

Secretary of Labor v. Wal-Mart Stores, Inc.
OSHRC Docket No. 09-1013
Respondent's Opening Brief

Exhibit E
Transcript of June 1, 2010, Deposition of Vicky Heza

Filed on June 20, 2011

*SECRETARY OF LABOR VS.
WAL-MART STORES, INC.*

*VICKY HEZA
June 1, 2010*



126 East 56th Street, Fifth Floor New York, New York 10022

PHONE: (212) 750-6434 FAX: (212) 750-1097

www.ELLENGRAUER.com

Original File 93713.TXT

Min-U-Script® with Word Index

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

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
-----x
SECRETARY OF LABOR,

Complainant,

-against-

WAL-MART STORES, INC.,

Respondent.

OSHRC Docket No. 09-1013
-----x

1050 Connecticut Avenue, NW
Washington, DC

June 1, 2010
1:35 p.m.

Videoconference Deposition of VICKY
HEZA, taken before John L. Harmonson, Registered
Professional Reporter and Notary Public in and
for the District of Columbia.

ELLEN GRAUER COURT REPORTING CO. LLC
126 East 56th Street, Fifth Floor
New York, New York 10022
212-750-6434
Ref: 93713

1 **A P P E A R A N C E S:**

2

3 **ON BEHALF OF COMPLAINANT SECRETARY OF LABOR:**

4 **U.S. DEPARTMENT OF LABOR**
5 **OFFICE OF THE SOLICITOR**

6

 201 Varick Street
 Room 983
 New York, New York 10014

7

8 **BY: DARREN COHEN, ESQUIRE**
9 **(646) 264-3675**

10

11

12 **ON BEHALF OF RESPONDENT WAL-MART STORES, INC.:**

13

14 **GIBSON DUNN**

15

 1050 Connecticut Avenue, NW
 Washington, DC 20036

16

17 **BY: BARUCH A. FELLNER, ESQUIRE**
18 **-and-**
19 **DANIEL RATHBUN, ESQUIRE**
20 **(202) 955-8500**

21

22

23 **ON BEHALF OF CAL-OSHA AND THE WITNESS:**

24

25 **WILLIAM CREGER, ESQUIRE**

26

 1515 Clay Street
 Room 1901
 Oakland, California 94612
 (510) 286-7348

27

28

29

30

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

----- I N D E X -----

WITNESS	EXAMINATION BY	PAGE
VICKY HEZA	MR. FELLNER	5

----- E X H I B I T S -----

EXHIBITS	DESCRIPTION	FOR I.D.
----------	-------------	----------

(NO EXHIBITS MARKED)

P R O C E E D I N G S

1
2
3 THE COURT REPORTER: We are going on
4 the record for the video conferenced deposition of
5 Vicky Heza, in the matter of Secretary of Labor v.
6 Wal-Mart Stores, Inc., pending before the United
7 States Occupational Safety and Health Review
8 Commission, OSHRC Docket No. 09-1013. Today's
9 date is June 1, 2010, and the time is 1:35 p.m.

10 My name is John Harmonson. I am a
11 court reporter and notary public in and for the
12 District of Columbia, appearing on behalf of Ellen
13 Grauer Court Reporting of New York, New York, and
14 will be reporting these proceedings from the
15 offices of Gibson, Dunn & Crutcher in Washington,
16 D.C.

17 At this time would counsel please
18 identify themselves and state whom they represent.

19 MR. FELLNER: This is Baruch Fellner.
20 I'm with Gibson, Dunn & Crutcher on behalf of
21 Wal-Mart, the respondent in this matter. I'm
22 joined by Dan Rathbun here in Washington, D.C.

23 MR. COHEN: And this is Darren Cohen in
24 New York from the Office of the Solicitor,
25 Department of Labor, representing the complainant,

1 HEZA

2 the Secretary of Labor.

3 MR. CREGER: William Creger. I'm an
4 attorney with Cal-OSHA, the Los Angeles legal unit
5 of the Division of Occupational Safety and Health.

6 THE WITNESS: And I am Vicky Heza with
7 Cal-OSHA.

8 V I C K Y H E Z A ,
9 after having been first duly sworn, was examined
10 and did testify under oath as follows:

11 MR. FELLNER: Once again, let me
12 apologize to everyone for both the delay and the
13 technical difficulties that prevent this
14 deposition from being taken in a video format.
15 This is the first one in my career that is voice
16 only. But I suspect we can get it done, and I
17 hope we can get it done with dispatch.

18 Again, this is Baruch Fellner with
19 Gibson, Dunn & Crutcher on behalf of Wal-Mart in
20 this matter. It deals with a general duty clause
21 citation involving an unruly crowd of shoppers on
22 Blitz Day 2008, in Valley Stream, Long Island.

23 EXAMINATION

24 BY MR. FELLNER:

25 Q. Ms. Heza, I assume that you know the

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

HEZA

process and procedures of taking depositions, but at the risk of belaboring the point, first you know that you are and have been sworn in and therefore are under oath.

Let me ask you whether you've been through the drill before and have given a deposition.

A. I believe once.

Q. Just let me remind you, and that is if there is anything unclear about my questions, please let me know so that I can clarify the questions. I think it may be a little trickier since this is exclusively audio, but we'll give it a whirl.

Also, if you need a break at any point, please let me know and we can obviously take a brief recess.

As a preliminary matter, are you taking any medications that might affect your memory or your ability to give this deposition today?

A. I have been taking cough medicine, yes.

Q. And would that cough medicine, in your view, affect your ability to recall?

A. I don't think so.

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

HEZA

Q. Okay. And I hope you feel better if you've been taking the cough medicine.

A. Thank you.

Q. How did you prepare for this deposition?

MR. COHEN: Baruch, before you go further, I just want to for the record note again the Secretary's objection to the deposition and to the possible admission of the deposition at the hearing. I just want to have that on the record.

MR. FELLNER: Duly noted.

BY MR. FELLNER:

Q. Ms. Heza, how did you prepare for this deposition?

A. You know, to be honest, I did not have much time at all to prepare for this deposition. And so this is, to a large extent, off the top of my head.

Q. Did you have an opportunity to speak with anyone concerning this deposition?

A. Well, yeah, I spoke with the chief.

Q. And who is the --

MR. CREGER: She spoke with me.

MR. FELLNER: You being counsel?

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

HEZA

MR. CREGER: I am counsel, yes.

BY MR. FELLNER:

Q. Right. And the chief being Len Welsh?

A. Correct.

Q. Okay. And did you speak with anybody outside of California OSHA with respect to this deposition?

A. No.

Q. Did you review any materials in preparation for the deposition?

A. No.

Q. Let me just briefly get into your education and employment background, if I may. Would you describe for me your formal educational background, please.

A. I have a bachelor's in biology and a master's in toxicology.

Q. And when did you receive your bachelor's, please?

A. Oh, I don't know. It was in the '80s, I think.

Q. And your master's?

A. '90s. '95, maybe.

Q. Have you received any other formal

1 HEZA

2 training?

3 A. In what?

4 Q. Related to safety and health issues.

5 A. Well, in my career with Cal-OSHA I've
6 attended training classes.

7 Q. All right. And what kind of classes,
8 off the top of your head, can you recall
9 attending?

10 A. Oh, policy and procedure. It was so
11 long ago, I actually don't remember. I think
12 industrial hygiene techniques.

13 Q. Okay. Do you have any other degrees
14 other than the two that you mentioned?

15 A. No.

16 Q. Are you a Certified Safety
17 Professional?

18 A. No.

19 Q. A CIH, Certified Industrial Hygienist?

20 A. No.

21 Q. Let me get in a little bit into your
22 employment history. How long have you worked for
23 California OSHA?

24 A. I think about 23 years.

25 Q. And what positions have you held?

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

HEZA

A. I have held industrial hygiene consultant; district manager of San Diego enforcement; regional manager of Cal-OSHA consultation; deputy chief enforcement; and I am now the program manager of Cal-OSHA consultation.

Q. Could you go back to those various positions and give me time frames and content of responsibility, please.

A. Industrial hygiene consultant would be '86 through '91, and I was conducting on-site surveys at the employer's request.

District manager in San Diego was '91 to '94. Wait a minute. When was that? '91 to '93. And that was the district office, the enforcement office, so those duties included assignment of work, review of work product, and then personnel-related issues.

And then from ninety -- I'm missing some years here. But through 1999 I was regional manager for the consultation service, and that position entailed establishing strategic goals, working with the various offices in implementing those, keeping track of the consultation and service activities, conducting

1 HEZA

2 outreach and training.

3 And then the next position as deputy
4 chief of enforcement from '99 to 2009, it was
5 working with the regional managers and the
6 district managers as they conducted their
7 enforcement activities. You know, outreach and
8 education, again establishing strategic goals and
9 performance goals and tracking that kind of
10 information, and then personnel activities.

11 And then most recently as program
12 manager for the consultation service it is
13 overseeing the consultation program, ensure its
14 consistency with federal requirements, working
15 with the various managers and senior staff in, you
16 know, working towards achieving our goals.

17 Q. That's a very impressive list,
18 Ms. Heza.

19 And is it fair to say that your
20 knowledge of California regulations and
21 enforcement and consultation issues is thorough
22 and comprehensive?

23 A. I -- I don't know if I would use those
24 terms. You know, I'm reasonably knowledgeable
25 about the Cal-OSHA consultation program.

1 HEZA

2 Q. With respect to enforcement issues, and
3 you were deputy chief of enforcement for a period
4 of ten years, I would assume that applies to
5 enforcement issues as well as consultation issues,
6 that you're reasonably knowledgeable insofar as
7 enforcement issues?

8 A. Yes.

9 Q. Have you played any role with respect
10 to developing Cal-OSHA's regulations?

11 A. No.

12 Q. Any advisory role with respect to any
13 regulatory initiatives?

14 A. No.

15 Q. Have you at all been involved in or had
16 responsibility for administering the IIPP program?

17 A. Administering the IIPP program? What
18 does that mean?

19 Q. Well, if there is a better gerund to
20 use than administering the IIPP program -- How
21 about reviewing the IIPP program, being conversant
22 with respect to the kinds of programs that
23 employers would implement in response to the IIPP
24 regulation?

25 A. I'm familiar with the IIPP

1 HEZA

2 requirements.

3 Q. And are you also familiar with how
4 employers generally attempt to meet those
5 requirements?

6 A. Am I familiar with how employers would
7 generally attempt to meet those requirements?

8 Q. To comply with IIPP.

9 A. Yeah, I would say so.

10 Q. Same question with respect to special
11 orders. And let me be a little bit more specific.
12 Do you have any responsibility for issuing or
13 monitoring the compliance with special orders?

14 A. I personally have not.

15 Q. Have you supervisory responsibility or
16 have you had supervisory responsibility with
17 respect to individuals who have issued or
18 monitored compliance with special orders?

19 A. I did supervise managers whose offices,
20 you know, would have issued special orders.

21 Q. Now, let's get into the operation of
22 California's OSHA Act, an area in which I'm
23 considerably less familiar than I am with the
24 federal program. I assume, of course, you are
25 totally familiar and conversant with the design

1 HEZA

2 and operation of California's Occupational Safety
3 and Health Act.

4 A. I'm familiar.

5 Q. And let me ask you with respect to the
6 design and operation of the federal Occupational
7 Safety and Health Act. Are you at all conversant
8 in that?

9 A. No. I'm familiar with it, but I'm not
10 conversant in it.

11 Q. Got it. Who admit -- Let me ask it
12 more directly and you'll allow me this leading
13 question.

14 The California OSHA Act is administered
15 by the Department of Industrial Relations; is that
16 right?

17 A. Correct.

18 Q. The California OSHA Act is an approved
19 state plan under Section 18 of the federal OSHA
20 Act; is that correct?

21 A. We don't have final approval.

22 Q. Yeah, that's always been an anomaly.
23 When is California going to finally
24 have final approval? Do you have any idea?

25 A. You would have to ask the chief.

1 HEZA

2 Q. In order to gain and maintain whatever
3 interim approval under the federal OSHA Act
4 California OSHA must be -- I think the operative
5 phrase is at least as effective as the federal
6 program; is that correct?

7 A. Correct.

8 Q. Now, are you familiar at all with any
9 policy or programmatic interactions between
10 California OSHA personnel and federal OSHA
11 personnel?

12 A. Could you maybe state that differently?
13 I'm not quite sure what you're asking me.

14 Q. Well, obviously, there are
15 opportunities for federal OSHA and its state plan
16 counterparts to discuss policy issues,
17 programmatic issues, citation issues, regulatory
18 issues. Are you at all familiar with any of those
19 interactions?

20 A. There are meetings that are held
21 between Region 9 and Cal-OSHA to discuss a variety
22 of issues, any one of which could include the ones
23 that you mentioned.

24 And then there are meetings of all the
25 state plans with federal OSHA on a maybe quarterly

1 HEZA

2 basis, three times a year, through OSHPD, which is
3 a statewide -- sorry -- a nationwide organization,
4 and there is a discussion about federal policy
5 issues at those meetings as well.

6 Q. Now, would you for clarity purposes
7 identify what Region 9 is?

8 A. Well, that is the federal OSHA region
9 that -- within which California sits. Region 9 is
10 California, Arizona, Nevada, Hawaii and Guam.

11 Q. And do you -- How often does California
12 OSHA meet with Region 9?

13 A. Well, recently it's been probably --
14 They've been trying to maintain the quarterly
15 agenda, a quarterly meeting.

16 Q. And what are some of the subject
17 matters, if I may ask, that you meet with Region 9
18 on?

19 A. It's a review of our progress towards
20 our strategic goals. Federal OSHA may, you know,
21 introduce the meeting by talking about things that
22 are going on in Washington or budget issues. But
23 it's primarily a discussion from the Cal-OSHA
24 program. It's a discussion on our progress
25 towards our strategic goals.

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

HEZA

Q. And similarly, this every three or four times a year that state plans more formally meet under I think you said OSHPD, what are some of the issues that you meet on?

A. The agenda items will typically include budgetary discussions, updates on a new information system that is in the works, new regulations that the feds have promulgated or are working on.

And then the states, you know, will highlight something innovative going on. A couple of states will report on some innovative programs they have within their own states.

Q. When was your last meeting of OSHPD?

A. Well, I have not attended a meeting, I think, since the end of '08.

Q. Okay. Have you discussed any meetings that have transpired since '08?

A. No. The chief has attended, but we haven't spoken about them.

Q. Okay. Are you at all familiar with the recent initiatives that federal OSHA has made which kind of would copy California OSHA's IIPP program?

1 HEZA

2 A. Well, I understand they're holding some
3 stakeholder meetings to discuss what they refer to
4 as I2P2.

5 Q. Right. It's an unfortunate acronym,
6 but I don't think California has ever done that
7 before. It sounds too much like R2D2.

8 So you're familiar that they're having
9 stakeholder meetings. Have there been any other
10 discussions that you have participated in or that
11 you have heard of between California and federal
12 OSHA with regard to I2P2?

13 A. At a recent meeting, I spoke with one
14 of the federal folks, just in general terms, about
15 I2P2, and she told me that they would be holding
16 some stakeholder meetings, and that was about the
17 extent of it.

18 Q. There was no substantive discussion
19 during the course of that meeting that dealt with
20 what federal OSHA's objective may have been with
21 respect to I2P2, or may be with respect to I2P2?

