

Exhibit C

R-CALF v. USDA
Case No. 1:20-cv-02552-RDM

Page 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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RANCHER-CATTLEMEN ACTION :
LEGAL FUND, UNITED :
STOCKGROWERS OF AMERICA, :
:
Plaintiff, : CASE NO.
:
vs. : 20:cv-2552 (RDM)
:
UNITED STATES DEPARTMENT OF :
AGRICULTURE AND THOMAS J. :
VILSACK, IN HIS OFFICIAL :
CAPACITY AS SECRETARY OF THE :
UNITED STATES DEPARTMENT OF :
AGRICULTURE, :
:
Defendants. :
- - - - - :

DEPOSITION OF HARRY M. KAISER, PHD

DATE: March 17, 2023
TIME: 9:12 a.m.
LOCATION: Via Zoom Videoconferent

REPORTED BY: Constance H. Rhodes
Reporter, Notary

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1 A P P E A R A N C E S 2 3 On behalf of Plaintiff: 4 DAVID MURASKIN, ESQUIRE 5 Public Justice Foundation 6 1620 L Street, Northwest 7 Suite 630 8 Washington, DC 20036 9 Dmuraskin@publicjustice.net 10 11 On behalf of Defendant: 12 REBECCA KOPPLIN, ESQUIRE 13 LIAM HOLLAND, ESQUIRE 14 Department of Justice Civil Division 15 Federal Programs Branch 16 1100 L Street, Northwest 17 Washington, DC 20036 18 Rebecca.m.kopplin@usdoj.gov 19 20 ALSO PRESENT: 21 Solomon Francis, Videographer 22 Jane Kim 23 24 * * * * * 25 26 27 28 29 30 31 32	1 P R O C E E D I N G S 2 VIDEOGRAPHER: Good morning. We are going 3 on the record at 9:12 a.m. on March 17th, 2023. 4 Please note that this deposition is being conducted 5 virtually. The quality of recording depends on 6 quality of camera and internet connection of 7 participants. What is seen from the witness and 8 heard on screen is what will be recorded. 9 Audio and video recording will continue 10 to take place unless all parties agree to go off 11 the record. 12 This begins media unit 1 of the remote 13 recorded video deposition of Dr. Harry M. Kaiser, 14 taken in the matter of Rancher-Cattlemen Action 15 Legal Fund, United Stockgrowers of America, 16 Plaintiff, versus United States Department of 17 Agriculture and Thomas J. Vilsack in his official 18 capacity as Secretary of the United States 19 Department of Agriculture, defendants, filed in 20 the United States District Court for the District 21 of Columbia, Case number 20cv2552 (RDM). 22 My name is Solomon Francis of Veritext
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1 C O N T E N T S 2 EXAMINATION BY: PAGE 3 Counsel for Plaintiff 6, 249 4 Counsel for Defendant 244 5 6 KAISER DEPOSITION EXHIBITS:* 7 1 Expert Rebuttal Report by Harry M. Kaiser 16 8 2 Article in Applied Economics: "Can generic 9 advertising alleviate consumer concerns 10 onever food scares" 29 11 3 Expert Report of Claudiu V. Dimofte 77 12 4 Ward and Lambert 1993 Article: "Generic 13 Promotion of Beef: Measuring the Impact 14 of the US Beef Checkoff" 151 15 5 Ron Ward 1999 Article: "Evaluating the 16 Beef Promotion Checkoff: The Robustness 17 of the Conclusions" 159 18 6 Kaiser 2019 Article: "An Economic 19 Analysis of the Cattlemen's Beef Promotion 20 and Research Board Demand-Enhancing 21 Programs" 162 22 7 Excel Spreadsheet Dimofte Data 203 8 Rebuttal Willingness to Pay Analyses 238 9 10 11 12 13 14 15 16 17 18 19 20 21 22 (* Exhibits attached to transcript.)	1 legal Solutions, and I'm the videographer. Our 2 court reporter is Connie Rhodes at Veritext Legal 3 Solutions. 4 At this time will counsel please state 5 their appearances and affiliations for the record. 6 MR. MURASKIN: David Muraskin with Public 7 Justice representing Ranchers-Cattlemen Action Legal 8 Fund, and also sitting in is our fellow Jane Kim 9 with Public Justice who will be listening to the 10 deposition. 11 MS. KOPPLIN: Rebecca Kopplin with the 12 Department of Justice for defendants. 13 THE WITNESS: My name Harry M. Kaiser. 14 I'm -- I'm the consultant for the Department of 15 Justice. 16 VIDEOGRAPHER: If there is no one else, at 17 this time will the court reporter please swear in 18 the witness, and we can proceed. 19 MS. KOPPLIN: I'm sorry. I think my 20 colleague Liam is also sitting in. Liam Holland, 21 also with the Department of Justice. 22

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1 WHEREUPON 2 HARRY M KAISER PHD 3 called as a witness, and having been first duly 4 sworn, was examined and testified as follows: 5 EXAMINATION BY COUNSEL FOR PLAINTIFF 6 BY MR. MURASKIN: 7 Q Good morning, Dr. Kaiser. My name is 8 David Muraskin, as you just heard, and I represent 9 the plaintiff in this action. You already stated 10 your name the record, so we can skip that 11 formality. 12 Do you understand you are under oath 13 today? 14 A Yes, I do. And good morning everyone. 15 Q Do you also understand that, in addition 16 to being recorded, this deposition is being 17 transcribed? 18 A Yes, I do. 19 Q Okay. That means a couple of things I 20 want to get out at the beginning. One is that 21 although there is a video, the transcript really 22 governs here, so you can't give head nods or head	1 But if they instruct you not to answer, 2 I'll ask whether you'll take that instruction, and 3 then if you do, we'll move on. Does that make 4 sense? 5 A That makes sense to me, yes. 6 Q Great. Throughout we're going to be 7 having a long conversation. There are things I'm 8 going to say that I don't understand. There are 9 things you say that I'm not going -- that you're 10 not going to understand. There are things that 11 we're just not going to understand about each 12 other. If I'm not clear you should just ask me to 13 clarify. Does that make sense? 14 A Yes, it does. Thank you. 15 Q Great. And if it -- if you answer and 16 you haven't asked me to clarify, I going to at 17 least believe that you think you understand. I'm 18 not asking you to read my mind, but I think that 19 if you haven't asked me to clarify you think you 20 understand the question. 21 Does that make sense? 22 A Yes. It makes sense.
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1 shakes. We need to give you -- we need an oral 2 answer. If you do that and don't give an oral 3 answer, I'll probably prompt you to say what does 4 the head shake mean or the nod mean just so you 5 can anticipate that. 6 A Yes. I will try to do that. 7 Q Great. The other thing is because of 8 the nature, particularly of video depositions, the 9 sound will get muddled if we are speaking over 10 each other. I will try to let you finish every 11 time you want to finish. If I mistake that, 12 please just let me know. I also encourage you to 13 pause for a second before you start your answer to 14 let your counsel state any objection for the 15 record so that doesn't get lost. 16 Does that make sense? 17 A Thank you. Yes, it does. 18 Q Great. The general rule on objections 19 in depositions is that while your counsel can 20 state them, unless they instruct you not to answer 21 and you take that instruction, you have to answer 22 the question regardless of the objection.	1 Q Similarly, I'm going to show you some 2 documents. Depending on how the deposition goes, 3 it may be one document, it may be more than one 4 document. If there's ever any time you don't 5 understand what document I'm talking about, please 6 just ask. 7 Does that make sense? 8 A Yes, it does. 9 Q Great. And similarly if you don't ask 10 me what document I'm talking about, I'm going to 11 at least believe you think you know what document 12 I'm talking about. 13 Does that make sense? 14 A Yes. 15 Q Great. We will take some breaks during 16 this deposition. They are tiring and everyone 17 needs a chance to use the restroom and stretch 18 their legs. We can break whenever you want. The 19 only request I have is that if a question is 20 pending, when you want a break we finish answering 21 that question, then we take a break. 22 A That's makes a lot of sense to me.

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1 Q Great. So do you have any illness? Are 2 you on any medication that prevents you from 3 recalling information today? 4 A No. 5 Q Are you -- do you have any illness or 6 are you on any medication that prevents you from 7 testifying truthfully today? 8 A No. 9 Q What did you do to prepare for this 10 deposition? 11 A The main thing that I did to prepare for 12 the deposition is I reread my rebuttal report, and 13 then I also read Dr. Dimofte's original report. 14 Those are the two main things that I did to 15 prepare for this deposition. 16 Q Did you read any other documents? 17 A Yes, I did. I read the deposition of 18 Dr. Dimofte, and I read one of the articles that I 19 cited in my rebuttal -- reread it I should say -- 20 in my rebuttal. 21 Q Which of those articles? Do you recall? 22 A Yes, I do. It was the Messer, et al.,	1 about the deposition? 2 A No. 3 Q Did you speak to your family about the 4 deposition? 5 A I mentioned to my wife that I was going 6 to be deposed today. 7 Q Okay. Did you speak to anyone besides 8 counsel about the case? 9 A No. 10 Q Again, you didn't speak to your family 11 about the case? 12 A No. 13 Q Have you ever served as an expert 14 before? 15 A Yes. 16 Q When? 17 A I have twice. The first time was 18 about -- and I don't know exactly the date, but it 19 was about 10 or 11 years ago for the California 20 Department of Justice involving the California 21 Raisin Administrative Committee, which is a 22 federal marketing order.
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1 article with two different dates. It's -- it 2 was -- it was online in 2011, and it was published 3 in 2014. 4 Q About how much time did you spend 5 prepping for this deposition? 6 A Four hours. 7 Q Did you speak to counsel? 8 A Yes. 9 Q About how long did you talk to counsel? 10 A Three hours. 11 Q So it was four hours in addition to 12 those three hours for seven total, or it was four 13 total? 14 A Four total. 15 Q Gotcha. Did counsel show you any 16 documents besides what we discussed? 17 A Do you mean throughout the whole process 18 or -- 19 Q No. As part of preparation. But thank 20 you for asking. 21 A No. 22 Q Did you speak to anyone besides counsel	1 The second time was for the US Department 2 of Justice also about a different issue, again with 3 the California Raisin Administrative Board. 4 Q And the second time do you recall 5 approximately when it was? 6 A Approximately five years ago. 7 Q Did you issue reports in those cases? 8 A Yes, I did in both of them. 9 Q Do you recall what opinion you offered 10 in the first California raisin case about 10 or 11 11 years ago? 12 A Yes, I do. 13 Q And what was that opinion? 14 A I was asked to evaluate the efficacy of 15 the California Raisin Administrative Committee's 16 or Board's export and domestic promotion programs 17 and to compute a rate of return on investment to 18 their stakeholders. And my finding was that -- 19 that the -- the existence of these promotion 20 programs was highly beneficial to the California 21 raisin growers. I do not recall the actual rate 22 of return, but it was way better than one

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1 indicating that the benefits exceed the cost of 2 the program. 3 Q And in the second case do you recall 4 what your opinion was? 5 A Yes, I do. 6 Q What was it? 7 A It was a very different part of what the 8 California Raisin Advisory Board does. They have 9 a supply management or supply control program 10 where they take and remove some of -- some of the 11 raisins from the growers from the market, and by 12 doing so they increase the price that they can 13 negotiate by more than -- by a percent that's 14 higher than what the percentage reduction is in 15 supply. And -- and basically, I -- I estimated an 16 impact of that on -- on the industry revenue -- 17 net revenue from doing that. 18 Q Were you deposed in those cases? 19 A I was deposed in the first case. I was 20 not deposed in the second case. 21 Q Do you have a transcript of that 22 deposition from the first case?	1 Lion Brothers were suing the California Raisin 2 Board. So it would be -- and I don't know if it's 3 spelled like the animal lion. Lion Brothers 4 versus the California Raisin Board, but I don't 5 remember the name. 6 Q And would the California Raisin Board 7 have been a party in the other case, too? 8 A Yes, they were. 9 Q Okay. When were you retained to work in 10 this case? 11 A I do not recall the exact date, but my 12 recollection is around August of 2022. 13 Q And who contacted you to be an expert in 14 this case? 15 A Rebecca, who is on this testimony. 16 Q Did -- about how much time did you spend 17 working on this case in total to date? 18 A To date, I would -- give or take a 19 couple hours, I would estimate I have about 65 20 hours. 21 Q Did anyone help you with that work? 22 A No. I did all the work myself.
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1 A No. 2 Q Who would? 3 A Pardon? 4 Q Who would have a transcript of that 5 deposition? 6 A I would imagine the California 7 Department of Justice would have it. 8 Q Were you subject to a Daubert challenge, 9 if you know what that means, in either case? 10 A I don't know what that means. 11 Q Was -- in either case was your expert 12 testimony challenged as admissible? Do you know? 13 A I do know, and it was not. 14 Q Was it admitted into the record? 15 A Yes, it was. 16 Q But it wasn't challenged? 17 A No. It wasn't challenged. 18 Q Great. If I wanted to find these cases, 19 would I look up California raisin? Do you 20 remember the names of the cases in any way? 21 A I remember the name of one of them and I 22 can't remember -- it's the Lion Brothers. The	1 (KAISER Exhibit Number 1 was marked for 2 identification.) 3 BY MR. MURASKIN: 4 Q So I'm now going to introduce the first 5 exhibit into this. It's always a test to see 6 whether this works. It now should be in your 7 marked exhibits file. 8 A Okay. Just double click on it? 9 Q Yeah. That's how it should work. 10 A Oh, this is my -- this is my report. 11 Q Yeah. This is being marked as Exhibit 1 12 for the record. And if I was doing my first 13 question, does this look like your report to you. 14 It sounds like it does; is that right? 15 A It does. 16 Q Great. We're going to spending a lot of 17 time with this today. 18 A Can I ask a question? It's kind of 19 small, and I have two big windows on my computer 20 open. Do you know how I enlarge this so I can see 21 it better. 22 Q I would think you do control and rotate

Page 18 1 your mouse if that's an option, or you pinch if 2 that's another option, I know if you have a 3 different window open, like a chat window, you can 4 close that using the arrows in the upper 5 right-hand -- 6 A Oh, there we go. There we go. Okay. 7 That helped. I can zoom in. Okay. 8 Q I'm going to direct you to pages in this 9 as we talk, so I'm not asking you to keep the 10 entire thing scrolling through. 11 A Okay. 12 Q And we're going to start with the back 13 actually with your CV. So if you want to go to 14 page 26, that's where we're going to start. Just 15 let me know when you're there. 16 A I'm there. 17 Q And page 26 is part of your CV. Is that 18 a fair characterization? 19 A Yes, it is. 20 Q And there it says that you were the 21 director of the Cornell Commodity Promotion 22 Research Program from July 1991 to June 1998; is	Page 20 1 A I do not, but I know that it was -- the 2 program was authorized and reauthorized every 3 year, so it was on a year-by-year basis. And it 4 was part of the budget reconciliation bill, 5 whatever it's called, so it was the Congress that 6 passed it, and so it's part of the overall budget 7 I believe. 8 Q Was Cornell and this program the only 9 recipients of this grant, or were there other 10 recipients of the grant? 11 A Cornell was the only recipient of the 12 grant, which was around \$220,000 a year the last 13 year. However, I always funded about five to 14 seven universities' agricultural economists to 15 conduct various studies in addition to the studies 16 that we conducted at Cornell, different issues 17 surrounding the economics of generic advertising 18 programs. 19 Q Do you remember what those universities 20 were? 21 A I do. 22 Q What were they?
Page 19 1 that accurate? 2 A Yes. 3 Q What's the goal of the Cornell Commodity 4 Research Program? 5 A The goal of -- this was, by the way, 6 funded by a special grant from Congress, and the 7 goal of it was to increase our understanding of 8 the economic impacts of generic commodity or 9 Checkoff programs in general. And it was solely 10 funded by a special grant from Congress that was 11 administered by the US Department of Agriculture. 12 Q Which division of the US Department of 13 Agriculture? 14 A I believe it was the Agricultural 15 Marketing Service, AMS. 16 Q And AMS is the marketing service that 17 oversees the Checkoff program or is the part of 18 the Department of Agriculture that oversees the 19 Checkoff program. Is that right? 20 A That is correct. 21 Q Do you know what bill the funding was 22 passed as part of?	Page 21 1 A I probably can't list all of them, but 2 the biggest ones were Auburn University, 3 University of California-Davis, the University of 4 Minnesota, Arizona State, Oklahoma State, Texas 5 A&M, and I did fund a couple for the University of 6 California-Berkeley. 7 Now, there are others. I just can't 8 recall. But those were the ones that regularly 9 received funding. 10 Q Gotcha. And you said this was about a 11 \$220,000 grant, and I just want to make sure I'm 12 clear. That was the entire allotment for -- from 13 Congress for the studying of the -- the commodity 14 research program. 15 Is that right or was there other money 16 Congress separately allotted? 17 A That was the entire amount per year and 18 I think we had the grant -- I had the grant for 19 about 15 years. 20 Q How much did you personally pay yourself 21 in that grant? 22 A I didn't pay myself anything out of that

