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Transcript of Ellen Peterson

Date: November 28, 2022

Case: Certain Soft Projectile Launching Devices (337-TA-1325)

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Transcript of Ellen Peterson
November 28, 2022

1 (1 to 4)

1		3	
UNITED STATES INTERNATIONAL TRADE COMMISSION		I N D E X	
2	Washington, D.C.	2	PAGE
3	x	3	EXAMINATION BY MR. ZHANG..... 6
4	In the Matter of :	4	EXAMINATION BY MS. UHLENHUTH..... 37
5	CERTAIN SO T PROJECTILE :	5	o0o
6	LAUNCHING DEVICES, : Inv. No. 337 TA 325	6	
7	COMPONENTS THEREO , :	7	E X H I B I T S
8	AMMUNITION, AND PRODUCT :	8	EXHIBIT DESCRIPTION PAGE
9	CONTAINING SAME :	9	0 Photograph 4
0	x	0	02 Photograph 4
			03 Photograph 4
2	Videotaped Deposition of ELLEN PETERSON	2	04 Video 37
3	Conducted Virtually	3	o0o
4	Monday, November 28, 2022	4	
5	8:02 a.m. PST	5	
6		6	
7		7	
8		8	
9	Job No.: 472544	9	
20	Pages: 40	20	
2	Reported by: Burgundy B. Ryan, RPR,	2	
22	CSR No. 373	22	
2		4	
A P P E A R A N C E S		BE IT REMEMBERED that, pursuant to Notice	
2	ON BEHALF OF THE COMPLAINANT:	2	of Taking Deposition, and on Monday, November 28,
3	FISH & RICHARDSON, PC	3	2022, commencing at 8:02 a.m. PST thereof, via
4	By: LINHONG ZHANG, Esquire	4	remote video teleconference, before me, Burgundy
5	1000 Maine Ave SW	5	B. Ryan, a Certified Shorthand Reporter in and for
6	Washington, D.C. 20024	6	the State of California, personally appeared
7	202.783.5070	7	ELLEN PETERSON,
8	lwzhang@fr.com	8	a witness called on behalf of COMPLAINANTS, who,
9	ON BEHALF OF RESPONDENTS SPLAT R BALL:	9	having been first duly sworn by me to testify to
10	KIRKLAND & ELLIS, LLP	10	the truth, was examined and testified as follows:
11	By: LAURA KELLEY UHLENHUTH, Esquire	11	THE VIDEOGRAPHER: Here begins Video No.
12	60 East South Temple	12	1 in the videotaped deposition of Ellen Peterson
13	Suite 700	13	in the matter of Certain Soft Projectile Launching
14	Salt Lake City, Utah 84111	14	Devices in the United States International Trade
15	801.877.8168	15	Commission, Washington D.C., case number
16	laura.uhlenhuth@kirkland.com	16	337-TA-1325.
17	KIRKLAND & ELLIS, LLP	17	Today's date is November 28th, 2022.
18	By: BRIAN A. VERBUS, Esquire	18	The time on the video monitor is 8:02
19	300 North LaSalle	19	a.m. Pacific Standard Time.
20	Chicago, Illinois 60654	20	The remote videographer today is Brendon
21	312.862.2000	21	Skipper, representing Planet Depos.
22	brian.verbus@kirkland.com	22	All parties of this video deposition are
15	ON BEHALF OF RESPONDENTS GEL BLASTER:		
16	KELLEY, DRYE & WARREN, LLP		
17	By: JOLIE BRETT SCHENNERMAN, Esquire		
18	3 World Trade Center		
19	175 Greenwich Street		
20	New York, New York 10007		
21	212.808.7695		
22	jschenerman@kelleydrye.com		
20	ALSO PRESENT:		
21	BRENDON SKIPPER, Videographer		
22	Planet Depos		

Transcript of Ellen Peterson
November 28, 2022

2 (5 to 8)

5 1 attending remotely. 2 Would Counsel please voice-identify 3 themselves and state whom they represent? 4 MR. ZHANG: Linhong Zhang -- 5 MS. UHLENHUTH: Good morning -- 6 Sorry. Go ahead. 7 MR. ZHANG: Linhong Zhang from Fish & 8 Richardson on behalf of Complainants. 9 MS. UHLENHUTH: Good morning. This is 10 Laura Uhlenhuth, and I represent the witness Ellen 11 Peterson in addition to the Splat-R-Ball 12 Respondents. 13 Along with me from Kirkland & Ellis is 14 Brian Verbus. 15 MS. SCHENERMAN: Good morning. My name 16 is Jolie Schenerman, I am from Kelley, Drye and 17 Warren, and we represent the Gel Blaster 18 Respondents. 19 THE VIDEOGRAPHER: The court reporter 20 today is Brooke Ryan, representing Planet Depos. 21 Would the reporter please swear in the 22 witness?	7 1 few questions today and, you know, let me know 2 if -- if you have -- if you don't understand the 3 questions at all, but you are to answer them fully 4 to the best of your ability. 5 Do you understand that? 6 A. Yes. 7 Q. And do you understand you are to testify 8 truthfully today? 9 A. Yes. 10 Q. Okay. Could you tell me how you came to 11 be -- well, let me step back. 12 Are you affiliated with any of the 13 Respondents in this case? 14 A. What do you mean by "affiliated"? 15 Q. Okay. Well, do you have any sort of 16 relationship? 17 All right. So are you -- do you -- are 18 you an employee? Do you have any sort of official 19 relationship with any of the Respondents in this 20 case? 21 A. Not that I know of. 22 Q. Okay. So you don't -- you don't have any
6 1 (Whereupon, the witness was sworn.) 2 COURT REPORTER: Thank you very much. 3 Counsel, you may proceed. 4 EXAMINATION BY LINHONG ZHANG 5 Q. Good morning, Ms. Peterson. 6 A. Good morning. 7 Q. So could you state your full name for the 8 record, please? 9 A. My name is Ellen Patricia Peterson. 10 Q. And could you provide your mailing 11 address? 12 A. I live at 7201 Red Stone Road in 13 Gillette, Wyoming 82718. 14 Q. And is that where you are now today? 15 A. Yes. 16 Q. Have you been deposed before? 17 A. Have I been -- I'm sorry? 18 Q. Deposed? 19 A. Deposed? 20 No, I have not. 21 Q. Okay. So let me just go over a couple of 22 ground rules. It's just -- I'm going to ask you a	8 1 affiliation with Splat-R-Ball, do I have that 2 right? 3 A. No, I don't. 4 Q. You don't have any affiliation with Prime 5 Time Toys? 6 A. No. 7 Q. And you don't have any affiliation with 8 Gel Blaster? 9 A. No. 10 Q. And how about Steven Spangler, do you 11 have any affiliation with Steven Spangler? 12 A. So I know him through professional 13 development workshops, and we developed a 14 friendship outside of that. 15 Q. Okay. But, like, no business dealings or 16 anything like that? 17 A. No. 18 Q. How did you come to be involved in this 19 case? 20 MS. UHLENHUTH: Ellen, I'm going to 21 caution you not to reveal anything that's 22 privileged. So you can respond to the question to

November 28, 2022

9 1 the extent you don't reveal the content of any 2 discussions that we've had. 3 THE WITNESS: Okay. I was contacted by 4 telephone. 5 By MR. ZHANG: 6 Q. Okay. And when was that? 7 MS. UHLENHUTH: Same caution. 8 THE WITNESS: Some time in the past 9 couple of months. 10 By MR. ZHANG: 11 Q. Do you have a better estimate? 12 A. I'd have to look on my phone to see when 13 the phone call came in. 14 Q. Okay. Do you know who called you? 15 A. Yes. 16 Q. Who? 17 A. Laura Uhlenhuth. 18 Q. Was there anyone else on the line with 19 you? 20 A. Not that I know of. 21 Q. Okay. And what did she say when she 22 called you?	1 Q. Anything else? 2 A. Not that I can recall. 3 Q. Okay. And let me know, how did you go 4 about from speaking to her to entering into an -- 5 I think you guys have an -- you have an 6 engagement -- consulting engagement with Kirkland 7 and Ellis; is that right? 8 A. Yes. 9 Q. So did you have any other subsequent 10 phone calls or communications with her or any one 11 of the counsel in this case before you entered 12 into that engagement with Kirkland and Ellis? 13 A. Not that I recall. 14 Q. Did you have any written communication 15 between you and the lawyers involved in this case 16 before you entered into an engagement? 17 A. Not that I recall. 18 Q. What did you do to collect documents in 19 this case? 20 A. I beg your pardon? 21 Q. What did you do to collect documents? 22 A. I --
0 1 MS. UHLENHUTH: I'm going to have the 2 same objection here. 3 MR. ZHANG: So I don't -- I mean, unless 4 you're telling me you had an engagement with 5 Ms. Peterson before -- before -- before you called 6 her, I think that first conversation at least is 7 not privileged, so it is fair for me to under -- 8 to get at what you had talked to her about. 9 MS. UHLENHUTH: Yeah. Ellen, you can 10 respond so long as the response is limited to that 11 first conversation prior to when we entered into 12 an engagement agreement. 13 THE WITNESS: Okay. She -- she asked me 14 if I had attended Science in the Rockies at some 15 point I think in 2008. 16 By MR. ZHANG: 17 Q. And what -- what did you say? 18 A. Yes. 19 Q. Did she ask you about anything else? 20 A. If -- if I had -- if I had pictures or 21 information about Science in the Rockies at 2008 I 22 think.	2 1 Q. So go -- 2 A. Go ahead. 3 Q. Well, let me back up. I've seen a few 4 documents that have been produced with the Bates 5 number, so a number at the lower right-hand corner 6 of every document that says Peterson with a number 7 behind it. To lawyers, that suggests that you 8 produced those documents. I guess I'm trying to 9 figure out, one, if those are documents you 10 produced and, two, if they are, what you did to 11 collect those documents. 12 A. Are you referring to the -- the 13 photographs that I was sent the copies of? 14 Q. That's correct. 15 A. Okay. So I searched through my 16 computer's hard drive to go back to Science in the 17 Rockies at 2008. 18 Q. Okay. So you -- you said that you 19 sent -- you -- the photographs you were sent 20 copies of. So were those photographs -- did those 21 come from you or did someone send it to you? 22 A. They came from me and then recently

