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UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

- - - - - X

LULULEMON ATHLETICA CANADA INC.
and LULULEMON USA INC.

Petitioner,

vs. PATENT NO.: 9,259,615

NIKE, INC., IPR 2023-00349

Patent Owner.

- - - - - X

November 16, 2023
Washington, D.C.

VIDEOTAPED DEPOSITION OF:

ROBERT STONE, PH.D.

was called for examination by counsel for the
Petitioner,, pursuant to notice, taken at Morrison &
Foerster, LLP, 2100 L Street, N.W., Suite 900,
Washington, D.C., commencing at 9:06 a.m., before
Misty Klapper, a Notary Public in and for the
District of Columbia, when were present on behalf of
the respective parties:

1 APPEARANCES:

2 ON BEHALF OF THE PETITIONER:

3 FORREST MCCLELLEN, ESQUIRE

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12
13 ALSO PRESENT:

14 Gordon Thomas, Videographer

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C O N T E N T S

WITNESS:	EXAMINATION BY:	PAGE:
Robert Stone, Ph.D.	Forrest McClellen	4

E X H I B I T S

NO.:	DESCRIPTION:	PAGE:
Exhibit 1022	Computer Programming Sheet	19
Exhibit 1023	Computer Programming Sheet	24
Exhibit 1024	Handwritten Notes	50

EXHIBITS REFERRED TO:

NUMBER:	PAGE:
2002	10
1001	31
1002	48
1004	41

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P R O C E E D I N G S

VIDEO OPERATOR: Good morning.

We're going on the record at 9:06 a.m. on 09:07:25
November 16th 2023. 09:07:29

Please note that the microphones 09:07:33
are sensitive and may pick up whispering 09:07:34
and private conversations. 09:07:36

Please mute your phones at this 09:07:38
time. 09:07:39

Audio and video recording will 09:07:40
continue to take place, unless all parties 09:07:41
agree to go off the record. 09:07:44

This is media unit 1 of the video 09:07:46
recorded deposition of Dr. Robert Stone in 09:07:48
the matter of Lululemon Athletica Canada, 09:07:51
Inc. versus Nike, Inc. filed in the United 09:07:57
States Patent and Trademark Office; case 09:07:59
number IPR2023-00349. 09:08:02

The location of the deposition is 09:08:08
2100 L Street, Northwest, Suite 900, 09:08:11
Washington, D.C. 20037. 09:08:18

My name is Gordon Thomas, 09:08:23

1	representing Veritext Legal Solutions and	09:08:25
2	I am the videographer.	09:08:26
3	The Court Reporter is Misty Klapper	09:08:27
4	from the firm Veritext Legal Solutions.	09:08:32
5	Appearances will be noted upon	09:08:34
6	stenographic record.	09:08:36
7	Will the court reporter please	09:08:37
8	swear in the witness and then counsel may	09:08:38
9	proceed.	09:08:40
10	MS. REPORTER: One moment, please.	09:08:41
11	ROBERT STONE, PH.D.,	09:08:47
12	The Witness herein, called for	09:08:47
13	examination by counsel for the Petitioner,	09:08:47
14	having been duly sworn, was examined and	09:08:47
15	testified as follows:	09:08:47
16	EXAMINATION BY COUNSEL FOR THE PETITIONER	09:08:47
17	BY MR. MCCLELLEN:	09:08:58
18	Q. Good morning, Dr. Stone.	09:08:59
19	A. Good morning.	09:09:00
20	Q. Would you please state and spell your	09:09:01
21	name for the record.	09:09:02
22	A. Robert Thomas stone, R-O-B-E-R-T,	09:09:03

1	T-H-O-M-A-S, S-T-O-N-E.	09:09:07
2	Q. Thank you, Dr. Stone.	09:09:12
3	Dr. Stone, what do you do for a	09:09:14
4	living?	09:09:16
5	A. I am currently a professor of	09:09:17
6	practice in biomedical engineering for Virginia	09:09:18
7	Polytechnic Institute and State University.	09:09:21
8	Q. Do you have any other jobs?	09:09:24
9	A. I'm also the nominal president of a	09:09:25
10	company called Medical Design Solutions,	09:09:28
11	Incorporated.	09:09:30
12	Q. What do you mean by nominal	09:09:31
13	president?	09:09:33
14	A. We're not actually doing any designs	09:09:34
15	at the moment. We're in an idle mode, hoping to	09:09:35
16	receive funding to put a product into the	09:09:39
17	marketplace.	09:09:42
18	Q. Is this your eShirt company?	09:09:43
19	A. That's correct.	09:09:46
20	Q. Do you have any other jobs?	09:09:47
21	A. Other than some occasional expert	09:09:49
22	witness work, no.	09:09:51

1 Q. Dr. Stone, do you understand that you 09:09:54
2 are under oath today? 09:09:55
3 A. Yes. 09:09:57
4 Q. Is there any reason you cannot give 09:09:58
5 truthful testimony today? 09:10:00
6 A. No. 09:10:02
7 Q. So we'll take breaks roughly once per 09:10:03
8 hour. If you need a break before then, please 09:10:06
9 just let me know. I will likely ask to finish my 09:10:08
10 line of questioning; but after that, we'll go 09:10:12
11 ahead and take a break. 09:10:14
12 Do you understand? 09:10:15
13 A. Yes. 09:10:16
14 Q. Dr. Stone, what did you do to prepare 09:10:17
15 for this deposition? 09:10:19
16 A. I read my Declaration. I discussed 09:10:23
17 it with counsel. And I read references that are 09:10:26
18 listed here, as well as other references. 09:10:32
19 Q. Roughly how long did you spend 09:10:38
20 preparing for this deposition? 09:10:39
21 A. Somewhere between 10 and 12 hours, I 09:10:44
22 think, but that's an estimate. 09:10:46

Page 7

1 Q. How many meetings did you have with 09:10:48
2 your counsel in preparation for this deposition? 09:10:49
3 A. I believe we had two video 09:10:54
4 conferences and one live conference. 09:10:55
5 Q. Roughly how long was the first video 09:10:59
6 conference? 09:11:01
7 A. I think the video conference was only 09:11:04
8 about an hour-and-a-half. That's my -- best of 09:11:06
9 my recollection. 09:11:10
10 Q. Roughly how long was the second video 09:11:12
11 conference? 09:11:13
12 A. Similar time frame. 09:11:14
13 Q. And roughly how long was the third 09:11:16
14 meeting? 09:11:17
15 A. Roughly three hours. 09:11:21
16 Q. And was anyone, other than your 09:11:24
17 counsel, present with you in any of those 09:11:25
18 meetings? 09:11:27
19 A. Yes. 09:11:28
20 Q. Who? 09:11:29
21 A. There were two women counselors from 09:11:30
22 the same firm, but I don't recall their names. 09:11:33

1	Q.	Anyone else?	09:11:36
2	A.	I don't recall.	09:11:40
3	Q.	And when you said I read references	09:11:45
4		that are listed here, what did you mean?	09:11:47
5	A.	I skipped the pages. They're	09:12:05
6		double-sided.	09:12:10
7		On page 5 there's a list of materials	09:12:11
8		considered or paragraph -- is that paragraph 5?	09:12:14
9		That's on page 1. Paragraph two there's a list	09:12:17
10		of materials that were considered and following	09:12:26
11		references.	09:12:32
12	Q.	Okay. So, Dr. Stone, in front of	09:12:33
13		you, you have a copy of Exhibit 2002 in this	09:12:34
14		proceeding; is that correct?	09:12:37
15	A.	That's correct.	09:12:38
16	Q.	And you also have a separate table of	09:12:38
17		contents to that same exhibit in front of you,	09:12:40
18		correct?	09:12:42
19	A.	That's correct.	09:12:43
20	Q.	And these are clean copies of both	09:12:43
21		documents, correct?	09:12:45
22	A.	That is correct.	09:12:46

1 Q. All right. And when you were 09:12:46
2 referring to specific pages or paragraphs just 09:12:48
3 now, you were referring to Exhibit 2002, correct? 09:12:50
4 A. That's correct. 09:12:53
5 (Thereupon, Exhibit Number 2002 09:12:56
6 was referred to.) 09:12:56
7 BY MR. MCCLELLEN: 09:13:22
8 Q. And can you remind me one more time 09:13:22
9 which paragraph you meant when you said materials 09:13:25
10 considered. 09:13:28
11 A. I was looking at paragraph two and 09:13:30
12 three, which list -- well, paragraph two lists 09:13:33
13 the materials. 09:13:36
14 Q. Paragraph two of Exhibit 2002? 09:13:39
15 A. One moment, please. 09:13:43
16 Paragraph two, but they're also 09:13:52
17 listed on the -- a more thorough list is given on 09:13:54
18 paragraph 17, page 5. 09:13:59
19 Q. Okay. What documents, other than the 09:14:02
20 materials listed in paragraph 17 of your 09:14:05
21 Declaration, did you consider? 09:14:08
22 A. I don't recall using any, other than 09:14:13

Page 10

1	A.	No.	09:15:14
2	Q.	All right. Dr. Stone, please turn to	09:15:18
3		page 28 of your Declaration.	09:15:19
4	A.	Okay.	09:15:39
5	Q.	Excuse me, I'm at page 28 of 2 --	09:15:43
6		Exhibit 2002.	09:15:47
7		Let me know when you're there.	09:15:48
8	A.	I'm there.	09:15:49
9	Q.	Okay. Dr. Stone, page 28 of Exhibit	09:15:50
10		2002 is the first page of -- of Appendix A to	09:15:56
11		your Declaration, correct?	09:15:59
12	A.	That's correct.	09:16:02
13	Q.	Did you write Appendix A to your	09:16:03
14		Declaration?	09:16:05
15	A.	Yes, I did.	09:16:07
16	Q.	Is the information in Appendix A	09:16:08
17		correct?	09:16:10
18	A.	I believe it is.	09:16:12
19	Q.	On page 28 of Exhibit 2002 do you see	09:16:15
20		a subheader that states Expertise?	09:16:19
21	A.	Yes.	09:16:22
22	Q.	And below the subheader Expertise,	09:16:24

1 there are some categories; is that correct? 09:16:27

2 A. That's correct. 09:16:30

3 Q. And you wrote all those categories, 09:16:31

4 correct? 09:16:33

5 A. I did. 09:16:33

6 Q. Do these -- strike that. 09:16:37

7 Are the categories listed under 09:16:40

8 expertise your areas of expertise? 09:16:42

9 A. Those are all included in my areas of 09:16:47

10 expertise. 09:16:48

11 Q. Do you have other areas of expertise 09:16:51

12 that you did not list under the subheader 09:16:53

13 expertise? 09:16:55

14 A. I would include some other 09:17:00

15 manufacturing techniques that I currently am -- 09:17:03

16 have some expertise in. 09:17:08

17 Q. What do you mean by manufacturing 09:17:10

18 techniques? 09:17:11

19 A. As an example, in the senior design 09:17:13

20 class that I teach, there's a laboratory that has 09:17:16

21 a number of devices that are used in 09:17:19

22 manufacturing, and I have developed expertise in 09:17:23

1	those devices.	09:17:25
2	Q. What sort of devices are you talking	09:17:27
3	about?	09:17:29
4	A. 3D printers, CNC lathes, machining,	09:17:31
5	PCB fabrication.	09:17:37
6	Q. Anything else?	09:17:44
7	A. I can't think of anything, off the	09:17:54
8	top.	09:17:55
9	Q. Apart from that area of	09:17:56
10	manufacturing, are there any other areas of	09:17:57
11	expertise that you did not list under the header	09:17:59
12	Expertise on page 28 of Exhibit 2002?	09:18:02
13	A. I would have to go over 39 years	09:18:07
14	of -- so I developed expertise in blood gas	09:18:09
15	analyzers, blood analyzers. I developed	09:18:30
16	expertise in self-forming networks; in radio	09:18:41
17	frequency test equipment; in breath gas analysis;	09:18:54
18	in medical MEMS devices; in externally powered	09:19:12
19	medical devices; and in cardiac catheters.	09:19:47
20	Q. Anything else?	09:20:02
21	A. Not that I can recall.	09:20:03
22	Q. What is a blood gas analyzer?	09:20:09