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1 grant. I used that grant to -- I hired -- I had a 2 couple of other grants in addition. I, at one 3 time, had three PhD research associates working 4 for me. I had a data collector, I had one 5 administrative assistant, and I had an editor 6 that -- so I had a fairly big staff that was 7 funded from that grant as well as from a couple of 8 other grants that I had during that time. 9 Q And was the Commodity Promotion Research 10 Program founded in 1991? 11 A I don't recall the exact date, but that 12 sounds about right. Maybe '91, '92. That sounds 13 about right. 14 Q Let me ask the question this way. When 15 you started working there, is that when the 16 program started? Is that a fair characterization? 17 A No. I started working at Cornell in 18 1985. 19 Q No. Sorry. Let me rephrase the 20 question. I apologize. When you started working 21 at the Commodity Promotion Research Program, 22 that's when the program started. It didn't exist	1 through consulting. 2 Q Were you the last director or was there 3 a director after you of the program? 4 A I was the last director. There was only 5 two directors, Olan Forker and then me. 6 Q Gotcha. So looking a little bit lower 7 down on the same page of your CV. I'm now at the 8 period from September 1st, 1993, to June 17, 1994. 9 And it describes you as serving as a visiting 10 associate professor and an economist for Land 11 O'Lakes. 12 Do you see that? 13 A Yes, I do. 14 Q Land O'Lakes is the butter company, 15 correct? 16 A Land O'Lakes is a -- a dairy cooperative 17 in the upper midwest that does produce a lot of 18 butter and a lot of cheese. They are very large 19 in the food business, in the dairy business. 20 Q What did you do for Land O'Lakes? 21 A I worked half time at Land O'Lakes and 22 half-time at the University of Minnesota that
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1 before you started working there; is that correct? 2 A No. The program was established by my 3 predecessor, Dr. Olan Forker, and I became the 4 associate director of the program when it was 5 founded. So he was the director. I was the 6 associate director. He subsequently retired a few 7 years later, and I became the director. I became 8 the director in around -- I'm guessing around 1996 9 or '97. 10 Q Has the program -- did it end in '98 or 11 did it continue after you were no longer the 12 director? 13 A That's kind of a difficult question. 14 Our funding ended around that time, and we 15 continued the program based on just using that -- 16 that name, the National Institute, and we 17 feathered other grants that we had through it, so 18 it did continue even though the funding stopped. 19 I would say now it's no longer -- it 20 hasn't been active for a long time. I -- I kind of 21 switched from doing that area of research, from 22 those grants, to doing evaluation studies on my own	1 year. I did several projects for them. One of 2 the projects was developing a cheese price and 3 milk price forecasting model, which was pretty 4 much a quantitative statistical model that they -- 5 that they used to predict what the cheese prices 6 and the milk prices would be for the forthcoming 7 year. That was one of the projects I worked on. 8 The second project that I worked on was 9 looking at what would be the most optimal and 10 efficient locations for dairy farmers if they were 11 to open a new cheese plant. So we looked on the 12 West Coast, we looked on the East Coast, we looked 13 at South Dakota, and so forth. And what they were 14 looking for is what is the least-cost-producing 15 dairy farm place to be. And -- and so I worked on 16 that. 17 The third project I worked on -- I can't 18 remember what the fourth one was, but the third 19 project I worked on was -- this was in 1994 and 20 there was a brand-new futures market for cheese that 21 was -- that was just instituted, and Land O'Lakes 22 wanted me to simulate and teach them various hedging

Page 26 1 strategies so that when they buy their milk and they 2 make cheese, there's a six month, three month, a 3 year lag; and they wanted to be able to hedge 4 against adverse price movements. And basically I 5 constructed some hedging strategies for them and 6 simulated what their revenue gains or losses would 7 be had they followed those hedging strategies. 8 Q Anything else? 9 A There was a fourth project, and I can't 10 remember what it was. 11 Q Fair enough. Did you publish any of 12 those projects in academic journals? 13 A I -- no, I don't think I did. I 14 published a couple -- I did -- I published a 15 couple of working papers, but I didn't send them 16 to journals. 17 Q I noticed you just used air marks, and 18 this is one of those things that I -- maybe I need 19 to ask you. What do those air marks mean when you 20 said published? 21 A I -- I apologize. 22 Q No. No problem.	Page 28 1 something about social responsibility. That was 2 the kind of way in which you tested consumers' 3 perception and then willingness to pay; is that 4 right? 5 A Consumers' willingness to pay is 6 correct. We didn't look at -- I don't think we 7 looked at the perceptions because I don't think 8 perceptions is a meaningful metric or outcome to 9 look at. 10 Q Sure. I guess the way -- I'm trying to 11 understand the way you signal socially responsible 12 or socially responsible nature of the product was 13 through putting labels on the product; is that 14 right? 15 A That is correct. 16 Q Is it fair to say when consumers have a 17 specific social preference, they're willing to pay 18 for products that meet those preferences? 19 A I agree with that. But I would -- but I 20 would add the qualifier that some consumers would 21 be willing to pay a premium for -- for that, not 22 all.
Page 27 1 A I quote/unquote published, but 2 non-peer-reviewed working papers that were not in 3 any academic journal, nor did I submit them to -- 4 they were too applied. 5 Q Thank you. So moving now -- please take 6 your drink, there's no rush here, but moving now 7 to page 29. And then this is your list of 8 articles. I want to ask you about article 14, 9 which is titled: "Socially Responsible Products: 10 What Motivates Consumers to Pay a Premium." 11 So I went to this article, and I just want 12 to make sure I'm understanding it right. What you 13 conclude there is that labels that signal social 14 responsibility will lead to an increased payment for 15 the product. 16 Is that fair -- a fair summary? 17 A I recall -- I don't recall the exact 18 findings in that article, but I do believe we did 19 find that consumers were willing to pay a premium 20 for different socially responsible marketing 21 plans. 22 Q And that was through labels that signal	Page 29 1 Q And is it then fair to say that if a 2 product meets consumers' social preferences, those 3 products will benefit financially from consumers' 4 understanding they meet the social preferences and 5 then some consumers being willing to pay more? 6 A Yes. I agree with that. 7 Q Great. Page 32 of your CV. And now I'm 8 looking at article 44. 9 A Okay. 10 Q I think this is the article that you 11 were describing, the Messer article that you cite 12 in your paper, correct? 13 A Yes. That's correct. 14 Q And it may be just best for me to 15 introduce this article as another exhibit, and so 16 I'm going to do that. We may have to switch back 17 and forth between the exhibits for a second or 18 two, so I warn you in advance about that. Let me 19 introduce this one as an exhibit. 20 A Okay. 21 Q Give me a second I will do that and then 22 it will be available to you.

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1 (KAISER Exhibit Number 2 was marked for 2 identification.) 3 BY MR. MURASKIN: 4 Q So if you now go into the marked exhibit 5 folder, there should be what's marked as Exhibit 6 2. 7 A There we go. It just showed up. Okay. 8 Let me just -- I want to zoom in again. 9 Q Sure. 10 A There we go. I got it. 11 Q This is the article that we were just 12 talking about, this article 44 on your CV; is that 13 right? Is that a fair image of it? 14 A That's correct. 15 Q When I look at this, what it says on the 16 first page is published online in 2009. And then 17 on the second page it looks like it was published 18 in a journal in 2011; is that right? 19 A That is -- if that's what it says, I'm 20 sure it's correct. 21 Q So but you said earlier it was a 2014 22 article. Can you reconcile that for me?	1 cite this with the year from when it was published 2 and the -- the title when it was published, 3 correct? 4 A That is correct. 5 Q And the standard practice would be in a 6 published journal article to cite check and get 7 that accurate, correct? 8 A That is correct. 9 Q I assume the standard practice in your 10 CV would be to cite check and get it accurate, 11 correct? 12 A That is correct. And I might add what I 13 often do is I go through after it's published and 14 double check, and I do find often that the title 15 is a little bit different, and I usually make 16 those changes. But obviously, I didn't in this 17 instance. 18 Q Why didn't you do that here? 19 A I don't know. I just failed to do it. 20 Q Okay. I want to talk to you about Brian 21 Wansink, who's one of the coauthors on this. Is 22 that right?
Page 31	Page 33
1 A No, I can't. I -- I -- I -- the article 2 that -- this is the article that I am referencing 3 in my report, and if I said 2014 it's a mistake. 4 Q Well, the title of this article is "Can 5 Generic Advertising Alleviate Consumer Concerns 6 Over Food Scares." Correct? 7 A Correct. 8 Q But now this is where it becomes a bit 9 annoying. If you could go back to your CV and 10 look at article 44 -- this is Exhibit 1, article 11 44, page 32 -- you call it "Can Advertising 12 Alleviate Consumer Concerns About Mad Cow 13 Disease." 14 A Yeah. That was the original title. 15 This sometimes happens, and I failed to correct it 16 in my CV. And it is the same article. The name 17 of it probably got changed during the revision 18 process, and I apologize for that. But it is the 19 same article, and I just did not have the correct 20 title on it. 21 Q No problem. But I do want to confirm 22 the standard practice in your field would be to	1 A Yes. 2 Q And I -- I know in some fields being 3 listed last has significance. He's listed last in 4 this article. Is there a significance in your 5 field someone being listed last? 6 A He had very little to do with it. 7 Q What does that mean? Is that the normal 8 thing that the person that does the least is 9 listed last? 10 A Yes, it is. The -- the two -- Kent 11 Messer and I are the primary authors of that 12 paper, and I can tell you what Brian Wansink's 13 involvement is if you would like to know. 14 Q Sure. 15 A He was very active when we proposed the 16 idea, so he helped us with the experimental design 17 at meetings. He helped us with some of the theory 18 that we talked about in the paper, which was very 19 valuable. But pretty much from there on out 20 conducting the experiments, writing up the paper, 21 doing the statistical analysis was really Kent 22 Messer and myself.

Page 34 1 Q But this isn't your only work with Mr. 2 Wansink, is it? You also have some research 3 projects with him. If you look at page 44, 4 paragraphs 1 and 8 of your CV, those are projects 5 with him where he is not listed last. 6 A Wait. Can -- I have to get to the 7 exhibit. That's exhibit -- 8 Q Sure. This is Exhibit 1. 9 A Oh. 10 Q Your CV. 11 A Oh, okay. 12 Q It's page 44. 13 A Okay. Hold on one second. I keep 14 coming up with my -- oh, I'm sorry. I saw my 15 testimony there and -- okay, I have to go all the 16 way down. Page 44? 17 Q Yup. Of your report. These are 18 research projects. And then -- 19 A It's taking me a while to get there. 20 Q Sure. Just let me know when you're 21 there. 22 A Okay. Gotcha.	Page 36 1 alleged to have done academic misconduct. I don't 2 know if he -- I don't -- in fact, I'm pretty 3 certain he didn't -- he wasn't accused of 4 falsifying. 5 Q Well, he lost his tenure, correct? 6 A No. That's not correct. 7 Q Is he allowed to teach now? 8 A No. He was -- he retired. 9 Q Is he -- so was he allowed to do 10 research after his misconduct came to light? 11 A Yes, he was. 12 MS. KOPPLIN: Objection. Misstates prior 13 testimony. 14 BY MR. MURASKIN: 15 Q You can answer. 16 A Yes, he was. 17 Q When did that happen? 18 A I don't remember the year that it 19 happened. It was a while ago. 20 Q But he was at one point pulled from 21 research? 22 A I'm not aware of that.
Page 35 1 Q So research project one, he's actually 2 the lead author with you on a research project; is 3 that right? 4 A That is correct. 5 Q And on page 8 it looks like he's second 6 with you; is that right? 7 A On page what? 8 Q I'm sorry. Paragraph 8. Excuse me. I 9 misspoke. Paragraph 8 of the same page. 10 A Oh, I see. That is correct. 11 Q Did you do other work with him besides 12 those three things that I just mentioned, the 13 article and these two research projects? 14 A I don't recall that I did. 15 Q And Mr. Wansink was pulled from all 16 research at Cornell in 2019, correct? 17 A That is correct. 18 Q Because he falsified data, correct? 19 A I don't know if that's correct. 20 Q Well, why was he pulled from research at 21 Cornell? 22 A Because he was alleged to have -- he was	Page 37 1 Q Were 15 of his studies re-called because 2 the journals could not qualify that his research 3 reports were accurate? 4 A I do recall that, yes. 5 Q And if a newspaper article said that 6 Cornell found he misreported results, that might 7 be accurate in your mind, you just don't remember? 8 A Yes. 9 Q Is it standard to continue to list work 10 with someone whose conduct as an academician has 11 been called into question? 12 A Yes. As long as the study -- the study 13 that we're talking about wasn't called into 14 question. 15 Q So even if their practices are called 16 into question, generally, with 15 different 17 reports, we could assume that all the other 18 studies are okay? 19 MS. KOPPLIN: Objection. Misstates prior 20 testimony. 21 BY MR. MURASKIN: 22 Q You can answer.