3 1 somebody sent them to me. 2 Like the -- the -- am I allowed to look 3 on my computer and tell you where they came from? 4 Q. Yeah. 5 MS. UHLENHUTH: I would just like to 6 clarify, just so that everyone's on the same page 7 here. We provided Ellen with the produced 8 versions of Peterson 1, Peterson 2, and Peterson 9 3, so that's what she's talking about receiving. 10 THE WITNESS: Yeah. They were received 11 by me from -- with Brian, Johnny, Laura, and then 12 Selena's name on the -- on the email. 13 By MR. ZHANG: 14 Q. Okay. So you said you searched your 15 computer and then you provided it to counsel; is 16 that right? 17 A. That's correct. 18 Q. And I presume those are the three 19 photographs -- well, let me just introduce them so 20 we have no dispute as to what we're talking about 21 here. 22 So if you open up the chat function,	5 1 confirming what they are? 2 A. I did. Number 2 looks like a picture of 3 Steven Spangler on the presentation platform with 4 the jelly marbles on the floor. 5 And then number 3 is a picture of Steven 6 Spangler with the potato launcher -- polycarbonate 7 tube and plunger in his hand with the -- from the 8 same stage platform it looks like. 9 Q. Okay. Did those two photographs also 10 come from your files? 11 A. To the best of my knowledge, yes. 12 MS. UHLENHUTH: I also want to note that, 13 for the record, these are PDF versions of the 14 photos, not the natives that were also produced. 15 By MR. ZHANG: 16 Q. So did you -- did your search yield 17 anything other than these three photographs that 18 you saw? 19 A. There might be a couple other photos from 20 Science in the Rockies maybe. 21 Q. Okay. So you're not sure whether there 22 were additional photos that you provided to
4 1 there should be a document -- PDF document with 2 the Bates -- with the file name Peterson, bunch of 3 zeroes, 1 pdf? 4 A. I see it. 5 Q. For the record, that will be Exhibit 1. 6 (Whereupon, Peterson Exhibit 01 was marked for 7 identification.) 8 By MR. ZHANG: 9 Q. Do you mind opening that up, please? 10 A. Okay. 11 Q. Is that one of the photographs you 12 provided counsel? 13 A. It looks like one of them. 14 Q. All right. Let me have one second here. 15 So I've dropped in a file 16 Peterson 0002.pdf and then another file 17 Peterson 0003.pdf. We will mark those as Exhibits 18 2 and 3 respectively. 19 (Whereupon, Peterson Exhibits 2 and 3 were marked 20 for identification.) 21 By MR. ZHANG: 22 Q. Do you mind opening those up and	6 1 counsel? 2 A. Not that I provided to anybody, no. 3 Q. Well, let me step back. 4 Other than these three photos that we 5 looked at, did you provide anything else to 6 counsel? 7 A. No. 8 Q. And how -- how were these photos kept? 9 A. What do you mean? 10 Q. Like, how did you keep them? 11 A. They were saved on my computer hard 12 drive. They're digital -- they're digital photos 13 of the event that I went to in 2008. 14 Q. Okay. Did you take these photos? 15 A. Yes. 16 Q. And -- and what's being shown in Exhibit 17 1, the one with the Bates number Peterson 0001? 18 A. So that is Steve Spangler on the 19 presentation platform at Science in the Rockies 20 2008. He's holding the -- the polycarbonate tube 21 from the potato launcher in his left hand. There 22 are jelly marbles broken and scattered all over

7 1 the floor there. 2 In the background, you can see a 3 graduated cylinder with a water gel – water gel 4 crystals or water jelly marbles in them. There's 5 other presentation materials that are on the table 6 that we used during the course of the workshop. 7 Q. Okay. And so you're saying that on the 8 floor there were jelly marbles? 9 A. Yes. 10 Q. How did those jelly marbles get there? 11 A. So they were thrown or launched from 12 various places around the – the conference 13 room. 14 Q. Who -- who threw them? 15 A. So I can tell you that I was responsible 16 for some of them, but there were about 100-150 17 teachers in that room all seated around round 18 tables interacting with conference materials, so I 19 couldn't tell you all of the people who were 20 involved. I could – I can tell you that lots of 21 people were throwing jelly marbles or launching 22 them from their potato tubes.	9 1 size. 2 Q. Do you mind doing that? 3 A. I don't have a ruler anywhere in my 4 vicinity. 5 Q. Okay. Do you have a rough estimate? 6 Like, is it a centimeter? 7 MS. UHLENHUTH: Objection. Calls for 8 speculation. 9 THE WITNESS: I wouldn't have any idea. 10 I mean, I couldn't give you an exact amount. I 11 can tell you they are, you know, I don't know, 12 maybe the size of the tip of my thumb. 13 By MR. ZHANG: 14 Q. Okay. Roughly an inch or so? 15 A. No, not that much. 16 MS. UHLENHUTH: Same objection. 17 THE WITNESS: Probably like my thumbnail 18 more. But without a ruler, I have -- I don't 19 know. I haven't played with jelly marbles in -- 20 in a while. 21 By MR. ZHANG: 22 Q. For how long? When was the last time you
8 1 Q. Okay. And then you said people were 2 launching them as well? 3 A. Yes. 4 Q. How were they launching them? 5 A. So I – it kind of depends. So I saw 6 some folks put one marble down the polycarbonate 7 tube of their – of their potato launcher and 8 blowing on the end of it to launch it with their 9 mouths. Then – then from there, it follows that 10 there were people who put more than one inside 11 their launcher at the same time to see what the 12 effect of that would be. 13 We then had some people who took the 14 jelly marbles and put them in the tubes, then used 15 the other half of that potato launcher, which is 16 called a plunger, to use air pressure to push them 17 out of the tube. 18 Q. Do you recall the size of the jelly 19 marbles? 20 A. So I've used them since then. They're 21 small, round spheres. I don't know. I would have 22 to get out a ruler to take a look at the exact	20 1 worked with jelly marbles? 2 A. So when I taught – probably when I 3 taught science last in elementary – as an 4 elementary school teacher. That was – I have 5 been here two years – I don't know, more than 6 five years ago. 7 Q. And what did you use jelly marbles for? 8 A. So I was an elementary school science 9 teacher. I used them in my classroom for 10 demonstrations of a variety of purposes. We used 11 them to demonstrate the layers of the atmosphere. 12 If you dye water before you hydrate the 13 jelly marbles, the jelly marbles take on the color 14 of that dye. If you stack two colors of jelly 15 marbles next to each other, because of the way 16 they work, the – the – the colors will bleed 17 into each other. So in trying to demonstrate the 18 layers of the atmosphere, how they change from 19 layer to layer. 20 If you have clear jelly marbles and you 21 stack red ones on top of it, you get a layer in 22 between the two that are a lighter color of red –