1 A. A blood gas analyzer is a device 09:20:11
2 which can take a sample of blood and determine 09:20:14
3 the content of oxygen, carbon dioxide, carbon 09:20:18
4 monoxide. Those are the typical gases that are 09:20:24
5 examined for -- in a blood gas analyzer. 09:20:27
6 Q. What is a blood analyzer? 09:20:29
7 A. A blood analyzer is looking to 09:20:31
8 define -- determine what species of blood -- 09:20:34
9 sorry, species of cells and hemoglobin are in the 09:20:37
10 blood, hemoglobin that is not bound to any other 09:20:40
11 molecule, carboxy hemoglobin, met hemoglobin and 09:20:45
12 oxy hemoglobin. 09:20:51
13 Q. What is a self-forming network? 09:20:55
14 A. A self-forming network was a system 09:20:58
15 that I aided in the development for a so-called 09:21:00
16 Land Warrior Project for the United States Army, 09:21:05
17 where every member of the squad had a WiFi 09:21:07
18 transducer and that each one could be a server 09:21:17
19 for every other member of the squad so they would 09:21:19
20 be in complete communication. 09:21:23
21 Q. What did you mean by radio frequency 09:21:26
22 test equipment? 09:21:28

1 A. Two types of radio frequency test 09:21:33
2 equipment. 09:21:35
3 One is a so-called network analyzer, 09:21:36
4 which measures the radio frequency 09:21:39
5 characteristics of either singular devices or 09:21:41
6 printed circuit boards. 09:21:46
7 The other is a radio frequency power 09:21:48
8 meter, which could accept various forms of 09:21:53
9 modulation over a very wide frequency range and 09:21:57
10 provide an accurate indication of the total power 09:22:01
11 that was being emitted by such devices. 09:22:04
12 Q. What is a medical MEMS device? 09:22:08
13 A. Medical MEMS devices include pressure 09:22:12
14 sensors; accelerometers; devices which can be 09:22:15
15 encapsulated in suitable biomechanical materials 09:22:21
16 and function to provide indications of pressure 09:22:26
17 and/or movement within the body. 09:22:28
18 Q. Is MEMS an acronym? 09:22:31
19 A. It is. 09:22:32
20 Q. What does it stand for? 09:22:32
21 A. Micro-electrical mechanical system. 09:22:33
22 Q. M-E-M-S? 09:22:37

1	A.	Yes.	09:22:39
2	Q.	Okay. Dr. Stone, are you an expert	09:22:42
3		in computer science?	09:22:46
4	A.	I would not call myself an expert in	09:22:49
5		computer science. I would call myself a good	09:22:51
6		user of computer sciences.	09:22:55
7	Q.	Are you fluent in any computer coding	09:22:59
8		languages?	09:23:02
9	A.	I have some expertise in assembly,	09:23:04
10		some of the older languages, Fortran, Fourth,	09:23:07
11		some in C, some in Pascal. There are various	09:23:11
12		forms of C. And some in Python.	09:23:20
13	Q.	Can you read C++?	09:23:24
14	A.	I can now read C++ with a cheat sheet	09:23:26
15		alongside me to help recall some of the	09:23:30
16		instructions.	09:23:33
17	Q.	On page 28 of your Declaration, one	09:23:48
18		of the areas of expertise you identify is medical	09:23:50
19		electronics.	09:23:53
20		What did you mean by medical	09:23:54
21		electronics?	09:23:55
22	A.	Many medical devices require	09:23:58

1 electronics, either amplifiers, filters, digital 09:24:01
2 signal processing, all of which must be 09:24:06
3 integrated into the device. And I have expertise 09:24:09
4 both in the design, design reviews and printed 09:24:11
5 circuit board layout for such devices. 09:24:20

6 Q. Do you know what an if statement is? 09:24:25
7 A. Yes. 09:24:27

8 Q. What is it? 09:24:28
9 A. It's a conditional statement that's 09:24:28
10 used in a number of different programming 09:24:29
11 languages, which gives a condition which, if 09:24:32
12 true, will perform the function; otherwise, it 09:24:36
13 will not perform the following function. 09:24:39

14 Q. Do you know what a then statement is? 09:24:43
15 A. Yes. 09:24:45

16 Q. What is a then statement? 09:24:45
17 A. Then very often leads to the 09:24:47
18 instructions which would be performed if the if 09:24:51
19 statement is true. 09:24:54

20 Q. Do you know what a variable is in the 09:24:58
21 context of computer code? 09:24:59
22 A. Yes. 09:25:01

1	Q.	What is a variable?	09:25:02
2	A.	A variable is a parameter that can be	09:25:03
3		changed, whether it's a number -- typically it's	09:25:08
4		a number.	09:25:13
5	Q.	Do you know what a logical operator	09:25:14
6		is?	09:25:16
7	A.	Yes.	09:25:17
8	Q.	What is it?	09:25:17
9	A.	For example, logical operators	09:25:20
10		include ands, ors. An and statement requires	09:25:23
11		both of the conditions or all of the conditions	09:25:27
12		that are being looked at to be true.	09:25:30
13		An or statement is if either one of	09:25:32
14		them is a true statement, then the result is a	09:25:34
15		true state -- is true.	09:25:37
16	Q.	Okay.	09:25:54
17		MR. MCCLELLEN: The Court Reporter	09:26:27
18		is going to mark this as Exhibit 1022.	09:26:27
19		(Thereupon, Exhibit Number 1022	09:26:30
20		was marked for identification.)	09:26:30
21		BY MR. MCCLELLEN:	09:26:51
22	Q.	Dr. Stone, the Court Reporter has	09:26:51

1	handed you what's been marked as Exhibit 1022.	09:26:53
2	It's a one-page, pretty basic computer program	09:26:56
3	written in C++. Please take a moment to	09:27:00
4	familiarize yourself with it and let me know when	09:27:03
5	you're ready to discuss.	09:27:05
6	A. Okay.	09:27:29
7	Q. Are you ready to discuss?	09:27:31
8	A. I can discuss.	09:27:32
9	Q. Okay. Do you have sufficient	09:27:33
10	expertise to interpret this program?	09:27:36
11	MR. BOWLING: Objection, form.	09:27:41
12	THE WITNESS: I believe I	09:27:52
13	understand what it's saying.	09:27:53
14	BY MR. MCCLELLEN:	09:27:55
15	Q. Okay. Let's go through it.	09:27:56
16	Do you see line 6 of the program	09:27:57
17	shown in Exhibit 1022?	09:28:00
18	A. Yes.	09:28:01
19	Q. What does line 6 of the program do?	09:28:03
20	MR. BOWLING: Objection, form.	09:28:09
21	THE WITNESS: Sorry. It's -- it's	09:28:10
22	declaring a -- a string variable, A to be	09:28:15

1	a string variable.	09:28:19
2	BY MR. MCCLELLEN:	09:28:21
3	Q. And what about line 7?	09:28:22
4	A. It's declaring B to be a string	09:28:23
5	variable.	09:28:26
6	Q. And do you understand what line 10 of	09:28:27
7	the program would do?	09:28:29
8	A. Well, it's an instruction that is	09:28:34
9	telling an output to print on a screen or some --	09:28:38
10	at some location to enter a variable -- a -- a	09:28:42
11	value for A/N.	09:28:46
12	Q. And how about line 11?	09:28:51
13	A. It's taking an input for A.	09:28:55
14	Q. And how about line 13?	09:28:59
15	A. It's asking for an input for the	09:29:01
16	value of B/N.	09:29:04
17	Q. Does slash N produce an extra line?	09:29:09
18	A. I don't recall.	09:29:15
19	Q. Okay. How about line 14?	09:29:16
20	A. 14 is allowing the input of the	09:29:19
21	variable B.	09:29:22
22	Q. Is there an if statement shown on	09:29:23

1	Exhibit 1022?	09:29:25
2	A. There is.	09:29:27
3	Q. And where does that if statement	09:29:28
4	appear?	09:29:29
5	A. Line 17.	09:29:30
6	Q. And in plain language, what does the	09:29:32
7	if statement shown in Exhibit 1022 do?	09:29:34
8	A. If A is exactly equal to the variable	09:29:37
9	X, and B is exactly equal to the variable Y, then	09:29:44
10	there is an instruction that is an output to --	09:29:48
11	output to value of Z/N.	09:29:58
12	Q. Fair to say this is a pretty basic	09:30:03
13	computer program?	09:30:05
14	A. Yes.	09:30:06
15	Q. Writing this program would require	09:30:07
16	nothing more than basic programming skills?	09:30:08
17	MR. BOWLING: Objection, form.	09:30:13
18	THE WITNESS: It doesn't require a	09:30:15
19	lot of programming skills.	09:30:16
20	BY MR. MCCLELLEN:	09:30:20
21	Q. In your opinion, could a POSITA for	09:30:21
22	the purposes -- strike that.	09:30:22

1 In your opinion, could a person of 09:30:24
2 ordinary skill in the art for the purposes of the 09:30:26
3 '615 patent have written this program as of 2011? 09:30:29
4 A. Some of what are listed as a person 09:30:35
5 of ordinary skill in the art -- let me review 09:30:36
6 before I make a statement here. 09:30:39
7 A person of ordinary skill in the art 09:31:17
8 at the time of this patent may or may not. I'm 09:31:19
9 not certain if someone with a bachelor's degree 09:31:37
10 in industrial design or biomechanics would have 09:31:40
11 actually programmed in C or similar languages. 09:31:44
12 MS. REPORTER: I'm sorry? 09:31:50
13 THE WITNESS: C or similar 09:31:52
14 languages. 09:31:53
15 BY MR. MCCLELLEN: 09:31:53
16 Q. Are you referring to a paragraph in 09:31:54
17 your Declaration right now? 09:31:55
18 A. Yes. 09:31:57
19 Q. What paragraph? 09:31:57
20 A. Paragraph 24. 09:31:58
21 Q. Would a person of ordinary skill in 09:32:04
22 the art, having a degree in computer science, 09:32:05

Page 23

1	have been able to program the program shown in	09:32:08
2	Exhibit 1022 --	09:32:10
3	A. Yes.	09:32:12
4	Q. -- in 2011?	09:32:13
5	A. Yes.	09:32:14
6	Q. This is the last computer program I'm	09:32:32
7	going to give you. I promise. The Court	09:32:35
8	Reporter will mark this as Exhibit 1023.	09:32:38
9	(Thereupon, Exhibit Number 1023	09:32:43
10	was marked for identification.)	09:32:43
11	BY MR. MCCLELLEN:	09:33:00
12	Q. Dr. Stone, the Court Reporter has	09:33:01
13	handed you what's been marked as Exhibit 1023.	09:33:02
14	Please take a moment to review it and let me know	09:33:07
15	when you're ready to discuss it.	09:33:10
16	A. All right.	09:33:23
17	Q. Dr. Stone, is the structure of the	09:33:24
18	program shown in Exhibit 1023 substantially the	09:33:26
19	same as the structure of the program shown in	09:33:29
20	Exhibit 1022?	09:33:31
21	A. Yes.	09:33:34
22	Q. In Exhibit 1023 the program prints a	09:33:37