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1 A Can you repeat the question? 2 Q Are you saying that someone who has had 3 15 other reports from peer-reviewed articles 4 pulled, we should nonetheless assume that the 5 other reports that they produced are accurate and 6 should be relied on? 7 A What I'm saying is the two studies that 8 I was on, there was no academic misconduct at all 9 involved with. 10 Q Well, so it's three studies, right? 11 It's the article and two others, right? 12 A There's the article. There's -- there's 13 two articles, I believe, that I -- that he is a 14 coauthor with me on, and there are two research 15 grants. 16 Q So what's the second article? 17 A I would have to look. It was in a 18 public health journal, and the lead author was 19 John Cawley. And there's a list of about -- 20 there's a list of, I think, about ten authors, 21 including myself on. And it was on the Guiding -- 22 the efficacy of the Guiding Star Program from Lion	1 The NSF study that Wansink was the second 2 author on, I was minimally involved in that 3 research, and there were a couple of publications 4 that came out of that, and I was not an author on 5 those. Those were from PhD students working with 6 Bill Schultzie, who was the lead person on that, and 7 Brian Wansink. 8 Q So you just don't recall what came out 9 of it. Is that -- 10 A There were a couple of very good econ 11 journal articles that came out of the stigma 12 paper, but I was not part of that study. 13 Q Well, I guess I still want to go back 14 and ask you my original question, which, 15 regardless of the number of articles that you have 16 worked on with him, why should we assume when 17 someone has 15 different articles pulled as 18 unreliable that their other work remains reliable? 19 MS. KOPPLIN: Objection. Misstates prior 20 testimony. 21 BY MR. MURASKIN: 22 Q You can answer.
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1 Brothers Supermarket in promoting healthy eating. 2 And it was part of the NIH grant that Brian was 3 the lead. He was the lead PI on that you -- that 4 you mentioned. 5 Q Sorry. Can you explain -- sorry. Can 6 you spell the name of the lead author just so I 7 can make sure I can find it later. 8 A Yes. It's John, J-O-H-N, Cawley, 9 C-A-W-L -- I think -- E-Y. 10 Q Well, and then -- 11 A It's L-Y or L-E-Y. 12 Q Sorry. I didn't mean to cut you off. 13 What did these research projects that you 14 worked with him on produce if they didn't produce 15 articles? 16 A The NIH -- they actually didn't produce 17 a lot of articles, either of them. The NIH study, 18 that what I just mentioned, the Cawley, et al., 19 article, was probably the main paper that was 20 published. I'm not saying there wasn't another 21 paper published, but I don't recall another paper 22 published out of that.	1 A I would just say the opposite. I mean 2 why -- why would you assume if somebody commits 3 one crime that they are automatically guilty of a 4 bunch of hypothetical crimes in their actions in 5 the past. 6 BY MR. MURASKIN: 7 Q Okay. I'm on the same page. I want to 8 direct you to something else. So I'm looking at 9 entries -- and now these will span pages 44 to 46. 10 Entries 2, 7, 14, 25, and 28 are all grants from 11 the New York State Dairy Promotion Board. 12 Is that accurate? 13 A If that's what it says. I just -- I'm 14 looking at 2 right now. I didn't remember all the 15 numbers. But I -- 16 Q I'm going to ask you if there are any 17 others, so that's part of the reason I want you 18 to look at all of them and make sure I've got 19 them? 20 A Okay. So 2 is a grant from the New York 21 State Dairy Board from October 2008 to September 22 of 2009. Seven is another grant for a three-year

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1 period -- these used to be three-year periods 2 usually -- from the same -- from the New York 3 State Dairy Board. 4 What was the other numbers? 5 Q 14, 25, 28. 6 A Fourteen was also. Twenty-five was also 7 a grant from the New York State Dairy Promotion 8 Board. And 28. Generally speaking, these were 9 three-year grants. Sometimes they were one-year 10 grants if we had a special, like, one-year 11 extension to the existing grant. 12 But this is a grant that I -- that -- that 13 Cornell had with my predecessor going back to 1974 14 when the New York -- when this board became a board. 15 Q Well, do you -- one of the reasons I 16 wanted you to look at all these is I'm trying to 17 make sure I haven't missed anything. Do you 18 recall any other grants you got from the New York 19 State Dairy Promotion Board besides the ones I 20 listed? 21 A I want to go back and look at 2 again, 22 when that was. The grant in number 2 was the last	1 A Yes. 2 Q Which -- which ones? 3 A I received a -- a consulting -- I -- 4 I -- I'm doing everything with these programs now 5 on a consulting basis. In 2022 I did the economic 6 evaluation study which is required every five 7 years for the American Egg Board, I -- in 2023 I'm 8 currently working with the Eggcelerator Lab, which 9 is part of the American Egg Board on three 10 subprojects that are not evaluative but rather 11 looking at some different things for the efficacy 12 of the projects that they sponsor. 13 Other than that I have not done any other 14 work for the American Egg Board that I -- that I 15 recall. 16 Q Any from the California Egg Board? 17 A No. 18 Q How much was the payment in 2022? 19 A I believe it was \$44,000 as a consulting 20 agreement. 21 Q How much in 2023? 22 A For three projects it's 36,000, 12,000
Page 43	Page 45
1 Cornell grant that we received from the board. 2 Within the last ten years I got a \$60,000 grant 3 that I handled on a consulting basis to do a 4 subproject for them. But this was -- number 2 was 5 the most recent grant that I received going 6 through Cornell from that board. 7 Q Can you recall anything else besides the 8 \$60,000 grant in the last ten years? 9 A No. I can't recall. 10 Q And the New York State Dairy Promotion 11 Board gets money from the Dairy Checkoff, correct? 12 A That is correct. Every dairy farmer in 13 the country is assessed 15 cents on every hundred 14 pounds of milk they sell and up to a dime of that 15 goes to fund local or state boards like this, and 16 the other nickel goes to fund Dairy Management, 17 Inc., which is the national program. 18 Q If you look at entry 26 in your research 19 projects, that reflects an entry from the American 20 and California Egg Boards. Are there any other 21 grants you received from the American and 22 California Egg Boards?	1 per project. 2 Q And the egg boards receive money from 3 the Egg Checkoff, correct? 4 A That is correct. 5 Q And I added all these up and I got a 6 figure of about more than \$2 million. It sounds 7 bigger than that \$2 million from the various 8 checkoff programs directly. Does that sound right 9 to you? 10 A From the various checkoffs for Cornell 11 and my consulting grants? 12 Q Yeah. 13 A Frankly, I don't know. I would think it 14 was more than that. 15 Q How much would you think it is? 16 A I estimated I believe, before I started 17 to do this on a consulting basis, that I brought 18 in about \$6 million. Those were the national 19 institute, all those things. I thought it was in 20 the \$6 million range. But I won't -- that's not 21 in concrete. That's just a guess. 22 Q No. That's fine. I think I was just

Page 46 1 looking at your research projects, so that 2 explains the incongruity. I wasn't adding in your 3 other work. 4 Of the various consulting fees and 5 research grants, how much have you personally 6 profited from the checkoffs? 7 A I don't know. 8 Q Can you ballpark it for me? 9 A I would guess over a million in the last 10 20 years or so, 15 years. But again, that's just 11 a guess. I -- I -- I -- I could add it up. I 12 could go through my tax returns and add it up, but 13 I've done a lot of consulting. 14 Q And is it fair to say that checkoffs 15 also funded your research in other ways besides 16 personally going to your income, such as like 17 research assistants and things like that? 18 A Yes, it is. 19 Q Do you have any idea what the value of 20 that is? I guess it's about the remainder of the 21 \$6 million? 22 A It would be in the millions. Yes,	Page 48 1 Q How many years at a million dollars a 2 year? Do you have a sense? 3 A I don't know if it's a million dollars a 4 year either. I'm just guessing, but that -- this 5 goes back to probably the late 1980s. 6 Q And are there other ways in which the 7 checkoff funds Cornell that you are aware of? 8 A No. There are no other ways that the 9 checkoff funds Cornell. 10 Q Have the checkoffs ever paid you to give 11 a speech? 12 A No. 13 Q And besides these consulting grants, 14 have they paid for specific research papers? 15 A Yes, indirectly. I can explain that. 16 So through the -- through the grant that I -- the 17 grants I received from the DMI, which is really a 18 USDA grant by the way, the USDA picked me because 19 it would be a conflict of interest to have -- 20 because I'm the evaluator of DMI. So the USDA 21 picked me, DMI paid me -- paid for the grant. 22 I hired a PhD research associate off that
Page 47 1 absolutely. And 6 million wouldn't be a bad 2 guess. 3 Q Do the checkoffs give money to Cornell 4 in ways other than those listed in your CV? Do 5 they just give like donations to Cornell or other 6 things like that? 7 MS. KOPPLIN: Objection. Calls for 8 speculation. 9 BY MR. MURASKIN: 10 Q You can answer. 11 A Yes and no. They cannot give donations. 12 By law checkoff programs can't -- I don't think by 13 law they can give donations. However, Dairy 14 Management, Inc., has given a lot of money to the 15 department of food science at Cornell for 16 innovation and developing new products, lower fat 17 cheese, things like that. And it is much larger 18 in magnitude than the economic research grants 19 that I've received. It would probably be close to 20 a million a year I would guess. And they fund 21 these centers -- these dairy centers of 22 excellence, and Cornell is one of those.	Page 49 1 grant that was also every couple years. And I did 2 all the analysis myself and I freed the fresh PhD 3 person up to do more academic types of research 4 that -- that we would coauthor. And I thought that 5 was a better -- that was a good division of labor. 6 That was kind of my model, that I would do kind of 7 the applied work because I was quite well trained at 8 it, and the research associate would do the more 9 academic work. 10 Q How many articles did that generate? 11 A A lot. I don't know. Seventy-five I'm 12 guessing. 13 Q Are there other ways in which the 14 checkoff has funded your academic research? 15 A No. 16 Q And there are specific papers that 17 you've produced as part of these consulting 18 grants, correct? 19 A Yes. But much less. Much -- 20 Q Well, you -- I'm sorry. I didn't mean 21 to cut you off. Finish your thought. 22 A Oh, I just -- yes, but far, far less

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1 than -- than -- than the papers that were 2 generated from the Cornell -- the Cornell research 3 grants. 4 Q But one of those is a paper you rely on 5 for this report, right? "The Economic Analysis of 6 the Cattlemen's Beef Promotion Research Board" was 7 a paper paid for by the Beef Checkoff, right? 8 A That is correct. That was -- that 9 was -- the research for that was paid for by the 10 CBB, the Cattlemen's Beef Board, and I -- I -- I 11 produced -- that research produced a report that 12 was delivered both orally and in writing to the 13 Cattlemen's Beef Board. I subsequently asked 14 permission whether I could publish that or submit 15 it to be published in a journal called Applied 16 Economics, and they granted me that permission. 17 Q Has it been published? 18 A Yes. 19 Q Why don't you cite the published 20 version -- oh, I'm sorry. You do. 21 A I think I did. 22 Q Yeah. It's a link. It's just my	1 Agricultural Marketing Service. I apologize. I'm 2 misstating its name. 3 A Yeah. I think if you added up those 4 numbers that you just went through, that would be 5 a pretty good estimate of the total amount that I 6 received on AMS. And that -- by the way, that -- 7 that is what -- that was to do DMI, Dairy 8 Management, Inc., and then later on to do the 9 fluid processor program, the milk program. And 10 both MilkPEP and DMI paid for those, but it was 11 USDA that decided on who would do the study, and 12 they picked me during these periods. 13 Q And when you get these grants do they 14 pay for your personal time to some extent? 15 MS. KOPPLIN: Objection. Confusing. 16 THE WITNESS: Yes, they do. They -- they 17 paid into something called salary recovery at 18 Cornell, which basically means I can bill out my 19 salary for a certain amount of time, and that money 20 goes into an account that I control, that I can use 21 on any sort of research thing. Not -- but I cannot 22 use it for my own salary. So I can use it to hire
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1 confusion about the link. My apologies. 2 I'm now looking at the same set of pages, 3 44 to 45, but I'm now interested in the grants 4 you've gotten from the Agricultural Marketing 5 Service. So the ones that I see are 5, 12, 13, and 6 19. 7 A Okay. Five, twelve, thirteen -- 8 Q Yeah. And 19. 9 A And 19. Okay. 10 Q Are there any that I missed from the 11 Agricultural Marketing Research Service? It 12 sounds like maybe, because you got other grants to 13 pay for the promotion program, right? 14 MS. KOPPLIN: Objection. Compound. 15 BY MR. MURASKIN: 16 Q Did you get other grants from the 17 Agricultural Marketing Research Service besides 5, 18 12, 13, and 19? 19 A I don't recall. 20 Q Do you have any sense of how much money 21 you've received in grant funding from the 22 Agricultural Marketing Research Service?	1 students, I could use it to hire -- I could travel 2 with it, anything to support my research. 3 BY MR. MURASKIN: 4 Q Do you have an idea how much of these 5 AMS grants went into that account? 6 A There was a limit on the amount of time. 7 I just don't recall how much it was. I think the 8 limit was maybe something like six weeks a year or 9 something, but I really don't recall. It was a -- 10 it -- it -- it was not a trivial amount. I have a 11 -- I still have salary recovery today that much of 12 that came from that grant. 13 Q And AMS is the entity of the USDA that 14 oversees the checkoffs, right? 15 A That is correct. 16 Q Does AMS fund your research other ways 17 besides these grants? 18 A No. 19 Q I'm now looking at pages 47 and 48 of 20 your report, which was the courses taught. 21 A Okay. 22 Q Do you teach any courses on marketing?

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1 A I teach a course -- a graduate course 2 called Agricultural Markets. And what it -- what 3 it -- what it does is it talks about how 4 agricultural markets in more of the aggregate 5 sense works. How -- what's the price formulation 6 process, what is the structure of the markets, and 7 that sort of thing. So in agricultural economics 8 that's sometimes called agricultural marketing, 9 but it's very different from like a business 10 school class in marketing. It's more of an 11 economics version of markets. 12 Q Makes sense. And your training is as an 13 economist, right? 14 A That is correct. 15 Q And would you say your expertise is in 16 economics? 17 A That's correct. 18 Q Do you have a degree in consumer 19 marketing or any other form of business school 20 style marketing that you just described? 21 A No, I don't. 22 Q And Cornell business school, in fact,	1 I'm not going to try to pronounce this person's 2 name because I will butcher it, but the title of 3 the report is "Explaining the differences between 4 two previous meat generic advertising studies." 5 Do you see that? 6 A Yes, I do. 7 Q And that was delivered at a conference 8 in 1999, correct? 9 A That is correct. 10 Q How was it delivered? Was it a paper? 11 Was it a talk? Was there a PowerPoint? 12 A It was both a paper and a talk. It 13 was -- and I was at that conference. Indeed, I 14 may have even organized the conference. I 15 organized a lot of these NEC63 conferences. And I 16 recall seeing the paper, even though it was a long 17 time ago. I vaguely recall kind of the substance 18 of the paper. The paper was later published in a 19 proceedings. I cannot find that. I used to have 20 it, but when -- when we renovated our building and 21 moved offices, I threw a lot of that stuff out. 22 So I no longer have a copy of that paper.
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1 has a marketing and management communication 2 faculty, and you are not part of it, right? 3 A That is correct. 4 Q So have you ever taught a course on 5 marketing that would fall within the parameters of 6 that sense of marketing, rather than the 7 agricultural markets you described? 8 A No, I have not. 9 Q Have you ever worked professionally as a 10 marketer for a business? 11 A No, I have not. 12 Q So your expertise in analyzing marketing 13 is as an economist, not as a marketer; is that 14 fair? 15 A Yes. That's fair. 16 Q Great. Moving to page 49 and 50. So 17 this is what you've marked as Exhibit 2, materials 18 reviewed and relied upon. Is this document 19 complete of all the materials you reviewed and 20 relied upon? 21 A Yes, it is. 22 Q I'd like you to look at the third entry.	1 Q So you didn't actually review a copy of 2 this paper to prepare this report? 3 A No. I acted on my recall from seeing 4 the paper. 5 Q Do you have a photographic memory? 6 A No, I don't. 7 Q Do you have a phonographic memory? 8 MS. KOPPLIN: Objection. Confusing. 9 BY MR. MURASKIN: 10 Q I don't think it's confusing. You can 11 answer the question. 12 A I don't know what that means. 13 Q Phonographic means you can recall speech 14 perfectly, such that if you heard a speech you 15 could recall it. Do you have such a memory? 16 A No, I do not. 17 Q So you can't recite for me this report 18 right now? 19 A No, I cannot. However, I did, as part 20 of this study, review the rebuttal paper by Ron 21 Ward. And in the rebuttal paper by Ron Ward, he 22 does talk about the main conclusions of the