November 28, 2022

2 1 (Court Reporter clarification.) 2 THE WITNESS: Sorry. If you stack red 3 jelly marbles on top of clear jelly marbles, you 4 get a layer in between the -- the two intentional 5 colors that comes out as a lesser color of red, 6 more of a pink, and so it shows you kind of the 7 gradient of the atmosphere layers changing from 8 one to the next. 9 So if you talk about the troposphere, 10 which is the layer closest to the -- to the earth, 11 and then you go up to the -- I think it's the 12 stratosphere is -- is next, there is a place in 13 between the troposphere and the stratosphere 14 called the tropopause that you want to show that 15 the layers are starting to change from one layer 16 to the next. 17 So the kids get -- or your students get a 18 pretty good picture of how they kind of bleed 19 together and there is no absolute line that says 20 this is where one stops and this is where the next 21 one begins, they kind of fade into each other, and 22 that's a good demonstration for that -- for that	23 1 west, then you could see longitude lines and 2 latitude lines. So we talked the history teacher 3 into using those to give a hands-on demonstration 4 of a kind of an abstract concept of being able to 5 see those lines on the globe. 6 By MR. ZHANG: 7 Q. Now, you mentioned hydrating the jelly 8 marbles. When you worked with jelly marbles, how 9 long would you hydrate them? 10 A. So usually I would dump the jelly marbles 11 into a -- a container and then cover the -- fill 12 the container or close to fill the container with 13 water so that they would sit overnight so that 14 they would be hydrated by the next morning. 15 Q. Did you ever experiment with letting them 16 sit in water for different periods of time? 17 A. Yes. If you put them in a cup of water 18 and you take them out after about an hour, you can 19 actually see that they've actually grown just a 20 little bit. And they don't -- they're not perfect 21 spheres at that point, they actually have little 22 bumps on them as they start to expand.
22 1 particular instance. 2 I also use them to teach -- so a 3 colleague of mine -- I taught on a team of 4 teachers that was a history teacher, math teacher, 5 I was the science teacher, and we had an English 6 teacher. I used -- I talked my history teacher 7 into using the jelly marbles as demonstration for 8 map and globe skills. 9 If you hydrate the -- the jelly marbles, 10 you can pierce it with a toothpick, and the 11 toothpick becomes kind of the prime meridian or 12 the axis that goes through the center of the earth 13 so you can rotate the earth on its axis. 14 You can also use a straight edge to carve 15 the marbles or chop the marbles in half and show 16 hemisphere to hemisphere. And then we talked how 17 as you went north or south of the equator you were 18 talking about latitude. And if you went east and 19 west of the prime meridian, you were talking 20 about -- 21 (Court Reporter clarification.) 22 THE WITNESS: Prime meridian, east and	24 1 Q. Okay. And then do they get larger 2 with -- with -- with more time in the water? 3 A. So they -- the little bumps disappear, 4 they smooth out, and then they -- they kind of 5 become fully hydrated at some point. I don't know 6 what point that is, I just know that if you leave 7 them in overnight they are ready for classroom use 8 the next day. 9 Q. Going back to Science in the Rockies and 10 these photographs that you have of it. 11 Did you get hit with one of these jelly 12 marbles -- 13 A. Yes. 14 Q. -- during -- did it hurt? 15 A. No. 16 Q. Did it leave a welt? 17 A. No. 18 Q. Do you know what happened to the jelly 19 marbles when you -- when you got hit by it? 20 A. So when the jelly marbles hit something, 21 they -- they fracture into all of the tiny little 22 pieces that you see laying all around in the

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November 28, 2022

25 1 pictures. They look more like the water gel 2 crystals that you can get at a florist shop that 3 they use to keep as a medium to hold up the 4 flowers or to keep the flowers hydrated, I 5 guess. 6 Q. Do you know what the jelly marbles are 7 made of? 8 A. I believe they're made out of sodium 9 polyacrylate. 10 Q. And what is your basis for that? 11 A. I -- Steve Spangler has told us that in 12 workshops. 13 Q. Do you know the composition of the jelly 14 marbles? 15 MS. UHLENHUTH: Objection. Calls for 16 expert testimony. 17 You can answer, to the extent you know. 18 THE WITNESS: Okay. So, no, other than 19 that they're -- that I have been told they're 20 sodium polyacrylate, I don't know what they're 21 actually composed of. 22 By MR. ZHANG:	27 1 you understand it, they don't always come in 2 these -- they don't always come in spherical 3 forms? 4 A. That's the way I understand it. 5 Q. Do you know how they make it into 6 spherical form? 7 A. I have absolutely -- 8 MS. UHLENHUTH: Objection. Calls for 9 expert testimony. Scope. 10 THE WITNESS: I have absolutely no 11 idea. 12 By MR. ZHANG: 13 Q. So going back -- if I understand you 14 correctly, the shape of the jelly marble, they 15 change based on how much time they are placed in 16 the water? 17 A. That's my experience. 18 Q. And so sometimes -- you're saying 19 depending on how long it's in the water they can 20 be spherical or they cannot be spherical? 21 A. So left -- 22 MS. UHLENHUTH: Objection.
26 1 Q. Do you know what sodium polyacrylate 2 is? 3 A. I've been told that's a super absorbent 4 polymer. 5 Q. Who -- who has -- who has told you that 6 it's a super absorbent polymer? 7 A. So in presentations at Science in the 8 Rockies they are introduced as a super absorbent 9 polymer. 10 Q. Do you know what a super absorbent 11 polymer is? 12 MS. UHLENHUTH: Objection. Calls for 13 expert testimony. Scope. 14 THE WITNESS: I'm not a polymer chemist, 15 so I would say I don't have an exact definition. 16 I can give you examples of things that I've been 17 taught are super absorbent polymers. Things like 18 the jelly marbles, the water gel crystals, the 19 powder or the absorbent that's inside of baby 20 diapers. 21 By MR. ZHANG: 22 Q. So super absorbent polymers, at least as	28 1 Mischaracterizes -- sorry. Let me just get this 2 out. Mischaracterizes former testimony. 3 You can respond. 4 THE WITNESS: Left overnight in water 5 they become spheres. If you take them out before 6 that, so after an hour or so, they -- they have 7 different shapes. 8 By MR. ZHANG: 9 Q. Were you ever involved in the selling or 10 marketing of this jelly marble product? 11 A. No. 12 Q. Were you involved in putting together 13 any -- any sort of science shows or events with 14 Steve Spangler? 15 A. No. 16 Q. Have you been involved with any 17 commercial dealings with Steve Spangler? 18 A. No. 19 Q. When is the last time you spoke with 20 Steven Spangler? 21 A. Probably a month ago. 22 Q. What did you talk to him about?

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November 28, 2022

29 1 A. So I talked to him about my leg injury. 2 Q. Did you talk to him about this case at 3 all? 4 A. No. 5 Q. Have you had any conversations with 6 Mr. Spangler about this case? 7 A. No. 8 Q. What made you decide to be involved in 9 this case? 10 MS. UHLENHUTH: Objection. Relevance. 11 THE WITNESS: I had information that they 12 asked me about. 13 By MR. ZHANG: 14 Q. And what information is that? 15 A. Information about Science in the Rockies 16 in 2008 and the water gel spheres. 17 Q. Going back to Science in the Rockies. I 18 apologize. 19 When you launched them, how did you 20 launch them, the -- the jelly marbles? 21 A. Me, personally? 22 Q. Yeah.	3 1 original one, but I have been to Science in the 2 Rockies more than once, so I have -- I have 3 them -- I have several of them roaming around. 4 Q. Have you ever seen jelly marbles fired 5 from any other device other than the potato 6 launcher? 7 A. Not that I can -- not that I can 8 remember, no. 9 Q. So you've never seen it shot from, say, 10 an air soft gun? 11 A. No. 12 Q. How about a sling shot? 13 A. No. 14 Q. How about a gun of any sort? 15 A. Not that I can recall. 16 Q. You said that you saw people shoot the 17 jelly marbles using the potato launcher and the 18 plunger? 19 A. Yes. 20 Q. Do you recall if they were successful in 21 doing that? 22 A. I don't know.
30 1 A. I threw them. 2 Q. You threw them. Okay. 3 So you didn't personally blow them out of 4 a tube? 5 A. So my potato launcher was covered with 6 potato starch and other sorts of gross stuff from 7 outside. I wasn't putting my mouth on mine. 8 Q. Can you tell me how big the potato 9 launcher is? 10 A. Not without getting a ruler out and 11 measuring it. I don't have one handy, either the 12 ruler or the potato launcher. 13 Q. You can't give me a rough estimate as to 14 how big it is? 15 MS. UHLENHUTH: Objection. Calls for 16 speculation. 17 THE WITNESS: Again, without -- without 18 measuring it. I haven't played with my potato 19 launcher in a couple of years. 20 By MR. ZHANG: 21 Q. Do you still have it? 22 A. Yes. I don't know if I still have the	32 1 Q. And then -- and then in terms of Exhibits 2 1 through 3, the pictures, when did you take these 3 pictures? 4 A. These pictures were taken on -- in July 5 of 2008, after our potato war, before the Science 6 in the Rockies conference ended. 7 Q. Okay. And Mr. Spangler was on stage but 8 who was on stage before him? 9 A. It's a Steve Spangler presentation. The 10 only other people who shared the stage with him 11 are -- so it's kind of -- his mentor, chemistry 12 teacher Doug Hodous, and Steve Spangler. 13 Q. Do you know what was happening before 14 this? 15 A. So -- 16 MS. UHLENHUTH: Objection. Vague. 17 THE WITNESS: -- we had just come in from 18 our potato war, which we still had our potato 19 launchers in our hands. 20 By MR. ZHANG: 21 Q. Give me one second. 22 So if I have it right, you said you