22 A. It wasn't a meeting. It was a coffee
23 break, exchanging a couple of words.

24 Q. And other than that, you're not
25 familiar with any of the substance behind federal

1 HEZA

2 OSHA's I2P2 exercise?

3 A. What do you mean?

4 Q. Are you -- Other than that brief coffee
5 meeting, have there been any other opportunities
6 or inquiries or discussions that you have had, or
7 that you're familiar with that others may have had
8 at California OSHA, with respect to federal OSHA's
9 I2P2 initiative?

10 A. I can't speak to what other people in
11 California OSHA have or have not spoken to or
12 spoken with. I myself have not had any
13 substantial -- substantive discussions, excuse me,
14 substantive discussions with the federal folks
15 about the proposal.

16 Q. And has anyone in California that may
17 have had some more substantive discussions talked
18 to you about those discussions?

19 A. I'm not aware of anyone that has had
20 those discussions. So the answer to your question
21 is no.

22 Q. Okay. You mentioned a moment ago when
23 you were describing your meetings or California's
24 meetings with Region 9, and I think I took this
25 down accurately, that part of those meetings go to

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

HEZA

things going on in Washington.

Have there been any discussions that you are aware of, either that you have participated in or that others have participated in and relayed to you, dealing with crowd management or crowd control-type issues?

A. I don't --

MR. COHEN: Objection to form.

THE WITNESS: I'm sorry, could you repeat what -- somebody --

MR. COHEN: I just made an objection to the form of the question.

Go ahead and answer.

BY MR. FELLNER:

Q. You can answer it.

A. Not to my recollection.

Q. And has there been any discussion that you are aware of with Region 9 with respect to the Wal-Mart case of 2008?

A. Not that I'm aware of.

Q. Same question with respect to the meetings that you have had with the state plans, the OSHPD more formal meetings. Has there been any discussion at those meetings with respect to

1 HEZA

2 crowd management or crowd control issues?

3 A. Well, as I said, it's been a while
4 since I have attended one of those meetings, and
5 that subject was not a topic of discussion at any
6 of the meetings that I attended.

7 Q. And was that the subject of any
8 meetings that were relayed back to you by any
9 other attendee of California OSHA?

10 A. Not that I recall.

11 Q. And how many years would you have
12 participated in your various different positions
13 in meetings either with Region 9 or with the state
14 plans under OSHPD?

15 A. With Region 9, I may have participated
16 in meetings going back to 1998. With OSHPD, with
17 a very limited window, maybe 2001 or '02
18 through 2008.

19 Q. Thank you.

20 One of the areas, specific areas, that
21 I wanted to get into now involves the IMIS system,
22 the Integrated Management Information System.

23 Is it correct that both Cal-OSHA and
24 federal OSHA citations are, as it were, cataloged
25 in the IMIS system?

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

HEZA

A. That's the database that we use, and that's how we -- that's the federal database that we use to create citations, yeah.

Q. Let me ask you for purposes of clarification, to create citations or to retain the information with respect to issued citations?

A. Correct.

Q. And if some of my questions reflect some frustrations of penetrating the IMIS system, I apologize in advance.

Is there any interaction between the federal OSHA and California OSHA with respect to this cataloging process or retention process known as IMIS?

A. I'm not really sure I understand your question.

Q. Well, I mean do you do your own thing with regard to -- does California do its own thing with regard to entering data into IMIS, or is this something that you consult with federal OSHA on?

MR. COHEN: Objection to form.

BY MR. FELLNER:

Q. Go ahead, you can answer the question.

A. The California, the COSHOs and the

1 HEZA

2 clerical enter their own information.

3 Q. And they don't consult with federal
4 OSHA with respect to how to go about entering that
5 information?

6 A. No.

7 Q. Do the agencies look at each other for
8 any kind of guidance or ideas insofar as entering
9 this information is concerned, to your knowledge?

10 A. You know, I know in the past if we
11 wanted to retrieve information, we could work with
12 Washington to develop special reports, but I don't
13 think that's really available anymore to the state
14 plan.

15 I think the interaction between the
16 state and the feds with regards to IMIS is more
17 often when something is not functioning properly.

18 Q. Can you give me an example to your best
19 recollection of that kind of an interaction when
20 something is not functioning properly?

21 A. Well, you know, I don't know the
22 technical terminology, but the systems, you know,
23 a particular office, their system may go down or
24 crash or whatever you want to call it, and we do
25 fix that. You know, we use our own technical

1 HEZA

2 staff to fix that, but there may be some
3 interaction with Washington.

4 And I really don't know that much about
5 the state of IMIS today, so it's kind of difficult
6 for me to answer, I think, your questions from my
7 personal direct experience.

8 Q. If I were to search, for example, for
9 citations that Cal-OSHA may have issued for
10 certain kinds of hazards covered by specific
11 standards, specific California OSHA standards, how
12 would I go about doing that?

13 A. I believe that would require something
14 called a micro-to-host report. It's a report
15 that -- There are several ways. You can get
16 reports out of local databases. You can also get
17 reports out of what has been sent to Washington.

18 And, you know, to a certain extent you
19 can establish your own sort criteria. So if you
20 were looking to see, you know, a list of employers
21 who had been issued A, B, C, D, there is a
22 mechanism to do that.

23 I personally don't do it. We have
24 staff up in headquarters who do that kind of
25 thing.

1 HEZA

2 Q. Of course.

3 And that question was directed at
4 citations under specific standards. If I were to
5 search for citations, California OSHA citations
6 issued under the IIPP or under special orders, is
7 that a more difficult process?

8 A. Well, 3203, which is the Title 8 IIPP
9 reference, you know, we could pull information
10 out, limited information mind you, but we could
11 pull information out on who had been issued 3203
12 citations. A special order, to be perfectly
13 honest, I have no idea.

14 Q. Let me ask you more granularly if I
15 may. If I wanted to search for citations under
16 the IIPP program -- I know what your answer is
17 going to be for special orders. But under the
18 IIPP program, for any citations that dealt with
19 problems of crowd control or crowd management, is
20 the IMIS system sufficient to capture that level
21 of detail?

22 A. Perhaps in a very, very limited way.
23 If an accident investigation had been conducted,
24 sometimes you can search on keywords. But it's
25 probably a multistep process.

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

HEZA

And again, I am really not the expert. I'm not the one to answer that question. I'm not that familiar with when you drill down that far into IMIS. I'm not familiar with how that would actually be retrievable. It would not be easy.

Q. If an accident did not occur, would that make it difficult or impossible to retrieve that information?

A. It would be difficult to retrieve that from IMIS.

Q. Are there any other ways of finding that level of detail about California OSHA citations?

A. With regards to crowd control?

Q. Yeah.

A. You know, I really -- I'm not the IMIS expert. I'm not a tech expert. Beyond what I've already provided, I cannot shed any further light on the subject.

Q. And I appreciate your allowing me to belabor this issue as much as I have. And frankly, if we had been more successful under IMIS, this deposition could have been avoided.

Let's talk a little bit about the

1 HEZA

2 structure of the California OSHA Act, if I may.
3 And again, rather basically, the act gives, as I
4 understand it, the Department of Industrial
5 Relations the ability to issue regulations
6 pertaining to workplace safety and health; is that
7 correct?

8 A. There is a Cal-OSHA standards board.
9 Where it fits within the Cal-OSHA Act I couldn't
10 tell you. But there is a standards board that
11 promulgates regulations.

12 Q. Now, with respect to specific
13 regulations that pertain to individual industries,
14 is it correct that the department, through the
15 standards board, has issued those kinds of
16 regulations, specific regulations that pertain to
17 individual industries and general regulations that
18 pertain to all industries? Is that correct?

19 A. There are vertical and horizontal
20 standards.

21 Q. And the horizontal standards or general
22 regulations, are they known as general industry
23 safety orders? Is that right?

24 A. That's where they would reside in Title
25 8, yes.

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

HEZA

Q. Okay. Do you know whether these general industry safety orders are similar to the kinds of regulations that federal OSHA issues under Section 5(a)(2) of its statute?

A. I wouldn't have -- You would have to speak to someone who's with the standards board. You would have to speak to an attorney. I can't answer that question. No, I can't answer that question.

Q. Okay. Let's turn more specifically to the IIPP program. I assume you're familiar with Section 3203 of the California Code.

A. Correct.

Q. And that Section 3203 requires California employers to develop what is referred to as an Injury and Illness Prevention Program; is that right?

A. Correct.

Q. Now, is it fair to say that each employer's IIPP program is unique or ought to be unique and tailored to its particular workplace and workplace hazards?

A. Yeah. The IIPP should be reflective of the site, or, you know, there might be some like

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

HEZA

kind of corporate overarching policy but very unique hazards identified, or if there are unique situations at a site, then the IIPP should reflect that.

Q. And further, that the IIPP program should describe ways to both identify and abate those specific hazards? Do I have that correct?

A. That is one of the elements of the IIPP.

Q. And speaking of the elements, I would like you to confirm I think what is on the face of the IIPP program. There are about eight key elements; is that correct?

A. I believe so.

Q. And let me tick them off and see whether or not I've got them right.

It is management responsibility; compliance; communication; hazard assessment; accident exposure investigation; hazard correction; training and instruction; and record keeping.

A. Yes.

Q. Let's walk through the establishment of an IIPP. What is an employer supposed to do first

1 HEZA

2 when he's trying to construct his own IIPP?

3 A. Well, you know, an employer can
4 probably approach it from various directions, but
5 there does have to be -- you know, a hazard
6 analysis has to be conducted.

7 And then from that, the development of
8 ways to correct the hazards, to communicate it,
9 communicate the hazards to employees and train.
10 And then ultimately assigning responsibility for
11 the program.

12 Q. Now, with respect to the hazard
13 analysis, are there a number of different ways
14 that an employer can use to discover particular
15 hazards and then to analyze them?

16 A. I would imagine so.

17 Q. Does anything come to mind?

18 A. An employer can use their injury and
19 illness records. They can bring their insurance
20 carrier in, their loss prevention specialist.
21 They can hire a consultant.

22 Q. So with respect to what the employer
23 has at hand, the first thing that you mentioned
24 was to examine the injury/illness records that an
25 employer has, and that would be one of the good

1 HEZA

2 places to start. Do I have that correctly?

3 A. Well, it would certainly show the
4 employer if there are any trends or anything in
5 particular that should be looked at more
6 thoroughly.

7 Q. Now, what kind of follow-up is required
8 once the IIPP is established?

9 A. If new hazards are introduced into the
10 workplace, those have to be included in the
11 program in terms of attempts to correct and
12 training.

13 If employees are assigned to a
14 different or a unique or new job, they have to
15 have training that is consistent with the hazards
16 associated with that new position. That would be
17 required in follow-up.

18 Q. So, for example, if I were involved in
19 retail and I had experiences with respect to an
20 unruly crowd that created some injuries in my
21 workplace, would you think that it would be
22 required under the IIPP program to do a hazard
23 analysis insofar as the impact of an unruly crowd
24 on my workplace is concerned?

25 MR. COHEN: Objection to the form.

1 HEZA

2 Calls for speculation.

3 BY MR. FELLNER:

4 Q. You can answer the question.

5 A. Yes. Well, I really can't answer the
6 question. I don't know.

7 Q. Let's probe that a little -- I'm sorry,
8 you were continuing?

9 A. No.

10 Q. Let's probe that a little more if I
11 may. You indicated a moment ago that a good place
12 to start is to check your accidents and illness
13 records, injury record. That remains correct,
14 right?

15 A. That was one of the alternatives that I
16 listed, yeah.

17 Q. And if an employer, a retail employer,
18 were to check his injury records and to find that
19 employees had tripped or fallen or had been pushed
20 or shoved and that this qualified as reportable
21 injuries in the context of crowds entering the
22 particular workplace, would that not be important
23 for the employer to evaluate for purposes of an
24 IIPP program?

25 A. Conceivably.

1 HEZA

2 Q. Conceivably. Why would it conceivably
3 not be important to evaluate that?

4 A. Well, you know, it would depend upon I
5 think the details and the facts. It's difficult
6 for me to answer, you know, a hypothetical or
7 speculative question with certainty. That's why I
8 would say that, you know, the employer has to take
9 a look at their history; and if they see
10 something, if there is a flag, then that very well
11 could be the basis for further evaluation.

12 Q. All right. Now, Cal-OSHA has model
13 IIPP programs on its website; is that correct?

14 A. That is correct.

15 Q. And these models are available for
16 high-hazard and also for nonhigh-hazard employers?

17 A. I think so, although intermittent,
18 perhaps.

19 Q. What do you mean by "intermittent"?

20 A. Seasonal.

21 Q. I see. Could you be a little bit more
22 specific about what you mean by seasonal?

23 A. I would suggest you look on the
24 website. That would probably tell you better than
25 I could.

1 HEZA

2 Q. Well, let me be a little bit more
3 precise. For example, is this what you had in
4 mind when the temperatures go way up in
5 California, that there may be some seasonal IIPP
6 programs for purposes of heat-related disorders?
7 Is that what you had in mind?

8 A. My recollection is that the seasonal or
9 intermittent program was -- was written or
10 produced by our then Chief Howard, and I seem to
11 think it was for like the agricultural industry,
12 although I really don't remember. It was a long
13 time ago.

14 Q. Okay. Are there models specifically
15 available to address workplace hazards like
16 workplace violence?

17 A. I believe there are such models on the
18 website, yes.

19 Q. What is the purpose of putting these
20 models on the website?

21 A. Employers can use them as boilerplates
22 to develop their own site-specific programs.

23 Q. And are they, as it were,
24 authoritative?

25 A. I don't know what that means.

1 HEZA

2 Q. Do they --

3 A. I don't know what you mean by that.

4 Q. Let me rephrase it.

5 Do they reflect kind of safe harbors
6 that if an employer follows one of these -- one of
7 these website programs, that they will not be
8 subject to IIPP citations?

9 A. You know, an employer can have a
10 program and can still be issued citations, if that
11 answers your questions.

12 Q. Let me probe that. That wasn't exactly
13 my question, but let me take that one step
14 further.

15 What are the circumstances in which an
16 employer can have a program and still receive
17 citations?

18 A. They don't follow it.

19 Q. I see. Can you give me an example of
20 any particular case that you're familiar with
21 where an employer had a program but didn't follow
22 it?

23 A. No, not off the top of my head.

24 Q. Does Cal-OSHA offer any assistance,
25 direct or indirect assistance, for employers

1 HEZA

2 looking to develop individualized IIPPs?

3 A. The consultation program will offer
4 some assistance if asked.

5 Q. And I know that you've been involved --
6 I'm sorry, go ahead.

7 A. It's ultimately the employer's
8 responsibility to develop the program.

9 Q. And you've been extensively involved in
10 the consultation program and are presently
11 involved. Have you ever been asked by an employer
12 with respect to setting up an IIPP program
13 concerning workplace violence-type issues?

14 A. No.

15 Q. Have you ever been asked with respect
16 to any crowd-related issues that might be involved
17 in IIPP?

18 A. No.

19 Q. The model IIPP program for high-hazard
20 employers has an extensive list of training
21 subjects; is that correct?

22 A. I don't recall.

23 Q. Do you have a binder in front of you,
24 Ms. Heza?

25 A. No. Oh -- I don't have a binder in

1 HEZA

2 front of me, no.