Page 58 1 Coulibaly and Brorsen paper. So that helped my 2 recall a bit. 3 Q But is it typical in your field to rely 4 on citations you can't find the actual citation 5 of? 6 MS. KOPPLIN: Objection. Misstates prior 7 testimony. 8 THE WITNESS: I don't think that's what I 9 said. I actually had a copy of the paper at one 10 time. I just don't have a copy anymore. But I know 11 it exists. 12 BY MR. MURASKIN: 13 Q Well, but that's not what I'm asking. 14 If you submitted a journal article and cited a 15 report that you hadn't actually looked at in 16 preparation for preparing the journal article, 17 would that be accepted in your field? 18 A Well, I don't think that's what I said. 19 You said I didn't actually look at it. I did look 20 at it at one time. I just don't have a copy of 21 it. 22 Q Well, but you can't tell me --	Page 60 1 have this article, correct? 2 MS. KOPPLIN: Objection. Argumentative. 3 Asked and answered. 4 BY MR. MURASKIN: 5 Q You can answer that. 6 A I provided you the citation for the 7 article. That article exists. Maybe you couldn't 8 find it. I -- the citation is something I know 9 for a fact exists. 10 Q Let me ask the question this way: If 11 you were to submit a journal article and no one 12 could find the article that you are citing in what 13 you've submitted, would you be allowed to cite 14 that article in what you are seeking to publish? 15 A I can't speculate on something like that 16 because that's -- that's a -- totally a 17 hypothetical situation. 18 Q I mean you're a reviewer for many 19 journals. You can't possibly tell me why -- how a 20 journal would act if they couldn't find a article? 21 MS. KOPPLIN: Objection. Asked and 22 answered.
Page 59 1 A I read the paper, I saw the 2 presentation, and I think it would be totally 3 acceptable for me to cite that. 4 Q You think that a journal in economics 5 would publish something based on your recall of an 6 article 24 years later? 7 MS. KOPPLIN: Objection. Speculation. 8 Misstates prior testimony. 9 THE WITNESS: Should I answer that? 10 BY MR. MURASKIN: 11 Q Yeah. You should answer. 12 A Yes, I do. 13 Q If a reviewer in a journal asked for a 14 cite and you couldn't provide it, would they allow 15 you to continue to cite that article in the thing 16 you are seeking to publish? 17 A Not if I couldn't provide the citation. 18 Q And you can't provide me this article, 19 correct? 20 A I can provide you citation. 21 Q Well, no, you can't, because you can't 22 tell me where it is. Right? You don't actually	Page 61 1 THE WITNESS: I -- I object to the 2 question. I don't think it's -- 3 BY MR. MURASKIN: 4 Q You don't get to object to the question. 5 A Okay. Well, I can't object to the 6 question, but that is not what I was saying. I do 7 know that the paper exists. I had the proper 8 citation for it. I read the article 24 years ago. 9 I saw the paper being presented, and I read the 10 rebuttal of the paper recently by Ron Ward. I 11 have no problem with citing that at all. 12 Q Well, but I'm not asking if you have a 13 problem citing it. I'm asking you whether a 14 journal would publish an article whose citations 15 rely upon something no one can find. 16 MS. KOPPLIN: Objection. Calls for 17 speculation. 18 THE WITNESS: Yes, I agree. 19 BY MR. MURASKIN: 20 Q Sorry. You said yes. I just missed the 21 second word. 22 A Yes, I agree.

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1 Q Agree about what? 2 A To your question. 3 Q You agree that, yes, a journal would 4 publish such an article? 5 A Yes. 6 Q Okay. Way down page 49 you cite a book 7 that you authored, The Economics of Commodity 8 Promotion Programs: Lessons from California. 9 A Yes. 10 Q You relied on this -- the entirety of 11 this book in preparing your report? 12 MS. KOPPLIN: Objection. Misstates prior 13 testimony. 14 THE WITNESS: Can you be more specific 15 what you mean by that question? 16 BY MR. MURASKIN: 17 Q You are citing the book. There's not 18 pin cite. And I'm asking does that mean relied on 19 the entirety of the book. 20 A Yes. 21 Q Name me all the chapters in the book. 22 A I can't do that.	1 contributed into -- to pay for these programs. And 2 from an optimality standpoint, they should greatly 3 increase their -- farmers should greatly increase 4 their investments uniform across all the studies 5 that were put into that book. 6 And then the third main conclusion is that 7 even though the rate of return to these programs is 8 very, very high, these programs by themselves are 9 not saviors for the industry; that is, they produce 10 a high relative rate of return on investment, but 11 they are so under invested in that the amount of -- 12 the amount of profit -- incremental profits that 13 they produce is very trivial from a total revenue of 14 the industry perspective. And so those are the 15 three main conclusions of every chapter in that 16 book. 17 Q Where would I look to find -- what pages 18 would I look to find the first conclusion? 19 A I have no idea. 20 Q What pages would I look to find the 21 second conclusion? 22 A I have no idea.
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1 Q Did you reread the entire book to 2 prepare your report? 3 A No, I did not. I was the editor of the 4 book, so I based -- based on -- I -- I know all of 5 the conclusions from all of the chapters. But I 6 cannot -- I don't have a photographic memory, so I 7 can't repeat what all the chapters are. 8 Q Well, you know all the conclusions. So 9 tell me all the conclusions from all the chapters. 10 A All the conclusions show that -- that 11 commodity checkoff programs for the various 12 California commodities, most of them are fruits 13 and vegetables and dairy as well, have returned a 14 higher rate of benefits to their stakeholders, to 15 their payors of the programs, than they cost in a 16 very significant way. And that's the main 17 conclusion. 18 The second main conclusion of that book is 19 that even though these programs are very beneficial, 20 they are -- they are very under -- under invested in 21 by the stakeholders. Approximately a half a percent 22 of the price or less that these farmers receive is	1 Q What pages would I look to find the 2 third conclusion? 3 A I have no idea. 4 Q If you submitted a report to a journal 5 that listed the entirety of a book, would they ask 6 you to provide specific segments of the book that 7 you relied on so they could check your citations? 8 MS. KOPPLIN: Objection. Calls for 9 speculation. 10 THE WITNESS: Can you rephrase the 11 question? I don't understand it. 12 BY MR. MURASKIN: 13 Q If you submitted a journal article to a 14 journal for publication and you cited the entirety 15 of a book, would they come back to you and ask you 16 for what sections supported the statement so they 17 could check your citation? 18 MS. KOPPLIN: Objection. Calls for 19 speculation. 20 THE WITNESS: I have no idea. 21 BY MR. MURASKIN: 22 Q How do you have no idea? You're a

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1 reviewer on many journals. 2 MS. KOPPLIN: Objection. Argumentative. 3 THE WITNESS: Your question is very vague. 4 Can you be more specific? 5 BY MR. MURASKIN: 6 Q No. I'm trying to understand. Would a 7 journal ask you for more specifics when you cite a 8 entire book for a statement? Would they ask you 9 where you could find the underlying support in 10 that book? 11 MS. KOPPLIN: Objection. Calls for 12 speculation. 13 THE WITNESS: I have no idea. 14 BY MR. MURASKIN: 15 Q That's interesting. Okay. 16 On page 50 you cite the rog responses. 17 Which rog responses did you rely on for this case? 18 A I was sent a document about four months 19 ago I think it was, and I perused it at the time 20 from the Department of Justice, and I think that 21 that's what this is referring to. And I vaguely 22 recall that it had the complaints from five --	1 perused it. I don't really talk about -- it's 2 really more background, and I don't -- I don't 3 think I talk about that at all, their 4 complaints -- their complaint in my rebuttal 5 because my rebuttal really focuses on Dr. 6 Dimofte's report. 7 Q Okay. And the next you list is the 8 deposition of Claudiu Dimofte. 9 A Yes. 10 Q Did you review the entirety of the 11 deposition? 12 A I read the whole thing, yes. 13 Q And are you relying on any statements 14 from the deposition in your report? 15 A No, I'm not. 16 MR. MURASKIN: Okay. We've been going 17 about a little over an hour. I'm going to turn to 18 the start of your report. Maybe it makes sense to 19 take a five- or ten-minute break. Do you have a 20 preference about the amount of time? 21 THE WITNESS: The shorter the better, I 22 guess.
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1 maybe five ranchers, and each of the complaints 2 were very, very similar. And I looked at that but 3 did not at all include it in my rebuttal to 4 Dr. Dimofte's study because I was asked to focus 5 on that study. 6 Q I'll just ask you again then. Which 7 responses did you rely on for the purposes of this 8 report? 9 A I don't know. You mean, in this -- I -- 10 I -- I -- it -- relied on for my report? 11 Q Yeah. This is -- 12 A I didn't rely on anything from that in 13 my report. 14 Q And do you recall which ones you 15 reviewed for background information? 16 A Yes. Isn't that what's listed here? I 17 read -- I got one Word file or PDF that had this 18 in, and I don't recall the title of it. I guess 19 this is what it was. And as I mentioned, when I 20 read it there were five or so individual 21 farmers -- ranchers that were represented in it. 22 And each of the -- I read -- I mean I just kind of	1 MR. MURASKIN: I'm fine with five. 2 Rebecca, are you okay with five or do you want more? 3 MS. KOPPLIN: That works for me. 4 MR. MURASKIN: So let's come back in five 5 minutes. So let's say 10:30 Eastern time. 6 VIDEOGRAPHER: The time is 10:24 a.m. 7 We're going off the record. 8 (Whereupon, a brief recess was taken.) 9 VIDEOGRAPHER: The time is 10:30 a.m. 10 We're back on the record. Please proceed, counsel. 11 BY MR. MURASKIN: 12 Q Great. So I'm now going to walk you 13 through the substance of your report. So starting 14 on page 2 which is the first substantive report, 15 let me know when you're there, Dr. Kaiser. 16 A Okay. 17 Q I'm looking at page 2, paragraph 3. Is 18 that a complete list of all the tasks you were 19 asked to perform? 20 A That is a complete list, yes. 21 Q Were there any tasks you were asked to 22 perform that you declined to undertake?

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1 A No. 2 Q Were there any tasks you were asked to 3 perform that defendants asked you not to put in 4 your report? 5 A No. 6 Q Were there any results that they asked 7 you not to put in your report? 8 MS. KOPPLIN: Objection. Calls for 9 privileged information. 10 BY MR. MURASKIN: 11 Q Are you going to take that objection? 12 A Yes. 13 MR. MURASKIN: Well, actually, Rebecca -- 14 sorry -- just for -- to be clear, you are 15 instructing him not to answer. 16 MS. KOPPLIN: I would instruct him not to 17 answer, yes. 18 MR. MURASKIN: And Dr. Kaiser, you are not 19 answering based on her instruction? 20 THE WITNESS: That is correct. 21 BY MR. MURASKIN: 22 Q Okay. Going to paragraph 8.	1 A I do other things as well, but, you 2 know, I do, quite frankly, much of this as a 3 consultant now. 4 Q Explain to me why that's relevant to 5 your answer. What is doing it as a consultant 6 mean for why you continue to do it? 7 A Because I -- most of the consulting work 8 that I do, I don't publish. I do it basically to 9 supplement my salary. 10 Q Gotcha. So turning to the next page, 11 and it's paragraph 15, where -- I'm going to 12 characterize it and you can tell me if this is 13 right. You are trying to explain Dr. Dimofte's 14 study in that he conducted a study to determine 15 whether checkoff advertising harms R-CALF'S 16 members. 17 Is that a fair characterization of 18 paragraph 15? 19 A That is. That's a -- I believe a quote 20 from his report. 21 Q Do you -- are you aware that R-CALF's 22 members solely include domestic cattle producers?
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1 A Yes. 2 Q Also, on page 2. It says a large part 3 of your research for 38 years has been the 4 checkoff programs. I'm just curious why. 5 A That's a good question. The truth of 6 the matter is that there were not a lot of 7 agricultural economists that were working in this 8 area, and it really fit my level -- my expertise 9 very well. And there were a lot of opportunities 10 to fund my research in that area. 11 Q What do you mean it fit your expertise 12 well? 13 A I was trained as an agricultural 14 economist, and I had -- a big part of that was on 15 -- looking at agricultural policy and agricultural 16 marketing or markets. And -- and this was -- this 17 fit the bill because there's both a lot of policy 18 and a lot of markets -- dimensions to these 19 programs. 20 Q Well, as someone who's never done 21 something for 38 years, I guess I'm also curious 22 why do you continue to do it.	1 A Can you say that -- I didn't quite hear 2 that. 3 Q Are you aware that R-CALF's members 4 solely include domestic cattle producers? 5 A I assume that by -- I don't -- I didn't 6 know that for a fact, but I -- but I -- but I 7 assumed that. 8 Q So when you assessed his report you did 9 it with the understanding that he was attempting 10 to determine the impact of the checkoff on that 11 subset of producers; is that fair? 12 A That's fair. 13 Q Is it a generally accepted principle in 14 economics that increased competition drives down 15 prices? 16 A Yes. Compared to an imperfectly 17 competitive market, that's true, yes. 18 Q Explain to me what you mean by as 19 compared to a perfectly -- I'm not -- and I get 20 your words right -- as compared to a perfectly 21 competitive market, if that's what you said; or if 22 that's not what you said, please correct it.

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1 MS. KOPPLIN: Objection. Compound. 2 THE WITNESS: Okay. I'll go ahead and 3 answer it. So in economics this is all called 4 market structure. It's also a subdiscipline called 5 industrial organization. And there's generally four 6 types of market structure that are talked about: 7 Perfect competition, which does result in the 8 highest quantity being sold in the market and the 9 lowest prices on the one hand; and then monopoly at 10 the other extreme that results in the highest price 11 and the lowest on the quantity in the market. 12 And in between you have something called 13 monopolistically competitive, and then you have 14 oligopolistic markets. So I agree with your -- 15 what you asked me; that is, that greater 16 competition usually leads to lower prices in the 17 market. 18 BY MR. MURASKIN: 19 Q Gotcha. Is it also a generally accepted 20 principle in economics that homogenization of 21 goods across competitors drives down prices? 22 A Yes. Can I just expand on that?	1 are successful at differentiating their product; 2 and therefore they can charge a higher price than 3 other firms in the market, which, by definition 4 then, is not a perfectly competitive market. 5 Q Gotcha. But it is accepted that if you 6 can differentiate, you can charge a higher price. 7 That's correct? 8 A Yes. 9 Q Is there anywhere that you are aware of 10 in the literature that says consumers naturally 11 regard all beef as equivalent? 12 A I'm not aware of that. I mean I'm not 13 aware of the answer to that question. I don't -- 14 I have no idea how consumers perceive -- in the 15 market perceive beef. 16 Q But that also means you are not aware of 17 any study that suggests that consumers naturally 18 regard beef as an interchangeable good; is that 19 fair? 20 A As a what? 21 Q Interchangeable good. 22 A Can you re- -- I don't quite understand
Page 75	Page 77
1 Q Of course. 2 A That is one of the characteristics of a 3 perfectly competitive market. Producers producing 4 a homogenous commodity or a product that cannot be 5 differentiated. 6 Q Sorry. When you say that's one of the 7 characteristics of the market, it's not a -- I 8 just want to make sure I'm understanding right. 9 You're not saying that homogeneity is a 10 characteristic of a perfectly competitive market. 11 Rather you're saying in a perfectly competitive 12 market, if there's homogeneity, that drives down 13 prices. 14 Is that correct? 15 A No. I meant what I said. That is, 16 homogeneity is a characteristic of a perfectly 17 competitive market. 18 Q Why is that? 19 A Because if -- if -- if there is ability 20 to differentiate a product, if firms can 21 differentiate their project, then that will lead 22 to some market power on the part of the firms that	1 your question. 2 Q I'm just trying to confirm. You are not 3 aware of any study that says consumers naturally 4 regard beef as interchangeable among different 5 beef producers? 6 A That's correct. 7 Q And in fact, you're aware that there are 8 subsets of a beef market which try to distinguish 9 different beef products, correct? 10 A Correct. 11 Q Can you give some examples of those? 12 A Sure. Kobe beef, black Angus beef. 13 There's another colored cow beef, I forgot what 14 the name of it is. And those would be examples. 15 Q Great. And do you take issue with any 16 of the studies cited in paragraph 15 of 17 Dr. Dimofte's report that shows consumers will pay 18 for more domestic beef? 19 I can show you his report if you like. 20 A Yes. 21 MR. MURASKIN: So it'll take a second. 22 I'm happy to introduce it.