1 request to define variables A and B in terms of 09:33:44
2 the first day this week you exceeded an exercise 09:33:50
3 goal and the second day of this week you exceeded 09:33:56
4 an exercise goal, true? 09:33:58
5 A. Yes. 09:34:00
6 Q. In the program shown in Exhibit 1023, 09:34:00
7 if a user enters Monday for variable A and 09:34:02
8 Tuesday for variable B, then according to the if 09:34:05
9 statement, the program will print, quote, a 09:34:11
10 streak reward backslash N, end quote, correct? 09:34:14
11 A. That is correct. 09:34:19
12 Q. Fair to say this is a pretty basic 09:34:28
13 computer program? 09:34:29
14 A. It's a basic computer program. 09:34:30
15 Q. A person of ordinary skill in the art 09:34:33
16 as of 2011, having a degree in computer science, 09:34:35
17 could have written this program, correct? 09:34:38
18 A. Correct. 09:34:42
19 MR. MCCLELLEN: Objection, form. 09:34:42
20 THE WITNESS: Sorry, repeat the 09:34:44
21 question. 09:34:45
22 BY MR. MCCLELLEN: 09:34:52

1 Q. A person of ordinary skill in the art 09:34:52
2 as of 2007 (sic) having -- having a bachelor's 09:34:54
3 degree in computer science could have written the 09:34:59
4 program shown in Exhibit 1023, correct? 09:35:02
5 A. I would assume that's correct. 09:35:07
6 MR. MCCLELLLEN: I missed what you 09:35:18
7 said. What did you say? 09:35:19
8 BY MR. MCCLELLLEN: 09:35:20
9 Q. Thank you, Dr. Stone. You can put 09:35:21
10 those two exhibits aside. 09:35:22
11 To your knowledge, has a court ever 09:35:23
12 excluded an opinion that you've offered? 09:35:25
13 A. One statement that I had in an expert 09:35:27
14 report was excluded. 09:35:30
15 Q. What -- what court excluded that 09:35:34
16 statement? 09:35:36
17 A. I don't recall. 09:35:37
18 Q. Do you recall what case that 09:35:38
19 statement was excluded in? 09:35:39
20 A. I don't recall the name of the case. 09:35:44
21 Q. Do you recall when that statement was 09:35:46
22 excluded? 09:35:47

1	A.	Probably 15 years ago.	09:35:48
2	Q.	Is that the only time a court has	09:35:54
3		excluded one of your opinions?	09:35:57
4	A.	Yes.	09:35:58
5	Q.	Did that case in which the court	09:35:59
6		excluded one of your opinions go to trial?	09:36:01
7	A.	Again, I don't recall.	09:36:04
8	Q.	Is it your understanding -- strike	09:36:11
9		that.	09:36:14
10		What -- what do you mean by excluded	09:36:20
11		your opinion?	09:36:22
12	A.	I had a statement in a report that no	09:36:24
13		physician would treat a patient who was in the	09:36:30
14		intensive care unit without reviewing their	09:36:33
15		record. And that statement was included because	09:36:36
16		I am not a physician -- was excluded.	09:36:38
17	Q.	According to your understanding, do	09:36:44
18		you believe that you would have been able to	09:36:47
19		testify to that statement at trial had that case	09:36:49
20		gone to trial?	09:36:52
21		MR. MCCLELLLEN: Objection, form.	09:36:53
22		THE WITNESS: I don't know. I	09:36:56

Page 27

1 could refer to an expert that I had 09:36:57
2 checked with, which I did not put in my 09:36:59
3 original report. 09:37:01
4 BY MR. MCCLELLEN: 09:37:13
5 Q. Please turn to paragraph 33 of your 09:37:14
6 Declaration. Let me know when you're there. 09:37:15
7 A. I'm there. 09:37:29
8 Q. In your opinion, is a user setting a, 09:37:30
9 quote, daily goal, an example of receiving an 09:37:33
10 activity time period? 09:37:37
11 MR. BOWLING: Objection, form. 09:37:47
12 THE WITNESS: If the user sets a 09:38:01
13 goal that is to be accomplished in a day, 09:38:03
14 then he has at least allowed -- he 09:38:06
15 selected a time period, yes. 09:38:11
16 BY MR. MCCLELLEN: 09:38:19
17 Q. So let's roll back to paragraph 32 of 09:38:20
18 your Declaration. Let me know when you're there. 09:38:22
19 A. I'm there. 09:38:24
20 Q. Okay. And do you see the limitation 09:38:25
21 that -- that your Declaration identifies as 09:38:28
22 1[B]/11[D], quote, receiving an activity time 09:38:30

1	period, end quote?	09:38:34
2	A. I do.	09:38:35
3	Q. Okay. So if a user sets a daily	09:38:35
4	goal, does that action by the user satisfy the	09:38:40
5	claim element receiving an activity time period,	09:38:48
6	according to your understanding?	09:38:50
7	A. No.	09:38:52
8	MR. MCCLELLEN: Objection, form.	09:38:53
9	THE WITNESS: Sorry.	09:38:54
10	No.	09:38:55
11	BY MR. MCCLELLEN:	09:38:55
12	Q. Why not?	09:38:56
13	A. Because the user did not receive that	09:38:56
14	time period. He merely sect -- selected one that	09:39:00
15	had been previously received by the device when	09:39:02
16	it was manufactured.	09:39:06
17	Q. So please go to the second sentence	09:39:09
18	of paragraph 33 of your Declaration. Would you	09:39:10
19	read that sentence.	09:39:16
20	A. Sorry, which -- which paragraph?	09:39:17
21	Q. The second sentence of paragraph 33	09:39:19
22	of your Declaration.	09:39:21

1	A.	Okay.	09:39:22
2	Q.	And please just read the second	09:39:23
3		sentence to yourself silently, and then let me	09:39:24
4		know when you've done so.	09:39:27
5	A.	Okay.	09:39:29
6	Q.	So is it your testimony that if a	09:39:31
7		user sets a daily goal during registration of a	09:39:36
8		wearable device, the user -- excuse me -- the	09:39:42
9		system has not received an activity time period?	09:39:45
10	A.	The list of activity time periods	09:39:47
11		that are shown in the reference that was given is	09:39:49
12		not the same as the user inputting a time period	09:39:54
13		so that the device receives it. He is selecting	09:39:59
14		one that's already been received.	09:40:02
15	Q.	What reference are you talking about?	09:40:04
16	A.	I believe it's the -- I believe it's	09:40:06
17		the Stivorice reference, but I'd like to see the	09:40:38
18		patent and recall, because I don't keep all of	09:40:42
19		them straight.	09:40:44
20	Q.	All right. We're -- we're not to	09:40:44
21		Stivorice yet, I think.	09:40:46
22		Looking at paragraph 33 of your	09:40:47

1	Declaration, do you see any citations to	09:40:49
2	Stivoric?	09:40:52
3	A. No, we're talking about the '615	09:40:55
4	patent.	09:40:59
5	Q. Okay. The Court Reporter will hand	09:41:00
6	you what's been previously marked as Exhibit	09:41:16
7	1001.	09:41:18
8	(Thereupon, Exhibit Number 1001	09:41:26
9	was referred to.)	09:41:26
10	BY MR. MCCLELLEN:	09:41:29
11	Q. Do you recognize this, Dr. Stone?	09:41:29
12	A. I have seen it before.	09:41:31
13	Q. What is it?	09:41:33
14	A. It's a patent attributed to Weast, et	09:41:34
15	al., dated February 16th 2016.	09:41:37
16	Q. And this is what you refer to in your	09:41:43
17	Declaration as the '615 patent, correct?	09:41:46
18	A. That's correct.	09:41:48
19	Q. Okay. So in -- in the context of the	09:41:53
20	'615 patent, not Stivoric, if a user sets a daily	09:41:55
21	goal during registration of a wearable device, in	09:42:00
22	your opinion does that meet the receiving	09:42:04

1 activity time period limitation? 09:42:07

2 MR. BOWLING: Objection to form. 09:42:12

3 THE WITNESS: He does so in the 09:42:24

4 course -- sorry, repeat the question so 09:42:25

5 I'm careful to answer it. 09:42:26

6 BY MR. MCCLELLEN: 09:42:33

7 Q. In the context of the '615 patent, if 09:42:34

8 a user sets a daily goal during registration of a 09:42:38

9 wearable device, then, in your opinion, does that 09:42:41

10 action meet the, quote, receiving an activity 09:42:46

11 time period limitation, end quote? 09:42:49

12 A. If the user selects the daily goal 09:42:53

13 and the daily -- sets it as a daily goal and 09:42:56

14 selects the goal itself, then, yes, that's 09:43:00

15 selecting an activity time period for that goal. 09:43:03

16 Q. So we're using a different -- we're 09:43:08

17 using different verbs. I said set. You said 09:43:10

18 selects. So let's -- let's go back to sets, 09:43:14

19 because I think it may be a little different in 09:43:16

20 this context. 09:43:18

21 If a user sets a daily goal during 09:43:20

22 registration of a wearable device, then does that 09:43:23

1 action meet the receiving an activity time period 09:43:26
2 limitation? 09:43:29
3 MR. BOWLING: Objection, form. 09:43:33
4 THE WITNESS: I think I'd rather 09:43:34
5 use my statement in paragraph 33. In my 09:43:35
6 opinion, these passages confirm that the 09:43:38
7 user not only selects or defines a goal 09:43:40
8 period, that is, an activity time period, 09:43:44
9 but that he or she does so in the course 09:43:46
10 of goal setting. 09:43:48
11 I'm going to let that stand. 09:43:50
12 BY MR. MCCLELLEN: 09:43:59
13 Q. Okay. Let's take the first passage 09:44:00
14 that you cited in paragraph 33, which you cite in 09:44:01
15 the second sentence of paragraph 33. It's column 09:44:06
16 46 of the '615 patent, lines 61 to 63. 09:44:10
17 Do you see that citation in paragraph 09:44:14
18 33 of your report? 09:44:16
19 A. I do. 09:44:17
20 Q. How does that passage confirm that a 09:44:18
21 user not only selects or defines a goal time 09:44:19
22 period, i.e. an activity time period, but that he 09:44:23