3 MR. RATHBUN: There's not a binder in
4 the conference room directed to you with tabs in
5 it?

6 THE WITNESS: There is a binder that
7 says "Daniel Rathbun" on it.

8 MR. RATHBUN: Okay. That's yours. I'm
9 sorry that someone didn't give that to you
10 directly.

11 BY MR. FELLNER:

12 Q. If I may ask you, to refresh your
13 recollection, to turn to Tab 5 in that binder,
14 please.

15 MR. COHEN: I assume I have the same
16 binder?

17 MR. FELLNER: Yes, you do, Darren.

18 THE WITNESS: Okay.

19 BY MR. FELLNER:

20 Q. And specifically to page 6 in that --
21 under that tab.

22 A. Okay.

23 Q. Let me ask you to look at that. I
24 don't have to introduce a public record,
25 obviously, into -- as an exhibit.

1 HEZA

2 But this is the workplace injury and
3 illness prevention model program. And does the
4 list of training subjects at page 6 refresh your
5 recollection?

6 A. That there is a list of training
7 subjects?

8 Q. Yes. And that it describes the kind of
9 possible hazards that we were talking about
10 before.

11 A. It certainly lists particular subjects,
12 yes.

13 Q. And it lists an extensive -- It's a
14 relatively extensive list of training subjects?
15 Are you familiar with this? Have you seen this
16 list before?

17 A. I'm sure I saw it years ago. I haven't
18 really looked at it in a very, very long time.

19 Q. Take a look at page 7, what is referred
20 to as the Hazard Assessment Checklist, and
21 successive pages. Is it fair to describe this
22 Hazard Assessment Checklist as relatively
23 exhaustive and detailed?

24 A. It's lengthy.

25 Q. Do you know whether these two items

1 HEZA

2 that I've just called to your attention, whether
3 they are exhaustive of the kinds of possible
4 hazards that an employer is exposed to?

5 A. I don't know that I would use the word
6 "exhaustive." I think a person who can best
7 answer that question or the folks that can best
8 answer that question are the ones who wrote this.
9 It's intended to give the employer, you know,
10 guidance certainly at the time that it was
11 written.

12 Q. And what inference can you draw if
13 there is a particular hazard that's not on this
14 list?

15 A. I mean, usually we have disclaimers
16 that these lists are not meant to be all-inclusive
17 and that there could be other hazards that -- you
18 know, in addition to what's on this list. These
19 documents are intended as guidance. They're not,
20 you know, intended to be the final say in what the
21 employer has to develop.

22 Q. Are they updated with any degree of
23 frequency?

24 A. I don't think this one has been in a
25 while.

HEZA

1
2 Q. Do you know of your own knowledge as to
3 whether there is anything in these documents that
4 I've pointed you to that deals with crowd
5 management or crowd control?

6 A. I don't recall if there is or there
7 isn't something that deals with crowd management
8 or crowd control.

9 Q. Or that deals with hazards being struck
10 or pushed or shoved or tripped or injured by a
11 crowd? Same answer?

12 A. Yes. Specific to crowds, I don't
13 know that -- I don't recall if there is something
14 in here that's specific to crowds.

15 Q. Now, in designing its IIPP, does an
16 employer only need to identify and abate specific
17 hazards identified in specific California
18 regulations?

19 A. Well, that would certainly be the place
20 to start. But if there is a hazard that is unique
21 to a facility that is not covered under a
22 regulation, then the employer should also try to
23 address that as well.

24 Q. And how about hazards whose sources are
25 general industry safety orders, might they also be

1 HEZA

2 a place to start with?

3 A. Yes.

4 Q. And employers may very well have to go
5 beyond those orders themselves if, as you've
6 indicated, there are unique hazards that an
7 employer and only that employer would know in his
8 workplace?

9 A. Correct.

10 Q. Now, Section 3203 says that employers
11 must conduct hazard inspections and provide hazard
12 training whenever new substances, processes,
13 procedures or equipment are introduced in the
14 workplace that represent a new occupational safety
15 and health hazard or whenever the employer is made
16 aware of a new or previously unrecognized hazard.

17 You're familiar with that obligation?

18 A. Uh-huh. Yes.

19 Q. So is it fair to say that that language
20 would require employers to look beyond the hazard
21 specifically identified in specific regulations or
22 safety orders?

23 A. Well, if it's reasonable for -- If it's
24 reasonable for the employer, you know, to
25 acknowledge that there could be something beyond

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

HEZA

Title 8, which, of course, is just a minimum that employers have to comply with, then yeah, a reasonable employer should probably look into whatever the issue may be.

Q. In your extensive experience that you've had with so many different hats on, have you seen employer IIPP programs that in fact have looked beyond specific regulations and special orders and have anticipated hazards that weren't covered in either?

A. You know, I don't have a clear recollection of looking at a specific program, so I guess I can't really answer that question in the affirmative.

Q. Is there anything that would assist you in answering that question?

A. I don't know. Maybe you could restate it.

Q. Well, we've established the proposition, Ms. Heza, and you've testified that upon occasion employers may have to look beyond both the special orders that have been issued as well as the specific regulatory requirements of Cal-OSHA.

1 HEZA

2 And my question is: Do you have any
3 examples that come to mind where employers have
4 established IIPPs that deal with hazards beyond
5 either special orders and/or specific regulations?

6 A. A specific employer does not come to
7 mind.

8 Q. How about a specific example without a
9 specific employer?

10 A. I'm sorry, but the light bulb is not
11 going off.

12 Q. Let me ask you this: In your 23 years
13 of experience in various different jobs, have you
14 ever seen an IIPP program that dealt with crowd
15 management or crowd control issues?

16 A. Not that I recall.

17 Q. Have you ever discussed crowd
18 management, crowd control issues as being part of
19 an IIPP program with anyone who may have seen such
20 a program?

21 A. I don't have any specific recollection
22 of that.

23 Q. We talked before about one of the ways
24 that an employer can trigger the IIPP process, and
25 that was by initially taking a look at his injury

1 HEZA

2 reports. Is it fair to say that those injury
3 reports may very well identify unsafe workplace
4 conditions that are associated with those
5 industries -- with those injuries? I didn't mean
6 industries.

7 A. Yes.

8 Q. And through identifying those unsafe
9 workplace conditions, that such injuries -- injury
10 reports would develop a recognition on the part of
11 the employer that he ought to be doing something
12 with respect to those workplace hazards?

13 A. Correct.

14 Q. Now, are you at all familiar with the
15 general duty clause under the federal program?

16 A. Not -- You know, just from a very
17 layman's perspective.

18 Q. Well, let me ask you from your layman's
19 perspective whether or not the kind of recognition
20 that the analysis of such injuries would trigger,
21 whether that's a recognition that is similar to a
22 recognized hazard under the general duty clause.

23 A. You know, I can't speak to the general
24 duty clause. It's outside of my, you know,
25 experience, my scope of expertise. So I really

1 HEZA

2 can't speak to the general duty clause.

3 Q. Have you ever heard Section 3203
4 compared to the general duty clause?

5 A. More in the negative. But
6 historically, it would not necessarily be general
7 duty clause equivalent. I haven't really heard
8 any comparison recently that I can recall.

9 Q. And when you've heard it in the
10 negative, in those discussions what distinguishes
11 3203 from the general duty clause?

12 A. When 3203 was first promulgated from a
13 policy standpoint, it was not -- it was not to be
14 used as like a 5(a)(1) equivalent. And over time
15 that has changed.

16 But if you're going to ask more
17 questions about that, you really need to speak to
18 the policy folks who were making those decisions
19 at the time.

20 Q. Understood. But are you aware of it
21 changing over time? You had indicated that over
22 time that particular policy has changed.

23 A. Not -- You know, not in writing. The
24 P&T hasn't changed at all. But 3203 has been
25 applied, I think, certainly in workplace violence.

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

HEZA

Before we had our heat illness standard, it was applied for that. So it was --

Q. What was the second example? I'm sorry to interrupt you. Workplace violence was the first example. Heat only; is that what you said?

A. No. Before we had our heat illness prevention standard --

Q. Ah, heat illness.

A. -- I believe we used 3203 to issue citations for employers to address those hazards.

Q. So there has been some history but not across the board in California for the use of 3203 where specific regulations are not issued and where certain broad-based hazards are recognized?

A. Could you say that again, ask me that again?

Q. Sure. There has been precedent for 3203 to be used and to be cited for certain hazards that are not covered by specific regulations; is that correct?

A. Well, as I said, I believe that we've used it in the past for workplace violence. And I believe in maybe 2005 we may have issued some with respect to heat illness. But I can't say that

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

HEZA

with 100 percent certainty. I really don't remember exactly what we issued back then.

Q. And do you know of any instance in which 3203 has been used in the context of crowd-related issues?

A. No, I do not know of any instances.

Q. And specifically crowd-related issues in the context of the retail industry?

A. Same answer.

Q. And are you aware of any employer that has recognized in his or her IIPP program any crowd-related issues and has taken any hazard assessment and training and abatement measures in response to that?

A. Not specifically.

Q. And more granularly with respect to the hazards of being struck, pushed, shoved, tripped or injured by a crowd, same questions. Have you seen any citations for IIPP or special orders in the context of those particular workplace conditions?

A. Not that I recall.

Q. And have you seen any IIPP programs or initiatives undertaken by employers responding to

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

HEZA

those kinds of workplace conditions?

A. Not that I am aware of. I have not seen such IIPPs.

Q. Have such IIPPs been drawn to your attention by anyone else?

A. No.

Q. So as far as you're concerned, the words "crowd management" or "crowd control" have never been discussed as a hazard in your presence in 23 years with California OSHA; is that correct?

MR. COHEN: Objection to form.

MR. FELLNER: I have no idea why.

BY MR. FELLNER:

Q. But go ahead and answer the question.

MR. COHEN: It's vague and compound.

MR. FELLNER: That's fine.

BY MR. FELLNER:

Q. Answer the question, please.

A. Not that I am aware of.

Q. Isn't that something that you would be aware of had it occurred?

A. I don't recall. You know, like you said, I've been there for 23 years. You have lots of informal conversations. But I do not recall,

1 HEZA

2 you know, having discussions about specific
3 employers and specific programs dealing with
4 crowds.

5 Q. Dealing with crowd management or crowd
6 control?

7 A. Correct.

8 Q. A couple more technical questions with
9 regard to IIPP if I may. Are IIPP citations
10 freestanding, or do they typically rely upon
11 general industry safety order provisions or other
12 regulations?

13 A. I'm afraid I don't understand your
14 question.

15 Q. Well, is an IIPP -- Can 3203 be cited
16 by itself, or is it in tandem with a specific
17 regulation that is being violated?

18 A. It can be cited by itself.

19 Q. And what are the circumstances for
20 which it would be cited by itself?

21 A. The employer failed to meet one of the
22 elements.

23 Q. Of the IIPP itself?

24 A. Or to implement one of the elements.

25 Q. Okay. You've never seen it -- and I

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

HEZA

know I'm asking the same question in a slightly different way.

You've never seen it cited by itself or discussed it being cited by itself with respect to workplace security issues, have you?

A. I'm sorry, I don't understand your question.

Q. All right. The question -- We've tacked at in a somewhat different fashion before, but I'm asking you whether or not you have seen the IIPP provision 3203 cited by itself with respect to the absence of a program dealing with workplace crowd management issues.

A. Well, you said workplace violence before.

Q. I said workplace security. But I --

A. You -- we --

Q. Go ahead.

A. I seem to recall that we have issued, you know, workplace violence citations, I believe under 3203. You know, it's a fairly long time ago, and I don't, you know, recall -- Actually, I take it back. I do recall one case.

There was an incident that occurred and

1 HEZA

2 we issued I'm pretty sure it was a 3203 citing,
3 you know, failing to control potential Type 2
4 workplace violence.

5 Q. Can you remind me what Type 2 is?

6 A. Type 2 is where a -- whether it be a
7 customer, a client or some other person, you know,
8 comes into a workplace or is at a workplace and
9 commits a violent act against an employee of that
10 workplace.

11 Q. And this was cited under 3203?

12 A. I think.

13 Q. And in the area of workplace
14 violence -- Let's stay with that area for a
15 moment. This is an area in which Cal-OSHA has, as
16 it were, recognized that there are hazards related
17 to various different types of workplace violence;
18 is that accurate?

19 A. Correct.

20 Q. And that employers are expected to
21 incorporate workplace violence measures in their
22 IIPPs?

23 A. If appropriate.

24 Q. And that indeed you've got a model
25 workplace violence IIPP on your web page, don't

1 HEZA

2 you?

3 A. I think so.

4 Q. And as you've alluded to, there are
5 three types, basic types of workplace violence, is
6 that right, that's referred to on your web page?

7 A. Correct.

8 Q. Those three types are fatal assaults
9 upon employees at late night retail
10 establishments. That's Type 1. Is that accurate?

11 A. That's what the web site says. That's
12 what the program says.

13 Q. And Type 2 would be assaults by the
14 recipients of a company's products or services
15 upon the company's employees; is that right?

16 A. Correct.

17 Q. And then Type 3 is assaults upon
18 employees by others with employment-related ties
19 to the workplace?

20 A. Correct.

21 Q. Are you at all familiar with any of the
22 federal initiatives on workplace violence?

23 A. No, I'm not.

24 Q. What is -- And I'm asking for your
25 expertise, your 23 years expertise in the safety

1 HEZA

2 and health field. Could you tell me whether, in
3 your view, an unruly crowd might be considered to
4 be a type of workplace violence?

5 A. Can I tell you in my experience why an
6 unruly crowd might be involved in workplace
7 violence?

8 Q. Uh-huh.

9 A. Is that your question?

10 Q. That's the question. In other words,
11 given what you know about workplace violence
12 issues that have been included in 3203, and any
13 discussions that you may have had with respect to
14 what makes workplace violence cognizable under
15 California OSHA, do you think that a stampeding or
16 an unruly crowd attempting to enter a store might
17 be encompassed in workplace violence theories?

18 A. Well, without having a great deal of
19 facts at my disposal, I would have to say that is
20 possible.

21 Q. And I'm asking you to engage,
22 obviously, in hypotheticals. What would make that
23 possible, in your view?

24 A. I don't really want to answer
25 hypothetical questions.

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

HEZA

Q. Let me give you some more specific facts and see whether or not I can get you to engage in responding to this more factually-based hypothetical question.

Let's assume, Ms. Heza, that customers entering a store would push, shove, trample specific employees as they try to obtain goods and services in that store. Is that the kind of conduct, in your view, that would be encompassed by workplace --

MR. CREGER: There's a problem here, I'm afraid. There is a statute, 5304.5, which precludes employees of the Division from providing expert testimony. And these hypotheticals really are an attempt to elicit what I view as opinion testimony from this individual.

BY MR. FELLNER:

Q. Well, let's go back and talk about the workplace violence IIPP that you do recall, Ms. Heza. Do you recall the specifics of that IIPP?

A. Of the IIPP? No, I don't recall the specifics of the IIPP.

Q. Do you recall the specifics of the

1 HEZA

2 particular hazardous workplace violence areas that
3 were dealt with in that IIPP?