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1 (KAISER Exhibit Number 3 was marked for 2 identification.) 3 BY MR. MURASKIN: 4 Q So now you should have before you what's 5 been marked as Exhibit 3, which is Dr. Dimofte's 6 report in this case. I'm talking about 7 paragraph 15. 8 A Okay. It's still -- it's not here yet. 9 It's still sending. 10 Q Sure. I'll wait. 11 A There we go. Paragraph 15. Let me read 12 it. You are talking about the paragraph that 13 starts "the plaintiff also alleges"? 14 Q Yes. And it mentions within it several 15 studies -- Mennecke, Gao and Schroeder, Lim -- 16 A Okay. 17 Q -- Loureiro and Umberger. 18 A Okay. I read it. 19 Q I'm asking are you disagreeing with any 20 of the findings of those studies? 21 A I am not because I'm not -- I haven't 22 read the studies and I'm not really aware of it.	1 be standard in marketing, but I'm not aware of 2 that literature. But in agricultural economics 3 and economics that use experimental economics, 4 regression analysis or a form of regression 5 analysis is the preferred metric. 6 Q So you wouldn't know if a journal 7 article said that ANOVAs are "the overwhelming 8 majority of behavioral research tool, is the tool 9 -- sorry. Let me rephrase that question. 10 If I told you that a journal article 11 called ANOVAs the tool used in the overwhelming 12 majority of behavioral research, you wouldn't be 13 able to disagree with that; is that right? 14 A That's correct. 15 Q Okay. Do you know when ANOVAs are used? 16 MS. KOPPLIN: Objection. Confusing. 17 BY MR. MURASKIN: 18 Q You can answer. 19 A I -- in the economics -- in the 20 agricultural economics literature ANOVA is almost 21 never used. So I would assume that in the softer 22 sciences, such as marketing and psychology, where
Page 79	Page 81
1 But I'm not disagreeing with the findings, if 2 that's what the findings state. 3 Q Okay. That's good. So I'm actually 4 going to ask you now to turn back to your report. 5 A Okay. That's Exhibit 1, right? 6 Q That's Exhibit 1, yes. 7 A Okay. There. 8 Q And I need to do the same. So give me 9 one second. And now I'm on page 4, paragraph 18. 10 A Okay. 11 Q In that paragraph you characterized 12 Dr. Dimofte's use of a one-way ANOVA. Is that a 13 fair characterization of that paragraph? 14 A That's correct. 15 Q And ANOVA stands for analysis of 16 variance, right? 17 A That's correct. 18 Q Do you know if ANOVA is the typical 19 statistical measurement for a categorical 20 experimental design and behavioral research? 21 A It isn't in economic research. I'm not 22 an expert on marketing studies research. It may	1 the professions are not as well trained in 2 statistics as economists tend to be, that ANOVA 3 would be used. 4 Q Are you aware that the law regards 5 economics as a soft science? 6 MS. KOPPLIN: Objection. Foundation. 7 BY MR. MURASKIN: 8 Q You can answer. 9 A Are you talking about the profession? 10 Q Yeah. Are you aware that the law 11 regards economics as a soft science? 12 MS. KOPPLIN: Objection. Foundation. 13 THE WITNESS: I'm aware that economics is 14 the queen of the social sciences. 15 BY MR. MURASKIN: 16 Q Okay. Is it fair to characterize ANOVA 17 as similar to a regression? 18 A Yes. If you only did a single variable, 19 you can exactly replicate an ANOVA with a 20 regression. So if I regressed, for example, 21 willingness to pay on the controls, whether you 22 are in the ads group -- I mean the control group

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1 or the altered ad groups or the unaltered ad 2 groups, you have essentially replicated ANOVA if 3 you didn't include other covariates that may 4 affect the outcome variable. 5 Q Well, and there's a version of an ANOVA 6 called an ANCOVA that does include covariates, 7 right? 8 A Not that I'm aware of. 9 Q If I told you such a thing existed and 10 is regularly used, would you be surprised to learn 11 that? 12 A No. I'm just not aware of -- I don't do 13 analysis of variance models. 14 Q Okay. On page 5, same paragraph, but 15 you now have a -- they're subsectioned off, and 16 I'm looking specifically at subsection G. 17 A Uh-huh. 18 Q So you say there that Dr. Dimofte found 19 that those who viewed the altered ad had 20 statistically significant -- significant higher 21 response that the ad would impact their 22 purchasing. And then you go on to say that this	1 Q Are you aware that Dr. Dimofte does? 2 A No, I wasn't. I thought he was a -- had 3 a degree in marketing. 4 Q So what I understand you to be saying 5 here is that the only way to know for certain 6 whether an ad affects someone in terms of their 7 purchases is to actually watch them go and then 8 purchase a product in the store? 9 A No. I'm not saying that, but you need 10 to observe their behavior. You can observe it in 11 a laboratory. You can observe it in the field. 12 There are other ways to observe it. But what I'm 13 saying is -- and by the way, I am a behavioral 14 economist. I do know a little bit about consumer 15 behavior. 16 Q Well, a laboratory is a hypothetical 17 setting, too, right? 18 A It is but it's much more close to the 19 real world when you are using auctions where 20 people are actually purchasing goods in -- goods 21 in the -- in the laboratory. 22 Q When is the last time you engaged in an
Page 83	Page 85
1 quote does not speak to whether the altered ad 2 group would actually purchase the product. 3 What did this mean? 4 A Can I read the -- 5 Q Yes. Of course. 6 A I think this is one of the biggest flaws 7 in his study, that he asked subjects how 8 advertising affected them, when advertising -- the 9 impacts of advertising are really at a very 10 subconscious subliminal way it affects humans. 11 And there's a reason why we want to observe the 12 actual behavior of how advertising affects rather 13 than ask directly how does the advertising direct 14 you. 15 It's a -- not only a hypothetical question 16 that people really can't answer accurately, but 17 rather needs to be observed either in the laboratory 18 or in the real world. So people see an ad, for 19 example, and we look at how their actual marketplace 20 changes. 21 Q Do you have a degree in psychology? 22 A No, I don't.	1 auction in your supermarket? 2 A In the supermarket? 3 Q When did you bid on carrots via auction 4 in your supermarket? 5 A Never. 6 Q Any other products you bid on when you 7 went to the supermarket via auction? 8 A No. That's not the way a study would be 9 done in a supermarket. A supermarket you might 10 give -- have two different test markets where you 11 might alter the prices and observe the actual 12 purchases. 13 Q Right. So that's looking at things in 14 the real world side, correct? 15 A Say that one more time. 16 Q That's looking at things in actual 17 purchase settings rather than in a laboratory, 18 correct? 19 A That is correct. 20 Q So a laboratory doesn't do that. It 21 creates a hypothetical world, correct? 22 MS. KOPPLIN: Objection. Misstates prior

Page 86 1 testimony. 2 THE WITNESS: It -- a laboratory -- a good 3 laboratory experiment tries to emulate the real 4 world, and -- and that's how you can conduct 5 experimental auctions. 6 BY MR. MURASKIN: 7 Q Do you know if marketing journals 8 require the research submitted to them to conduct 9 real world tests? 10 A I have no idea. 11 Q Do you know if marketing journals 12 require the research submitted them -- to them to 13 perform laboratory tests? 14 A I don't know. 15 Q And you would agree, I assume, with the 16 statement that companies conduct marketing testing 17 via surveys, right? 18 A Yes. 19 Q And therefore that suggests that 20 there's -- the market views those surveys as 21 valuable, correct? 22 A What do you mean by the market views --	Page 88 1 value that domestic beef more highly? 2 A It's possible. 3 Q Well, it seems like that would actually 4 not be a surprising result according to you. Is 5 that right? 6 A It depends. I mean, you could print 7 something like that on a label, and 95 percent of 8 the consumers wouldn't even read it when they are 9 at the grocery store looking at products. And if 10 they don't read it, then it will have zero impact. 11 Q Well, but you are saying, based on the 12 text produced in the ad Dr. Dimofte tested, that 13 it's not surprising people reacted; but now you're 14 saying that text may not matter. So reconcile 15 those two things for me. 16 A Well, I mean I'm saying it's possible 17 either way, that it would matter or it wouldn't 18 matter. It's going to matter to some people maybe 19 that read that, but if I read something that -- 20 that portrays the product in a very positive light 21 and then I'm asked a hypothetical about, you know, 22 do you like that or not, I mean, I don't see what
Page 87 1 you mean the firms? 2 Q I mean that when someone spends money on 3 a survey, that suggests that they think the survey 4 is valuable, right? 5 A Presumably, yes. 6 Q Subparagraph H. Do you want to take a 7 second to read it so that I can then ask you some 8 questions? 9 A Yes. Please. Okay. 10 Q So here you say it's not surprising that 11 the altered ad places statistically significant 12 and higher value on the origin of beef than the 13 other groups. 14 Why is that not surprising? 15 A Because they were told that beef that is 16 produced domestically uses high quality feed, 17 advanced standards of care, and limited carbon 18 footprint. All of those suggest a very positive 19 message to the consumer. 20 Q So is it fair to say that if there are 21 differentiating factors for domestic beef that are 22 positive about it, that would lead consumers to	Page 89 1 you kind of get out of that -- that question. 2 What does that finding tell us? 3 Q Do you disagree that consumers prefer 4 domestic beef? 5 A I don't disagree or agree. I think 6 consumers sometimes prefer imported products to 7 domestic products and sometimes prefer local 8 products to national or international products. I 9 guess it depends on the consumer and it depends 10 upon the product. 11 Q Well, the studies you looked at in 12 paragraph 15 of Dr. Dimofte's report all found 13 that consumers will pay a premium for domestic 14 beef. And you -- are you now saying that those 15 studies are wrong? 16 A No. I'm saying that it varies from 17 product to product. I'm not -- I haven't read 18 those studies. It doesn't surprise me. Those 19 findings don't surprise me. But I would have to 20 look more carefully at, you know, who was it that 21 paid the premium. You know, I'd have to look at 22 the studies for more detail on it.

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1 But what I am saying is that there is 2 no -- there is no reason why you should be surprised 3 by a finding that you get the reverse. Imported 4 cheeses people are willing to pay a premium for. 5 Imported exotic beef maybe people would be willing 6 to pay a premium over domestic -- domestically 7 produced beef. I'm just saying that I don't know 8 if -- if -- if you -- if you market your product as 9 local or state beef that that necessarily is going 10 to lead to a premium by -- by everybody. 11 Q Well, am I understanding you correctly 12 then that consumers -- you're saying consumers 13 have preferences, and they act on those 14 preferences; is that right? 15 A Yes. Well, they have preferences. They 16 act on the preferences, but it's not a one to one. 17 People might say I prefer this and then their 18 actions don't actually result in that revealed 19 preference. 20 Q And if a product can appeal to those 21 preferences, that's a way to differentiate it 22 within the market, correct?	1 premium for that. But I could also see a lot of 2 other consumers not paying -- buying the less 3 expensive beef and not really caring. 4 Q Yeah. I guess I'm asking at a higher 5 level, but I appreciate your answer, and thank you 6 for that. I'm just saying as a general rule of 7 economics. If a consumer has a preference and a 8 product is able to appeal to that preference, a 9 consumer is more likely to purchase that product 10 than an equivalent product without those 11 properties. 12 A Correct. 13 Q In a world of limited supply, that means 14 that those products that are differentiated can 15 charge more, right? 16 A Correct. 17 Q On page -- paragraph K, do you want to 18 take time to review that? 19 A Yeah. 20 Q This is 18(k) just for the record being 21 clear. 22 A Okay.
Page 91	Page 93
1 A Yes. 2 Q And that brings it out of the 3 homogenized product to something distinct, 4 correct? 5 A Yes. 6 Q And that means that if your product has 7 those preferred characteristics, are consumers 8 more likely to purchase that than a product that 9 does not have those characterizations, but is 10 otherwise equivalent; is that right? 11 A Well, I mean, the way you phrased the 12 question, I would say yes; but if you want to 13 compare this to imported beef, I don't see why 14 most consumers would actually pay more for 15 basically the same product. 16 First of all, when you go to a grocery 17 store, you are not usually -- the beef that's 18 imported doesn't say imported beef. It's probably 19 mixed with domestic beef to begin with it, so it 20 would be difficult to label. I guess if you had 21 local beef -- you know, this beef was produced 22 within 25 miles, I could see some consumers paying a	1 Q So here you discuss Dr. Dimofte's 2 findings on willingness to pay across attributes, 3 and you say: This does not mean the generic 4 advertising actually causes consumers to pay a 5 lower price in the marketplace. 6 What does that statement mean? 7 A It simply means that that result doesn't 8 mean that generic advertising causes the price to 9 be lower. 10 Q And how would you test that? 11 A Very easy. The eight studies that I've 12 quoted have -- have looked exactly at that 13 question and found that generic advertising raises 14 the price. 15 Q Yeah. We'll get there. I guess I'm 16 still curious how you would test that in a 17 marketing setup. 18 A Very easy. I could conduct -- I did 19 that in the Messer -- the Messer article. We 20 exposed subjects to different media treatments, 21 and one of them was generic advertising of beef. 22 And then we had them bid on a hamburger and -- of

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1 which they -- some of them actually bought and 2 some of them actually didn't buy. And we found 3 that compared to the control group, the 4 willingness to pay was higher for the generic beef 5 ads group by like 50 cents or something like that 6 a hamburger. That's how you test it. And in 7 fact, that's what we did. 8 Q I'd like you to go to paragraph 20. 9 A Uh-huh. 10 Q Do you want to take a second to read 11 that before I ask a question? 12 A No. I'm familiar with this one. 13 Q Okay. So here you're criticizing Dr. 14 Dimofte's willingness-to-pay measurement because 15 of the imprecise -- what you call imprecise and 16 broad ranges. 17 Is that a fair characterization? 18 A That is. 19 Q And you say the study should have asked 20 an open-ended dollar amount question. Right? 21 A That is correct. And I further say that 22 it's very easy to do with a -- with a sliding	1 Q Right. That's -- I think we're saying 2 the same thing. So a very specific dollar amount. 3 I can't give you a precise dollar amount of their 4 willingness to pay, correct? 5 A Yeah. 6 Q But then you say that 25-cent increments 7 would be better; is that right? 8 A Would be preferable to this, what he 9 used. 10 Q Well, but, I guess, why-25 cent 11 increments? What tells you that consumers can 12 choose between 25-cent increments? 13 A The only reason I used 25 cents is it's 14 a narrower range than what he used. I'm not 15 saying I would use 25 cents. I would use an 16 open-ended, like I just said. 17 Q Right. But that's -- you just also told 18 me that's not required, so I'm trying to 19 understand your view of what is required. 20 A Well, if it was a -- if he had much more 21 narrow ranges than \$2 ranges on this, I would say 22 any -- any -- any narrower range would be better
Page 95	Page 97
1 lever in Qualtrics that you can range it from zero 2 to \$20, let's say, and just ask them to put their 3 finger on the mouse and slide it to where 4 they're -- what they think is their willingness to 5 pay for a 1 pound steak. 6 Q Is that sort of question with a sliding 7 lever or what you call in your report an 8 open-ended dollar amount question, is that sort of 9 question required for research in the field? 10 A No. 11 Q And so that means the research is 12 published without using that sort of question, 13 correct? 14 A I presume so. If I was a reviewer on 15 it, if this was an article to be submitted, I 16 would -- I would object to these broad ranges, 17 though. 18 Q Well, and I'm a little bit confused 19 about that because you say a consumer can't nail 20 down their willingness to pay to a specific dollar 21 amount. Is that a fair statement of your -- 22 A No. The specific pay amount.	1 than what he used. And then I give an example. 2 Suppose I bid \$5 versus 6.99. That's a \$2 3 difference, and yet I'm going to be quoted as 4 exactly the same willingness to pay. That is very 5 imprecise. 6 Q Well, is there anything in Dr. Dimofte's 7 study that says that the imprecision you just 8 described would vary across treatments? 9 A I don't quite understand your -- so 10 rephrase your question, please. 11 Q Sure. Dr. Dimofte used this exact same 12 question across a variety of different conditions, 13 correct? 14 A Correct. 15 Q And you're saying it's imprecise, right? 16 A Correct. 17 Q And I'm saying is there any reason to 18 believe that the imprecision you've identified 19 would be reacted to differently by consumers in 20 the different treatments, the different 21 conditions? 22 A It's quite possible.