1 or she does so in the course of goal setting? 09:44:25

2 A. It refers to when the user would be 09:44:45

3 setting a daily goal. 09:44:48

4 Q. It being the statement from the '615 09:44:54

5 patent? 09:44:57

6 A. Well, if I can read that, in some 09:44:58

7 examples, portions of the registration process 09:44:59

8 may be optional, for example, setting a daily 09:45:03

9 goal, display setup, et cetera. 09:45:06

10 Q. How does the statement that you just 09:45:12

11 read confirm the opinion that you cite in the 09:45:14

12 second to last sentence of paragraph 33 of your 09:45:20

13 Declaration? 09:45:22

14 A. Well, again, the sentence reads, In 09:45:31

15 my opinion, these passages confirm that a user 09:45:34

16 not only selects or defines a goal period, that 09:45:37

17 is, an activity period, but he or she does so in 09:45:41

18 the course of goal setting. 09:45:44

19 So we've talked about a daily goal 09:45:46

20 and we've talked about a goal. And when it's 09:45:48

21 being set in this particular line, the 09:45:51

22 registration may be optional setting a daily goal 09:45:54

1	in the patent itself.	09:46:00
2	Q. Is the passage that you cited at	09:46:05
3	column 46, lines 61 through 63, an example of	09:46:08
4	what you believe meets the receiving an activity	09:46:12
5	time period limitation?	09:46:15
6	MR. BOWLING: Objection, form.	09:46:24
7	THE WITNESS: Yes.	09:46:25
8	BY MR. MCCLELLEN:	09:46:34
9	Q. Is the passage that you cited at	09:46:34
10	column 51, lines 1 through 8, of the '615 patent	09:46:37
11	an example of what you believe satisfies the	09:46:42
12	receiving an activity time period limitation?	09:46:47
13	MR. BOWLING: Objection, form.	09:46:51
14	THE WITNESS: Now that I've read	09:47:05
15	this, can you repeat it?	09:47:06
16	BY MR. MCCLELLEN:	09:47:07
17	Q. Is the passage that you cited in	09:47:08
18	paragraph 33 of your expert report, column 51,	09:47:11
19	lines 1 through 8, of the '615 patent an example	09:47:17
20	of what you believe satisfies the receiving an	09:47:21
21	activity time period limitation?	09:47:24
22	A. Well, specifically the goal may	09:47:28

1 respond -- correspond to a specified amount of 09:47:31
2 time, such as a day, an hour, a week, a month or 09:47:33
3 the like. In some arrangements the goal time 09:47:36
4 period -- 09:47:49
5 MS. REPORTER: I'm sorry. 09:47:49
6 THE WITNESS: I'm sorry. Going too 09:47:49
7 fast? Can't hear me? 09:47:49
8 MS. REPORTER: I can hear you. 09:47:49
9 THE WITNESS: Okay. In some 09:47:49
10 arrangements the goal time period may 09:47:49
11 correspond to the evaluation time period. 09:47:50
12 And then it gives an example. 09:47:51
13 If the evaluation time period was 09:47:53
14 one day, the goal time period may be 09:47:55
15 defined as one day. Alternatively -- 09:47:56
16 alternatively, the user may define his or 09:47:59
17 her own goal time period. 09:48:02
18 So if you'll one more time repeat 09:48:05
19 the question, then I'll -- 09:48:13
20 BY MR. MCCLELLEN: 09:48:14
21 Q. Is the passage at column 51, lines 1 09:48:16
22 through 8, of the '615 patent an example of what 09:48:19

1 you believe satisfies the receiving an activity 09:48:22
2 time period limitation? 09:48:25
3 A. Yes. 09:48:27
4 Q. Let's go back to column 46, lines 61 09:48:35
5 through 63, of the '615 patent. Let me know when 09:48:38
6 you're there. 09:48:48
7 A. I'm there. 09:48:49
8 Q. How does the passage at column 46, 09:48:53
9 lines 61 through 63, of the '615 patent support 09:48:58
10 your opinion as to the meaning of receiving an 09:49:05
11 activity time period? 09:49:09
12 A. The very last line reads, Setting a 09:49:28
13 daily goal. So setting a daily goal is a time 09:49:32
14 period in which it must be accomplished. And the 09:49:38
15 goal, whatever it is that you're setting, is what 09:49:41
16 he's in the process of putting in. 09:49:45
17 Q. So focusing on daily goal, daily is 09:49:51
18 the time period? 09:49:56
19 A. In this case he is selecting a daily 09:49:58
20 goal, yes. 09:50:00
21 Q. Okay. 09:50:02
22 A. Sorry. He is -- he is setting a 09:50:03

1	daily goal.	09:50:13
2	Q. He being a user?	09:50:15
3	A. He being the user.	09:50:17
4	Q. Okay. Does the magnitude of the goal	09:50:19
5	make a difference, in your opinion, to whether	09:50:27
6	the user has set a time period?	09:50:31
7	MR. BOWLING: Objection, form.	09:50:35
8	THE WITNESS: I don't understand	09:50:36
9	your question.	09:50:37
10	BY MR. MCCLELLEN:	09:50:40
11	Q. So, for example, if a user sets a	09:50:40
12	daily goal of 2400 calories burned, has the user	09:50:44
13	still -- has the -- strike that.	09:50:49
14	If a user sets a daily goal of 2400	09:50:53
15	calories burned, has the system when that goal	09:50:55
16	was set still received an activity time period?	09:50:59
17	MR. BOWLING: Objection to form.	09:51:01
18	MS. REPORTER: I'm sorry, could you	09:51:02
19	repeat that?	09:51:03
20	MR. MCCLELLEN: Yeah.	09:51:05
21	BY MR. MCCLELLEN:	09:51:05
22	Q. If a user sets a daily goal of, for	09:51:06

1 example, 2400 calories burned, has a system in 09:51:08
2 which that goal was set still received an 09:51:12
3 activity time period? 09:51:14
4 A. If the user sets a daily goal and he 09:51:17
5 puts the material in there, the number of 09:51:20
6 calories burned at 2400, that is a time period 09:51:24
7 over which the goal must be accomplished. 09:51:29
8 Q. Okay. And it doesn't make a 09:51:34
9 difference as to whether a time period is set 09:51:36
10 whether the goal itself is 2400 calories burned 09:51:42
11 or some other kind of goal, correct? 09:51:47
12 MR. BOWLING: Objection, form. 09:51:50
13 THE WITNESS: Would you clarify 09:51:51
14 what some other kind of goal might be 09:51:52
15 and -- 09:51:55
16 BY MR. MCCLELLEN: 09:51:55
17 Q. Sure. Sure. If a user sets a daily 09:51:56
18 goal of 2000 calories consumed, has a system in 09:51:59
19 that -- in which that goal was set still received 09:52:04
20 an activity time period? 09:52:08
21 A. In the context of the '615 here, if 09:52:09
22 they are setting a daily goal, regardless of what 09:52:13

1 the particular goal is, and it's set for the day, 09:52:17
2 they've set a time period for that goal to be 09:52:21
3 accomplished. 09:52:23
4 Q. The same would be true if the goal 09:52:24
5 was exercising for 30 minutes at moderate 09:52:26
6 intensity, correct? 09:52:28
7 A. If the user is setting a daily goal 09:52:32
8 and that is the goal, then that is the time 09:52:33
9 period over which that goal must be accomplished. 09:52:36
10 Q. Okay. And equally the same is true 09:52:39
11 if the daily goal were exercising for 20 minutes 09:52:42
12 at vigorous intensity, correct? 09:52:46
13 A. I believe I've already stated 09:52:48
14 regardless of what the activity is. 09:52:49
15 Q. Okay. We've been going for nearly an 09:52:55
16 hour. Why don't we go ahead and take a 09:52:57
17 ten-minute break. 09:53:00
18 VIDEO OPERATOR: The time is 9:52 09:53:02
19 a.m. We're going off the record. 09:53:04
20 (Thereupon, a brief recess was taken.) 09:53:06
21 VIDEO OPERATOR: The time is 10:04 10:04:48
22 a.m. We're going back on the record. 10:04:49

1	Please proceed, counsel.	10:04:52
2	BY MR. MCCLELLEN:	10:04:53
3	Q. Welcome back, Dr. Stone.	10:04:53
4	A. Thank you.	10:04:55
5	Q. During the break did you discuss the	10:04:56
6	substance of your testimony with your counsel?	10:04:57
7	A. No.	10:05:00
8	Q. Dr. Stone, the Court Reporter is	10:05:05
9	going to hand you what has been previously marked	10:05:07
10	as Exhibit 1004.	10:05:09
11	(Thereupon, Exhibit Number 1004	10:05:11
12	was referred to.)	10:05:11
13	MR. MCCLELLEN: You don't need to	10:05:29
14	mark it.	10:05:30
15	THE WITNESS: Thank you.	10:05:35
16	BY MR. MCCLELLEN:	10:05:36
17	Q. Dr. Stone, do you recognize this?	10:05:37
18	A. Yes.	10:05:41
19	Q. What is this?	10:05:42
20	A. This is what's referred to as the	10:05:44
21	Sirmans patent.	10:05:45
22	Q. Please turn to paragraph 84 of	10:05:49

1	Sirmans. And let me know when you're there.	10:05:51
2	A. I'm there.	10:06:05
3	Q. Do you see the parenthetical,	10:06:06
4	Dr. Stone, in the middle of the paragraph that	10:06:09
5	refers to 30 minutes a day, five days a week?	10:06:11
6	A. I do.	10:06:13
7	Q. There are seven days in a week,	10:06:15
8	correct?	10:06:18
9	A. That's correct.	10:06:18
10	Q. If somebody completes an athletic	10:06:20
11	goal in each of five days in a single week, they	10:06:21
12	must exercise in at least some consecutive days,	10:06:26
13	correct?	10:06:30
14	A. Correct.	10:06:30
15	Q. What is the fewest number of	10:06:32
16	consecutive days that somebody can exercise in a	10:06:34
17	week and still complete a goal in each of five	10:06:37
18	days in that week?	10:06:40
19	A. I'd like to draw a diagram and	10:06:45
20	calculate it out. I'm sorry. If you'll give me	10:06:48
21	a few minutes, I'll work it out.	10:06:51
22	May I write on the back of this	10:07:02

1	exhibit?	10:07:04
2	Q. Which exhibit?	10:07:05
3	A. This is 1023.	10:07:06
4	Q. If you don't mind, would you write on	10:07:09
5	the front of the Sirmans reference.	10:07:15
6	A. Oh, thank you. I'm writing on a pad	10:07:22
7	instead.	10:07:25
8	Q. Okay. And, Dr. Stone, just so you	10:07:26
9	know, before you write anything, we're going to	10:07:28
10	make what you write an exhibit to this	10:07:30
11	deposition.	10:07:31
12	A. Fine.	10:07:32
13	It would appear that three would be	10:08:16
14	the fewest.	10:08:18
15	Q. Three days?	10:08:24
16	A. Three days would -- would be the --	10:08:25
17	the minimum that would be in sequence.	10:08:26
18	Q. Okay. So fair to say a person of	10:08:29
19	ordinary skill in the art as of 2011 would	10:08:31
20	understand that exercising once per day, five	10:08:35
21	days a week meant completing at least three goals	10:08:38
22	in three consecutive days, correct?	10:08:42

1	MR. BOWLING: Objection, form.	10:08:46
2	THE WITNESS: That would be what	10:08:47
3	I'd calculate here.	10:08:48
4	BY MR. MCCLELLEN:	10:08:49
5	Q. In other words, one goal on each of	10:08:50
6	three consecutive days, correct?	10:08:51
7	MR. BOWLING: Same objection.	10:08:54
8	THE WITNESS: One goal on three	10:09:01
9	consecutive days would be the minimum	10:09:03
10	number of consecutive days that would be	10:09:06
11	in a week.	10:09:08
12	BY MR. MCCLELLEN:	10:09:13
13	Q. Now, the parenthetical in paragraph	10:09:13
14	84 --	10:09:15
15	A. Sorry, if five goals had been	10:09:16
16	completed during the week. I didn't complete the	10:09:17
17	statement.	10:09:21
18	Q. Now, paragraph 84 of Sirmans also	10:09:23
19	includes a reference to exercising 20 minutes a	10:09:26
20	day, three days a week, correct?	10:09:30
21	A. That is correct.	10:09:32
22	Q. Three days a week are not necessarily	10:09:33