4 A. I recall the specifics about the
5 incident.

6 Q. Can you describe that for me, please?

7 A. An employee of a -- I think it was a
8 mental health institution was attacked by a
9 patient.

10 Q. And this attack by the patient, was
11 this a kind of intentional action by the patient?

12 A. Well, I think the employee was killed
13 and -- the employee died rather, more
14 appropriately. And I don't recall what legal
15 aspect there was to it. But we did issue I'm
16 pretty sure it was a 3203 with regards to that.

17 Q. And do you believe that that particular
18 workplace violence citation that was issued
19 depended upon intentionality on the part of the
20 patient?

21 A. I can't answer that.

22 Q. All right. And with respect to the
23 conduct of the employer in that particular case,
24 what was California OSHA's view as to what the
25 employer did wrong in that case?

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

HEZA

A. I believe it was specific to alarm systems.

Q. And could you be a little bit more specific than that, if you recall?

A. That the worker was in the room alone with the patient and did not have a mechanism to raise alarms when the patient became violent.

Q. So let me take that one step further. As I understand that particular case, it was the interaction between a patient and worker and the absence of a specific control to prevent the violent conduct which led to that particular citation, right?

A. What I recall is what I've shared with you.

Q. Okay. Let me go back to another area, and perhaps you might give me a little bit more background on this. We've talked about IIPP. With respect to special orders, I assume you're familiar with Section 332 of the California Code that gives the Director of Industrial Relations the ability to issue special orders; is that right?

A. Yes.

1 HEZA

2 Q. And as I understand it, a special order
3 is warranted whether it's an unsafe condition or a
4 device or a place of employment that poses a
5 threat to the health or safety of an employee that
6 cannot be made safe under existing standards or
7 orders of the Standards Board, right?

8 A. That, I believe, is what the labor code
9 says.

10 Q. Now, what's the relationship between
11 special orders and the general industry safety
12 orders we spoke about earlier?

13 A. I don't know.

14 Q. Is it fair to say that special orders
15 are issued in the absence of specific regulatory
16 requirements that are covered under general
17 industry safety orders? Is that accurate?

18 A. Well, I think that's what the labor
19 code says, which cannot be made safe under
20 existing standards or orders.

21 Q. Okay. Now, are you familiar with
22 Cal-OSHA's policy and procedural manual provisions
23 pertaining to special orders?

24 A. Somewhat.

25 Q. My recollection is that Cal-OSHA's

1 HEZA

2 policy is to consider the issuance of a special
3 order to correct an unsafe condition which can't
4 be made safe under an existing Title 8 safety
5 order. I think that's straight out of the
6 provision.

7 Am I refreshing your recollection
8 adequately?

9 A. Uh-huh.

10 Q. To your knowledge, what are the
11 pertinent considerations that Cal-OSHA would use
12 in considering the issuance of a special order?

13 A. You know, I have not been -- I don't
14 recall that I've been directly involved in the,
15 you know, development of a special order. I don't
16 have much, if any, experience in special orders.

17 Q. Given even your limited experience, is
18 it safe to say that special orders only pertain to
19 individual employers?

20 A. Yes.

21 Q. Might an individual employer be
22 required to address a hazard identified in a
23 special order through an IIPP?

24 A. I don't know.

25 Q. If an individual employer recognized a

1 HEZA

2 previously unrecognized hazard through an IIPP,
3 how would this relate to the issuance of a special
4 order?

5 A. You know, I would have to defer to our
6 legal staff for that. I can't answer those
7 questions.

8 Q. Okay. Have you ever heard of
9 Section 332 compared to OSHA's general duty
10 clause -- federal OSHA's general duty clause?

11 A. I'm sorry, could you repeat that?

12 Q. Have you ever heard of Section 332, the
13 special order section, compared to federal OSHA's
14 general duty clause?

15 A. I'm trying to think. I don't recall
16 that I heard that in an official capacity, that
17 comparison.

18 Q. How about in an unofficial capacity?

19 A. Probably. Probably.

20 Q. Do you recall any specific context in
21 which that comparison has been made unofficially?

22 A. No, no. No, no. Again, this is just
23 kind of general conversations.

24 Q. Do you recall who those conversations
25 may have been with?

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

HEZA

A. They may have -- I'm sure they were Cal-OSHA staff, but I couldn't tell you who they were.

Q. Is it possible that any of those conversations may have been with Len Welsh?

A. They may have been.

Q. In your experience, has Cal-OSHA ever issued a special order pertaining to crowd control or crowd management?

A. Not that I'm aware of.

Q. And how about in the retail industry, have you -- retail crowd control or crowd management, has that ever been issued?

A. Not that I'm aware of.

Q. Is it safe to say that Cal-OSHA has the authority to issue a special order if it thought an employer faced hazards relating to crowd control or crowd management?

A. Well, after, you know, consulting with our legal staff before I would make a decision like that. But conceivably we would pursue that line if we thought that was appropriate.

Q. I seem to recall a case not involving an unruly crowd but, pardon my comparison, an

1 HEZA

2 unruly killer whale in San Diego in which
3 California OSHA either considered issuing a
4 special order citation then retracted it or did
5 something similar to that.

6 Are you familiar at all with that
7 particular investigation?

8 A. Not in any detail. I know which one
9 you're talking about, yes.

10 Q. Do you recall what the upshot of that
11 particular investigation was?

12 A. I never reviewed the case file. I
13 think the chief dealt with that one directly.

14 Q. And do you recall what the ultimate
15 outcome was?

16 A. I believe the -- I don't know what was
17 issued. I honestly do not remember what was
18 issued. And the investigative summary was
19 modified.

20 Q. But California OSHA certainly
21 investigated that particular matter; is that
22 correct?

23 A. Correct.

24 Q. And is it also correct to say that
25 there are no specific California regulations

1 HEZA

2 dealing with killer whales?

3 A. Not to my knowledge.

4 Q. Is there a penalty associated with the
5 issuance of a special order?

6 A. I don't think so.

7 Q. The employer has to just post a notice
8 of abatement and perform the abatement; isn't that
9 right?

10 A. I would have to review the P&T. I
11 don't have a lot of experience with special
12 orders.

13 Q. Okay. Have you ever had any --
14 Regardless of whether you've had experience in
15 issuing special orders, have you had any
16 conversations with respect to the legal
17 underpinnings of special orders?

18 A. No, not that I recall.

19 Q. In your view, would you -- In light of
20 the fact there is no specific regulation that a
21 special order is attached to, in your view would
22 it be unfair to levy a penalty under such
23 circumstances?

24 A. Look, you're asking me questions that
25 are beyond my experience, beyond my knowledge. I

1 HEZA

2 think these are legal issues, and I can't answer
3 those questions.

4 Q. Do you have any personal experience or
5 knowledge of retail crowd management issues?

6 A. Do I have any personal experience?

7 Q. Uh-huh.

8 A. No. No.

9 Q. Are you -- Have you ever discussed with
10 anyone retail crowd management issues?

11 A. No.

12 Q. Have you ever been to a Black Friday
13 sale?

14 A. No.

15 Q. Have any of your relatives or
16 acquaintances?

17 A. How on earth would I know that?

18 Q. Well, that they have talked to you
19 about?

20 A. No.

21 Q. Have you ever read any specific
22 incidents involving crowd management -- read about
23 any specific instances involving crowd management
24 issues in retail stores?

25 A. Just whatever videos were on the news

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

HEZA

clips.

Q. And do you recall any of those specific videos on the news clips? Have you ever seen any? Do you recall any of them specifically?

A. I recall seeing one. I couldn't tell you when it was. I couldn't tell you where it was. I couldn't tell you who the retailer was. But it was a video of customers rushing into a store when the doors were unlocked.

Q. And did you say that was relatively recently or in the dim past?

A. A couple of years ago probably.

Q. What reaction did you have to that specific video when you saw it as a safety and health professional?

MR. COHEN: Objection. This is outside the scope.

MR. CREGER: I don't know what relevance this could possibly be.

MR. FELLNER: I'm going to ask her to respond to the question, whether she had any specific safety and health concerns when she saw the video.

MR. CREGER: That's a different

1 HEZA

2 question.

3 BY MR. FELLNER:

4 Q. Answer that question.

5 A. Whether or not I --

6 MR. COHEN: Object to being outside the
7 scope of the subpoena.

8 BY MR. FELLNER:

9 Q. Whether she had any specific safety and
10 health concerns, please, with respect to that
11 video when you saw it.

12 A. I thought it was lucky that nobody got
13 hurt.

14 Q. Did you have any concerns with respect
15 to employee safety when you saw it?

16 A. That was just a general -- you know, a
17 general reaction.

18 Q. Did you bring any concern to your
19 colleagues at Cal-OSHA that would suggest that
20 this ought to be investigated?

21 A. No.

22 Q. Are you aware of any California OSHA
23 office that has investigated a retail store for
24 any conduct like you viewed on this video?

25 A. Not that I'm aware of.

1 HEZA

2 Q. Let me ask you to turn to Tab 9 in the
3 binder that you've got. Let me ask you to take a
4 look at that news report concerning a specific
5 free concert at a Wal-Mart in Bakersfield.

6 A. Uh-huh.

7 Q. Is this by any -- Well, take a look at
8 it.

9 A. Okay.

10 Q. Does this at all refresh your
11 recollection as to whether this was the incident
12 you may have seen on the video?

13 A. I don't think so.

14 Q. Okay. Are you independently familiar
15 with this particular incident? Do you recall it
16 occurring?

17 A. No.

18 Q. Are you aware of whether Cal-OSHA
19 investigated this particular incident?

20 A. I -- I don't know.

21 Q. Are you aware of any citations that
22 Cal-OSHA may have issued with respect to this
23 particular incident?

24 A. Not that I can recall.

25 Q. Now, this incident occurred in 2007,

1 HEZA

2 did it not, when you were deputy enforcement head?

3 A. Uh-huh. Yes.

4 Q. Would this have been the kind of
5 incident or investigation that would have come to
6 your attention?

7 A. If someone had been injured or filed a
8 complaint, perhaps.

9 Q. Given the uniqueness of the incident,
10 it would not necessarily have come to your
11 attention?

12 A. Correct.

13 MR. CREGER: Let me interject here.
14 Can we take a break?

15 MR. FELLNER: Sure. As a matter of
16 fact, yeah, why don't we take a break.

17 (A recess was then taken.)

18 BY MR. FELLNER:

19 Q. The last topic that I want to deal with
20 you involves employee exposure. As I understand
21 the theory under California OSHA's policy and
22 procedures manual, when it comes to exposure,
23 employee exposure to workplace hazards, you have
24 what's referred to as the zone of danger theory.

25 Are you familiar with that, Ms. Heza?

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

HEZA

A. I've heard the term.

Q. And does the size of that -- the geographic size of that zone of danger, does it depend upon the nature of the hazard?

A. Probably.

Q. Now, there's various different ways of establishing employee exposure, are there not, either directly through what the compliance officer sees or through appropriate interview statements; is that right?

A. Correct.

Q. With respect to the kinds of hazards that we've been talking about today involving crowd management and crowd control, do you see issues involving difficulties of establishing employee exposure in that kind of a context?

A. In what kind of a context?

Q. In the context of the hazard that we've been describing or the facts that we've been talking about, namely what you saw in the video of a crowd entering into a workplace. Would you think there may be some difficulties with respect to establishing the zone of danger for employees?

A. Well, the zone of danger is not a

1 HEZA

2 finite term. You know, an investigation would
3 follow certain procedural steps. You know, I
4 really can't speculate on some -- you know, on
5 some kind of general hypothetical proposition.

6 Q. But if you saw a crowd generally
7 entering a store without knowing where employees
8 are or would be, as you put it, it would be
9 speculative to come up with a zone of danger for
10 employees, wouldn't it?

11 A. It's so fact-specific. I mean, you
12 know, I can't answer that question.

13 Q. Right. To put it a little bit more
14 specifically, any customer that is injured in the
15 context of crowds entering a store, Cal-OSHA would
16 have no jurisdiction over that; is that correct?

17 A. Correct.

18 Q. Are you familiar at all with any
19 substitutes for establishing the kinds of
20 fact-specific zone of danger employee exposure
21 that we talked about?

22 Are there any surrogates that can be
23 used, or is it a requirement under California OSHA
24 that specific employees be exposed to a zone of
25 danger in order to make out a case?

1 HEZA

2 A. I didn't understand that question at
3 all.

4 Q. Let me just ask you the second half of
5 the question. Is it a requirement under
6 California OSHA's policy that to establish a zone
7 of danger, there has to be evidence in the file
8 that employees specifically are exposed to that
9 zone of danger?

10 A. There would have to be evidence in the
11 file that demonstrates employees were exposed to a
12 hazard.

13 Q. Okay.

14 A. Or hazardous conditions.

15 Q. You described before that one of your
16 responsibilities was to establish goals and
17 objectives. I think my recollection is accurate
18 in this respect. Is that correct?

19 A. Yes.

20 Q. Now, that was in connection with which
21 position that you held?

22 A. Several.

23 Q. Could you remind me, please?

24 A. My current position, as deputy chief,
25 and regional manager of consultation.

1 HEZA

2 Q. And? You said "several."

3 A. Yes. I said my current position,
4 deputy chief, and regional manager.

5 Q. Oh, I'm sorry. I'm sorry.

6 And could you describe for me whether
7 or not those goals and objectives included
8 substantive areas in which California OSHA ought
9 to be more active in an enforcement capacity?

10 A. We traditionally have targeted
11 high-hazard employment such as construction. Also
12 as part of our goals and objectives, trying to
13 reach underserved workforce such as those that
14 don't necessarily speak English in a variety of
15 industries.

16 Q. And in any of those several capacities
17 where you were considering goals and objectives,
18 were issues involving crowd management ever
19 discussed?

20 A. I don't believe so.

21 Q. Was the retail industry ever discussed?

22 A. I don't recall having done so.

23 Q. In the context of your present
24 consultation position as well as any other
25 consultation work that you've done in 23 years,

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

HEZA

have you ever consulted on crowd management or crowd control issues?

A. I don't believe so.

Q. Are you aware of any employer, retail or otherwise, that has asked for California's expertise with respect to such issues?

A. Not that I recall.

Q. Let me return for a moment to workplace violence if I may, Ms. Heza. Given your experience, do you believe -- and given your earlier response to the one video that you recall that your view was, if I recall your testimony correctly, that it was lucky that no one was hurt in that video, do you believe that there is an aspect of workplace violence to what you saw in that video?

A. Well, there may have been based upon the definition of Type 2, but it would be very, again, you know, fact-specific, unique to that situation.

Q. But --

A. That might very well be something that we would look at.

Q. Under the workplace violence rubric?

1 HEZA

2 A. Yeah. We might do an evaluation to see
3 if it's an appropriate fit.

4 MR. FELLNER: I have no further
5 questions.

6 MR. COHEN: I have no questions for
7 you, Ms. Heza. I don't want to take any more of
8 your time.

9 THE WITNESS: Thank you so much.

10 MR. CREGER: Thank you. I guess we can
11 go.

12 MR. FELLNER: Absolutely.

13 And thank you very much. I hope you
14 feel better from your cold.

15 (Whereupon, the deposition was concluded at
16 3:22 p.m.)

17

18

19

20

21

22

23

24

25

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

A C K N O W L E D G M E N T

STATE OF)
) ss.:
COUNTY OF)

I, VICKY HEZA, hereby
certify that I have read the transcript of my
testimony taken under oath in my deposition;
that the transcript is a true, complete and
correct record of my testimony, and that the
answers on the record as given by me are true
and correct.