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1 Q What gives you the basis for that? 2 A Just my expertise. I mean, if I 3 understand what you're saying is, are you saying 4 that the level of imprecision would be 5 consistently exactly the same in group one versus 6 group two versus group three; and therefore, when 7 you are comparing the groups, that impression 8 cancels out? Is that what you're saying? 9 Q What I'm asking you is, this exact same 10 question is reproduced across the different 11 conditions, right? 12 A Yes. 13 Q Why are we to believe that consumers 14 would react differently to this question in the 15 different conditions? 16 A I think I even give an example of that. 17 Suppose that -- that one consumer in one group has 18 a true willingness to pay of \$4.99 and therefore 19 is quoted as one, using this in -- in -- in the 20 control group. 21 Suppose another consumer has, you know, a 22 bid that's outside of that range for the second	1 A There's no reason to believe that that's 2 true. That level of imprecision would be 3 different -- I mean it would be the same across 4 the three groups. There is no reason for me to 5 believe that. I mean maybe it is; maybe it isn't. 6 But that's an empirical question. 7 Q Is there a source that says that's not 8 how you should run marketing service studies? 9 A If this was a study that I was an editor 10 on or a reviewer on, I would reject it for these 11 broad ranges. I don't think it's -- because of 12 this imprecision. 13 Q But you just told me -- 14 A I think it's a major flaw. 15 Q You told me a minute ago you are not 16 actually an expert in these type in studies, so 17 I'm not -- and that's not the type of work you do. 18 So I'm trying to understand what sort of study -- 19 what sort of source you have to say that 20 replicating these ranges across conditions for 21 this type of study is inappropriate because the 22 imprecision won't cancel out.
Page 99	Page 101
1 group. You know. I'm getting a little confused 2 here. I'd better stop because I -- I -- I need to 3 look at what I -- the example that I actually gave. 4 So if you need -- 5 Q I do want to -- I'm happy to let you 6 finish, but I do want to say that's not actually 7 answering my question. What I'm trying to 8 understand is what led -- leads you to believe 9 that whatever imprecision you identified in this 10 wouldn't be replicated across conditions. 11 MS. KOPPLIN: Misstates prior testimony. 12 THE WITNESS: I'm having a hard time 13 understanding what -- can I rephrase what I think 14 you're saying and can you answer whether that's what 15 you're asking? 16 Are you saying that the level of 17 imprecision will be consistent in each of the 18 three groups; and therefore, if you compare the 19 three groups, the difference, that imprecision 20 cancels out. Is that what you're saying? 21 BY MR. MURASKIN: 22 Q Answer that question. Sure.	1 A That is not what I said. I didn't say 2 I'm not an expert in these studies. I did not say 3 that. I said I'm not an expert in marketing and 4 in consumer behavioral research. I am an expert 5 on behavioral economics, which is a little bit 6 different, but we -- this is the type of study 7 that I am -- I have some knowledge about. So I -- 8 so I object to the characterization of my 9 question -- or what you said I said. 10 Q Okay. And I'm -- great. Then you are 11 an expert here. So then tell me what source you 12 have that says that replicating these ranges 13 across the different conditions doesn't address 14 your problem of imprecision. What -- what 15 citations do you have for that authority -- for 16 that position? 17 A I just -- I -- I -- I think I made it 18 pretty clear in my testimony why this is 19 imprecise. 20 Q And I'm just -- you have not given me 21 any actual source nor is there anyone cited in 22 your paper. So I'm just trying to understand.

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1 You don't actually have a source for that? 2 A Well, I mean I wouldn't do it. 3 Q Okay. Turning to paragraph 21. 4 A Okay. 5 Q And here you are attacking hypothetical 6 conservative surveys generally and just saying 7 that people respond differently in the 8 marketplace. Is that a fair characterization? 9 A Yes. 10 Q But hypothetical consumer surveys are 11 regularly done, right? 12 A In the marketing literature, yes. 13 Q So is it common for economists to throw 14 out an entire field of study as unreliable? 15 MS. KOPPLIN: Objection. Foundation. 16 Misstates prior testimony. 17 BY MR. MURASKIN: 18 Q You can answer. 19 A Yes. If you talk to a behavioral 20 economist, they would object to a hypothetical 21 survey like this. So the answer is in the 22 economics profession that is true.	1 Q No. What I'm saying is, you testified 2 earlier, I believe, that when companies spend 3 money on something, that indicates they find 4 value, right? 5 A They find value. Yes. 6 Q And economists are generally interested 7 in analyzing market forces, right? 8 A What do you mean by market forces? 9 Q What motivates markets and what makes 10 them move, right? 11 A I don't understand what you mean by 12 that. Markets -- what are demand drivers? What 13 are supply drivers? Is that what you mean? 14 Q What I mean is that one of the things 15 economics is trying to do is understand why 16 markets operate the way they do, right? 17 A Yes. 18 Q So you've told me that there's a market 19 that exists for research which finds value in 20 consumer studies, correct? 21 A Yes. 22 Q So wouldn't it be inconsistent with the
Page 103	Page 105
1 Q And this is true even though marketers 2 of companies use them all the time? 3 A Yes. 4 Q So -- 5 A Doesn't mean that -- 6 Q I didn't mean to cut you off. 7 A Does not mean they're good studies just 8 because companies use them. Companies do 9 pseudoscience all the time and probably because 10 they don't have a lot of PhD-trained economists 11 that are working with them. 12 Q Is it common for economists to ignore 13 market forces? 14 A Not at all. 15 Q Well, but if companies are using studies 16 and they are relying on them, doesn't that suggest 17 there's a market force behind them? 18 A I don't know what you mean by market 19 force. 20 Q Well, you said -- 21 A Are you saying that because companies do 22 this, the academic researchers should follow.	1 principles of economics to just ignore those 2 studies as valueless? 3 MS. KOPPLIN: Objection. Misstates prior 4 testimony. Lack of foundation. 5 THE WITNESS: I don't think they're 6 valueless. I just think they are filled with -- 7 that hypothetical bias is a documented real problem, 8 and studies that don't try to deal -- and there are 9 ways to deal with it -- to deal with hypothetical 10 bias are biased, so -- which means they are 11 inaccurate. 12 BY MR. MURASKIN: 13 Q Okay. Turn to page 7, paragraph 22. 14 A Okay. 15 Q My understanding of what you're saying 16 in this paragraph is that Dr. Dimofte should have 17 studied other products besides just steak. Is 18 that a fair characterization? 19 A Yes, it is. 20 Q How many products do you think he should 21 have studied to make it reliable? 22 A I would have taken maybe the five most

Page 106 1 common products. I would included steak and then 2 maybe go to the other extreme with ground beef, a 3 pot roast, and, you know, other beef products 4 there. 5 Taking one extreme -- steak is the 6 highest-value product, and trying to represent beef 7 cattle, I think that that is not representative of 8 the entirety at least of the beef industry. 9 Q But you understand that in doing a 10 consumer survey, there are limits on the amount of 11 different items you can test, right? 12 A I actually thought about that, and it 13 would have been simple to have -- to include five 14 or six or seven or whatever products in there. It 15 wouldn't have taken -- it wouldn't have cost any 16 more from Qualtrics, and it wouldn't have taken 17 very long to include those. So I don't agree with 18 that. 19 Q If you were running a study to determine 20 how consumers reacted to beef, pork, and chicken 21 products as they're currently labeled, so those 22 three categories, how many different products	Page 108 1 pork, and chicken, that you would study 2 approximately 15. I'm saying is that what you 3 think is necessary to make such a study reliable? 4 A I'd have to think about the 15 or 5 whatever. But I think certainly, you know, if you 6 are looking at multiple commodities, you probably 7 wouldn't need as many different types of 8 subproducts. You know, I wouldn't reject it 9 outright if you just had beef, pork, and chicken 10 as the categories. But, you know, I mean the -- 11 as I quote in this, the Brooker, Eastwood, and 12 Gray study found that there are differential 13 impacts of advertising on -- that, you know -- so 14 if you -- in that study if they went to -- just 15 aggregated into the three products that they 16 looked at, they might have found advertising was 17 totally ineffective on the beef category when the 18 actual result was very effective with hamburger. 19 It just wasn't effective with the other two 20 products that they looked at. 21 Q I'm sorry. I still just -- I do want an 22 answer to my question. I'm just a little bit
Page 107 1 would you study? 2 A Beef, pork, and chicken? 3 Q Yeah. 4 A You could probably study up to 15, 20 in 5 a survey like this. Surveys are easy. They are 6 easy to administer. It wouldn't take that much -- 7 it wouldn't take that much longer. If I did 15 to 8 20, you would have to pay a little bit more for 9 the response, but I think dividing -- dividing the 10 commodities up into several products would be a 11 good thing. 12 Q And that's what you think would be 13 necessary to make that study reliable? 14 A I think this is a limitation of the 15 study, that he's only looking at how advertising 16 affects just steak. But I think -- you know. And 17 especially in the context of this where it would 18 have been easy to -- in a survey to include a few 19 more products. 20 Q That's not my question. My question is 21 you described when you were trying to study in a 22 study of different consumers' reactions to beef,	Page 109 1 confused. 2 So I want to do a study that looks at how 3 consumers are reacting to the current labeling of 4 beef, pork, and chicken products. Are you telling 5 me I could just study three products or I need to 6 study more than three, less than 15 -- I'm trying to 7 understand. 8 A You are asking me to evaluate your 9 research product? I mean, you can do whatever you 10 want. What power do I have over what you're 11 asking? 12 Q I'm trying to understand what you think 13 would make that study reliable. 14 A Oh. 15 Q If you were evaluating three different 16 products -- beef, pork and chicken -- three 17 different types of products and then the 18 subdivisions within that, how many products would 19 you study to understand how consumers react to 20 that label? 21 A I would be okay if you just did beef 22 pork and chicken.

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1 Q Even though -- 2 A I would also be okay if you did -- if 3 you subdivided it. But -- you know. 4 Q I'm not understanding your reaction, 5 because aren't there different types of beef, 6 pork, and chicken? Why is that not the same thing 7 as different types of beef? 8 A Well, he's -- he's just -- he's not 9 doing beef. He's doing steak. He's just doing 10 steak. What I'm saying is how do you apply that 11 result to all of beef. 12 Q But you just told me, or maybe I'm 13 misunderstanding. I'm not asking about what 14 Dr. Dimofte did. I'm trying to understand. I'm 15 doing a study to figure out how consumers react to 16 the labels on beef, pork, and chicken products. 17 Not just one type of beef, all beef products, all 18 pork products, all chicken products, including 19 eggs. 20 How many products would I -- how many 21 different types of those goods would I need to study 22 to create a reliable survey in your mind? That's	1 representative of the whole categories. 2 Q And that's all I'm trying to understand. 3 And so how many products would you need to study 4 to be represent -- 5 A I don't know. I don't know how many 6 products. Five maybe? Four? I would have to 7 look at -- I'm not -- I'd have to look at the 8 chicken category, the poultry category, and the 9 pork category in more detail. But yes, I think 10 multiple -- more than one would be better to 11 represent the category than one. 12 Q Okay. Paragraph 23. This is a similar 13 critique about the number of ads shown, right? 14 A Yes. 15 Q So how many ads do you think he needed 16 to show to make his study reliable? 17 A Well, what we did in the Messer study 18 was we -- we had multiple print ads, four or five 19 that we circulated to the -- to that media group. 20 We had two radio -- two 30-second radio ads we 21 played on "Beef, it's what's for dinner." And 22 then we had a television ad that we showed. And
Page 111	Page 113
1 what I'm trying to get an answer to. 2 A I can't answer that. I don't know. 3 Q Be more than one each or less than one 4 each? 5 A If you did one each -- what confuses me, 6 if you did one each, if you did beef, you did 7 pork, and you did chicken, what would you 8 present -- would you just present the word beef to 9 the consumer? I don't understand. Show them a 10 picture of beef? 11 Q I'm trying to understand how consumers 12 are reading labels on products. That's what I've 13 been trying to talk to you about. 14 A Yeah. I understand what you are trying 15 to do. I just don't understand what you're -- 16 studies could -- studies could do a number of 17 different ways on that. There's not one way to 18 examine what you're looking at. 19 One way would be to do what Dr. Dimofte 20 did and select steak for beef, chicken breasts for 21 chicken, and pork chops for pork. And I would 22 have a criticism of that saying that that isn't	1 that was much more reflective of the Beef Checkoff 2 than displaying just one ad for steak. So our ads 3 included hamburgers, steaks, other things. So I 4 think that would be a preferred experimental 5 design than just showing one -- one ad that has a 6 steak on it. 7 Q Okay. Page 8, paragraph 24. 8 Paragraph 24 is divided into a bunch of dashes, so 9 all I'm going to ask you first about dash two. 10 A Dash two. Okay. Domestic independent 11 cattle ranchers. 12 Q Yeah. 13 A Okay. 14 Q So here you are suggesting that instead 15 of the question asked, Dr. Dimofte should have 16 asked a question how likely would be -- would you 17 be to buy domestic beef products rather than 18 imported ones. 19 What would that question measure? 20 A It would measure a -- in a much more 21 neutral way what people's preferences would be for 22 domestic versus imported beef. How much they