1	consecutive, correct?	10:09:35
2	A. That's correct.	10:09:37
3	Q. A person of ordinary skill in the art	10:09:40
4	as of 2011 reading three days a week would	10:09:41
5	recognize that that phrase can encompass, for	10:09:46
6	example, Monday, Wednesday and Friday, correct?	10:09:49
7	A. That is correct.	10:09:53
8	Q. Same for Tuesday, Thursday, Saturday?	10:09:54
9	A. Correct.	10:09:57
10	Q. Same for Wednesday, Friday, Sunday?	10:09:58
11	A. Correct.	10:10:01
12	Q. Same for Monday, Tuesday, Wednesday?	10:10:02
13	A. Sorry, Monday, Tuesday, Wednesday?	10:10:06
14	Q. Yes.	10:10:09
15	A. Would be three days in a row.	10:10:09
16	Q. Yes.	10:10:12
17	A. Yes.	10:10:12
18	Q. So just so we have a clear record --	10:10:12
19	(crosstalk)	10:10:14
20	A. -- get a same for, same for, same for	10:10:15
21	for days that were skipped, I believe, and then	10:10:17
22	you went for days that are in sequence.	10:10:20

1 Q. Right. We're working through the 10:10:24
2 permutations. 10:10:25
3 A. Okay. 10:10:26
4 Q. Okay. So let's -- let's do this 10:10:26
5 again to get a clean record. 10:10:28
6 A person of ordinary skill in the art 10:10:30
7 reading three days a week would recognize that 10:10:33
8 that phrase, three days a week, also encompasses 10:10:34
9 Monday, Tuesday, Wednesday, correct? 10:10:38
10 A. That is correct. 10:10:40
11 Q. Okay. Same question for Tuesday, 10:10:41
12 Wednesday, Thursday? 10:10:44
13 A. Correct. 10:10:45
14 Q. And so on for all the remaining 10:10:47
15 possible combinations of three days in a week, 10:10:49
16 right? 10:10:52
17 A. Yes. Let's clarify, three 10:10:53
18 consecutive days in a week. You said for all 10:11:04
19 possible. That would be consecutive days. 10:11:09
20 Either that or I did not understand your 10:11:25
21 question. 10:11:27
22 Q. Okay. I think we had a 10:11:27

1	miscommunication.	10:11:29
2	Okay. So just now you were	10:11:51
3	clarifying that a person of ordinary skill would	10:12:23
4	have recognized that three days in a week could	10:12:26
5	encompass all possible combinations of three	10:12:32
6	consecutive days in a week; is -- is that	10:12:35
7	correct?	10:12:37
8	A. It could.	10:12:38
9	Q. It could, okay. Give me just a	10:12:39
10	moment, Dr. Stone.	10:12:49
11	Okay. Dr. Stone, would you please	10:15:11
12	turn to paragraph 36 of your Declaration. Let me	10:15:12
13	know when you're there.	10:15:28
14	A. I'm there.	10:15:29
15	Q. And, Dr. Stone, in paragraph 36 of	10:15:30
16	your Declaration do you summarize your	10:15:32
17	understanding of a reference called Hoffman?	10:15:35
18	A. That's correct.	10:15:40
19	Q. Would you recognize Hoffman if I	10:15:42
20	showed it to you?	10:15:43
21	A. Yes.	10:15:45
22	Q. The Court Reporter is handing you	10:15:56

1 what has been previously marked as Exhibit 1002. 10:15:57
2 (Thereupon, Exhibit Number 1002 10:16:01
3 was referred to.) 10:16:01
4 THE WITNESS: Thank you. 10:16:08
5 BY MR. MCCLELLEN: 10:16:13
6 Q. Dr. Stone, do you have that in front 10:16:16
7 of you? 10:16:17
8 A. I do. 10:16:17
9 Q. Dr. Stone, in preparing your 10:16:19
10 Declaration did you review Exhibit 1002 in its 10:16:20
11 entirety? 10:16:23
12 A. Best of my recollection, yes. 10:16:25
13 Q. Okay. Please turn to paragraph 198 10:16:27
14 of Exhibit 1002, which is Hoffman. And let me 10:16:32
15 know when you're there. 10:16:42
16 A. I'm there. 10:16:45
17 Q. Dr. Stone, in the sixth to last line 10:16:51
18 of paragraph 198 do you see the phrase three 10:16:53
19 goals in three consecutive days? 10:16:57
20 A. I see that. 10:17:00
21 Q. Do you have an opinion about how a 10:17:03
22 person of ordinary skill in the art as of 2011 10:17:05

1	would have interpreted, quote, three goals in	10:17:08
2	three consecutive days, end quote?	10:17:11
3	MR. BOWLING: Objection, form.	10:17:15
4	THE WITNESS: I think it reads	10:17:17
5	exactly as it says, that they completed	10:17:19
6	three goals in three consecutive days. I	10:17:21
7	don't think that needs any interpretation.	10:17:25
8	BY MR. MCCLELLEN:	10:17:30
9	Q. Do you understand that phrase to mean	10:17:31
10	one goal in each of three consecutive days?	10:17:33
11	MR. BOWLING: Objection, form.	10:17:36
12	THE WITNESS: Actually, by looking	10:17:44
13	at the context, they could complete two	10:17:47
14	goals in a single day, three goals in	10:17:52
15	three consecutive days, so it becomes a	10:17:55
16	little bit strange as to whether they mean	10:17:57
17	three goals in each of three days or if it	10:18:02
18	would be one goal in each of those days,	10:18:06
19	based on the following statement	10:18:09
20	completing two goals in a single day.	10:18:13
21	BY MR. MCCLELLEN:	10:18:26
22	Q. Okay. Dr. Stone, let's go ahead and	10:18:27

1	take another ten minutes and let's go off the	10:18:30
2	record, please.	10:18:35
3	VIDEO OPERATOR: The time is 10:17	10:18:36
4	a.m. We are going off the record.	10:18:38
5	(Thereupon, a brief recess was taken.)	10:18:39
6	VIDEO OPERATOR: The time is	10:29:42
7	approximately 10:29 a.m. We are going	10:29:42
8	back on the record.	10:29:45
9	Please proceed, counsel.	10:29:47
10	BY MR. MCCLELLEN:	10:29:49
11	Q. Okay. Welcome back, Dr. Stone.	10:29:49
12	A. Thank you.	10:29:51
13	MR. MCCLELLEN: Would you please	10:29:51
14	mark the paper in front of Dr. Stone as	10:29:52
15	Exhibit 1024.	10:29:54
16	(Thereupon, Exhibit Number 1024	10:29:56
17	was marked for identification.)	10:29:56
18	MR. MCCLELLEN: Thank you.	10:30:11
19	And Lululemon has no further	10:30:12
20	cross-examination at this time, although	10:30:14
21	we may have more questions if Nike	10:30:16
22	redirects. So we pass the witness.	10:30:18

1 MR. BOWLING: Okay. I'll take a 10:30:20
2 couple of minutes. 10:30:22
3 VIDEO OPERATOR: The time is 10:29 10:30:28
4 a.m. We're going off the record. 10:30:30
5 (Thereupon, a brief recess was taken.) 10:30:31
6 VIDEO OPERATOR: The time is 10:36 10:37:13
7 a.m. We're going back on the record. 10:37:15
8 Please proceed, counsel. 10:37:17
9 MR. BOWLING: No -- no further 10:37:19
10 questions from us for Dr. Stone. Thank 10:37:20
11 you. 10:37:23
12 VIDEO OPERATOR: The time is 10:36 10:37:24
13 a.m. We're going off the record. 10:37:25
14 (Thereupon, signature having not been
15 waived, at 10:36 a.m. the deposition
16 concluded.)
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CERTIFICATE OF DEPONENT

I, Robert Stone, Ph.D., do hereby
certify that I have read the foregoing pages,
1 through 51, inclusive, which
contain a correct transcript of the answers
given by me to the questions propounded to me
herein, except for changes, if any, duly
noted on the enclosed errata sheet.

Robert Stone

WITNESS

Sworn and subscribed to before me
this ____ day of _____, 20__.

My commission expires:

Notary Public:

Page 52

CERTIFICATE OF NOTARY

I, MISTY KLAPPER, the officer
before whom the foregoing deposition was
taken, do hereby certify that the witness
whose testimony appears in the foregoing
deposition was duly sworn by me; that the
testimony of said witness was taken by me
in shorthand and thereafter reduced to
typewriting by me; that said deposition is
a true record of the testimony given by
said witness; that I am neither counsel
for, related to, nor employed by any of
the parties to the action in which this
deposition was taken; and, further, that I
am not a relative or employee of any
attorney or counsel employed by the
parties hereto, nor financially or
otherwise interested in the outcome of
this action.

<%449,Signature%>

Misty Klapper, RMR, CSR, CRR

Notary Public in and for the District of Columbia

Page 53

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AARON BOWLING, ESQUIRE

aaron.bowling@arnoldporter.com

NOVEMBER 22, 2023

RE: LULULEMON ATHLETICA CANADA INC V. NIKE INC

NOVEMBER 16, 2023, ROBERT STONE, PH.D., JOB NO. 6278045

The above-referenced transcript has been
completed by Veritext Legal Solutions and
review of the transcript is being handled as follows:

___ Per CA State Code (CCP 2025.520 (a)-(e)) - Contact Veritext
to schedule a time to review the original transcript at
a Veritext office.

___ Per CA State Code (CCP 2025.520 (a)-(e)) - Locked .PDF
Transcript - The witness should review the transcript and
make any necessary corrections on the errata pages included
below, notating the page and line number of the corrections.
The witness should then sign and date the errata and penalty
of perjury pages and return the completed pages to all
appearing counsel within the period of time determined at
the deposition or provided by the Code of Civil Procedure.

___ Waiving the CA Code of Civil Procedure per Stipulation of
Counsel - Original transcript to be released for signature
as determined at the deposition.

___ Signature Waived - Reading & Signature was waived at the
time of the deposition.

Page 54

1 _X_ Federal R&S Requested (FRCP 30(e)(1)(B)) - Locked .PDF
2 Transcript - The witness should review the transcript and
3 make any necessary corrections on the errata pages included
4 below, notating the page and line number of the corrections.
5 The witness should then sign and date the errata and penalty
6 of perjury pages and return the completed pages to all
7 appearing counsel within the period of time determined at
8 the deposition or provided by the Federal Rules.
9 ___ Federal R&S Not Requested - Reading & Signature was not
10 requested before the completion of the deposition.