VICKY HEZA

Signed and subscribed to before
me, this day of ,
20__.

Notary Public, State of _____

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

C E R T I F I C A T E

I, the undersigned Registered Professional Reporter and Notary Public, do hereby certify that VICKY HEZA, after having been first duly sworn by me to testify to the truth, did testify as set forth in the foregoing pages, that the testimony was reported by me in stenotype and transcribed under my personal direction and supervision, and is a true and correct transcript.

I further certify that I am not of counsel, not related to counsel or the parties hereto, and not in any way interested in the outcome of this matter.

SUBSCRIBED AND SWORN TO under my hand and seal this 4th day of June, 2010.

My commission expires October 14, 2010.

JOHN L. HARMONSON, RPR
Notary Public in and for
the District of Columbia

ERRATA

ELLEN GRAUER COURT REPORTING CO. LLC
126 East 56th Street, Fifth Floor
New York, New York 10022
212-750-6434

NAME OF CASE: SECRETARY OF LABOR vs. WAL-MART
DATE OF DEPOSITION: JUNE 1, 2010
NAME OF WITNESS: VICKY HEZA

PAGE	LINE	FROM	TO	REASON
8	_____	_____	_____	_____
9	_____	_____	_____	_____
10	_____	_____	_____	_____
11	_____	_____	_____	_____
12	_____	_____	_____	_____
13	_____	_____	_____	_____
14	_____	_____	_____	_____
15	_____	_____	_____	_____
16	_____	_____	_____	_____
17	_____	_____	_____	_____
18	_____	_____	_____	_____
19	_____	_____	_____	_____
20	_____	_____	_____	_____
21	_____	_____	_____	_____

Subscribed and sworn before me

this _____ day of _____, 20__.

(Notary Public)

My Commission Expires:

	5 (1) 37:13	accidents (1) 32:12	16:15;17:6	55:14
0	5304.5 (1) 54:13	accurate (4) 51:18;52:10; 57:17;70:17	ago (7) 9:11;19:22;32:11; 34:13;38:17;50:23; 64:13	approval (3) 14:21;24:15;3
02 (1) 21:17	5a1 (1) 45:14	accurately (1) 19:25	agricultural (1) 34:11	approved (1) 14:18
08 (2) 17:17,19	5a2 (1) 28:5	achieving (1) 11:16	Ah (1) 46:9	area (5) 13:22;51:13,14,15; 56:17
09-1013 (1) 4:8		acknowledge (1) 41:25	ahead (5) 20:14;22:24;36:6; 48:15;50:19	areas (4) 21:20,20;55:2; 71:8
1	6	acquaintances (1) 63:16	alarm (1) 56:2	Arizona (1) 16:10
1 (2) 4:9;52:10	6 (2) 37:20;38:4	acronym (1) 18:5	alarms (1) 56:8	aspect (2) 55:15;72:16
1:35 (1) 4:9		across (1) 46:13	all-inclusive (1) 39:16	assaults (3) 52:8,13,17
100 (1) 47:2	7 (1) 38:19	Act (11) 13:22;14:3,7,14, 18,20;15:3;27:2,3,9; 51:9	allow (1) 14:12	assessment (4) 29:19;38:20,22; 47:14
100 (1) 47:2		action (1) 55:11	allowing (1) 26:21	assigned (1) 31:13
18 (1) 14:19	8	active (1) 71:9	alluded (1) 52:4	assigning (1) 30:10
1998 (1) 21:16	8 (4) 25:8;27:25;42:2; 58:4	activities (3) 10:25;11:7,10	alone (1) 56:6	assignment (1) 10:17
1999 (1) 10:20	80s (1) 8:21	actually (3) 9:11;26:6;50:23	alternatives (1) 32:15	assist (1) 42:16
2	86 (1) 10:11	addition (1) 39:18	although (2) 33:17;34:12	assistance (3) 35:24,25;36:4
2 (5) 51:3,5,6;52:13; 72:19		address (4) 34:15;40:23; 46:11;58:22	always (1) 14:22	associated (3) 31:16;44:4;62:4
2001 (1) 21:17	9	adequately (1) 58:8	analysis (4) 30:6,13;31:23; 44:20	assume (7) 5:25;12:4;13:24; 28:12;37:15;54:6; 56:20
2005 (1) 46:24	9 (10) 15:21;16:7,9,12, 17;19:24;20:19; 21:13,15;66:2	administered (1) 14:14	analyze (1) 30:15	attached (1) 62:21
2007 (1) 66:25	90s (1) 8:24	administering (3) 12:16,17,20	and/or (1) 43:5	attack (1) 55:10
2008 (3) 5:22;20:20;21:18	91 (3) 10:11,13,14	admission (1) 7:10	Angeles (1) 5:4	attacked (1) 55:8
2009 (1) 11:4	93 (1) 10:15	admit (1) 14:11	anomaly (1) 14:22	attempt (3) 13:4,7;54:16
2010 (1) 4:9	94 (1) 10:14	advance (1) 22:11	anticipated (1) 42:10	attempting (1) 53:16
23 (6) 9:24;43:12;48:11, 24;52:25;71:25	95 (1) 8:24	advisory (1) 12:12	anymore (1) 23:13	attempts (1) 31:11
3	99 (1) 11:4	affect (2) 6:20,24	apologize (2) 5:12;22:11	attended (5) 9:6;17:16,20;21:4, 6
3 (1) 52:17	A	affirmative (1) 42:15	appearing (1) 4:12	attende (1) 21:9
3:22 (1) 73:16	abate (2) 29:7;40:16	afraid (2) 49:13;54:13	applied (2) 45:25;46:3	attending (1) 9:9
3203 (20) 25:8,11;28:13,15; 41:10;45:3,11,12,24; 46:10,13,19;47:5; 49:15;50:12,22;51:2, 11;53:12;55:16	abatement (3) 47:14;62:8,8	again (10) 5:11,18;7:8;11:8; 26:2;27:3;46:16,17; 59:22;72:20	applies (1) 12:4	attention (4) 39:2;48:6;67:6,11
332 (3) 56:21;59:9,12	ability (4) 6:21,24;27:5; 56:23	against (1) 51:9	approach (1) 30:4	attorney (2) 5:4;28:8
5	absence (3) 50:13;56:12;57:15	agencies (1) 23:7	appropriate (4) 51:23;60:23; 68:10;73:3	audio (1) 6:14
	Absolutely (1) 73:12	agenda (2)	appropriately (1)	authoritative (1) 34:24
	accident (3) 25:23;26:7;29:20			

<p>authority (1) 60:17</p> <p>available (3) 23:13;33:15;34:15</p> <p>avoided (1) 26:24</p> <p>aware (17) 19:19;20:4,19,21; 41:16;45:20;47:11; 48:3,20,22;60:11,15; 65:22,25;66:18,21; 72:5</p>	<p>63:12</p> <p>Blitz (1) 5:22</p> <p>board (6) 27:8,10,15;28:7; 46:13;57:7</p> <p>boilerplates (1) 34:21</p> <p>both (4) 5:12;21:23;29:7; 42:23</p> <p>break (4) 6:16;18:23;67:14, 16</p> <p>brief (2) 6:18;19:4</p> <p>briefly (1) 8:13</p> <p>bring (2) 30:19;65:18</p> <p>broad-based (1) 46:15</p> <p>budget (1) 16:22</p> <p>budgetary (1) 17:7</p> <p>bulb (1) 43:10</p>	<p>can (38) 5:16,17;6:12,17; 9:8;20:16;22:24; 23:18;24:15,16,19; 25:24;30:3,14,18,19, 21;32:4;34:21;35:9, 10,16,19;39:6,7,12; 43:24;45:8;49:15,18; 51:5;53:5;54:3;55:6; 66:24;67:14;69:22; 73:10</p> <p>capacities (1) 71:16</p> <p>capacity (3) 59:16,18;71:9</p> <p>capture (1) 25:20</p> <p>career (2) 5:15;9:5</p> <p>carrier (1) 30:20</p> <p>case (9) 20:20;35:20; 50:24;55:23,25; 56:10;60:24;61:12; 69:25</p> <p>cataloged (1) 21:24</p> <p>cataloging (1) 22:14</p> <p>certain (5) 24:10,18;46:15,19; 69:3</p> <p>certainly (6) 31:3;38:11;39:10; 40:19;45:25;61:20</p> <p>certainty (2) 33:7;47:2</p> <p>Certified (2) 9:16,19</p> <p>changed (3) 45:15,22,24</p> <p>changing (1) 45:21</p> <p>check (2) 32:12,18</p> <p>Checklist (2) 38:20,22</p> <p>chief (11) 7:22;8:4;10:5; 11:4;12:3;14:25; 17:20;34:10;61:13; 70:24;71:4</p> <p>CIH (1) 9:19</p> <p>circumstances (3) 35:15;49:19;62:23</p> <p>citation (5) 5:21;15:17;55:18; 56:14;61:4</p> <p>citations (20) 21:24;22:4,6,7; 24:9;25:4,5,12,15,</p>	<p>18;26:14;35:8,10,17; 46:11;47:20;49:9; 50:21;66:21</p> <p>cited (8) 46:19;49:15,18,20; 50:4,5,12;51:11</p> <p>citing (1) 51:2</p> <p>clarification (1) 22:6</p> <p>clarify (1) 6:12</p> <p>clarity (1) 16:6</p> <p>classes (2) 9:6,7</p> <p>clause (11) 5:20;44:15,22,24; 45:2,4,7,11;59:10,10, 14</p> <p>clear (1) 42:12</p> <p>clerical (1) 23:2</p> <p>client (1) 51:7</p> <p>clips (2) 64:2,4</p> <p>Code (4) 28:13;56:21;57:8, 19</p> <p>coffee (2) 18:22;19:4</p> <p>cognizable (1) 53:14</p> <p>COHEN (13) 4:23,23;7:7;20:9, 12;22:22;31:25; 37:15;48:12,16; 64:17;65:6;73:6</p> <p>cold (1) 73:14</p> <p>colleagues (1) 65:19</p> <p>Columbia (1) 4:12</p> <p>Commission (1) 4:8</p> <p>commits (1) 51:9</p> <p>communicate (2) 30:8,9</p> <p>communication (1) 29:19</p> <p>company's (2) 52:14,15</p> <p>compared (3) 45:4;59:9,13</p> <p>comparison (4) 45:8;59:17,21; 60:25</p> <p>complainant (1) 4:25</p>	<p>complaint (1) 67:8</p> <p>compliance (4) 13:13,18;29:19; 68:9</p> <p>comply (2) 13:8;42:3</p> <p>compound (1) 48:16</p> <p>comprehensive (1) 11:22</p> <p>Conceivably (4) 32:25;33:2,2; 60:22</p> <p>concern (1) 65:18</p> <p>concerned (3) 23:9;31:24;48:8</p> <p>concerning (3) 7:21;36:13;66:4</p> <p>concerns (3) 64:23;65:10,14</p> <p>concert (1) 66:5</p> <p>concluded (1) 73:15</p> <p>condition (2) 57:3;58:3</p> <p>conditions (5) 44:4,9;47:22;48:2; 70:14</p> <p>conduct (5) 41:11;54:10; 55:23;56:13;65:24</p> <p>conducted (3) 11:6;25:23;30:6</p> <p>conducting (2) 10:11,25</p> <p>conference (1) 37:4</p> <p>conferenced (1) 4:4</p> <p>confirm (1) 29:12</p> <p>connection (1) 70:20</p> <p>consider (1) 58:2</p> <p>considerably (1) 13:23</p> <p>considerations (1) 58:11</p> <p>considered (2) 53:3;61:3</p> <p>considering (2) 58:12;71:17</p> <p>consistency (1) 11:14</p> <p>consistent (1) 31:15</p> <p>construct (1) 30:2</p> <p>construction (1)</p>
B				
<p>bachelor's (2) 8:17,20</p> <p>back (7) 10:7;21:8,16;47:3; 50:24;54:19;56:17</p> <p>background (3) 8:14,16;56:19</p> <p>Bakersfield (1) 66:5</p> <p>Baruch (3) 4:19;5:18;7:7</p> <p>based (1) 72:18</p> <p>basic (1) 52:5</p> <p>basically (1) 27:3</p> <p>basis (2) 16:2;33:11</p> <p>became (1) 56:8</p> <p>behalf (3) 4:12,20;5:19</p> <p>behind (1) 18:25</p> <p>belabor (1) 26:22</p> <p>belaboring (1) 6:3</p> <p>best (3) 23:18;39:6,7</p> <p>better (4) 7:2;12:19;33:24; 73:14</p> <p>Beyond (9) 26:18;41:5,20,25; 42:9,22;43:4;62:25, 25</p> <p>binder (7) 36:23,25;37:3,6, 13,16;66:3</p> <p>biology (1) 8:17</p> <p>bit (8) 9:21;13:11;26:25; 33:21;34:2;56:4,18; 69:13</p> <p>Black (1)</p>	<p>California (42) 8:7;9:23;11:20; 14:14,18,23;15:4,10; 16:9,10,11;17:24; 18:6,11;19:8,11,16; 21:9;22:13,19,25; 24:11;25:5;26:13; 27:2;28:13,16;34:5; 40:17;46:13;48:11; 53:15;55:24;56:21; 61:3,20,25;65:22; 67:21;69:23;70:6; 71:8</p> <p>California's (4) 13:22;14:2;19:23; 72:6</p> <p>call (1) 23:24</p> <p>called (2) 24:14;39:2</p> <p>Calls (1) 32:2</p> <p>Cal-OSHA (24) 5:4,7;9:5;10:4,6; 11:25;15:21;16:23; 21:23;24:9;27:8,9; 33:12;35:24;42:25; 51:15;58:11;60:3,8, 16;65:19;66:18,22; 69:15</p> <p>Cal-OSHA's (3) 12:10;57:22,25</p>	C		