Page 114 1 value -- how much they value the term "domestic" 2 and how much they value the term "imported." 3 Q But that isn't what Dr. Dimofte was 4 trying to study, right? 5 A I don't know what the point of this 6 question is. He is -- all I'm saying is he's 7 presenting leading information and then trying to 8 act like he's asking an objective measure of 9 people's preferences for imported versus domestic 10 beef. If he wants the contamination -- is he 11 wants to measure the contamination of that, then 12 he's doing it. 13 Q Well, your question would not assess how 14 additional information about products influences 15 purchasing decisions, correct? 16 A Correct. 17 Q Okay. Next dash, if you want to read 18 that. So this is dash 3 under paragraph 24. 19 A Yeah. How did generic ads...? 20 Q Yes. 21 A Okay. 22 Q So here you're criticizing Dr. Dimofte	Page 116 1 Q And one of the things he did was compare 2 the responses not just in one condition with one 3 ad but across conditions, right? 4 A Yes. 5 Q I guess I'm a bit confused about your 6 criticism of this question because I understand 7 how this question that Dr. Dimofte asks is 8 actually different than the question how likely 9 would you be to buy domestic beef products rather 10 than imported ones. 11 MS. KOPPLIN: Objection. That wasn't a 12 question. 13 BY MR. MURASKIN: 14 Q It was a question. I don't understand, 15 I'd like you to explain, how the question you're 16 criticizing by Dr. Dimofte of generic ads that 17 encourage beef consumption without regard to meat 18 origin influence your willingness to pay for beef 19 products, with your question -- that you say would 20 be a good one -- how likely would you be to buy 21 domestic beef products rather than imported ones. 22 A Again, I am -- I have problems with the
Page 115 1 for asking how do generic ads encourage beef 2 consumption without regard to meat origin 3 influence your willingness to pay for beef 4 products. And you are saying he should have shown 5 an actual ad, right? 6 A I'm actually saying more than that. He 7 should have shown an actual ad, and then he should 8 have measured -- and not connected it, but just 9 measured. So one group would see the ad, one 10 group would not see the ad and compare the 11 willingness to pay for beef. Ask them how much 12 would you be willing to pay for beef. That would 13 be the way to measure the impact of the ad. 14 Q Well, Dr. Dimofte did do that, too, 15 right? 16 A Yes. And he showed no impact. 17 Q We'll get there. And he asked other 18 questions beyond this one, right? 19 A Yes. 20 Q So in fact, he did not just rely on the 21 answer to this question, right? 22 A Yes.	Page 117 1 first two questions asking hypothetically how much 2 are you willing to pay. And I have problems with 3 asking hypothetically what are your intentions to 4 purchase beef. They suffer -- they all suffer 5 from hypothetical bias. So I'm not saying that 6 those are superior questions either. 7 Q Okay. Dash 4, paragraph 24. 8 MS. KOPPLIN: I'm sorry. They are not 9 numbered. Which one is this? 10 MR. MURASKIN: Dash 4. 11 THE WITNESS: "Would you say that 12 advertising influences your meat purchasing 13 behavior"? Okay. 14 BY MR. MURASKIN: 15 Q Again, Dr. Dimofte did not rely on this 16 question, "Would you say, that beef advertising 17 influences your meat purchasing behavior" alone. 18 Correct? 19 A That is correct. But one question I 20 have about his conclusions in these studies is he 21 doesn't cite what -- what questions or answers he 22 did rely upon for his conclusions. So I -- I had

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1 to kind of speculate on what that was because I -- 2 he didn't -- he didn't really back up from the 3 willingness to pay being significant or the blah, 4 blah, blah, blah, being significant. This leads 5 to this conclusion. So I don't quite understand 6 his empirical support for his conclusions. 7 Q Well, just I aim to be clear. His 8 report provides specific empirical data of the 9 ANOVAs he ran, right? 10 A That is correct. He does give the 11 empirical results, but then he comes up with a set 12 of conclusions that he makes, and not all of them 13 I can find are backed up by his empirical results 14 And he doesn't -- he doesn't present a road map. 15 Q Where in your report do you list the 16 conclusions that aren't backed up by empirical 17 results? 18 A I think that's in the ones where they 19 have like -- where I summarize his findings. And 20 then the next question summarizes his conclusions. 21 Q So can you find me that paragraph, 22 please?	1 supposed to contain all of your opinions? 2 A No. 3 Q All right. 4 A I mean if you asked me -- if you asked 5 me of an opinion that's not in the report, do I 6 not answer that question? 7 Q No. But are -- is your -- were you told 8 to list all your criticisms of Dr. Dimofte's 9 report in your report? 10 A Yes. 11 Q Okay. Paragraph 24, dash 6. 12 A Hold on a second because I went up. 13 Okay. Got it. Footnote 9? Is that the one? 14 Q I think it's -- 15 A Or to what extent do you agree that 16 domestic beef products are worth paying more? 17 Q Sorry. Let me count and I'll tell you. 18 A I should have used numbers. 19 Q Yeah. It's footnote 9. So it's the 20 last one. 21 A Footnote 9. Let me look at it. Okay. 22 Q So here you say in a quote: It's
Page 119	Page 121
1 A Well, let me just give you an example. 2 He concludes that generic advertisements put 3 downward pressure on -- on prices. And presumably 4 those would be retail prices because it's a 5 consumer study. That's one. 6 Q Where -- where -- what -- show me what 7 empirical result found that? 8 Can you find me the paragraph in your 9 report where you list out the conclusions that you 10 say lack empirical support? 11 A I don't know that I have that. I'm just 12 saying that right now from -- 13 Q I understand that -- 14 A I list his conclusions. I list his 15 conclusions. I list his findings, and I'm saying 16 that -- right now I'm saying that I don't -- I 17 don't see a road map for how he connects his 18 conclusions to his findings. 19 Q Okay. But you can't point me -- 20 A I have studied the report. It's not in 21 there. 22 Q Did you understand that your report was	1 difficult to conceive how the statement, "Beef 2 that is produced domestically uses high quality 3 feed, advanced standards of care, and a limited 4 carbon footprint," does anything but suggest 5 domestic beef is superior. 6 Do you see that? 7 A Yes. 8 Q Am I correctly characterizing the 9 report? 10 A Yes. 11 Q Explain to me grammatically how the 12 sentence does that? 13 A Well, the phrase basically is very, very 14 positive of domestic beef, and it points out 15 attributes such as high quality feed, advanced 16 standards of care, and a limited carbon footprint. 17 And then it basically wants to contrast that to 18 imported beef, which he doesn't say has any of 19 those -- those positive attributes. And so if I 20 read that and was asked to rank my preference for 21 domestic beef versus any alternative, I would 22 choose domestic beef based on that very positive

Page 122 1 portrayal of domestic beef and the absence of that 2 portrayal to the alternative, which I presume is 3 imported beef. 4 Q Where does this sentence contrast 5 domestic and imported beef, the sentence that's 6 from Dr. Dimofte's report. 7 A It contrasts it by omitting anything 8 about any alternative to domestic beef. And then 9 doesn't it ask do you prefer domestic to imparted 10 or to other beef or something like that? 11 Wasn't footnote 9 part of -- I'd have to 12 look at the original report, but I thought he was 13 contrasting something there with the imported beef 14 or to alternative -- to non-domestic beef. 15 Q Well, you're welcome -- you have 16 Dr. Dimofte's original report as Exhibit 3. You 17 are welcome to go look at footnote 9, which is on 18 page 4 and actually doesn't say anything of the 19 sort to what you say it says. Footnote 9 as far 20 as I can tell, looks like Complaint paragraphs 2. 21 But you can try to find out where you are looking. 22 A Where is footnote 4? What page?	Page 124 1 Q So you can't find where you are talking 2 about his report. So just looking at this 3 statement: Beef that was produced domestically 4 uses high quality feed, advanced standards of 5 care, and a limited carbon footprint. 6 A Can I stop you for a second. I don't 7 know where you are. 8 Q All right. Page 9. 9 A Oh. I'm on page 7. Okay. Sorry. 10 Page 9. 11 Q The last dash. The little thing right 12 before paragraph 25. It's the last dash in 13 paragraph 24. It's what we were looking at 14 previously. 15 A Okay. Oh, yeah. Footnote 9. Okay. 16 Gotcha. 17 Q So just looking at the statement you 18 quote from Dr. Dimofte's report: Beef that is 19 produced domestically uses high quality feed, 20 advanced standards of care and limited carbon 21 footprint. 22 Isn't it possible that beef produced
Page 123 1 Q Footnote 9 is on page 4. 2 A Footnote 9. I'm sorry. Okay. I don't 3 find the same footnote that I'm -- 4 Q Yeah. Neither do I. 5 A Okay. 6 Q But you can try to find what you were 7 referencing. 8 A Yeah. That's what I'm trying to look 9 for right now. I don't find it. 10 Q Okay. 11 A I could do a search for it later, but I 12 can't find it, and I don't know why -- what's 13 going on there. 14 Q All right. Well, then let me just ask 15 you, returning to your report, so Exhibit 1, and 16 this is page 9, the last dash, as part of 17 paragraph 24. 18 A Okay. Hold on. So it's page 24? 19 Q Sorry. Yeah. It's page 9, paragraph 20 24. This is the last -- 21 A Okay. Gotcha. Now, what is it? The 22 last --	Page 125 1 internationally uses all those same things? 2 A Yes. 3 Q And isn't it possible that by omitting 4 any reference to international, this statement 5 doesn't actually do anything to say that 6 international lacks those things? 7 A I'm not sure. When I read it, I -- I -- 8 I read that when you're -- when you're bragging 9 about or enhancing the characteristics of domestic 10 by itself without including anything else, I take 11 it as kind of the alternative doesn't have that. 12 That's the way I read that. 13 Q So you are relying on your own reactions 14 to this statement, correct? 15 A I am. That is correct. 16 Q Do you have any source that says this 17 should be read -- statements like this should be 18 read to be negative about the omitted product? Is 19 there any journal article you can point me to that 20 says that? 21 A No. Not that I know of. 22 Q And in your view when people are told

Page 126 1 that products are a product of the USA. Does that 2 imply that all products from -- are all product -- 3 foreign products are bad? 4 A No. 5 Q And when you hear -- when you're told 6 something's dairy free, does that imply dairy is 7 bad? 8 A Not in that context, but if I tell you 9 it's RBST free, does imply that if I don't have 10 that label that other product is bad? 11 I produced a paper that shows the huge 12 stigma effect of that. So in other words, if I 13 label fluid milk as RBST free -- and I don't care if 14 you know what RBST is or not, it's free of it -- it 15 stigmatizes milk products that don't have that 16 label. So yes, I can give you an example where the 17 omission of that implies that the product is 18 inferior. 19 Q Did you run any tests on the language 20 that Dr. Dimofte used to suggest that people would 21 regard imported beef as negative when they read 22 this statement?	Page 128 1 campaigns? 2 A I wouldn't say never possible, but it 3 would be very difficult. 4 Q So a regular part of research reflects 5 the fact that consumers have been exposed to 6 historical campaigns? 7 A Correct. 8 Q And you seem to also suggest in 9 paragraph 25 that the unaltered ad group could 10 have been a control in this case. Is that a fair 11 characterization of what you're saying? 12 A Yes. And let me just elaborate. If I 13 were doing this experiment, I wouldn't have even 14 had a control group, if that's what he's going to 15 argue, and rather increase the number of 16 observations in the altered group and the 17 unaltered ad group. 18 Because after all, what he wanted to show 19 or what he was testing, I should say, is does the 20 altered ad lead to a higher willingness to pay or a 21 higher intent to purchase. And he didn't need the 22 control group for that matter.
Page 127 1 A No. 2 Q So when you say that it's difficult to 3 conceive that this statement does anything but 4 suggest domestic beef is superior, you are just 5 relying on your own gut instinct? 6 A I am relying on my own gut instinct, 7 yes. 8 Q Going to the next paragraph, 9 paragraph 25. So this is also on page 9. 10 A Okay. 11 Q So here you're -- do you want to take a 12 second to read it? 13 A Yeah. Let me read it. 14 Q Please go ahead. 15 A Okay. 16 Q So here you are objecting to 17 Dr. Dimofte's statement that the control group 18 could represent the effects of historical beef 19 campaigns; is that right? 20 A Yes. That's correct. 21 Q Is it ever possible to find consumers 22 that have never been exposed to historical	Page 129 1 So I would have just relied on those 2 two -- two groups and have -- I guess you could call 3 the -- the -- the -- I wouldn't even call the -- one 4 of them a control. I would just say there's -- 5 there's two groups that you're testing, because 6 that's -- I mean it's the difference in those two 7 that really matters for his study. 8 Q Okay. Paragraph 26. 9 A Okay. 10 MR. MURASKIN: Actually, this is going to 11 be a long exchange on paragraph 26, so do you want 12 to take another five-minute break and come back at 13 11:45? We've been going another hour. 14 THE WITNESS: I'm okay with whatever 15 people want to do. I'm fine. 16 MR. MURASKIN: Can we take a five-minute 17 break and come back at 11:45? Let me put it that 18 way. Is that all right? 19 THE WITNESS: Okay. Excellent. 20 VIDEOGRAPHER: The time is 11:40 a.m. 21 We're going off the record. 22 (Whereupon, a brief recess was taken.)

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1 VIDEOGRAPHER: The time is 11:46 a.m. 2 We're back on the record. Please proceed, counsel. 3 BY MR. MURASKIN: 4 Q Great. So Dr. Kaiser, again, we're 5 looking at paragraph 26, which spans pages 9 and 6 10 of your report. My understanding of what 7 you're saying here generally -- and we're going to 8 get into some of those specifics -- is that you 9 fault Dr. Dimofte for not performing a regression 10 similar to what you perform, which you claim 11 controls for independent variables. And 12 therefore, you say his analysis is not reliable. 13 Is that right? 14 A That's correct. 15 Q I want to -- I'm going to get into your 16 regression at the end of this deposition, but I 17 want to kind of lay some ground understanding of 18 we're talking about. 19 What's an independent variable? 20 A An independent variable, which is also 21 sometimes called an explanatory variable, is a 22 variable that we hypothesize has an impact on the	1 right of your criticism? 2 A That's correct. 3 Q And what are examples of demographic and 4 socioeconomic independent variables? 5 A Let me give you an example. Suppose you 6 had two groups, a control group -- okay -- that 7 doesn't see any ads, and then an ad group. And 8 you have higher average income in the ad group 9 than in the control group. And you find that the 10 willingness to pay using ANOVA or the ad group is 11 higher than it is for the control group. And it's 12 statistically significant. 13 The problem with that approach is that 14 maybe that's due to the fact that the ad group had 15 richer subjects in it that can afford to pay more 16 for the steak than the control group. And there's 17 no way of knowing that if you just run a testing of 18 the means of the two groups, which a one-way ANOVA 19 does. But you could control for that by doing a 20 regression that not only included an indicator 21 variable for which group they are in, but also a 22 control variable -- a control independent variable
Page 131	Page 133
1 so-called dependent variable. 2 For example, an independent variable in a 3 willingness-to-pay equation would be things like 4 household demographics, whether or not they had been 5 exposed to advertising, other factors that we 6 hypothesize would affect -- might affect willingness 7 to pay. And what a regression analysis will do is 8 it will test whether or not these independent 9 variables are -- have a statistically significant 10 impact on the dependent variable. 11 Q Is an independent variable sometimes 12 called a covariate? 13 A Yes. It's called -- sometimes called an 14 explanatory variable, a covariate, an exogenous 15 variable. It's got a lot of names, but yes. 16 Q Just for the sake of clarity, I'll try 17 to use the terms "independent" or "covariate." 18 A Yes. 19 Q And you specifically criticize him for 20 not controlling for demographic or socioeconomic 21 independent variables, and you use both terms. 22 Can you just describe for me (A) is that	1 for the income of each of the subjects. 2 Q Well, and later in this paragraph -- and 3 it's really -- paragraph 26 is actually broken up 4 into two paragraphs so this is in the second part 5 of paragraph 26. You list what you consider to be 6 socioeconomic and demographic covariables or 7 covariates as gender, age, education, income, 8 number of children, employment status. Those are 9 all accurate examples of the covariates you 10 thought should be measured? 11 A Those would be examples -- it wasn't 12 meant to be a comprehensive list; but yes, those 13 would be examples of what we usually find in 14 regressions for independent variables on 15 willingness to pay. 16 Q What is a dependent variable? 17 A A dependent variable is the very -- the 18 outcome measure that you are measuring such as 19 willingness to pay or intent to purchase or 20 quantity demanded. And you are trying to identify 21 what are the main determinants that affect a 22 person's willingness to pay or intent to purchase