1 LULULEMON ATHLETICA CANADA INC V. NIKE INC
2 ROBERT STONE, PH.D. (#6278045)

3 E R R A T A S H E E T

4 PAGE_____ LINE_____ CHANGE_____

5 _____

6 REASON_____

7 PAGE_____ LINE_____ CHANGE_____

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9 REASON_____

10 PAGE_____ LINE_____ CHANGE_____

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12 REASON_____

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14 _____

15 REASON_____

16 PAGE_____ LINE_____ CHANGE_____

17 _____

18 REASON_____

19 PAGE_____ LINE_____ CHANGE_____

20 _____

21 REASON_____

22 _____

23 _____

24 WITNESS _____ Date _____

25 _____

[& - above]

&	16th 4:4 31:15	3	615 23:3 31:3
& 1:16 2:4,9 54:23 55:9	17 10:18,20 11:1,9 22:5	30 40:5 42:5 55:1	31:17,20 32:7 33:16 34:4 35:10,19 36:22 37:5,9 39:21
1	19 3:8 198 48:13,18	31 3:14 312 2:11 32 28:17 33 28:5 29:18 29:21 30:22 33:5,14,15,18 34:12 35:18	6278045 54:5 56:2 63 33:16 35:3 37:5,9
1 4:13 9:9 28:22 35:10,19 36:21 55:1 10 3:13 7:21 21:6 1001 3:14 31:7 31:8 1002 3:15 48:1 48:2,10,14 1004 3:16 41:10,11 1022 3:8 19:18 19:19 20:1,17 22:1,7 24:2,20 1023 3:9 24:8,9 24:13,18,22 25:6 26:4 43:3 1024 3:10 50:15,16 10:04 40:21 10:17 50:3 10:29 50:7 51:3 10:36 51:6,12 51:15 11 21:12 28:22 12 7:21 13 21:14 14 21:19,20 15 27:1 16 1:11 54:5	2 2 12:5 20 40:11 44:19 52:16 2000 39:18 2002 3:13 9:13 10:3,5,14 11:14 12:6,10 12:19 14:12 20037 4:21 2007 26:2 2011 23:3 24:4 25:16 43:19 45:4 48:22 2016 31:15 2023 1:11 4:4 54:3,5 2023-00349 1:8 2025.520 54:9 54:12 2100 1:17 4:20 22 54:3 24 3:9 23:20 2400 38:12,14 39:1,6,10 268-7000 2:5 28 12:3,5,9,19 14:12 17:17	32 28:17 33 28:5 29:18 29:21 30:22 33:5,14,15,18 34:12 35:18 36 47:12,15 39 14:13 3d 14:4 4 4 3:3 41 3:16 415 2:5 4200 2:10 425 2:4 449 53:21 46 33:16 35:3 37:4,8 48 3:15 5 5 9:7,8 10:18 50 3:10 51 35:10,18 36:21 583-2300 2:11 6 6 20:16,19 60602 2:10 61 33:16 35:3 37:4,9	7 7 21:3 70 2:10 8 8 35:10,19 36:22 84 41:22 44:14 44:18 9 9,259,615 1:7 900 1:17 4:20 94105 2:5 9:06 1:18 4:3 9:52 40:18 a a.m. 1:18 4:3 40:19,22 50:4 50:7 51:4,7,13 51:15 aaron 2:9 54:1 aaron.bowling 2:11 54:2 able 24:1 27:18 above 54:6

[accelerometers - burned]

accelerometers 16:14 accept 16:8 accomplished 28:13 37:14 39:7 40:3,9 accurate 16:10 acronym 16:18 action 29:4 32:10 33:1 53:13,19 activity 28:10 28:22 29:5 30:9,10 32:1 32:10,15 33:1 33:8,22 34:17 35:4,12,21 37:1,11 38:16 39:3,20 40:14 actually 6:14 23:11 49:12 ago 27:1 agree 4:12 ahead 7:11 40:16 49:22 aided 15:15 al 31:15 alex 2:3 allowed 28:14 allowing 21:20 alongside 17:15 alternatively 36:15,16 amount 36:1	amplifiers 18:1 analysis 14:17 analyzer 14:22 15:1,5,6,7 16:3 analyzers 14:15,15 ands 19:10 answer 32:5 answers 52:5 apart 14:9 appeal 1:1 appear 22:4 43 13 appearances 2:1 5:5 appearing 54 18 55:7 appears 53:5 appendix 12:10 12:13,16 approximately 50:7 area 14:9 areas 13:8,9,11 14:10 17:18 army 15:16 arnold 2:9 arnoldporter.... 2:11 54:2 arrangements 36:3,10 art 23:2,5,7,22 25:15 26:1 43:19 45:3 46:6 48:22	aside 26:10 asking 21:15 assembly 17:9 assume 26:5 athletic 42:10 athletica 1:4 4:15 54:4 56:1 attorney 53:16 attributed 31:14 audio 4:10 ayap 2:6 b b 3:6 5:22 21:4 21:16,21 22:9 25:1,8 28:22 55:1 bachelor's 23:9 26:2 back 28:17 32:18 37:4 40:22 41:3 42:22 50:8,11 51:7 backslash 25:10 based 49:19 basic 20:2 22:12,16 25:12 25:14 behalf 1:20 2:2 2:8 believe 8:3 12:18 20:12 27:18 30:16,16	35:4,11,20 37:1 40:13 45:21 best 8:8 48:12 biomechanical 16:15 biomechanics 23:10 biomedical 6:6 bit 49:16 blood 14:14,15 14:22 15:1,2,5 15:6,7,8,10 board 1:1 18:5 boards 16:6 body 16:17 bound 15:10 bowling 2:9 20:11,20 22:17 28:11 32:2 33:3 35:6,13 38:7,17 39:12 44:1,7 49:3,11 51:1,9 54:1 break 7:8,11 40:17 41:5 breaks 7:7 breath 14:17 brief 40:20 50:5 51:5 burned 38:12 38:15 39:1,6 39:10
---	--	---	--

c	cetera 34:9	combinations 46:15 47:5	conference 8:4 8:6,7,11
c 3:1 4:1 17:11 17:12,13,14 20:3 23:11,13	change 56:4,7 56:10,13,16,19	commencing 1:18	conferences 8:4
ca 2:5 54:9,12 54:20	changed 19:3	commission 52:18	confirm 33:6 33:20 34:11,15
calculate 42:20 44:3	changes 52:7	communication 15:20	consecutive 42:12,16 43:22 44:6,9,10 45:1 46:18,19 47:6 48:19 49:2,6 49:10,15
call 17:4,5	characteristics 16:5	company 6:10 6:18	consider 10:21
called 1:15 5:12 6:10 15:15 16:3 47:17	cheat 17:14	complete 15:20 42:17 44:16 49:13	considered 9:8 9:10 10:10
calories 38:12 38:15 39:1,6 39:10,18	checked 28:2	completed 44:16 49:5 54:7,17 55:6	consumed 39:18
canada 1:4 4:15 54:4 56:1	chicago 2:10	completes 42:10	contact 54:9
carbon 15:3,3	circuit 16:6 18:5	completing 43:21 49:20	contain 52:5
carboxy 15:11	citation 33:17	completion 55:10	content 15:3
cardiac 14:19	citations 31:1	computer 3:8,9 17:3,5,6,7 18:21 20:2 22:13 23:22 24:6 25:13,14 25:16 26:3	contents 9:17
care 27:14	cite 33:14 34:11	concluded 51:16	context 18:21 31:19 32:7,20 39:21 49:13
careful 32:5	cited 33:14 35:2,9,17	condition 18:11	continue 4:11
case 4:17 26:18 26:20 27:5,19 37:19	civil 54:19,20	conditional 18:9	conversations 4:7
categories 13:1 13:3,7	claim 29:5	conditions 19:11,11	copies 9:20
catheters 14:19	clarify 39:13 46:17		copy 9:13
ccp 54:9,12	clarifying 47:3		correct 6:19 9:14,15,18,19 9:21,22 10:3,4 12:11,12,17 13:1,2,4 25:10 25:11,17,18 26:4,5 31:17
cells 15:9	class 13:20		
certain 23:9	clean 9:20 46:5		
certificate 52:1 53:1	clear 45:18		
certify 52:3 53:4	cnc 14:4		
	code 18:21 54:9 54:12,19,20		
	coding 17:7		
	columbia 1:20 53:22		
	column 33:15 35:3,10,18 36:21 37:4,8		

31:18 39:11 40:6,12 42:8,9 42:13,14 43:22 44:6,20,21 45:1,2,6,7,9,11 46:9,10,13 47:7,18 52:5 corrections 54:14,15 55:3 55:4 correspond 36:1,11 counsel 1:15 5:8,13,16 7:17 8:2,17 41:1,6 50:9 51:8 53:11,16 54:18 54:21 55:7 counselors 8:21 couple 51:2 course 32:4 33:9 34:1,18 court 5:3,7 19:17,22 24:7 24:12 26:11,15 27:2,5 31:5 41:8 47:22 cross 50:20 crosstalk 45:19 crr 53:21 csr 53:21 currently 6:5 13:15	d d 4:1 11:8 28:22 d.c. 1:12,18 4:21 daily 28:9 29:3 30:7 31:20 32:8,12,13,13 32:21 34:3,8 34:19,22 37:13 37:13,17,17,19 38:1,12,14,22 39:4,17,22 40:7,11 date 54:16 55:5 56:24 dated 31:15 day 25:2,3 28:13 36:2,14 36:15 40:1 42:5 43:20 44:20 49:14,20 52:16 days 42:5,7,11 42:12,16,18 43:15,16,21,22 44:6,9,10,20,22 45:4,15,21,22 46:7,8,15,18,19 47:4,6 48:19 49:2,6,10,15,17 49:18 declaration 7:16 10:21 11:13,22 12:3	12:11,14 17:17 23:17 28:6,18 28:21 29:18,22 31:1,17 34:13 47:12,16 48:10 declaring 20:22 21:4 define 15:8 25:1 36:16 defined 36:15 defines 33:7,21 34:16 degree 23:9,22 25:16 26:3 deponent 52:1 deposition 1:13 4:14,19 7:15 7:20 8:2 43:11 51:15 53:3,6,9 53:14 54:19,22 54:24 55:8,10 description 3:7 design 6:10 13:19 18:4,4 23:10 designs 6:14 determine 15:2 15:8 determined 54:18,22 55:7 developed 13:22 14:14,15 development 15:15	device 15:1 16:12 18:3 29:15 30:8,13 31:21 32:9,22 devices 13:21 14:1,2,18,19 16:5,11,13,14 17:22 18:5 diagram 42:19 difference 38:5 39:9 different 18:10 32:16,17,19 digital 18:1 dioxide 15:3 discuss 20:5,7,8 24:15 41:5 discussed 7:16 11:10 display 34:9 district 1:20 53:22 documents 9:21 10:19 doing 6:14 double 9:6 dr 4:14 5:18 6:2,3 7:1,14 9:12 11:12 12:2,9 17:2 19:22 24:12,17 26:9 31:11 41:3,8,17 42:4 43:8 47:10,11 47:15 48:6,9
---	--	---	--

48:17 49:22 50:11,14 51:10 draw 42:19 duly 5:14 52:7 53:6	16:2 errata 52:8 54:14,16 55:3 55:5 eshirt 6:18 esquire 2:3,3,9 54:1 estimate 7:22 11:16 et 31:14 34:9 evaluation 36:11,13 exactly 22:8,9 49:5 examination 1:15 3:2 5:13 5:16 50:20 examined 5:14 15:5 example 13:19 19:9 28:9 34:8 35:3,11,19 36:12,22 38:11 39:1 45:6 examples 34:7 exceeded 25:2 25:3 except 52:7 excluded 26:12 26:14,15,19,22 27:3,6,10,16 excuse 12:5 30:8 exercise 25:2,4 42:12,16	exercising 40:5 40:11 43:20 44:19 exhibit 3:8,9,10 9:13,17 10:3,5 10:14 11:13 12:6,9,19 14:12 19:18,19 20:1,17 22:1,7 24:2,8,9,13,18 24:20,22 25:6 26:4 31:6,8 41:10,11 43:1 43:2,10 48:1,2 48:10,14 50:15 50:16 exhibits 3:11 26:10 expert 6:21 17:2,4 26:13 28:1 35:18 expertise 12:20 12:22 13:8,8 13:10,11,13,16 13:22 14:11,12 14:14,16 17:9 17:18 18:3 20:10 expires 52:18 externally 14:18 extra 21:17	f fabrication 14:5 fair 22:12 25:12 43:18 familiarize 20:4 fast 36:7 february 31:15 federal 55:1,8,9 fewest 42:15 43:14 filed 4:16 filters 18:1 financially 53:17 fine 43:12 finish 7:9 firm 5:4 8:22 first 8:5 12:10 25:2 33:13 five 42:5,11,17 43:20 44:15 fluent 17:7 fmcclellen 2:6 focusing 37:17 foerster 1:17 2:4 following 9:10 18:13 49:19 follows 5:15 54:8 foregoing 52:3 53:3,5
e			
e 2:6,11 3:1,6 4:1,1 5:22 6:1 16:22 54:9,12 55:1 56:3,3,3 either 16:5 18:1 19:13 46:20 electrical 16:21 electronics 17:19,21 18:1 element 29:5 emitted 16:11 employed 53:12,16 employee 53:15 encapsulated 16:15 enclosed 52:8 encompass 45:5 47:5 encompasses 46:8 engineering 6:6 enter 21:10 enters 25:7 entirety 48:11 equal 22:8,9 equally 40:10 equipment 14:17 15:22			