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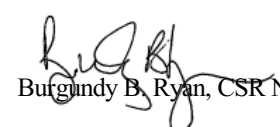
November 28, 2022

33 1 had -- you guys had just come in from having a 2 fight with your potato guns outside? 3 A. Yes. 4 Q. What was being launched using your potato 5 guns? 6 A. Potato plugs, essentially. 7 Q. So not jelly marbles? 8 A. No. 9 Q. So walk me through this. You guys have 10 your potato fight outside, you walk back in, 11 Mr. Spangler takes the stage, and how does it turn 12 into this jelly marble situation that's shown in 13 the pictures? 14 A. So this is a teacher workshop where all 15 of the materials are out on the table for us to 16 work with as we're going through the process of 17 the day. It's -- so as we move from demonstration 18 or experiment to experiment and more materials are 19 put out, other ones are put away. So as we headed 20 out for the potato war, we take our potato guns 21 and our safety glasses with us and we are out on 22 the back lot at the hotel popping each other with	35 1 workshop to explore with the materials in front of 2 them. So it followed naturally that, you know, 3 some people -- I picked up some and threw them and 4 other people put them in their potato launcher and 5 launched them that way. 6 The resulting mess in the hotel ballroom 7 was quite extensive. You can see some of that on 8 the stage in the pictures. 9 Q. Okay. And -- and the jelly marbles that 10 were being thrown, you said they were already 11 hydrated? 12 A. Yes. 13 Q. Were they sitting in water or were they 14 hydrated but then taken out of water? 15 A. If I recall correctly, there was still 16 water in the cup but they were full sphere 17 shape. 18 Q. And what is your current employer? 19 A. I'm sorry. Say that again. 20 Q. What is your current employer? 21 A. I'm the director of Area 59, which is a 22 maker space attached to Gillette Community
34 1 potato cores. 2 When we come back in from the potato gun 3 fight, on the table now are new materials for 4 whatever unit of -- of presentation that's coming 5 next. On the table in front of, I think every 6 person or every two people, there was a small cup 7 that we usually use for mixing slime but instead 8 were jelly marbles in -- in water sitting on the 9 table. 10 As we started talking with the -- talking 11 about those -- or Steve started presenting about 12 those, somebody somewhere in the ballroom picked 13 up one and -- and threw it as kind of a, you know, 14 joking around sort of thing. Steve is quite 15 playful and mischievous and so his -- his comment 16 was don't even think about it. That, of course, 17 launched a number of other marbles in the general 18 direction. 19 He threw a few of them, and then, well, 20 there is 100 to 150 people with jelly marbles on 21 their tables, potato launchers in their hands who 22 have been encouraged throughout the entire	36 1 College. 2 Q. I'm sorry. I didn't quite catch it. 3 You said you are the director of Area 59, 4 which is -- 5 A. It's a maker space. It's called Area 59 6 because it's located on Highway 59 but it's a 7 maker space attached to Gillette Community 8 College. 9 Q. What's a maker space? 10 A. So a maker space is kind of like a -- so 11 it's a -- it's a workshop with a collection of 12 tools, things like 3D printers, laser cutters. We 13 have a full workshop and a metal shop that people 14 use to create their own projects. So like a gym 15 membership for tools, so people can come access 16 our space and use those things. 17 Q. I see. So you're employed by Gillette 18 College, do I have that right? 19 A. That's correct. 20 Q. So -- I see. Okay. 21 MR. ZHANG: I think I have no further 22 questions.

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November 28, 2022

37 1 MS. UHLENHUTH: Can we take a quick 2 couple-minute break? 3 Ellen, I think we will have a few 4 questions back on the record. I just need a 5 minute or two first. 6 THE WITNESS: Okay. 7 THE VIDEOGRAPHER: We are going off the 8 record. The time is 8:42. 9 (Recess.) 10 THE VIDEOGRAPHER: We are back on the 11 record. The time is 8:51. 12 EXAMINATION BY LAURA UHLENHUTH 13 Q. All right. Good morning, Ellen. I am 14 sharing my screen. And what I'm showing here is 15 entitled SRB 000002863, and I'm going to play part 16 of this exhibit. 17 (Whereupon, Peterson Exhibit 04 was marked for 18 identification.) 19 (Whereupon, Exhibit 04 was played.) 20 By MS. UHLENHUTH: 21 Q. Ms. Peterson, is that a recording of you 22 in this video?	39 1 Q. And is that a true and accurate copy of 2 the photograph that you took in 2008? 3 A. Yes. 4 MS. UHLENHUTH: No further questions. 5 MR. ZHANG: I don't -- I don't have 6 anything else. 7 THE VIDEOGRAPHER: Anything else for the 8 video record? 9 MS. UHLENHUTH: That's it for us. Thank 10 you. 11 THE VIDEOGRAPHER: This marks the end of 12 the deposition of Ellen Peterson. We are going 13 off the video record at 8:53. 14 (Proceedings concluded.) 15 ---o0o--- 16 17 18 19 20 21 22
38 1 A. Yes. 2 Q. Do you recall giving an interview during 3 the 2008 Science in the Rockies conference? 4 A. Yes. 5 Q. I would like to circle back. 6 If you remember earlier, Mr. Zhang 7 introduced a number of photographs. Do you 8 remember that? 9 A. Yes. 10 Q. And one of them was Peterson 2. Do you 11 remember that photograph? 12 A. Yes. 13 Q. Can you describe for me what is depicted 14 in that photograph? 15 A. Sure. That is Steve Spangler on stage. 16 He is -- on the floor around his feet are the 17 broken pieces of water jelly spheres. Off to his 18 left is a graduated cylinder with the water gel 19 spheres or crystals in them. There is other 20 presentation materials on the table behind him 21 that have been used in demonstrations and things 22 that we were -- we were doing that day.	40 1 CERTIFICATE OF STENOGRAPHIC REPORTER 2 I, BURGUNDY B. RYAN, a Certified 3 Shorthand Reporter, hereby certify that the 4 witness in the foregoing deposition, 5 ELLEN PETERSON, 6 was by me duly sworn to tell the truth, the whole 7 truth, and nothing but the truth, in the 8 within-entitled cause; that said deposition was 9 taken at the time and place therein named; that 10 the testimony of said witness was stenographically 11 reported by me, a disinterested person, and was 12 thereafter transcribed into typewriting. 13 I further certify that I am not of 14 counsel or attorney for either or any of the 15 parties to said deposition, nor in any way 16 interested in the outcome of the cause named in 17 said caption. 18 DATED: Wednesday, November 30, 2022. 19 20  21 Burgundy B. Ryan, CSR No. 11373, RPR 22

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A			
ability 7:4 able 23:4 about 8: 0, 0:8, 0: 9, 0:2 , :4, 3:9, 3:20, 7: 6, 2 :9, 22: 8, 22:20, 23: 8, 28:22, 29: , 29:2, 29:6, 29: 2, 29: 5, 3 : 2, 3 : 4, 34: , 34: 6 absolute 2 : 9 absolutely 27:7, 27: 0 absorbent 26:3, 26:6, 26:8, 26: 0, 26: 7, 26: 9, 26:22 abstract 23:4 access 36: 5 accurate 39: actually 23: 9, 23:2 , 25:2 addition 5: additional 5:22 address 6: affiliated 7: 2, 7: 4 affiliation 8: , 8:4, 8:7, 8: after 23: 8, 28:6,	32:5 again 30: 7, 35: 9 ago 20:6, 28:2 agreement 0: 2 ahead 5:6, 2:2 air 8: 6, 3 : 0 all 4:22, 7:3, 7: 7, 4: 4, 6:22, 7: 7, 7: 9, 24:2 , 24:22, 29:3, 33: 4, 37: 3 allowed 3:2 along 5: 3 already 35: 0 also 2:34, 5:9, 5: 2, 5: 4, 22:2, 22: 4 always 27: , 27:2 ammunition :8 amount 9: 0 another 4: 6 answer 7:3, 25: 7 any 7: 2, 7: 5, 7: 8, 7: 9, 7:22, 8:4, 8:7, 8: , 9: , :9, : 0, : 4, 9:9, 28: 3, 28: 6, 29:5, 3 :5, 3 : 4, 40: 4, 40: 5	anybody 6:2 anyone 9: 8 anything 8: 6, 8:2 , 0: 9, : , 5: 7, 6:5, 39:6, 39:7 anywhere 9:3 apologize 29: 8 appeared 4:6 area 35:2 , 36:3, 36:5 around 7: 2, 7: 7, 24:22, 3 :3, 34: 4, 38: 6 asked 0: 3, 29: 2 atmosphere 20: , 20: 8, 2 :7 attached 35:22, 36:7 attended 0: 4 attending 5: attorney 40: 4 ave 2:5 away 33: 9 axis 22: 2, 22: 3 B baby 26: 9 back 7: , 2:3, 2: 6, 6:3,	24:9, 27: 3, 29: 7, 33: 0, 33:22, 34:2, 37:4, 37: 0, 38:5 background 7:2 ballroom 34: 2, 35:6 based 27: 5 basis 25: 0 bates 2:4, 4:2, 6: 7 because 20: 5, 36:6 become 24:5, 28:5 becomes 22: been 4:9, 6: 6, 6: 7, 2:4, 20:5, 25: 9, 26:3, 26: 6, 28: 6, 3 : , 34:22, 38:2 before 4:4, 6: 6, 0:5, : , : 6, 20: 2, 28:5, 32:5, 32:8, 32: 3 beg :20 begins 4: , 2 :2 behalf 2:2, 2: 0, 2:26, 4:8, 5:8 behind 2:7, 38:20 being 6: 6, 23:4, 33:4, 35: 0 believe 25:8