<p>71:11 consult (2) 22:21;23:3 consultant (3) 10:3,10;30:21 consultation (14) 10:5,6,21,25; 11:12,13,21,25;12:5; 36:3,10;70:25;71:24, 25 consulted (1) 72:2 consulting (1) 60:20 content (1) 10:8 context (10) 32:21;47:5,9,21; 59:20;68:17,18,19; 69:15;71:23 continuing (1) 32:8 control (16) 21:2;25:19;26:15; 40:5,8;43:15,18; 48:9;49:6;51:3; 56:12;60:9,13,19; 68:15;72:3 control-type (1) 20:7 conversant (4) 12:21;13:25;14:7, 10 conversations (5) 48:25;59:23,24; 60:6;62:16 copy (1) 17:24 corporate (1) 29:2 correction (1) 29:21 correctly (2) 31:2;72:14 COSHOs (1) 22:25 cough (3) 6:22,23;7:3 counsel (3) 4:17;7:25;8:2 counterparts (1) 15:16 couple (4) 17:12;18:23;49:8; 64:13 course (4) 13:24;18:19;25:2; 42:2 COURT (3) 4:3,11,13 covered (5) 24:10;40:21; 42:11;46:20;57:16</p>	<p>crash (1) 23:24 create (2) 22:4,6 created (1) 31:20 CREGER (9) 5:3,3;7:24;8:2; 54:12;64:19,25; 67:13;73:10 criteria (1) 24:19 crowd (46) 5:21;20:6,7;21:2, 2;25:19,19;26:15; 31:20,23;40:4,5,7,8, 11;43:14,15,17,18; 47:19;48:9,9;49:5,5; 50:14;53:3,6,16; 60:9,10,13,13,18,19, 25;63:5,10,22,23; 68:15,15,22;69:6; 71:18;72:2,3 crowd-related (4) 36:16;47:6,8,13 crowds (5) 32:21;40:12,14; 49:4;69:15 Crutcher (3) 4:15,20;5:19 current (2) 70:24;71:3 customer (2) 51:7;69:14 customers (2) 54:6;64:9</p>	<p>20:6;49:3,5;50:13; 62:2 deals (4) 5:20;40:4,7,9 dealt (5) 18:19;25:18; 43:14;55:3;61:13 decision (1) 60:21 decisions (1) 45:18 defer (1) 59:5 definition (1) 72:19 degree (1) 39:22 degrees (1) 9:13 delay (1) 5:12 demonstrates (1) 70:11 Department (4) 4:25;14:15;27:4, 14 depend (2) 33:4;68:5 depended (1) 55:19 deposition (14) 4:4,5:14;6:8,21; 7:6,9,10,15,17,21; 8:8,11;26:24;73:15 depositions (1) 6:2 deputy (6) 10:5;11:3;12:3; 67:2;70:24;71:4 describe (5) 8:15;29:7;38:21; 55:6;71:6 described (1) 70:15 describes (1) 38:8 describing (2) 19:23;68:20 design (2) 13:25;14:6 designing (1) 40:15 detail (3) 25:21;26:13;61:8 detailed (1) 38:23 details (1) 33:5 develop (7) 23:12;28:16; 34:22;36:2,8;39:21; 44:10 developing (1)</p>	<p>12:10 development (2) 30:7;58:15 device (1) 57:4 died (1) 55:13 Diego (3) 10:3,13;61:2 different (10) 21:12;30:13; 31:14;42:7;43:13; 50:3,10;51:17;64:25; 68:7 differently (1) 15:12 difficult (5) 24:5;25:7;26:8,10; 33:5 difficulties (3) 5:13;68:16,23 dim (1) 64:12 direct (2) 24:7;35:25 directed (2) 25:3;37:4 directions (1) 30:4 directly (5) 14:12;37:10; 58:14;61:13;68:9 Director (1) 56:22 disclaimers (1) 39:15 discover (1) 30:14 discuss (3) 15:16,21;18:3 discussed (7) 17:18;43:17; 48:10;50:5;63:9; 71:19,21 discussion (7) 16:4,23,24;18:18; 20:18,25;21:5 discussions (12) 17:7;18:10;19:6, 13,14,17,18,20;20:3; 45:10;49:2;53:13 disorders (1) 34:6 dispatch (1) 5:17 disposal (1) 53:19 distinguishes (1) 45:10 District (5) 4:12;10:3,13,15; 11:6 Division (2)</p>	<p>5:5;54:14 Docket (1) 4:8 documents (2) 39:19;40:3 done (5) 5:16,17;18:6; 71:22,25 doors (1) 64:10 down (3) 19:25;23:23;26:4 draw (1) 39:12 drawn (1) 48:5 drill (2) 6:7;26:4 duly (2) 5:9;7:12 Dunn (3) 4:15,20;5:19 during (1) 18:19 duties (1) 10:16 duty (11) 5:20;44:15,22,24; 45:2,4,7,11;59:9,10, 14</p>
D				
<p>Dan (1) 4:22 danger (9) 67:24;68:4,24,25; 69:9,20,25;70:7,9 Daniel (1) 37:7 Darren (2) 4:23;37:17 data (1) 22:20 database (2) 22:2,3 databases (1) 24:16 date (1) 4:9 Day (1) 5:22 DC (2) 4:16,22 deal (3) 43:4;53:18;67:19 dealing (5)</p>	E			
	<p>earlier (2) 57:12;72:12 earth (1) 63:17 easy (1) 26:6 education (2) 8:14;11:8 educational (1) 8:15 effective (1) 15:5 eight (1) 29:13 either (6) 20:4;21:13;42:11; 43:5;61:3;68:9 elements (5) 29:9,11,14;49:22, 24 elicit (1) 54:16 Ellen (1) 4:12 else (1) 48:6 employee (11) 51:9;55:7,12,13; 57:5;65:15;67:20,23; 68:8,17;69:20</p>			

employees (14) 30:9;31:13;32:19; 52:9,15,18;54:8,14; 68:24;69:7,10,24; 70:8,11	29:24 establishments (1) 52:10 evaluate (2) 32:23;33:3 evaluation (2) 33:11;73:2 even (1) 58:17 everyone (1) 5:12 evidence (2) 70:7,10 exactly (2) 35:12;47:3 EXAMINATION (1) 5:23 examine (1) 30:24 examined (1) 5:9 example (8) 23:18;24:8;31:18; 34:3;35:19;43:8; 46:4,6 examples (1) 43:3 exchanging (1) 18:23 exclusively (1) 6:14 excuse (1) 19:13 exercise (1) 19:2 exhaustive (3) 38:23;39:3,6 exhibit (1) 37:25 existing (3) 57:6,20;58:4 expected (1) 51:20 experience (14) 24:7;42:6;43:13; 44:25;53:5;58:16,17; 60:8;62:11,14,25; 63:4,6;72:11 experiences (1) 31:19 expert (4) 26:2,18,18;54:15 expertise (4) 44:25;52:25,25; 72:7 exposed (4) 39:4;69:24;70:8, 11 exposure (7) 29:20;67:20,22,23; 68:8,17;69:20 extensive (4) 36:20;38:13,14;	42:6 extensively (1) 36:9 extent (3) 7:18;18:17;24:18	F face (1) 29:12 faced (1) 60:18 facility (1) 40:21 fact (3) 42:8;62:20;67:16 facts (4) 33:5;53:19;54:3; 68:20 fact-specific (3) 69:11,20;72:20 factually-based (1) 54:4 failed (1) 49:21 failing (1) 51:3 fair (6) 11:19;28:20; 38:21;41:19;44:2; 57:14 fairly (1) 50:22 fallen (1) 32:19 familiar (27) 12:25;13:3,6,23, 25;14:4,9;15:8,18; 17:22;18:8,25;19:7; 26:4,5;28:12;35:20; 38:15;41:17;44:14; 52:21;56:21;57:21; 61:6;66:14;67:25; 69:18 far (2) 26:4;48:8 fashion (1) 50:10 fatal (1) 52:8 federal (29) 11:14;13:24;14:6, 19;15:3,5,10,15,25; 16:4,8,20;17:23; 18:11,14,20,25;19:8, 14;21:24;22:3,13,21; 23:3;28:4;44:15; 52:22;59:10,13 feds (2) 17:9;23:16 feel (2) 7:2;73:14 FELLNER (27)	4:19,19;5:11,18, 24;7:12,13,25;8:3; 20:15;22:23;32:3; 37:11,17,19;48:13, 14,17,18;54:18; 64:21;65:3,8;67:15, 18;73:4,12 field (1) 53:2 file (3) 61:12;70:7,11 filed (1) 67:7 final (3) 14:21,24;39:20 finally (1) 14:23 find (1) 32:18 finding (1) 26:12 fine (1) 48:17 finite (1) 69:2 first (7) 5:9,15;6:3;29:25; 30:23;45:12;46:6 fit (1) 73:3 fits (1) 27:9 fix (2) 23:25;24:2 flag (1) 33:10 folks (4) 18:14;19:14;39:7; 45:18 follow (3) 35:18,21;69:3 follows (2) 5:10;35:6 follow-up (2) 31:7,17 form (5) 20:9,13;22:22; 31:25;48:12 formal (3) 8:15,25;20:24 formally (1) 17:3 format (1) 5:14 four (1) 17:2 frames (1) 10:8 frankly (1) 26:23 free (1) 66:5 freestanding (1)	49:10 frequency (1) 39:23 Friday (1) 63:12 front (2) 36:23;37:2 frustrations (1) 22:10 functioning (2) 23:17,20 further (7) 7:8;26:19;29:6; 33:11;35:14;56:9; 73:4
G					
gain (1) 15:2					
general (24) 5:20;18:14;27:17, 21,22;28:3;40:25; 44:15,22,23;45:2,4,6, 11;49:11;57:11,16; 59:9,10,14,23;65:16, 17;69:5					
generally (3) 13:4,7;69:6					
geographic (1) 68:4					
gerund (1) 12:19					
Gibson (3) 4:15,20;5:19					
given (6) 6:7;53:11;58:17; 67:9;72:10,11					
gives (2) 27:3;56:22					
goals (10) 10:22;11:8,9,16; 16:20,25;70:16;71:7, 12,17					
good (2) 30:25;32:11					
goods (1) 54:8					
granularly (2) 25:14;47:17					
Grauer (1) 4:13					
great (1) 53:18					
Guam (1) 16:10					
guess (2) 42:14;73:10					
guidance (3) 23:8;39:10,19					
H					

<p>half (1) 70:4 hand (1) 30:23 harbors (1) 35:5 Harmonson (1) 4:10 hats (1) 42:7 Hawaii (1) 16:10 hazard (22) 29:19,20;30:5,12; 31:22;38:20,22; 39:13;40:20;41:11, 11,15,16,20;44:22; 47:13;48:10;58:22; 59:2;68:5,19;70:12 hazardous (2) 55:2;70:14 hazards (28) 24:10;28:23;29:3, 8;30:8,9,15;31:9,15; 34:15;38:9;39:4,17; 40:9,17,24;41:6; 42:10;43:4;44:12; 46:11,15,20;47:18; 51:16;60:18;67:23; 68:13 head (4) 7:19;9:8;35:23; 67:2 headquarters (1) 24:24 Health (13) 4:7,5;5:9,4;14:3,7; 27:6;41:15;53:2; 55:8;57:5;64:16,23; 65:10 heard (8) 18:11;45:3,7,9; 59:8,12,16;68:2 hearing (1) 7:11 heat (5) 46:2,6,7,9,25 heat-related (1) 34:6 held (4) 9:25;10:2;15:20; 70:21 Heza (81) 4:5;5:1,6,25;6:1; 7:1,14;8:1;9:1;10:1; 11:1,18;12:1;13:1; 14:1;15:1;16:1;17:1; 18:1;19:1;20:1;21:1; 22:1;23:1;24:1;25:1; 26:1;27:1;28:1;29:1; 30:1;31:1;32:1;33:1; 34:1;35:1;36:1,24; 37:1;38:1;39:1;40:1;</p>	<p>41:1;42:1,21;43:1; 44:1;45:1;46:1;47:1; 48:1;49:1;50:1;51:1; 52:1;53:1;54:1,6,21; 55:1;56:1;57:1;58:1; 59:1;60:1;61:1;62:1; 63:1;64:1;65:1;66:1; 67:1,25;68:1;69:1; 70:1;71:1;72:1,10; 73:1,7 high-hazard (3) 33:16;36:19;71:11 highlight (1) 17:12 hire (1) 30:21 historically (1) 45:6 history (3) 9:22;33:9;46:12 holding (2) 18:2,15 honest (2) 7:16;25:13 honestly (1) 61:17 hope (3) 5:17;7:2;73:13 horizontal (2) 27:19,21 Howard (1) 34:10 hurt (2) 65:13;72:14 hygiene (3) 9:12;10:2,10 Hygienist (1) 9:19 hypothetical (4) 33:6;53:25;54:5; 69:5 hypotheticals (2) 53:22;54:15</p>	<p>25;13:8;17:24;25:6, 8,16,18;28:12,21,24; 29:4,6,10,13,25; 30:2;31:8,22;32:24; 33:13;34:5;35:8; 36:12,17,19;40:15; 42:8;43:14,19,24; 47:12,20,24;49:9,9, 15,23;50:12;51:25; 54:20,22,23,24;55:3; 56:19;58:23;59:2 IIPPs (5) 36:2;43:4;48:4,5; 51:22 Illness (8) 28:17;30:19; 32:12;38:3;46:2,7,9, 25 imagine (1) 30:16 IMIS (12) 21:21,25;22:10,15, 20;23:16;24:5; 25:20;26:5,11,17,24 impact (1) 31:23 implement (2) 12:23;49:24 implementing (1) 10:24 important (2) 32:22;33:3 impossible (1) 26:8 impressive (1) 11:17 Inc (1) 4:6 incident (9) 50:25;55:5;66:11, 15,19,23,25;67:5,9 incidents (1) 63:22 include (2) 15:22;17:6 included (4) 10:16;31:10; 53:12;71:7 incorporate (1) 51:21 indeed (1) 51:24 independently (1) 66:14 indicated (3) 32:11;41:6;45:21 indirect (1) 35:25 individual (6) 27:13,17;54:17; 58:19,21,25 individualized (1) 36:2</p>	<p>individuals (1) 13:17 industrial (7) 9:12,19;10:2,10; 14:15;27:4;56:22 industries (6) 27:13,17,18;44:5, 6;71:15 industry (10) 27:22;28:3;34:11; 40:25;47:9;49:11; 57:11,17;60:12; 71:21 inference (1) 39:12 informal (1) 48:25 information (12) 11:10;17:8;21:22; 22:7;23:2,5,9,11; 25:9,10,11;26:9 initially (1) 43:25 initiative (1) 19:9 initiatives (4) 12:13;17:23; 47:25;52:22 injured (4) 40:10;47:19;67:7; 69:14 injuries (5) 31:20;32:21;44:5, 9,20 Injury (8) 28:17;30:18; 32:13,18;38:2;43:25; 44:2,9 injury/illness (1) 30:24 innovative (2) 17:12,13 inquiries (1) 19:6 insofar (3) 12:6;23:8;31:23 inspections (1) 41:11 instance (1) 47:4 instances (2) 47:7;63:23 institution (1) 55:8 instruction (1) 29:21 insurance (1) 30:19 Integrated (1) 21:22 intended (3) 39:9,19,20 intentional (1)</p>	<p>55:11 intentionality (1) 55:19 interaction (5) 22:12;23:15,19; 24:3;56:11 interactions (2) 15:9,19 interim (1) 15:3 interject (1) 67:13 intermittent (3) 33:17,19;34:9 interrupt (1) 46:5 interview (1) 68:10 into (12) 8:13;9:21;13:21; 21:21;22:20;26:5; 31:9;37:25;42:4; 51:8;64:9;68:22 introduce (2) 16:21;37:24 introduced (2) 31:9;41:13 investigated (4) 61:21;65:20,23; 66:19 investigation (6) 25:23;29:20;61:7, 11;67:5;69:2 investigative (1) 61:18 involved (8) 12:15;31:18;36:5, 9,11,16;53:6;58:14 involves (2) 21:21;67:20 involving (7) 5:21;60:24;63:22, 23;68:14,16;71:18 Island (1) 5:22 issuance (4) 58:2,12;59:3;62:5 issue (7) 26:22;27:5;42:5; 46:10;55:15;56:23; 60:17 issued (22) 13:17,20;22:7; 24:9,21;25:6,11; 27:15;35:10;42:23; 46:14,24;47:3;50:20; 51:2;55:18;57:15; 60:9,14;61:17,18; 66:22 issues (36) 9:4;10:18;11:21; 12:2,5,5,7;15:16,17, 17,18,22;16:5,22;</p>
	I			
<p>I2P2 (7) 18:4,12,15,21,21; 19:2,9 idea (3) 14:24;25:13;48:13 ideas (1) 23:8 identified (4) 29:3;40:17;41:21; 58:22 identify (5) 4:18;16:7;29:7; 40:16;44:3 identifying (1) 44:8 IIPP (52) 12:16,17,20,21,23,</p>				