[form - instruction]

form 20:11,20 22:17 25:19 27:21 28:11 29:8 32:2 33:3 35:6,13 38:7 38:17 39:12 44:1 49:3,11 forming 14:16 15:13,14 forms 16:8 17:12 forrest 2:3 3:3 fortran 17:10 fourth 17:10 frame 8:12 11:21 francisco 2:5 frcp 55:1 frequency 14:17 15:21 16:1,4,7,9 friday 45:6,10 front 9:12,17 43:5 48:6 50:14 function 16:16 18:12,13 funding 6:16 further 50:19 51:9 53:14	gases 15:4 give 7:4 11:16 11:20 24:7 42:20 47:9 given 10:17 30:11 52:6 53:10 gives 18:11 36:12 go 4:12 7:10 14:13 20:15 27:6 29:17 32:18 37:4 40:16 49:22 50:1 goal 25:3,4 28:9,13 29:4 30:7 31:21 32:8,12,13,14 32:15,21 33:7 33:10,21 34:1 34:3,9,16,18,19 34:20,22 35:22 36:3,10,14,17 37:13,13,15,17 37:20 38:1,4 38:12,14,15,22 39:2,4,7,10,11 39:14,18,19,22 40:1,2,4,7,8,9 40:11 42:11,17 44:5,8 49:10 49:18 goals 43:21 44:15 48:19	49:1,6,14,14,17 49:20 going 4:3 19:18 24:7 33:11 36:6 40:15,19 40:22 41:9 43:9 50:4,7 51:4,7,13 good 4:2 5:18 5:19 17:5 gordon 2:14 4:22	hours 7:21 8:15 11:18
			i
			i.e. 33:22 identification 19:20 24:10 50:17 identifies 28:21 identify 17:18 idle 6:15 il 2:10 include 13:14 16:13 19:10 included 13:9 27:15 54:14 55:3 includes 44:19 inclusive 52:4 incorporated 6:11 indication 16:10 indications 16:16 industrial 23:10 information 12:16 input 21:13,15 21:20 inputting 30:12 institute 6:7 instruction 21:8 22:10
g	g 4:1 gas 14:14,17,22 15:1,5	h	h 3:6 6:1 56:3 half 8:8 hand 31:5 41:9 handed 20:1 24:13 handing 47:22 handled 54:8 handwritten 3:10 header 14:11 hear 36:7,8 help 17:15 hemoglobin 15:9,10,11,11 15:12 hereto 53:17 hoffman 47:17 47:19 48:14 hoping 6:15 hour 7:8 8:8 36:2 40:16

instructions 17:16 18:18 integrated 18:3 intensity 40:6 40:12 intensive 27:14 interested 53:18 interpret 20:10 interpretation 49:7 interpreted 49:1 ipr 1:8 ipr2023-00349 4:18	I	lists 10:12 little 32:19 49:16 live 8:4 living 6:4 llp 1:17 2:4 location 4:19 21:10 locked 54:12 55:1 logical 19:5,9 long 7:19 8:5 8:10,13 11:12 11:21 look 11:8 looked 19:12 looking 10:11 15:7 30:22 49:12 lot 22:19 lululemon 1:4,5 4:15 50:19 54:4 56:1	manufacturing 13:15,17,22 14:10 mark 19:18 24:8 41:14 50:14 marked 19:20 20:1 24:10,13 31:6 41:9 48:1 50:17 market 2:4 marketplace 6:17 material 39:5 materials 9:7 9:10 10:9,13 10:20 11:9 16:15 matter 4:15 mcclellen 2:3 3:3 5:17 10:7 19:17,21 20:14 21:2 22:20 23:15 24:11 25:19,22 26:6 26:8 27:21 28:4,16 29:8 29:11 31:10 32:6 33:12 35:8,16 36:20 38:10,20,21 39:16 41:2,13 41:16 44:4,12 48:5 49:8,21 50:10,13,18
	I 1:17 4:20 laboratory 13:20 land 15:16 language 22:6 languages 17:8 17:10 18:11 23:11,14 lathes 14:4 layout 18:5 leads 18:17 legal 5:1,4 54:7 likely 7:9 limitation 28:20 32:1,11 33:2 35:5,12 35:21 37:2 line 7:10 20:16 20:19 21:3,6 21:12,14,17,19 22:5 34:21 37:12 48:17 54:15 55:4 56:4,7,10,13,16 56:19 lines 33:16 35:3 35:10,19 36:21 37:4,9 list 9:7,9 10:12 10:17 13:12 14:11 30:10 listed 7:18 9:4 10:17,20 11:1 11:4 13:7 23:4	m m 6:1 16:22,22 machining 14:4 madison 2:10 magnitude 38:4 mail 2:6,11 make 23:6 38:5 39:8 43:10 54:14 55:3 manufactured 29:16	
	j		
	job 54:5 jobs 6:8,20		
k			
keep 30:18 kind 39:11,14 klapper 1:19 5:3 53:2,21 know 7:9 12:7 18:6,14,20 19:5 20:4 24:14 27:22 28:6,18 30:4 37:5 42:1 43:9 47:13 48:15 knowledge 26:11			

[mean - okay]

mean 6:12 9:4 11:6 13:17 15:21 17:20 27:10 49:9,16 meaning 37:10 meant 10:9 43:21 measures 16:4 mechanical 16:21 media 4:13 medical 6:10 14:18,19 16:12 16:13 17:18,20 17:22 meet 31:22 32:10 33:1 meeting 8:14 meetings 8:1,18 meets 35:4 member 15:17 15:19 mems 14:18 16:12,13,18 merely 29:14 met 15:11 meter 16:8 micro 16:21 microphones 4:5 middle 42:4 mind 43:4 minimum 43:17 44:9	minute 40:17 minutes 40:5 40:11 42:5,21 44:19 50:1 51:2 miscommuni... 11:3 47:1 missed 26:6 misty 1:19 5:3 53:2,21 mode 6:15 moderate 40:5 modulation 16:9 mofo.com 2:6,6 molecule 15:11 moment 5:10 6:15 10:15 20:3 24:14 47:10 monday 25:7 45:6,12,13 46:9 monoxide 15:4 month 36:2 morning 4:2 5:18,19 morrison 1:16 2:4 movement 16:17 mute 4:8	n n 3:1,1 4:1 6:1 21:11,16,17 22:11 25:10 n.w. 1:17 name 4:22 5:21 26:20 names 8:22 nearly 40:15 necessarily 44:22 necessary 54:14 55:3 need 7:8 41:13 needs 49:7 neither 53:11 network 15:13 15:14 16:3 networks 14:16 nike 1:8 4:16 50:21 54:4 56:1 nominal 6:9,12 northwest 4:20 notary 1:19 52:18 53:1,22 notating 54:15 55:4 note 4:5 noted 5:5 52:8 notes 3:10 notice 1:16 november 1:11 4:4 54:3,5	number 3:12 4:18 10:5 13:21 18:10 19:3,4,19 24:9 31:8 39:5 41:11 42:15 44:10 48:2 50:16 54:15 55:4 o o 3:1 4:1 5:22 6:1,1 oath 7:2 objection 20:11 20:20 22:17 25:19 27:21 28:11 29:8 32:2 33:3 35:6 35:13 38:7,17 39:12 44:1,7 49:3,11 occasional 6:21 offered 26:12 office 1:1 4:17 54:11 officer 53:2 oh 43:6 okay 9:12 10:19 11:11 12:4,9 17:2 19:16 20:6,9 20:15 21:19 28:20 29:3 30:1,5 31:5,19 33:13 36:9
---	--	---	---

[okay - please]

37:21 38:4 39:8 40:10,15 43:8,18 46:3,4 46:11,22 47:2 47:9,11 48:13 49:22 50:11 51:1 older 17:10 once 7:7 43:20 operator 4:2 19:5 40:18,21 50:3,6 51:3,6 51:12 operators 19:9 opinion 22:21 23:1 26:12 27:11 28:8 31:22 32:9 33:6 34:11,15 37:10 38:5 48:21 opinions 27:3,6 optional 34:8 34:22 ordinary 23:2,5 23:7,21 25:15 26:1 43:19 45:3 46:6 47:3 48:22 original 28:3 54:10,21 ors 19:10 outcome 53:18 output 21:9 22:10,11	own 36:17 owner 1:9 2:8 oxy 15:12 oxygen 15:3 p p 4:1 pad 43:6 page 3:2,7,12 9:7,9 10:18 12:3,5,9,10,19 14:12 17:17 20:2 54:15 55:4 56:4,7,10 56:13,16,19 pages 9:5 10:2 52:3 54:14,17 54:17 55:3,6,6 paper 50:14 paragraph 9:8 9:8,9 10:9,11 10:12,14,16,18 10:20 11:1,8,9 23:16,19,20 28:5,17 29:18 29:20,21 30:22 33:5,14,15,17 34:12 35:18 41:22 42:4 44:13,18 47:12 47:15 48:13,18 paragraphs 10:2 parameter 19:2 parenthetical 42:3 44:13	particular 34:21 40:1 parties 1:21 4:11 53:13,17 pascal 17:11 pass 50:22 passage 33:13 33:20 35:2,9 35:17 36:21 37:8 passages 33:6 34:15 patent 1:1,1,7,9 2:8 4:17 23:3,8 30:18 31:4,14 31:17,20 32:7 33:16 34:5 35:1,10,19 36:22 37:5,9 41:21 patient 27:13 pcb 14:5 pdf 54:12 55:1 penalty 54:16 55:5 perform 18:12 18:13 performed 18:18 period 28:10,15 29:1,5,14 30:9 30:12 32:1,11 32:15 33:1,8,8 33:22,22 34:16 34:17 35:5,12	35:21 36:4,10 36:11,13,14,17 37:2,11,14,18 38:6,16 39:3,6 39:9,20 40:2,9 54:18 55:7 periods 30:10 perjury 54:17 55:6 permutations 46:2 person 23:1,4,7 23:21 25:15 26:1 43:18 45:3 46:6 47:3 48:22 petitioner 1:6 1:16 2:2 5:13 5:16 ph.d. 1:14 3:3 5:11 52:2 54:5 56:2 phones 4:8 phrase 45:5 46:8 48:18 49:9 physician 27:13,16 pick 4:6 place 4:11 plain 22:6 please 4:5,8 5:7 5:10,20 7:8 10:15 12:2 20:3 24:14
---	--	--	--