best 7:4, 5: better 9: between : 5, 20:22, 2 :4, 2 : 3 big 30:8, 30: 4 bit 23:20 blaster 2:26, 5: 7, 8:8 bleed 20: 6, 2 : 8 blow 30:3 blowing 8:8 break 37:2 brendon 2:35, 4:20 brett 2:28 brian 2:2 , 2:25, 5: 4, 3: broken 6:22, 38: 7 brooke 5:20 bumps 23:22, 24:3 bunch 4:2 burgundy :2 , 4:4, 40:2, 40:2 business 8: 5 C california 4:6 call 9: 3 called 4:8, 9: 4,	9:22, 0:5, 8: 6, 2 : 4, 36:5 calls : 0, 9:7, 25: 5, 26: 2, 27:8, 30: 5 came 7: 0, 9: 3, 2:22, 3:3 can't 30: 3 cannot 27:20 caption 40: 7 carve 22: 4 case 4: 5, 7: 3, 7:20, 8: 9, : , : 5, : 9, 29:2, 29:6, 29:9 catch 36:2 cause 40:8, 40: 6 caution 8:2 , 9:7 center 2:29, 22: 2 centimeter 9:6 certain :5, 4: 3 certificate 40: certified 4:5, 40:2 certify 40:3, 40: 3 change 20: 8, 2 : 5, 27: 5 changing 2 :7 chat 3:22	chemist 26: 4 chemistry 32: chicago 2:23 chop 22: 5 circle 38:5 city 2: 6 clarification 2 : , 22:2 clarify 3:6 classroom 20:9, 24:7 clear 20:20, 2 :3 close 23: 2 closest 2 : 0 colleague 22:3 collect : 8, :2 , 2: collection 36: college 36: , 36:8, 36: 8 color 20: 3, 20:22, 2 :5 colors 20: 4, 20: 6, 2 :5 com 2:8, 2: 8, 2:25, 2:33 come 8: 8, 2:2 , 5: 0, 27: , 27:2, 32: 7, 33: , 34:2,	36: 5 comes 2 :5 coming 34:4 commencing 4:3 comment 34: 5 commercial 28: 7 commission : , 4: 5 communication : 4 communications : 0 community 35:22, 36:7 complainant 2:2 complainants 4:8, 5:8 components :7 composed 25:2 composition 25: 3 computer 3:3, 3: 5, 6: computer's 2: 6 concept 23:4 concluded 39: 4 conducted : 3 conference 7: 2, 7: 8, 32:6, 38:3 confirming 5: consulting :6 contacted 9:3
---	--	--	--

container 23: , 23: 2 containing :9 content 9: conversation 0:6, 0: conversations 29:5 copies 2: 3, 2:20 copy 39: cores 34: corner 2:5 correct 2: 4, 3: 7, 36: 9 correctly 27: 4, 35: 5 could 6:7, 6: 0, 7: 0, 7:20, 23: couldn't 7: 9, 9: 0 counsel 5:2, 6:3, : , 3: 5, 4: 2, 6: , 6:6, 40: 4 couple 6:2 , 9:9, 5: 9, 30: 9 couple-minute 37:2 course 7:6, 34: 6 court 5: 9, 6:2, 2 : , 22:2 cover 23: covered 30:5	create 36: 4 crystals 7:4, 25:2, 26: 8, 38: 9 csr :22, 40:2 cup 23: 7, 34:6, 35: 6 current 35: 8, 35:20 cutters 36: 2 cylinder 7:3, 38: 8 D date 4: 7 dated 40: 8 day 24:8, 33: 7, 38:22 dealings 8: 5, 28: 7 decide 29:8 definition 26: 5 demonstrate 20: , 20: 7 demonstration 2 :22, 22:7, 23:3, 33: 7 demonstrations 20: 0, 38:2 depending 27: 9 depends 8:5 depicted 38: 3 depos 2:36, 4:2 , 5:20 deposed 6: 6, 6: 8,	6: 9 deposition : 2, 4:2, 4: 2, 4:22, 39: 2, 40:4, 40:8, 40: 5 describe 38: 3 description 3:8 developed 8: 3 development 8: 3 device 3 :5 devices :6, 4: 4 diapers 26:20 different 23: 6, 28:7 digital 6: 2 direction 34: 8 director 35:2 , 36:3 disappear 24:3 discussions 9:2 disinterested 40: dispute 3:20 document 2:6, 4: documents : 8, :2 , 2:4, 2:8, 2:9, 2: doing 9:2, 3 :2 , 38:22 doug 32: 2 down 8:6	drive 2: 6, 6: 2 dropped 4: 5 drye 2:27, 5: 6 duly 4:9, 40:6 dump 23: 0 during 7:6, 24: 4, 38:2 dye 20: 2, 20: 4 E each 20: 5, 20: 7, 2 :2 , 33:22 earlier 38:6 earth 2 : 0, 22: 2, 22: 3 east 2: 4, 22: 8, 22:22 edge 22: 4 effect 8: 2 either 30: , 40: 4 elementary 20:3, 20:4, 20:8 ellen : 2, 4:7, 4: 2, 5: 0, 6:9, 8:20, 0:9, 3:7, 37:3, 37: 3, 39: 2, 40:5 ellis 2: 2, 2:20, 5: 3, :7, : 2
---	--	--	--

else 9: 8, 0: 9, : , 6:5, 39:6, 39:7 email 3: 2 employed 36: 7 employee 7: 8 employer 35: 8, 35:20 encouraged 34:22 end 8:8, 39: ended 32:6 engagement 0:4, 0: 2, :6, : 2, : 6 english 22:5 entered 0: , : , : 6 entering :4 entire 34:22 entitled 37: 5 equator 22: 7 esquire 2:4, 2: 3, 2:2 , 2:28 essentially 33:6 estimate 9: , 9:5, 30: 3 even 34: 6 event 6: 3 events 28: 3	ever 23: 5, 28:9, 3 :4 every 2:6, 34:5, 34:6 everyone's 3:6 exact 8:22, 9: 0, 26: 5 examination 3:3, 3:4, 6:4, 37: 2 examined 4: 0 examples 26: 6 exhibit 3:8, 4:5, 4:6, 6: 6, 37: 6, 37: 7, 37: 9 exhibits 4: 7, 4: 9, 32: expand 23:22 experience 27: 7 experiment 23: 5, 33: 8 expert 25: 6, 26: 3, 27:9 explore 35: extensive 35:7 extent 9: , 25: 7 F fade 2 :2 fair 0:7 feet 38: 6	few 7: , 2:3, 34: 9, 37:3 fight 33:2, 33: 0, 34:3 figure 2:9 file 4:2, 4: 5, 4: 6 files 5: 0 fill 23: , 23: 2 fired 3 :4 first 4:9, 0:6, 0: , 37:5 fish 2:3, 5:7 five 20:6 floor 5:4, 7: , 7:8, 38: 6 florist 25:2 flowers 25:4 folks 8:6 followed 35:2 follows 4: 0, 8:9 foregoing 40:4 form 27:6 former 28:2 forms 27:3 fracture 24:2 friendship 8: 4	front 34:5, 35: full 6:7, 35: 6, 36: 3 fully 7:3, 24:5 function 3:22 further 36:2 , 39:4, 40: 3 G gel 2:26, 5: 7, 8:8, 7:3, 25: , 26: 8, 29: 6, 38: 8 general 34: 7 getting 30: 0 gillette 6: 3, 35:22, 36:7, 36: 7 give 9: 0, 23:3, 26: 6, 30: 3, 32:2 giving 38:2 glasses 33:2 globe 22:8, 23:5 go 5:6, 6:2 , :3, 2: , 2:2, 2: 6, 2 : goes 22: 2 going 6:22, 8:20, 0: , 24:9, 27: 3, 29: 7, 33: 6, 37:7,
---	---	--	--