17:5;20:7;21:2;28:4; 36:13,16;43:15,18; 47:6,8,13;50:6,14; 53:12;63:2,5,10,24; 68:16;71:18;72:3,7	41:19 large (1) 7:18 last (2) 17:15;67:19 late (1) 52:9 layman's (2) 44:17,18 leading (1) 14:12 least (1) 15:5 led (1) 56:13 legal (6) 5:4;55:14;59:6; 60:21;62:16;63:2 Len (2) 8:4;60:6 lengthy (1) 38:24 less (1) 13:23 level (2) 25:20;26:13 levy (1) 62:22 light (3) 26:19;43:10;62:19 limited (4) 21:17;25:10,22; 58:17 line (1) 60:23 list (9) 11:17;24:20; 36:20;38:4,6,14,16; 39:14,18 listed (1) 32:16 lists (3) 38:11,13;39:16 little (11) 6:13;9:21;13:11; 26:25;32:7,10;33:21; 34:2;56:4,18;69:13 local (1) 24:16 Long (6) 5:22;9:11,22; 34:12;38:18;50:22 look (13) 23:7;33:9,23; 37:23;38:19;41:20; 42:4,22;43:25;62:24; 66:4,7;72:24 looked (3) 31:5;38:18;42:9 looking (3) 24:20;36:2;42:13 Los (1) 5:4	loss (1) 30:20 lot (1) 62:11 lots (1) 48:24 lucky (2) 65:12;72:14	39:16 measures (2) 47:14;51:21 mechanism (2) 24:22;56:7 medications (1) 6:20 medicine (3) 6:22,23;7:3 meet (7) 13:4,7;16:12,17; 17:3,5;49:21 meeting (8) 16:15,21;17:15,16; 18:13,19,22;19:5 meetings (18) 15:20,24;16:5; 17:18;18:3,9,16; 19:23,24,25;20:23, 24,25;21:4,6,8,13,16 memory (1) 6:20 mental (1) 55:8 mentioned (4) 9:14;15:23;19:22; 30:23 micro-to-host (1) 24:14 might (11) 6:20;28:25;36:16; 40:25;53:3,6,16; 56:18;58:21;72:23; 73:2 mind (6) 25:10;30:17;34:4, 7;43:3,7 minimum (1) 42:2 minute (1) 10:14 missing (1) 10:19 model (4) 33:12;36:19;38:3; 51:24 models (4) 33:15;34:14,17,20 modified (1) 61:19 moment (4) 19:22;32:11; 51:15;72:9 monitored (1) 13:18 monitoring (1) 13:13 more (26) 13:11;14:12;17:3; 19:17;20:24;23:16; 25:7,14;26:23;28:11; 31:5;32:10;33:21; 34:2;45:5,16;47:17;	49:8;54:2,4;55:13; 56:4,18;69:13;71:9; 73:7 most (1) 11:11 much (7) 7:17;18:7;24:4; 26:22;58:16;73:9,13 multistep (1) 25:25 must (2) 15:4;41:11 myself (1) 19:12
J		M	N	
job (1) 31:14 jobs (1) 43:13 John (1) 4:10 joined (1) 4:22 June (1) 4:9 jurisdiction (1) 69:16		maintain (2) 15:2;16:14 makes (1) 53:14 making (1) 45:18 management (22) 20:7;21:2,22; 25:19;29:18;40:5,7; 43:15,18;48:9;49:5; 50:14;60:10,14,19; 63:5,10,22,23;68:15; 71:18;72:2 manager (8) 10:3,4,6,13,21; 11:12;70:25;71:4 managers (4) 11:5,6,15;13:19 manual (2) 57:22;67:22 many (2) 21:11;42:7 master's (2) 8:18,23 materials (1) 8:10 matter (6) 4:5,21;5:20;6:19; 61:21;67:15 matters (1) 16:17 may (34) 6:13;8:14;16:17, 20;18:20,21;19:7,16; 21:15;23:23;24:2,9; 25:15;27:2;32:11; 34:5;37:12;41:4; 42:5,22;43:19;44:3; 46:24;49:9;53:13; 59:25;60:2,6,7; 66:12,22;68:23; 72:10,18 maybe (6) 8:24;15:12,25; 21:17;42:18;46:24 mean (9) 12:18;19:3;22:18; 33:19,22;35:3;39:15; 44:5;69:11 means (1) 34:25 meant (1)	name (1) 4:10 namely (1) 68:21 nationwide (1) 16:3 nature (1) 68:5 necessarily (3) 45:6;67:10;71:14 need (3) 6:16;40:16;45:17 negative (2) 45:5,10 Nevada (1) 16:10 New (11) 4:13,13,24;17:7,8; 31:9,14,16;41:12,14, 16 news (3) 63:25;64:4;66:4 next (1) 11:3 night (1) 52:9 ninety (1) 10:19 nobody (1) 65:12 nonhigh-hazard (1) 33:16 notary (1) 4:11 note (1) 7:8 noted (1) 7:12 notice (1) 62:7 number (1) 30:13	
K				
keeping (2) 10:24;29:22 key (1) 29:13 keywords (1) 25:24 killed (1) 55:12 killer (2) 61:2;62:2 kind (19) 9:7;11:9;17:24; 23:8,19;24:5,24; 29:2;31:7;35:5;38:8; 44:19;54:9;55:11; 59:23;67:4;68:17,18; 69:5 kinds (8) 12:22;24:10; 27:15;28:4;39:3; 48:2;68:13;69:19 knowing (1) 69:7 knowledge (7) 11:20;23:9;40:2; 58:10;62:3,25;63:5 knowledgeable (2) 11:24;12:6 known (2) 22:14;27:22				
L				
Labor (5) 4:5,25;5:2;57:8,18 language (1)			O	
			oath (2)	

<p>5:10;6:5 Object (1) 65:6 objection (7) 7:9;20:9,12;22:22; 31:25;48:12;64:17 objective (1) 18:20 objectives (4) 70:17;71:7,12,17 obligation (1) 41:17 obtain (1) 54:8 obviously (4) 6:17;15:14;37:25; 53:22 occasion (1) 42:22 Occupational (5) 4:7;5:5;14:2,6; 41:14 occur (1) 26:7 occurred (3) 48:22;50:25;66:25 occurring (1) 66:16 off (5) 7:18;9:8;29:16; 35:23;43:11 offer (2) 35:24;36:3 Office (5) 4:24;10:15,16; 23:23;65:23 officer (1) 68:10 offices (3) 4:15;10:23;13:19 official (1) 59:16 often (2) 16:11;23:17 Once (3) 5:11;6:9;31:8 one (24) 5:15;15:22;18:13; 21:4,20;26:3;29:9; 30:25;32:15;35:6,6, 13;39:24;43:23; 49:21,24;50:24;56:9; 61:8,13;64:6;70:15; 72:12,14 ones (2) 15:22;39:8 only (5) 5:16;40:16;41:7; 46:6;58:18 on-site (1) 10:11 operation (3) 13:21;14:2,6</p>	<p>operative (1) 15:4 opinion (1) 54:16 opportunities (2) 15:15;19:5 opportunity (1) 7:20 order (17) 15:2;25:12;49:11; 57:2;58:3,5,12,15, 23;59:4,13;60:9,17; 61:4;62:5,21;69:25 orders (29) 13:11,13,18,20; 25:6,17;27:23;28:3; 40:25;41:5,22;42:10, 23;43:5;47:20;56:20, 23;57:7,11,12,14,17, 20,23;58:16,18; 62:12,15,17 organization (1) 16:3 OSHA (37) 8:7;9:23;13:22; 14:14,18,19;15:3,4, 10,10,15,25;16:8,12, 20;17:23;18:12;19:8, 11;21:9,24;22:13,13, 21;23:4;24:11;25:5; 26:13;27:2;28:4; 48:11;53:15;61:3,20; 65:22;69:23;71:8 OSHA's (10) 17:24;18:20;19:2, 8;55:24;59:9,10,13; 67:21;70:6 OSHPD (6) 16:2;17:4,15; 20:24;21:14,16 OSHRC (1) 4:8 others (3) 19:7;20:5;52:18 otherwise (1) 72:6 ought (4) 28:21;44:11; 65:20;71:8 out (6) 24:16,17;25:10,11; 58:5;69:25 outcome (1) 61:15 outreach (2) 11:2,7 outside (4) 8:7;44:24;64:17; 65:6 over (4) 45:14,21,21;69:16 overarching (1) 29:2</p>	<p>overseeing (1) 11:13 own (9) 17:14;22:18,19; 23:2,25;24:19;30:2; 34:22;40:2 P P&T (2) 45:24;62:10 page (5) 37:20;38:4,19; 51:25;52:6 pages (1) 38:21 pardon (1) 60:25 part (5) 19:25;43:18; 44:10;55:19;71:12 participated (5) 18:10;20:5,5; 21:12,15 particular (21) 23:23;28:22; 30:14;31:5;32:22; 35:20;38:11;39:13; 45:22;47:21;55:2,17, 23;56:10,13;61:7,11, 21;66:15,19,23 past (3) 23:10;46:23;64:12 patient (7) 55:9,10,11,20; 56:7,8,11 penalty (2) 62:4,22 pending (1) 4:6 penetrating (1) 22:10 people (1) 19:10 percent (1) 47:2 perfectly (1) 25:12 perform (1) 62:8 performance (1) 11:9 Perhaps (4) 25:22;33:18; 56:18;67:8 period (1) 12:3 person (2) 39:6;51:7 personal (3) 24:7;63:4,6 personally (2) 13:14;24:23</p>	<p>personnel (3) 11:10;15:10,11 personnel-related (1) 10:18 perspective (2) 44:17,19 pertain (4) 27:13,16,18;58:18 pertaining (3) 27:6;57:23;60:9 pertinent (1) 58:11 phrase (1) 15:5 place (4) 32:11;40:19;41:2; 57:4 places (1) 31:2 plan (3) 14:19;15:15;23:14 plans (4) 15:25;17:3;20:23; 21:14 played (1) 12:9 please (11) 4:17;6:12,17;8:16, 20;10:9;37:14; 48:19;55:6;65:10; 70:23 pm (2) 4:9;73:16 point (2) 6:3,16 pointed (1) 40:4 policy (12) 9:10;15:9,16;16:4; 29:2;45:13,18,22; 57:22;58:2;67:21; 70:6 poses (1) 57:4 position (7) 10:22;11:3;31:16; 70:21,24;71:3,24 positions (3) 9:25;10:8;21:12 possible (6) 7:10;38:9;39:3; 53:20,23;60:5 possibly (1) 64:20 post (1) 62:7 potential (1) 51:3 precedent (1) 46:18 precise (1) 34:3 precludes (1)</p>	<p>54:14 preliminary (1) 6:19 preparation (1) 8:11 prepare (3) 7:5,14,17 presence (1) 48:10 present (1) 71:23 presently (1) 36:10 pretty (2) 51:2;55:16 prevent (2) 5:13;56:12 Prevention (4) 28:17;30:20;38:3; 46:8 previously (2) 41:16;59:2 primarily (1) 16:23 probably (9) 16:13;25:25;30:4; 33:24;42:4;59:19,19; 64:13;68:6 probe (3) 32:7,10;35:12 problem (1) 54:12 problems (1) 25:19 procedural (2) 57:22;69:3 procedure (1) 9:10 procedures (3) 6:2;41:13;67:22 proceedings (1) 4:14 process (6) 6:2;22:14,14;25:7, 25;43:24 processes (1) 41:12 produced (1) 34:10 product (1) 10:17 products (1) 52:14 Professional (2) 9:17;64:16 program (41) 10:6;11:11,13,25; 12:16,17,20,21; 13:24;15:6;16:24; 17:25;25:16,18; 28:12,17,21;29:6,13; 30:11;31:11,22; 32:24;34:9;35:10,16,</p>
--	---	---	--	--


21;36:3,8,10,12,19; 38:3;42:13;43:14,19, 20;44:15;47:12; 50:13;52:12	R2D2 (1) 18:7	refer (1) 18:3	32:13	responsibility (8) 10:9;12:16;13:12, 15,16;29:18;30:10; 36:8
programmatically (2) 15:9,17	raise (1) 56:8	reference (1) 25:9	remember (4) 9:11;34:12;47:3; 61:17	restate (1) 42:18
programs (9) 12:22;17:13; 33:13;34:6,22;35:7; 42:8;47:24;49:3	Rathbun (4) 4:22;37:3,7,8	referred (4) 28:16;38:19;52:6; 67:24	remind (3) 6:10;51:5;70:23	retail (12) 31:19;32:17;47:9; 52:9;60:12,13;63:5, 10,24;65:23;71:21; 72:5
progress (2) 16:19,24	rather (2) 27:3;55:13	reflect (3) 22:9;29:4;35:5	repeat (2) 20:11;59:11	report (4) 17:13;24:14,14; 66:4
promulgated (2) 17:9;45:12	reach (1) 71:13	reflective (1) 28:24	rephrase (1) 35:4	reporter (1) 64:8
promulgates (1) 27:11	reaction (2) 64:14;65:17	refresh (3) 37:12;38:4;66:10	reportable (1) 32:20	retain (1) 22:6
properly (2) 23:17,20	read (2) 63:21,22	refreshing (1) 58:7	REPORTER (2) 4:3,11	retention (1) 22:14
proposal (1) 19:15	really (16) 22:16;23:13;24:4; 26:2,17;32:5;34:12; 38:18;42:14;44:25; 45:7,17;47:2;53:24; 54:15;69:4	regard (4) 18:12;22:19,20; 49:9	Reporting (2) 4:13,14	retracted (1) 61:4
proposition (2) 42:21;69:5	reasonable (3) 41:23,24;42:4	Regardless (1) 62:14	reports (6) 23:12;24:16,17; 44:2,3,10	retrievable (1) 26:6
provide (1) 41:11	reasonably (2) 11:24;12:6	regards (3) 23:16;26:15;55:16	represent (2) 4:18;41:14	retrieve (3) 23:11;26:8,10
provided (1) 26:19	recall (39) 6:24;9:8;21:10; 36:22;40:6,13;43:16; 45:8;47:23;48:23,25; 50:20,23,24;54:20, 21,23,25;55:4,14; 56:5,15;58:14;59:15, 20,24;60:24;61:10, 14;62:18;64:3,5,6; 66:15,24;71:22;72:8, 12,13	Region (10) 15:21;16:7,8,9,12, 17;19:24;20:19; 21:13,15	representing (1) 4:25	return (1) 72:9
providing (1) 54:14	receive (2) 8:19;35:16	regional (5) 10:4,20;11:5; 70:25;71:4	request (1) 10:12	Review (5) 4:7;8:10;10:17; 16:19;62:10
provision (2) 50:12;58:6	received (1) 8:25	regulation (4) 12:24;40:22; 49:17;62:20	require (2) 24:13;41:20	reviewed (1) 61:12
provisions (2) 49:11;57:22	recent (2) 17:23;18:13	regulations (19) 11:20;12:10;17:9; 27:5,11,13,16,16,17, 22;28:4;40:18; 41:21;42:9;43:5; 46:14,21;49:12; 61:25	required (4) 31:7,17,22;58:22	reviewing (1) 12:21
public (2) 4:11;37:24	recently (4) 11:11;16:13;45:8; 64:12	regulatory (4) 12:13;15:17; 42:24;57:15	requirement (2) 69:23;70:5	Right (19) 8:4;9:7;14:16; 18:5;27:23;28:18; 29:17;32:14;33:12; 50:9;52:6,15;55:22; 56:14,24;57:7;62:9; 68:11;69:13
pull (2) 25:9,11	recess (2) 6:18;67:17	regulate (1) 59:3	requirements (6) 11:14;13:2,5,7; 42:24;57:16	risk (1) 6:3
purpose (1) 34:19	recipients (1) 52:14	Related (2) 9:4;51:16	requires (1) 28:15	role (2) 12:9,12
purposes (4) 16:6;22:5;32:23; 34:6	recognition (3) 44:10,19,21	relating (1) 60:18	reside (1) 27:24	room (2) 37:4;56:6
pursue (1) 60:22	recognized (5) 44:22;46:15; 47:12;51:16;58:25	Relations (3) 14:15;27:5;56:22	respect (39) 8:7;12:2,9,12,22; 13:10,17;14:5;18:21, 21;19:8;20:19,22,25; 22:7,13;23:4;27:12; 30:12,22;31:19; 36:12,15;44:12; 46:25;47:17;50:5,13; 53:13;55:22;56:20; 62:16;65:10,14; 66:22;68:13,23; 70:18;72:7	rubric (1) 72:25
push (1) 54:7	recollection (11) 20:17;23:19;34:8; 37:13;38:5;42:13; 43:21;57:25;58:7; 66:11;70:17	relationship (1) 57:10	respecting (1) 64:22	rushing (1) 64:9
pushed (3) 32:19;40:10;47:18	record (6) 4:4;7:8,11;29:21; 32:13;37:24	relatively (3) 38:14,22;64:11	respond (1) 64:22	safe (6) 35:5;57:6,19;58:4, 18;60:16
put (2) 69:8,13	records (4) 30:19,24;32:13,18	relates (1) 63:15	respondent (1) 4:21	Safety (22) 4:7;5:5;9:4,16; 14:2,7;27:6,23;28:3; 40:25;41:14,22; 49:11;52:25;57:5,11, 17;58:4;64:15,23; 65:9,15
putting (1) 34:19		relayed (2) 20:6;21:8	responding (2) 47:25;54:4	sale (1)
Q		relevance (1) 64:20	response (3) 12:23;47:15;72:12	
qualified (1) 32:20		rely (1) 49:10	responsibilities (1) 70:16	
quarterly (3) 15:25;16:14,15		remains (1)		
quite (1) 15:13				
R				