[please - recognize]

28:5 29:17 30:2 41:1,22 47:11 48:13 50:2,9,13 51:8 point 11:8 polytechnic 6:7 porter 2:9 portions 34:7 posita 22:21 possible 46:15 46:19 47:5 power 16:7,10 powered 14:18 practice 6:6 preparation 8:2 prepare 7:14 11:13,22 preparing 7:20 48:9 present 1:20 2:13 8:17 president 6:9 6:13 pressure 16:13 16:16 pretty 20:2 22:12 25:12 previously 29:15 31:6 41:9 48:1 print 21:9 25:9 printed 16:6 18:4	printers 14:4 prints 24:22 private 4:7 probably 27:1 procedure 54:19,20 proceed 5:9 41:1 50:9 51:8 proceeding 9:14 11:14 process 34:7 37:16 processing 18:2 produce 21:17 product 6:16 professor 6:5 program 20:2 20:10,16,19 21:7 22:13,15 23:3 24:1,1,6 24:18,19,22 25:6,9,13,14,17 26:4 programmed 23:11 programming 3:8,9 18:10 22:16,19 project 15:16 promise 24:7 propounded 52:6 provide 16:10 16:16	provided 54:19 55:8 public 1:19 52:18 53:22 purposes 22:22 23:2 pursuant 1:16 put 6:16 26:9 28:2 puts 39:5 putting 37:16 python 17:12 q question 25:21 32:4 36:19 38:9 46:11,21 questioning 7:10 questions 50:21 51:10 52:6 quote 25:9,10 28:9,22 29:1 32:10,11 49:1 49:2 r r 4:1 5:22,22 56:3,3 r&s 55:1,9 radio 14:16 15:21 16:1,4,7 range 16:9 rather 33:4 read 7:16,17 9:3 11:3 17:13	17:14 29:19 30:2 34:6,11 35:14 52:3 reading 45:4 46:7 54:23 55:9 reads 34:14 37:12 49:4 ready 20:5,7 24:15 reason 7:4 56:6 56:9,12,15,18 56:21 recall 8:22 9:2 10:22 11:15,17 11:19 14:21 17:15 21:18 26:17,18,20,21 27:7 30:18 receive 6:16 29:13 received 29:15 30:9,14 38:16 39:2,19 receives 30:13 receiving 28:9 28:22 29:5 31:22 32:10 33:1 35:4,12 35:20 37:1,10 recess 40:20 50:5 51:5 recognize 31:11 41:17 45:5 46:7
---	---	--	---

[recognize - sets]

47:19 recognized 47:4 recollection 8:9 48:12 record 4:3,12 5:6,21 27:15 40:19,22 45:18 46:5 50:2,4,8 51:4,7,13 53:10 recorded 4:14 recording 4:10 redirects 50:22 reduced 53:8 refer 28:1 31:16 reference 30:11 30:15,17 43:5 44:19 47:17 referenced 54:6 references 7:17 7:18 9:3,11 11:4,5,7 referred 3:11 10:6 31:9 41:12,20 48:3 referring 10:2 10:3 23:16 refers 34:2 42:5 regardless 39:22 40:14 registration 30:7 31:21 32:8,22 34:7	34:22 related 53:12 relative 53:15 released 54:21 remaining 46:14 remind 10:8 repeat 25:20 32:4 35:15 36:18 38:19 report 26:14 27:12 28:3 33:18 35:18 reporter 5:3,7 5:10 19:17,22 23:12 24:8,12 31:5 36:5,8 38:18 41:8 47:22 representing 5:1 request 25:1 requested 55:1 55:9,10 require 17:22 22:15,18 requires 19:10 respective 1:21 respond 36:1 result 19:14 return 54:17 55:6 review 23:5 24:14 48:10 54:8,10,13	55:2 reviewing 27:14 reviews 18:4 reward 25:10 right 10:1 12:2 23:17 24:16 30:20 46:1,16 rmr 53:21 robert 1:14 3:3 4:14 5:11,22 52:2 54:5 56:2 roll 28:17 roughly 7:7,19 8:5,10,13,15 row 45:15 rules 55:8	second 8:10 25:3 29:17,21 30:2 33:15 34:12 sect 29:14 see 12:19 20:16 28:20 30:17 31:1 33:17 42:3 48:18,20 seen 31:12 selected 28:15 29:14 selecting 30:13 32:15 37:19 selects 32:12,14 32:18 33:7,21 34:16 self 14:16 15:13 15:14 senior 13:19 sensitive 4:6 sensors 16:14 sentence 29:17 29:19,21 30:3 33:15 34:12,14 separate 9:16 sequence 43:17 45:22 server 15:18 set 32:17 34:21 38:6,16 39:2,9 39:19 40:1,2 sets 28:12 29:3 30:7 31:20 32:8,13,18,21
		s	
		s 3:1,6 4:1 6:1,1 16:22 56:3 sample 15:2 san 2:5 satisfies 35:11 35:20 37:1 satisfy 29:4 saturday 45:8 saying 20:13 says 11:9 49:5 schedule 54:10 science 17:3,5 23:22 25:16 26:3 sciences 17:6 screen 21:9	

[sets - system]

38:11,14,22 39:4,17 setting 28:8 33:10 34:1,3,8 34:18,22 37:12 37:13,15,22 39:22 40:7 setup 34:9 seven 42:7 sheet 3:8,9 17:14 52:8 shorthand 53:8 showed 47:20 shown 20:17 21:22 22:7 24:1,18,19 25:6 26:4 30:11 sic 26:2 sided 9:6 sign 54:16 55:5 signal 18:2 signature 51:14 53:21 54:21,23 54:23 55:9 silently 30:3 similar 8:12 23:11,13 single 42:11 49:14,20 singular 16:5 sirmans 41:21 42:1 43:5 44:18	sixth 48:17 skill 23:2,5,7,21 25:15 26:1 43:19 45:3 46:6 47:3 48:22 skills 22:16,19 skipped 9:5 45:21 slash 21:17 solutions 5:1,4 6:10 54:7 somebody 42:10,16 sorry 15:9 20:21 23:12 25:20 29:9,20 32:4 36:5,6 37:22 38:18 42:20 44:15 45:13 sort 14:2 species 15:8,9 specific 10:2 specifically 35:22 specified 36:1 spell 5:20 spend 7:19 squad 15:17,19 stand 16:20 33:11 state 5:20 6:7 19:15 54:9,12	stated 40:13 statement 18:6 18:9,14,16,19 19:10,13,14 21:22 22:3,7 23:6 25:9 26:13,16,19,21 27:12,15,19 33:5 34:4,10 44:17 49:19 states 1:1 4:17 12:20 15:16 stenographic 5:6 stipulation 54:20 stivoric 30:17 30:21 31:2,20 stone 1:14 3:3 4:14 5:11,18 5:22 6:2,3 7:1 7:14 9:12 11:12 12:2,9 17:2 19:22 24:12,17 26:9 31:11 41:3,8 41:17 42:4 43:8 47:10,11 47:15 48:6,9 48:17 49:22 50:11,14 51:10 52:2 54:5 56:2 straight 30:19 strange 49:16	streak 25:10 street 1:17 2:4 2:10 4:20 strike 13:6 22:22 27:8 38:13 string 20:22 21:1,4 structure 24:17 24:19 subheader 12:20,22 13:12 subscribed 52:15 substance 41:6 substantially 24:18 sufficient 20:9 suitable 16:15 suite 1:17 2:10 4:20 summarize 47:16 sunday 45:10 support 37:9 sure 39:17,17 swear 5:8 sworn 5:14 52:15 53:6 system 15:14 16:21 30:9 38:15 39:1,18
---	--	---	--

[t - using]

t	think 7:22 8:7 14:7 30:21 32:19 33:4 46:22 49:4,7 third 8:13 thomas 2:14 4:22 5:22 thorough 10:17 thought 11:3 three 8:15 10:12 43:13,15 43:16,21,22 44:6,8,20,22 45:4,15 46:7,8 46:15,17 47:4 47:5 48:18,19 49:1,2,6,6,10 49:14,15,17,17 thursday 45:8 46:12 time 4:9 8:12 10:8 11:21 23:8 27:2 28:10,15,22 29:5,14 30:9 30:10,12 32:1 32:11,15 33:1 33:8,21,22 35:5,12,21 36:2,3,10,11,13 36:14,17,18 37:2,11,13,18 38:6,16 39:3,6 39:9,20 40:2,8 40:18,21 50:3	50:6,20 51:3,6 51:12 54:10,18 54:24 55:7 today 7:2,5 took 11:21 top 14:8 total 16:10 trademark 1:1 4:17 transcript 52:5 54:6,8,10,13,13 54:21 55:2,2 transducer 15:18 treat 27:13 trial 1:1 27:6 27:19,20 true 18:12,19 19:12,14,15,15 25:4 40:4,10 53:10 truthful 7:5 tuesday 25:8 45:8,12,13 46:9,11 turn 12:2 28:5 41:22 47:12 48:13 two 8:3,21 9:9 10:11,12,14,16 16:1 26:10 49:13,20 types 16:1 typewriting 53:9	typical 15:4 typically 19:3 u under 7:2 13:7 13:12 14:11 understand 7:1 7:12 11:11 20:13 21:6 38:8 43:20 46:20 49:9 understanding 27:8,17 29:6 47:17 unit 4:13 27:14 united 1:1 4:16 15:16 university 6:7 usa 1:5 use 33:5 used 13:21 18:10 user 17:6 25:7 28:8,12 29:3,4 29:13 30:7,8 30:12 31:20 32:8,12,21 33:7,21 34:2 34:15 36:16 38:2,3,6,11,12 38:14,22 39:4 39:17 40:7 using 10:22 32:16,17
----------	---	---	---

[v - z]

v	wearable 30:8 31:21 32:9,22 weast 31:14 wednesday 45:6,10,12,13 46:9,12 week 25:2,3 36:2 42:5,7,11 42:17,18 43:21 44:11,16,20,22 45:4 46:7,8,15 46:18 47:4,6 welcome 41:3 50:11 went 45:22 west 2:10 whispering 4:6 wide 16:9 wifi 15:17 witness 3:2 5:8 5:12 6:22 20:12,21 22:18 23:13 25:20 27:22 28:12 29:9 32:3 33:4 35:7,14 36:6,9 38:8 39:13 41:15 44:2,8 48:4 49:4,12 50:22 52:11 53:4,7,11 54:13,16 55:2 55:5 56:24 women 8:21	words 44:5 work 6:22 42:21 working 46:1 write 12:13 42:22 43:4,9 43:10 writing 22:15 43:6 written 20:3 23:3 25:17 26:3 wrote 13:3
v 54:4 56:1 value 21:11,16 22:11 variable 18:20 19:1,2 20:22 21:1,5,10,21 22:8,9 25:7,8 variables 25:1 various 16:8 17:11 verbs 32:17 veritext 5:1,4 54:7,9,11 versus 4:16 video 4:2,10,13 8:3,5,7,10 40:18,21 50:3 50:6 51:3,6,12 videographer 2:14 5:2 videotaped 1:13 vigorous 40:12 virginia 6:6 vs 1:7	x	
	x 1:3,10 3:6 22:9 55:1	
	y	
	y 22:9 yap 2:3 yeah 38:20 years 14:13 27:1	
	z	
	z 22:11	
w		
waived 51:15 54:23,23 waiving 54:20 warrior 15:16 washington 1:12,18 4:21 we've 11:2 34:19,20 40:15		

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

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