37: 5, 39: 2 good 5:5, 5:9, 5: 5, 6:5, 6:6, 2 : 8, 2 :22, 37: 3 gradient 2 :7 graduated 7:3, 38: 8 greenwich 2:30 gross 30:6 ground 6:22 grown 23: 9 guess 2:8, 25:5 gun 3 : 0, 3 : 4, 34:2 guns 33:2, 33:5, 33:20 guys :5, 33: , 33:9 gym 36: 4	headed 33: 9 hemisphere 22: 6 here 4: , 0:2, 3:7, 3:2 , 4: 4, 20:5, 37: 4 hereby 40:3 highway 36:6 history 22:4, 22:6, 23:2 hit 24: , 24: 9, 24:20 horious 32: 2 hold 25:3 holding 6:20 hotel 33:22, 35:6 hour 23: 8, 28:6 hurt 24: 4 hydrate 20: 2, 22:9, 23:9 hydrated 23: 4, 24:5, 25:4, 35: , 35: 4 hydrating 23:7	inch 9: 4 information 0:2 , 29: , 29: 4, 29: 5 injury 29: inside 8: 0, 26: 9 instance 22: instead 34:7 intentional 2 :4 interacting 7: 8 interested 40: 6 international : , 4: 4 interview 38:2 introduce 3: 9 introduced 26:8, 38:7 inv :6 involved 8: 8, : 5, 7:20, 28:9, 28: 2, 28: 6, 29:8	24:20, 25:6, 25: 3, 26: 8, 27: 4, 28: 0, 29:20, 3 :4, 3 : 7, 33:7, 33: 2, 34:8, 34:20, 35:9, 38: 7 job : 9 johnny 3: joking 34: 4 jolie 2:28, 5: 6 jschenerman@kell- eydrye 2:33 july 32:4
H		J	K
half 8: 5, 22: 5 hand 5:7, 6:2 hands 32: 9, 34:2 hands-on 23:3 handy 30: happened 24: 8 happening 32: 3 hard 2: 6, 6:	idea 9:9, 27: identification 4:7, 4:20, 37: 8 illinois 2:23	jelly 5:4, 6:22, 7:4, 7:8, 7: 0, 7:2 , 8: 4, 8: 8, 9: 9, 20: , 20:7, 20: 3, 20: 4, 20:20, 2 :3, 22:7, 22:9, 23:7, 23:8, 23: 0, 24: , 24: 8,	24:20, 25:6, 25: 3, 26: 8, 27: 4, 28: 0, 29:20, 3 :4, 3 : 7, 33:7, 33: 2, 34:8, 34:20, 35:9, 38: 7 job : 9 johnny 3: joking 34: 4 jolie 2:28, 5: 6 jschenerman@kell- eydrye 2:33 july 32:4 keep 6: 0, 25:3, 25:4 kelley 2: 3, 2:27, 5: 6 kept 6:8 kids 2 : 7 kind 8:5, 2 :6, 2 : 8, 2 :2 , 22: , 23:4, 24:4, 32: , 34: 3, 36: 0 kirkland 2: 2, 2:20, 5: 3, :6, : 2 know 7: , 7:2 , 8: 2, 9: 4, 9:20, :3, 8:2 , 9: ,

9: 9, 20:5, 24:5, 24:6, 24: 8, 25:6, 25: 3, 25: 7, 25:20, 26: , 26: 0, 27:5, 30:22, 3 :22, 32: 3, 34: 3, 35:2 knowledge 5: L lake 2: 6 larger 24: lasalle 2:22 laser 36: 2 last 9:22, 20:3, 28: 9 latitude 22: 8, 23:2 launch 8:8, 29:20 launched 7: , 29: 9, 33:4, 34: 7, 35:5 launcher 5:6, 6:2 , 8:7, 8: , 8: 5, 30:5, 30:9, 30: 2, 30: 9, 3 :6, 3 : 7, 35:4 launchers 32: 9, 34:2 launching :6, 4: 3, 7:2 , 8:2, 8:4 laura 2: 3, 2: 8, 5: 0, 9: 7,	3: , 37: 2 lawyers : 5, 2:7 layer 20: 9, 20:2 , 2 :4, 2 : 0, 2 : 5 layers 20: , 20: 8, 2 :7, 2 : 5 laying 24:22 least 0:6, 26:22 leave 24:6, 24: 6 left 6:2 , 27:2 , 28:4, 38: 8 leg 29: lesser 2 :5 letting 23: 5 lighter 20:22 limited 0: 0 line 9: 8, 2 : 9 lines 23: , 23:2, 23:5 linhong 2:4, 5:4, 5:7, 6:4 little 23:20, 23:2 , 24:3, 24:2 live 6: 2 llp 2: 2, 2:20, 2:27 located 36:6 long 0: 0, 9:22,	23:9, 27: 9 longitude 23: look 9: 2, 3:2, 8:22, 25: looked 6:5 looks 4: 3, 5:2, 5:8 lot 33:22 lots 7:20 lower 2:5 lwzhang@fr 2:8 M made 25:7, 25:8, 29:8 mailing 6: 0 maine 2:5 make 27:5 maker 35:22, 36:5, 36:7, 36:9, 36: 0 map 22:8 marble 8:6, 27: 4, 28: 0, 33: 2 marbles 5:4, 6:22, 7:4, 7:8, 7: 0, 7:2 , 8: 4, 8: 9, 9: 9, 20: , 20:7, 20: 3, 20: 5, 20:20, 2 :3, 22:7,	22:9, 22: 5, 23:8, 23: 0, 24: 2, 24: 9, 24:20, 25:6, 25: 4, 26: 8, 29:20, 3 :4, 3 : 7, 33:7, 34:8, 34: 7, 34:20, 35:9 mark 4: 7 marked 4:6, 4: 9, 37: 7 marketing 28: 0 marks 39: materials 7:5, 7: 8, 33: 5, 33: 8, 34:3, 35: , 38:20 math 22:4 matter :4, 4: 3 maybe 5:20, 9: 2 mean 7: 4, 0:3, 6:9, 9: 0 measuring 30: , 30: 8 medium 25:3 membership 36: 5 mentioned 23:7 mentor 32: meridian 22: , 22: 9, 22:22 mess 35:6 metal 36: 3
---	--	---	--

might 5: 9 mind 4: 9, 4:22, 9:2 mine 22:3, 30:7 minute 37:5 mischaracterizes 28: , 28:2 mischievous 34: 5 mixing 34:7 monday : 4, 4:2 monitor 4: 8 month 28:2 months 9:9 more 8: 0, 9: 8, 20:5, 2 :6, 24:2, 25: , 3 :2, 33: 8 morning 5:5, 5:9, 5: 5, 6:5, 6:6, 23: 4, 37: 3 mouth 30:7 mouths 8:9 move 33: 7 much 6:2, 9: 5, 27: 5 N name 5: 5, 6:7, 6:9, 3: 2, 4:2 named 40:9, 40: 6	natives 5: 4 naturally 35:2 need 37:4 never 3 :9 new 2:3 , 34:3 next 20: 5, 2 :8, 2 : 2, 2 : 6, 2 :20, 23: 4, 24:8, 34:5 north 2:22, 22: 7 note 5: 2 nothing 40:7 notice 4: november : 4, 4:2, 4: 7, 40: 8 number 4: 5, 2:5, 2:6, 5:2, 5:5, 6: 7, 34: 7, 38:7 O objection 0:2, 9:7, 9: 6, 25: 5, 26: 2, 27:8, 27:22, 29: 0, 30: 5, 32: 6 official 7: 8 okay 6:2 , 7: 0, 7: 5, 7:22, 8: 5, 9:3, 9:6, 9: 4, 9:2 , 0: 3, :3, 2: 5, 2: 8,	3: 4, 4: 0, 5:9, 5:2 , 6: 4, 7:7, 8: , 9:5, 9: 4, 24: , 25: 8, 30:2, 32:7, 35:9, 36:20, 37:6 once 3 :2 one : 0, 2:9, 4: , 4: 3, 4: 4, 6: 7, 8:6, 8: 0, 2 :8, 2 : 5, 2 :20, 2 :2 , 24: , 30: , 3 : , 32:2 , 34: 3, 38: 0 ones 20:2 , 33: 9 only 32: 0 open 3:22 opening 4:9, 4:22 original 3 : other :9, 5: 7, 5: 9, 6:4, 7:5, 8: 5, 20: 5, 20: 7, 2 :2 , 25: 8, 30:6, 3 :5, 32: 0, 33: 9, 33:22, 34: 7, 35:4, 38: 9 out 2:9, 8: 7, 8:22, 2 :5, 23: 8, 24:4, 25:8, 28:2, 28:5, 30:3, 30: 0, 33: 5, 33: 9, 33:20,	33:2 , 35: 4 outcome 40: 6 outside 8: 4, 30:7, 33:2, 33: 0 over 6:2 , 6:22 overnight 23: 3, 24:7, 28:4 own 36: 4 P pacific 4: 9 page 3:2, 3:8, 3:6 pages :20 pardon :20 part 37: 5 particular 22: parties 4:22, 40: 5 past 9:8 patricia 6:9 pc 2:3 pdf 4: , 4:3, 4: 6, 4: 7, 5: 3 people 7: 9, 7:2 , 8: , 8: 0, 8: 3, 3 : 6, 32: 0, 34:6, 34:20, 35:3, 35:4, 36: 3, 36: 5 perfect 23:20
--	---	---	---