63:13 Same (7) 13:10;20:22; 37:15;40:11;47:10, 19;50:2 San (3) 10:3,13;61:2 saw (8) 38:17;64:15,23; 65:11,15;68:21;69:6; 72:16 scope (3) 44:25;64:18;65:7 search (4) 24:8;25:5,15,24 Seasonal (4) 33:20,22;34:5,8 second (2) 46:4;70:4 Secretary (2) 4:5;5:2 Secretary's (1) 7:9 Section (10) 14:19;28:5,13,15; 41:10;45:3;56:21; 59:9,12,13 security (2) 50:6,17 seeing (1) 64:6 seem (3) 34:10;50:20;60:24 sees (1) 68:10 senior (1) 11:15 sent (1) 24:17 service (3) 10:21,25;11:12 services (2) 52:14;54:9 setting (1) 36:12 several (4) 24:15;70:22;71:2, 16 shared (1) 56:15 shed (1) 26:19 shoppers (1) 5:21 shove (1) 54:7 shoved (3) 32:20;40:10;47:18 show (1) 31:3 similar (3) 28:3;44:21;61:5 similarly (1)	17:2 site (3) 28:25;29:4;52:11 site-specific (1) 34:22 sits (1) 16:9 situation (1) 72:21 situations (1) 29:4 size (2) 68:3,4 slightly (1) 50:2 Solicitor (1) 4:24 somebody (1) 20:11 someone (3) 28:7;37:9;67:7 sometimes (1) 25:24 somewhat (2) 50:10;57:24 sorry (11) 16:3;20:10;32:7; 36:6;37:9;43:10; 46:4;50:7;59:11; 71:5,5 sort (1) 24:19 sounds (1) 18:7 sources (1) 40:24 speak (9) 7:20;8:6;19:10; 28:7,8;44:23;45:2, 17;71:14 speaking (1) 29:11 special (34) 13:10,13,18,20; 23:12;25:6,12,17; 42:9,23;43:5;47:20; 56:20,23;57:2,11,14, 23;58:2,12,15,16,18, 23;59:3,13;60:9,17; 61:4;62:5,11,15,17, 21 specialist (1) 30:20 specific (44) 13:11;21:20; 24:10,11;25:4;27:12, 16;29:8;33:22;40:12, 14,16,17;41:21;42:9, 13,24;43:5,6,8,9,21; 46:14,20;49:2,3,16; 54:2,8;56:2,5,12; 57:15;59:20;61:25; 62:20;63:21,23;64:3,	15,23;65:9;66:4; 69:24 specifically (9) 28:11;34:14; 37:20;41:21;47:8,16; 64:5;69:14;70:8 specifics (4) 54:21,24,25;55:4 speculate (1) 69:4 speculation (1) 32:2 speculative (2) 33:7;69:9 spoke (4) 7:22,24;18:13; 57:12 spoken (3) 17:21;19:11,12 staff (6) 11:15;24:2,24; 59:6;60:3,21 stakeholder (3) 18:3,9,16 stampeding (1) 53:15 standard (2) 46:2,8 standards (12) 24:11,11;25:4; 27:8,10,15,20,21; 28:7;57:6,7,20 standpoint (1) 45:13 start (4) 31:2;32:12;40:20; 41:2 state (11) 4:18;14:19;15:12, 15,25;17:3;20:23; 21:13;23:13,16;24:5 statements (1) 68:11 States (4) 4:7;17:11,13,14 statewide (1) 16:3 statute (2) 28:5;54:13 stay (1) 51:14 step (2) 35:13;56:9 steps (1) 69:3 still (2) 35:10,16 store (7) 53:16;54:7,9; 64:10;65:23;69:7,15 Stores (2) 4:6;63:24 straight (1)	58:5 strategic (4) 10:22;11:8;16:20, 25 Stream (1) 5:22 struck (2) 40:9;47:18 structure (1) 27:2 subject (5) 16:16;21:5,7; 26:20;35:8 subjects (5) 36:21;38:4,7,11,14 subpoena (1) 65:7 substance (1) 18:25 substances (1) 41:12 substantial (1) 19:13 substantive (5) 18:18;19:13,14,17; 71:8 substitutes (1) 69:19 successful (1) 26:23 successive (1) 38:21 sufficient (1) 25:20 suggest (2) 33:23;65:19 summary (1) 61:18 supervise (1) 13:19 supervisory (2) 13:15,16 supposed (1) 29:25 sure (8) 15:13;22:16; 38:17;46:18;51:2; 55:16;60:2;67:15 surrogates (1) 69:22 surveys (1) 10:12 suspect (1) 5:16 sworn (2) 5:9;6:4 system (7) 17:8;21:21,22,25; 22:10;23:23;25:20 systems (2) 23:22;56:3	T
			Tab (3) 37:13,21;66:2 tabs (1) 37:4 tacked (1) 50:10 tailored (1) 28:22 talk (2) 26:25;54:19 talked (5) 19:17;43:23; 56:19;63:18;69:21 talking (5) 16:21;38:9;61:9; 68:14,21 tandem (1) 49:16 targeted (1) 71:10 tech (1) 26:18 technical (4) 5:13;23:22,25; 49:8 techniques (1) 9:12 temperatures (1) 34:4 ten (1) 12:4 term (2) 68:2;69:2 terminology (1) 23:22 terms (3) 11:24;18:14;31:11 testified (1) 42:21 testify (1) 5:10 testimony (3) 54:15,17;72:13 theories (1) 53:17 theory (2) 67:21,24 therefore (1) 6:5 thorough (1) 11:21 thoroughly (1) 31:6 thought (3) 60:17,23;65:12 threat (1) 57:5 three (4) 16:2;17:2;52:5,8 tick (1)	

<p>29:16 ties (1) 52:18 times (2) 16:2;17:3 Title (4) 25:8;27:24;42:2; 58:4 today (3) 6:21;24:5;68:14 Today's (1) 4:8 told (1) 18:15 took (1) 19:24 top (3) 7:18;9:8;35:23 topic (2) 21:5;67:19 totally (1) 13:25 towards (3) 11:16;16:19,25 toxicology (1) 8:18 track (1) 10:24 tracking (1) 11:9 traditionally (1) 71:10 train (1) 30:9 training (12) 9:2,6;11:2;29:21; 31:12,15;36:20;38:4, 6,14;41:12;47:14 trample (1) 54:7 transpired (1) 17:19 trends (1) 31:4 trickier (1) 6:13 trigger (2) 43:24;44:20 tripped (3) 32:19;40:10;47:18 try (2) 40:22;54:8 trying (4) 16:14;30:2;59:15; 71:12 turn (3) 28:11;37:13;66:2 two (2) 9:14;38:25 Type (8) 51:3,5,6;52:10,13, 17;53:4;72:19 types (4)</p>	<p>51:17;52:5,5,8 typically (2) 17:6;49:10</p> <p style="text-align: center;">U</p> <p>ultimate (1) 61:14 ultimately (2) 30:10;36:7 unclear (1) 6:11 under (30) 5:10;6:5;14:19; 15:3;17:4;21:14; 25:4,6,6,15,17; 26:23;28:5;31:22; 37:21;40:21;44:15, 22;50:22;51:11; 53:14;57:6,16,19; 58:4;62:22;67:21; 69:23;70:5;72:25 underpinnings (1) 62:17 underserved (1) 71:13 Understood (1) 45:20 undertaken (1) 47:25 unfair (1) 62:22 unfortunate (1) 18:5 unique (8) 28:21,22;29:3,3; 31:14;40:20;41:6; 72:20 uniqueness (1) 67:9 unit (1) 5:4 United (1) 4:6 unlocked (1) 64:10 unofficial (1) 59:18 unofficially (1) 59:21 unrecognized (2) 41:16;59:2 unruly (8) 5:21;31:20,23; 53:3,6,16;60:25;61:2 unsafe (4) 44:3,8;57:3;58:3 up (4) 24:24;34:4;36:12; 69:9 updated (1) 39:22 updates (1)</p>	<p>17:7 upon (9) 33:4;42:22;49:10; 52:9,15,17;55:19; 68:5;72:18 upshot (1) 61:10 use (11) 11:23;12:20;22:2, 4;23:25;30:14,18; 34:21;39:5;46:13; 58:11 used (6) 45:14;46:10,19,23; 47:5;69:23 usually (1) 39:15</p> <p style="text-align: center;">V</p> <p>vague (1) 48:16 Valley (1) 5:22 variety (2) 15:21;71:14 various (8) 10:7,23;11:15; 21:12;30:4;43:13; 51:17;68:7 vertical (1) 27:19 Vicky (2) 4:5;5:6 video (12) 4:4;5:14;64:9,15, 24;65:11,24;66:12; 68:21;72:12,15,17 videos (2) 63:25;64:4 view (9) 6:24;53:3,23; 54:10,16;55:24; 62:19,21;72:13 viewed (1) 65:24 violated (1) 49:17 violence (24) 34:16;45:25;46:5, 23;50:15,21;51:4,14, 17,21,25;52:5,22; 53:4,7,11,14,17; 54:20;55:2,18;72:10, 16,25 violence-type (1) 36:13 violent (3) 51:9;56:8,13 voice (1) 5:15</p>	<p style="text-align: center;">W</p> <p>Wait (1) 10:14 walk (1) 29:24 Wal-Mart (5) 4:6,21;5:19;20:20; 66:5 warranted (1) 57:3 Washington (7) 4:15,22;16:22; 20:2;23:12;24:3,17 way (3) 25:22;34:4;50:3 ways (7) 24:15;26:12;29:7; 30:8,13;43:23;68:7 web (3) 51:25;52:6,11 website (5) 33:13,24;34:18,20; 35:7 Welsh (2) 8:4;60:6 weren't (1) 42:10 whale (1) 61:2 whales (1) 62:2 what's (3) 39:18;57:10;67:24 whenever (2) 41:12,15 Whereupon (1) 73:15 whirl (1) 6:15 who's (1) 28:7 whose (2) 13:19;40:24 William (1) 5:3 window (1) 21:17 within (3) 16:9;17:14;27:9 without (3) 43:8;53:18;69:7 WITNESS (5) 5:6;20:10;37:6,18; 73:9 word (1) 39:5 words (3) 18:23;48:9;53:10 work (4) 10:17,17;23:11; 71:25</p>	<p>worked (1) 9:22 worker (2) 56:6,11 workforce (1) 71:13 working (5) 10:23;11:5,14,16; 17:10 workplace (51) 27:6;28:22,23; 31:10,21,24;32:22; 34:15,16;36:13;38:2; 41:8,14;44:3,9,12; 45:25;46:5,23;47:21; 48:2;50:6,14,15,17, 21;51:4,8,8,10,13,17, 21,25;52:5,19,22; 53:4,6,11,14,17; 54:11,20;55:2,18; 67:23;68:22;72:9,16, 25 works (1) 17:8 writing (1) 45:23 written (2) 34:9;39:11 wrong (1) 55:25 wrote (1) 39:8</p> <p style="text-align: center;">Y</p> <p>year (2) 16:2;17:3 years (11) 9:24;10:20;12:4; 21:11;38:17;43:12; 48:11,24;52:25; 64:13;71:25 York (3) 4:13,13,24</p> <p style="text-align: center;">Z</p> <p>zone (9) 67:24;68:4,24,25; 69:9,20,24;70:6,9</p>
---	---	---	---	--

 Attachments can contain viruses that may harm your computer. Attachments may not display correctly.

washshrcommission

From: Rathbun, Daniel Patrick [DRathbun@gibsondunn.com] **Sent:** Mon 6/20/2011 4:24 PM
To: washshrcommission
Cc: Darling, Jr., Ray H.; gottlieb.ronald@dol.gov; phillips.heather@dol.gov; james.charles@dol.gov; Willis Goldsmith (wgoldsmith@jonesday.com); Jacqueline Holmes (jholmes@JonesDay.com); Fellner, Baruch A.; Schwartz, Jason C.; Martin, Scott P.; Rathbun, Daniel Patrick
Subject: OSHRC Docket No. 09-1013: Exhibit E to Filing by RespondentWal-Mart Stores, Inc.
Attachments:  [09-1013 Respondent's Exhibit E to Respondent's Opening Brief.pdf\(1MB\)](#)

Attached please find Exhibit E to the Opening Brief for Respondent in the above-captioned matter.

Daniel P. Rathbun

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W., Washington, DC 20036-5306
Tel +1 202.887.3714 • Fax +1 202.530.9584
DRathbun@gibsondunn.com • www.gibsondunn.com

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message.