periods 23: 6	pink 2 : 6	7:22, 8:7, 8: 5, 30:5,	2: 0, 3:7, 5: 4
person 34:6, 40:	place 2 : 2, 40:9	30:6, 30:8, 30: 2, 30: 8,	product :8, 28: 0
personally 4:6, 29:2 , 30:3	placed 27: 5	3 :5, 3 : 7, 32:5, 32: 8,	professional 8: 2
peterson : 2, 4:7, 4: 2, 5: , 6:5, 6:9, 0:5, 2:6, 3:8, 4:2, 4:6, 4: 6, 4: 7, 4: 9, 6: 7, 37: 7, 37:2 , 38: 0, 39: 2, 40:5	places 7: 2	33:2, 33:4, 33:6, 33: 0, 33:20, 34: , 34:2, 34:2 , 35:4	projectile :5, 4: 3
phone 9: 2, 9: 3, : 0	planet 2:36, 4:2 , 5:20	powder 26: 9	projects 36: 4
photograph 3:9, 3: 0, 3: , 38: , 38: 4, 39:2	platform 5:3, 5:8, 6: 9	present 2:34	provide 6: 0, 6:5
photographs 2: 3, 2: 9, 2:20, 3: 9, 4: , 5:9, 5: 7, 24: 0, 38:7	play 37: 5	presentation 5:3, 6: 9, 7:5, 32:9, 34:4, 38:20	provided 3:7, 3: 5, 4: 2, 5:22, 6:2
photos 5: 4, 5: 9, 5:22, 6:4, 6:8, 6: 2, 6: 4	played 9: 9, 30: 8, 37: 9	presentations 26:7	pst : 5, 4:3
picked 34: 2, 35:3	playful 34: 5	presenting 34:	purposes 20: 0
picture 5:2, 5:5, 2 : 8	please 5:2, 5:2 , 6:8, 4:9	pressure 8: 6	pursuant 4:
pictures 0:20, 25: , 32:2, 32:3, 32:4, 33: 3, 35:8	plugs 33:6	presume 3: 8	push 8: 6
pieces 24:22, 38: 7	plunger 5:7, 8: 6, 3 : 8	pretty 2 : 8	put 8:6, 8: 0, 8: 4, 23: 7, 33: 9, 35:4
pierce 22: 0	point 0: 5, 23:2 , 24:5, 24:6	prime 8:4, 22: , 22: 9, 22:22	putting 28: 2, 30:7
	polyacrylate 25:9, 25:20, 26:	printers 36: 2	Q
	polycarbonate 5:6, 6:20, 8:6	prior 0:	question 8:22
	polymer 26:4, 26:6, 26:9, 26: , 26: 4	privileged 8:22, 0:7	questions 7: , 7:3, 36:22, 37:4, 39:4
	polymers 26: 7, 26:22	probably 9: 7, 20:2, 28:2	quick 37:
	popping 33:22	proceed 6:3	quite 34: 4, 35:7, 36:2
	potato 5:6, 6:2 ,	proceedings 39: 4	R
		process 33: 6	ready 24:7
		produced 2:4, 2:8,	recall :2, : 3,

: 7, 8: 8, 3 : 5, 3 :20, 35: 5, 38:2 received 3: 0 receiving 3:9 recently 2:22 recess 37:9 record 6:8, 4:5, 5: 3, 37:4, 37:8, 37: , 39:8, 39: 3 recording 37:2 red 6: 2, 20:2 , 20:22, 2 :2, 2 :5 referring 2: 2 relationship 7: 6, 7: 9 relevance 29: 0 remember 3 :8, 38:6, 38:8, 38: remembered 4: remote 4:4, 4:20 remotely 5: reported :2 , 40: reporter 4:5, 5: 9, 5:2 , 6:2, 2 : , 22:2 , 40: , 40:3 represent 5:3, 5: 0, 5: 7 representing 4:2 , 5:20	respectively 4: 8 respond 8:22, 0: 0, 28:3 respondents 2: 0, 2:26, 5: 2, 5: 8, 7: 3, 7: 9 response 0: 0 responsible 7: 5 resulting 35:6 reveal 8:2 , 9: richardson 2:3, 5:8 right 7: 7, 8:2, :7, 3: 6, 4: 4, 32:22, 36: 8, 37: 3 right-hand 2:5 road 6: 2 roaming 3 :3 rockies 0: 4, 0:2 , 2: 7, 5:20, 6: 9, 24:9, 26:8, 29: 5, 29: 7, 3 :2, 32:6, 38:3 room 7: 3, 7: 7 rotate 22: 3 rough 9:5, 30: 3 roughly 9: 4 round 7: 7, 8:2 rpr :2 , 40:2	ruler 8:22, 9:3, 9: 8, 30: 0, 30: 2 rules 6:22 ryan :2 , 4:5, 5:20, 40:2, 40:2 S safety 33:2 said 2: 8, 3: 4, 8: , 3 : 6, 32:22, 35: 0, 36:3, 40:8, 40: 0, 40: 5, 40: 7 salt 2: 6 same :9, 9:7, 0:2, 3:6, 5:8, 8: , 9: 6 saved 6: saw 5: 8, 8:5, 3 : 6 say 9:2 , 0: 7, 26: 5, 3 :9, 35: 9 saying 7:7, 27: 8 says 2:6, 2 : 9 scattered 6:22 schenerman 2:28, 5: 5, 5: 6 school 20:4, 20:8 science 0: 4, 0:2 ,	2: 6, 5:20, 6: 9, 20:3, 20:8, 22:5, 24:9, 26:7, 28: 3, 29: 5, 29: 7, 3 : , 32:5, 38:3 scope 26: 3, 27:9 screen 37: 4 search 5: 6 searched 2: 5, 3: 4 seated 7: 7 second 4: 4, 32:2 see 9: 2, 4:4, 7:2, 8: , 23: , 23:5, 23: 9, 24:22, 35:7, 36: 7, 36:20 seen 2:3, 3 :4, 3 :9 selena's 3: 2 selling 28:9 send 2:2 sent 2: 3, 2: 9, 3: several 3 :3 shape 27: 4, 35: 7 shapes 28:7 shared 32: 0 sharing 37: 4
--	---	--	--

shoot 3 : 6 shop 25:2, 36: 3 shorthand 4:5, 40:3 shot 3 :9, 3 : 2 should 4: show 2 : 4, 22: 5 showing 37: 4 shown 6: 6, 33: 2 shows 2 :6, 28: 3 signature-plkal 40: 9 since 8:20 sit 23: 3, 23: 6 sitting 34:8, 35: 3 situation 33: 2 size 8: 8, 9: , 9: 2 skills 22:8 skipper 2:35, 4:2 slime 34:7 sling 3 : 2 small 8:2 , 34:6 smooth 24:4 sodium 25:8, 25:20, 26: soft :5, 4: 3,	3 : 0 some 9:8, 0: 4, 7: 6, 8:6, 8: 3, 24:5, 35:3, 35:7 somebody 3: , 34: 2 someone 2:2 something 24:20 sometimes 27: 8 somewhere 34: 2 sorry 5:6, 6: 7, 2 :2, 28: , 35: 9, 36:2 sort 7: 5, 7: 8, 28: 3, 3 : 4, 34: 4 sorts 30:6 south 2: 4, 22: 7 space 35:22, 36:5, 36:7, 36:9, 36: 0, 36: 6 spangler 8: 0, 8: , 5:3, 5:6, 6: 8, 25: , 28: 4, 28: 7, 28:20, 29:6, 32:7, 32:9, 32: 2, 33: , 38: 5 speaking :4 speculation 9:8, 30: 6 sphere 35: 6 spheres 8:2 , 23:2 ,	28:5, 29: 6, 38: 7, 38: 9 spherical 27:2, 27:6, 27:20 splat-r-ball 2: 0, 5: , 8: spoke 28: 9 srb 37: 5 stack 20: 4, 20:2 , 2 :2 stage 5:8, 32:7, 32:8, 32: 0, 33: , 35:8, 38: 5 standard 4: 9 starch 30:6 start 23:22 started 34: 0, 34: starting 2 : 5 state 4:6, 5:3, 6:7 states : , 4: 4 stenographic 40: stenographically 40: 0 step 7: , 6:3 steve 6: 8, 25: , 28: 4, 28: 7, 32:9, 32: 2, 34: , 34: 4, 38: 5 steven 8: 0, 8: , 5:3, 5:5,	28:20 still 30:2 , 30:22, 32: 8, 35: 5 stone 6: 2 stops 2 :20 straight 22: 4 stratosphere 2 : 2, 2 : 3 street 2:30 students 2 : 7 stuff 30:6 subsequent :9 successful 3 :20 suggests 2:7 suite 2: 5 super 26:3, 26:6, 26:8, 26: 0, 26: 7, 26:22 sure 5:2 , 38: 5 sw 2:5 swear 5:2 sworn 4:9, 6: , 40:6 T ta :6, 4: 6 table 7:5, 33: 5, 34:3, 34:5, 34:9, 38:20 tables 7: 8, 34:2
---	---	--	---

take 6: 4, 8:22, 20: 3, 23: 8, 28:5, 32:2, 33:20, 37: taken 32:4, 35: 4, 40:9 takes 33: taking 4:2 talk 2 :9, 28:22, 29:2 talked 0:8, 22:6, 22: 6, 23:2, 29: talking 3:9, 3:20, 22: 8, 22: 9, 34: 0 taught 20:2, 20:3, 22:3, 26: 7 teach 22:2 teacher 20:4, 20:9, 22:4, 22:5, 22:6, 23:2, 32: 2, 33: 4 teachers 7: 7, 22:4 team 22:3 teleconference 4:4 telephone 9:4 tell 7: 0, 3:3, 7: 5, 7: 9, 7:20, 9: , 30:8, 40:6 telling 0:4	temple 2: 4 terms 32: testified 4: 0 testify 4:9, 7:7 testimony 25: 6, 26: 3, 27:9, 28:2, 40: 0 th 4: 7 thank 6:2, 39:9 themselves 5:3 thereafter 40: 2 therein 40:9 thereof :7, 4:3 thing 34: 4 things 26: 6, 26: 7, 36: 2, 36: 6, 38:2 think 0:6, 0: 5, 0:22, :5, 2 : , 34:5, 34: 6, 36:2 , 37:3 three 3: 8, 5: 7, 6:4 threw 7: 4, 30: , 30:2, 34: 3, 34: 9, 35:3 through 8: 2, 2: 5, 22: 2, 32:2, 33:9, 33: 6 throughout 34:22	throwing 7:2 thrown 7: , 35: 0 thumb 9: 2 thumbnail 9: 7 time 4: 8, 4: 9, 8:5, 9:8, 8: , 9:22, 23: 6, 24:2, 27: 5, 28: 9, 37:8, 37: , 40:9 tiny 24:2 tip 9: 2 today 4:20, 5:20, 6: 4, 7: , 7:8 today's 4: 7 together 2 : 9, 28: 2 told 25: , 25: 9, 26:3, 26:5 took 8: 3, 39:2 tools 36: 2, 36: 5 toothpick 22: 0, 22: top 20:2 , 2 :3 toys 8:5 trade : , 2:29, 4: 4 transcribed 40: 2 tropopause 2 : 4 troposphere 2 :9, 2 : 3 true 39:	truth 4: 0, 40:6, 40:7 truthfully 7:8 trying 2:8, 20: 7 tube 5:7, 6:20, 8:7, 8: 7, 30:4 tubes 7:22, 8: 4 turn 33: two 2: 0, 5:9, 20:5, 20: 4, 20:22, 2 :4, 34:6, 37:5 typewriting 40: 2 U uhlenhuth 2: 3, 3:4, 5:5, 5:9, 5: 0, 8:20, 9:7, 9: 7, 0: , 0:9, 3:5, 5: 2, 9:7, 9: 6, 25: 5, 26: 2, 27:8, 27:22, 29: 0, 30: 5, 32: 6, 37: , 37: 2, 37:20, 39:4, 39:9 uhlenhuth@kirkla- nd 2: 8 under 0:7 understand 7:2, 7:5, 7:7, 27: , 27:4, 27: 3 unit 34:4
--	---	---	---

united : , 4: 4 unless 0:3 use 8: 6, 20:7, 22:2, 22: 4, 24:7, 25:3, 34:7, 36: 4, 36: 6 using 22:7, 23:3, 3 : 7, 33:4 usually 23: 0, 34:7 utah 2: 6 V vague 32: 6 variety 20: 0 various 7: 2 verbus 2:2 , 5: 4 verbus@kirkland 2:25 versions 3:8, 5: 3 via 4:3 vicinity 9:4 video 3: 2, 4:4, 4: , 4: 8, 4:22, 37:22, 39:8, 39: 3 videographer 2:35, 4: , 4:20, 5: 9, 37:7, 37: 0, 39:7, 39: videotaped : 2, 4: 2 virtually : 3	voice-identify 5:2 W walk 33:9, 33: 0 want 5: 2, 2 : 4 war 32:5, 32: 8, 33:20 warren 2:27, 5: 7 washington :2, 2:6, 4: 5 water 7:3, 7:4, 20: 2, 23: 3, 23: 6, 23: 7, 24:2, 25: , 26: 8, 27: 6, 27: 9, 28:4, 29: 6, 34:8, 35: 3, 35: 4, 35: 6, 38: 7, 38: 8 way 20: 5, 27:4, 35:5, 40: 5 we're 3:20, 33: 6 we've 9:2 wednesday 40: 8 welt 24: 6 went 6: 3, 22: 7, 22: 8 west 22: 9, 23: whatever 34:4 whereupon 6: , 4:6, 4: 9, 37: 7, 37: 9	whether 5:2 whole 40:6 within-entitled 40:8 without 9: 8, 30: 0, 30: 7 witness 4:8, 5: 0, 5:22, 6: , 9:3, 9:8, 0: 3, 3: 0, 9:9, 9: 7, 2 :2, 22:22, 25: 8, 26: 4, 27: 0, 28:4, 29: , 30: 7, 32: 7, 37:6, 40:4, 40: 0 work 20: 6, 33: 6 worked 20: , 23:8 workshop 7:6, 33: 4, 35: , 36: , 36: 3 workshops 8: 3, 25: 2 world 2:29 wouldn't 9:9 written : 4 wyoming 6: 3 Y yeah 0:9, 3:4, 3: 0, 29:22 years 20:5, 20:6, 30: 9 yield 5: 6	york 2:3 Z zeroes 4:3 zhang 2:4, 3:3, 5:4, 5:7, 6:4, 9:5, 9: 0, 0:3, 0: 6, 3: 3, 4:8, 4:2 , 5: 5, 9: 3, 9:2 , 23:6, 25:22, 26:2 , 27: 2, 28:8, 29: 3, 30:20, 32:20, 36:2 , 38:6, 39:5 . .2000 2:24 .5070 2:7 .7695 2:32 .8168 2: 7 0 000002863 37: 5 0001 6: 7 0002 4: 6 0003 4: 7 01 3:9, 4:6 02 : 5, 3: 0, 4:3, 4: 8 03 3: 04 3: 2, 37: 7,
---	--	---	---

37: 9	3d	
1	36: 2	
100	4	
7: 6, 34:20	40	
1000	:20	
2:5	42	
10007	37:8	
2:3	472544	
11373	: 9	
:22, 40:2	5	
1325	51	
:6, 4: 6	37:	
14	53	
3:9, 3: 0, 3:	39: 3	
150	59	
7: 6, 34:20	35:2 , 36:3,	
175	36:5, 36:6	
2:30	6	
2	60	
20024	2: 4	
2:6	60654	
2008	2:23	
0: 5, 0:2 ,	7	
2: 7, 6: 3,	700	
6:20, 29: 6,	2: 5	
32:5, 38:3, 39:2	7201	
202.783	6: 2	
2:7	8	
2022	8	
: 4, 4:3,	: 5, 4:3,	
4: 7, 40: 8	4: 8, 37:8,	
212.808	37: , 39: 3	
2:32	801.877	
28	2: 7	
: 4, 4:2, 4: 7	82718	
3	6: 3	
30	84111	
40: 8	2: 6	
300		
2:22		
312.862		
2:24		
337		
:6, 4: 6		
37		
3:4, 3: 2		

No. 472544

Re: Deposition of **Ellen Peterson**

Date: 11/28/2022

Case: Certain Soft Projectile Launching Devices (337-TA-1325)

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ACKNOWLEDGMENT OF DEPONENT

I, Ellen Peterson, do hereby acknowledge that I have read and examined the foregoing testimony, and the same is a true, correct and complete transcription of the testimony given by me and any corrections appear on the attached Errata sheet signed by me.

12-22-22

(Date)

Ellen Peterson

(Signature)