Page 134 1 or quantity demanded. So it depends upon these 2 so-called covariates or independent variables. 3 And so higher income leads to a higher dependent 4 variable, willingness to pay, for example. 5 Q My understanding is that when you are 6 selecting a covariate or independent variable you 7 have to be careful to make sure that you are not 8 selecting something that is influenced by the 9 intervention you are studying; is that right? 10 A That is correct. You want something 11 that's truly exogenous or that's not affected. So 12 in other words, a classic example where that is 13 not the case is in demand. A lot of people will 14 say quantity demanded depends upon price. And so 15 they put the price as an independent variable and 16 quantity is a dependent variable. However, you 17 could argue that price depends upon quantity as 18 well. So price is truly not an independent 19 variable. It's also an endogenous or dependent 20 variable. And there are ways to -- statistical 21 ways to correct for that. That's called -- 22 sometimes called endogeneity on -- on an	Page 136 1 estimate on that intervention variable then would 2 be biased. It might be biased upward, it might be 3 biased downwards, but it would be biased and not 4 accurate. 5 Q Okay. What are the dependent variables 6 in Dr. Dimofte's study? 7 A I think the two main dependent variables 8 from an economist's perspective are willingness to 9 pay and then intent to purchase. So willingness 10 to pay is kind of the price, and intent to 11 purchase is kind of the quantity, a way of 12 measuring the quantity demanded. 13 And the other perception variables, I 14 don't think really show much. I mean I -- I -- I 15 don't think changing perceptions really doesn't -- 16 doesn't accurately predict what changes in behavior 17 there's going to actually be. 18 Q But you do -- 19 A But those two are by far in my opinion 20 the most important. 21 Q I understand you think they're the most 22 important, but you do in fact -- and you can look
Page 135 1 independent variable. 2 Q Well, and what the statistic literature 3 shows, my understanding is, is that if you select 4 a dependent variable as a covariate or independent 5 variable, what you are actually doing in that 6 analysis then is removing part of the effect of 7 the intervention. 8 Is that right? 9 A Can you -- I didn't quite understand 10 your question. When you -- can you just rephrase 11 it one more time? 12 Q Sure. My understanding of what the 13 statistics literature says is that if you identify 14 a covariate or independent variable that actually 15 is a dependent variable that is impacted by the 16 intervention, that in doing that analysis what 17 you'll have done is remove some of the effect of 18 the intervention from the analysis. 19 Is that correct? 20 A I would say that -- I think that that's 21 correct. But to be more specific it would -- it 22 would -- the resulting coefficient that you would	Page 137 1 to paragraph 21 for this -- list the other 2 consumer perception outcomes as a dependent 3 variable; is that right? 4 A Yes. But to be precise, for his one-way 5 ANOVA, he's just testing the means on those. He's 6 not doing regression obviously. 7 Q We'll get to your regression. Don't 8 worry. 9 If you have too many control variables 10 that leads to over fitting a statistical model; 11 isn't that right? 12 A Yes. But not when you have 1100 13 observations like he has or 500 observations. So 14 yes, you cannot -- you cannot estimate -- you 15 cannot have a number of covariates that is greater 16 than the number of observations. It's impossible 17 to estimate the model. And generally speaking, in 18 statistics you want to have at least 30 degrees of 19 freedom. So that means that you better have at 20 least 30 more observations in your sample than the 21 number of covariates that you have in the model. 22 Q What's the effect of over-fitting?

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1 A I don't know the term "over-fitting," 2 but if it's what I just said, if you have more -- 3 if you have more covariates than you have 4 observations, you can't -- the regression won't 5 solve. You can't even -- you can't even solve the 6 model. 7 Q So you are not familiar with the term 8 over-fitting in statistics? 9 A No. I'm not. 10 Q So Dr. Dimofte used random assignment to 11 the different conditions to check for -- and 12 checked that for representativeness. Correct? 13 That's what he did in his study? 14 A That's -- that's what I understand he 15 did, yes, which is the correct -- what you'd want 16 to do in an experimental design. 17 Q Doesn't random assignment help ensure 18 that the covariates do not vary between the 19 different conditions? 20 A Yes, it does. But -- in theory that's 21 correct. If he had a million observations -- if 22 he had a million subjects in each of the three	1 study -- in general, random assignment to the 2 different conditions is a means to control for 3 covariates; is that right? 4 A Yes, it is. 5 Q And we talked about this earlier, but I 6 just want to confirm. So you did not know of 7 something called an ANCOVA that controls for 8 covariates? 9 A That is correct. I'm only familiar 10 with -- I'm not disputing what you're saying. I'm 11 just not familiar. 12 Q No. I just -- I want to make sure that 13 we got that clear. But you are not saying that 14 journals require your type of a regression 15 analysis to be published, correct? 16 A No. I mean, it tends to be the norm in 17 economics that regression is preferred, but it's 18 not a condition. There have been studies that 19 have been published that it has used ANOVA. 20 Q Good. So I'm now going to look at 21 paragraph 30 on page 11, which is the articles 22 that you say are inconsistent with Dr. Dimofte's
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1 groups, the -- the -- the average household 2 demographic and socioeconomic variables accords 3 would be a -- the means would be probably 4 identical. 5 But given the fact that he didn't have a 6 million and I actually computed some of the means in 7 his subsamples, they were -- they were different. 8 I can't -- I can't recall because I did 9 that so long ago what the -- what the -- I looked at 10 a couple things like income and age, and the means 11 were different between the groups. 12 So randomization helps with that issue, 13 but the other thing you need is you need a big -- 14 you need a big N, as they say, a number of 15 observations so that the perfect -- the perfect 16 experimental design would have -- if you calculated 17 the means of the characteristics of each of the 18 groups, they would be identical. And he doesn't 19 have that in the sample, at least when I looked at 20 it a few months ago. 21 Q So but just in general -- and I'm not 22 talking now specifically about Dr. Dimofte's	1 study. Do you want to review these, or are you 2 familiar with them? 3 A I'm familiar with the studies. 4 Q Do any of these studies discuss whether 5 consumers would prefer domestic beef or 6 international beef? 7 A No. 8 Q Do any assess whether by default 9 consumers would pay more for domestic beef than 10 international beef? 11 A No. 12 Q Do any assess whether consumers would 13 buy more domestic beef than international beef? 14 A No. 15 Q Do any them study whether generic 16 advertising homogenizes beef? 17 A No. 18 Q So when you say that these articles show 19 that generic advertising increases demand, I just 20 want to make sure I'm understanding what you're 21 saying. What you're saying is that generic 22 advertising increases demand for beef in general

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1 wherever it comes from. 2 Is that right? 3 A That is correct. Most, but not all, the 4 studies. But certainly the studies that I did 5 looked at all beef demand in the commercial market 6 in the United States, which includes predominantly 7 domestically produced beef, but it also includes 8 imported beef and, of course, it excludes exported 9 beef. 10 Q But these articles form the basis for 11 your repeated statement that Dr. Dimofte is 12 incorrect to conclude that the Beef Checkoff is 13 harming R-CALF members; is that right? 14 A That is correct. And more specifically, 15 these studies show that the beef price, the price 16 received by -- at the retail level as well as at 17 the producer level is higher. So it's putting 18 upward pressure on price, not downward pressure on 19 price due to the advertisements. 20 Put differently, had we not had the Beef 21 Checkoff, prices at both the retail, probably at the 22 packer level, and certainly at the farm level would	1 producers specifically. So how do they refute 2 that if they don't study it? 3 A What I'm refuting, as I say in the first 4 line of paragraph 30, is that he concludes that 5 the current Beef Checkoff advertising has placed 6 downward pressure on retail prices in the 7 category. These studies show exactly the 8 opposite, that they actually enhance the retail 9 price. 10 Q If what I told you was his actual study 11 was to examine the Beef Checkoff's effect on 12 domestic producers, would you say that these 13 articles refute him? 14 A What finding are you talking about? 15 Which specific finding are you asking me about? 16 Q I'm saying that if what Dr. Dimofte did 17 was try to determine the impact of the Beef 18 Checkoff on domestic producers, would these 19 articles be refuting a finding about domestic 20 producers no matter what? 21 A Yes. Absolutely. Completely refutes it 22 on domestic producers. Domestic producers are
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1 have been lower than it actually was. 2 Q Did you ever assess whether R-CALF 3 members, which I mentioned earlier are solely 4 domestic beef producers, could have been part of a 5 different market than generic beef? 6 A Did I assess that? 7 Q Yeah. 8 A No. 9 Q So you've never assessed whether 10 R-CALF's members who are just domestic producers 11 could have potentially received a higher baseline 12 price than other beef; is that right? 13 A That's correct. 14 Q And none of the articles do that, right? 15 A That is correct. They're all 10,000 16 feet, very aggregate, macro kind of views of the 17 way generic advertising works. 18 Q Well, so then I'm having trouble 19 understanding how you say they dispute Dr. 20 Dimofte's findings, because what he's trying to 21 study, as we established at the beginning of this 22 deposition, is the Checkoff's effect on domestic	1 better off. They receive higher cattle prices and 2 beef prices at the retail level because of the 3 generic beef advertising of the Checkoff. So yes, 4 absolutely. 5 Q I don't understand how you can say that 6 if you haven't examined whether domestic producers 7 could be part of a different market. 8 MS. KOPPLIN: Objection. That's not a 9 question. 10 BY MR. MURASKIN: 11 Q You can answer. 12 A I -- maybe I don't understand what you 13 are saying, but domestic producers are the 14 majority of the Checkoff program, and these 15 studies have shown that their prices are higher in 16 the domestic market. 17 Q But let me be clear so I understand you. 18 You have no knowledge about whether it's possible 19 for domestic producers to form a distinct market 20 from all beef -- for just domestic beef -- that 21 would have a higher price. You don't know that. 22 A No, I don't know that. Okay. Now I

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1 understand -- I didn't understand your question. 2 But yes, I didn't address that because that 3 doesn't exist right now. 4 Q And so it's impossible and these studies 5 do not speak to -- strike that. 6 These studies do not speak to whether a 7 conclusion that domestic producers could form a 8 subset of the market with yet higher prices is true 9 or not, correct? 10 A Correct. 11 Q And if Dr. Dimofte had a conclusion 12 about that, they would not be refuting that 13 conclusion, correct? 14 A What is the conclusion? That -- 15 Q Yeah. 16 A I was talking specifically about his 17 conclusion that the Checkoff puts downward 18 pressure on price. 19 Q Right. And I'm just saying if he had a 20 conclusion that talked about whether domestic 21 producers could be a subset of the market that got 22 a yet higher price, these articles wouldn't be	1 positive and negative messaging impact consumer 2 behavior; is that right? 3 A I wouldn't go that far. I would say 4 that what you said is true, but it -- but it 5 does -- the generic -- the generic beef 6 advertising from the Checkoff plays a -- plays a 7 significant role in the article. So, but you're 8 right. I mean, we're looking at what -- the 9 difference between positive and negative messages 10 on beef willingness to pay, but the Beef Checkoff, 11 one of our findings is that one way to control for 12 the negative impact for mad cow types of stuff is 13 to -- is to use generic beef advertising. So I 14 think it's an important role in it. 15 Q Right. And I'm not trying to 16 mischaracterize anything, but I do want to make 17 sure that I'm understanding correctly. What the 18 article is examining is the effect of generic 19 advertising after an exposure to negative 20 information such as mad cow, correct? 21 A That is correct. 22 Q So it's not studying generic advertising
Page 147	Page 149
1 speaking to that, right? 2 A That is correct. 3 Q I'm going to ask you about the specific 4 articles. To the extent you remember, that's 5 great. I'm happy -- I have all the articles ready 6 to produce if you want to look at them. And I'm 7 happy to introduce them as exhibits. So if 8 there's things you don't remember, just let me 9 know and I'm happy to introduce them as exhibits. 10 This is not trying to trick you. I don't want to 11 waste your time if we don't need to, but they are 12 there if you want them. 13 A Good. That sounds good. 14 Q So on the Messer, et al., article from 15 2011 -- so this is what I'm going to call the 16 first article. I think we talked about this 17 earlier, but I'm going to -- you labeled it 2014, 18 I'll call it the 2011 article. It's the first 19 one. That article. 20 So my understanding of this study is it 21 actually isn't focused on the effectiveness of the 22 checkoff ads, rather it's meant to examine how	1 in a typical market but after a specific 2 intervention of negative information. 3 A We do have one treatment where we just 4 expose them just to generic advertising. So we do 5 measure the impact of the ads in that treatment. 6 There's four treatments. There's a control group, 7 there's a generic-ads-only group, there's a 8 negative-information-only group, and then there's 9 combined negative and generic ads. So there is -- 10 we are -- we can use the results of that study to 11 look at the impact of willingness to pay of 12 generic advertising by itself. 13 Q But that wasn't the point of the study. 14 The point of the study was to figure out whether 15 generic advertising -- how generic advertising 16 influenced consumers after exposure to negative 17 information, correct? 18 MS. KOPPLIN: Objection. Misstates prior 19 testimony. 20 THE WITNESS: I -- I don't agree. The 21 point of the ad was to look at -- I mean the 22 point -- the point of the article was to look at how

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1 does positive information of a generic ad affect 2 willingness to pay. How does negative information 3 affect willingness to pay, and then how does 4 combined negative and positive affect willingness to 5 pay. 6 So you can't just discount the first 7 part of it. That's -- that's -- that's important 8 as well. So we're looking at measuring positive 9 versus negative versus both. 10 BY MR. MURASKIN: 11 Q Okay. The next article, Ward and 12 Lambert, 1993. 13 A Okay. 14 Q Lambert at the time was the director of 15 economics with the National Cattlemen's 16 Association, correct? 17 A I don't know. I don't know Lambert. I 18 mean, I'm not saying he wasn't. I just don't 19 know. 20 Q Are you familiar with the National 21 Cattlemen's Association? 22 A I've heard of them. I've never done	1 A Okay. 2 (KAISER Exhibit Number 4 was marked for 3 identification.) 4 BY MR. MURASKIN: 5 Q So you should have what's now Exhibit 4, 6 which is the Ward and Lambert study from 1993. 7 A I got it. All right. Do you want me to 8 go to a particular page? 9 Q Yeah. So what I'm looking at is 10 page 460 of the study. 11 A Okay. 12 Q There's a chart on the bottom of 13 page 460 that's analyzing Checkoff expenditures 14 compared to what I understand to be a calculation 15 of beef demand. Is that a fair characterization 16 of what's going on there? 17 A Yes. They are looking at demand -- yes. 18 Q And then if you turn to the next page, 19 one of the things they say forms the basis of 20 their conclusion is that they compare the total 21 revenue with the Checkoff to the total income -- 22 I'm sorry. The total revenue of the Checkoff to
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1 work with them. 2 Q They in fact are participating in the 3 Checkoff program, correct? 4 A Yeah. 5 Q And it's -- if the article shows that 6 Lambert was the director of economics with the 7 National Cattlemen's Association, would that be 8 fair to rely on the article? Is that reasonable? 9 A Yeah. I think it would be, especially 10 because I know Ron Ward, who is the senior author 11 on this, and he has a very good reputation. 12 Q And so my understanding is that that 13 study concluded that the Checkoff was having a 14 positive effect by looking at Chec koff 15 expenditures compared to the -- a calculation for 16 beef demand. 17 Is that right? 18 A I think it is. I'd have to look at it 19 again. But I think it is. 20 Q Then let's pull up the study. I got it. 21 A Okay. Okay. 22 Q So let me introduce it.	1 the total revenue with a minimum expenditure -- 2 A Okay. 3 Q -- level, which they then say is row 4 three in this chart on 461, provides a 5 conservative and reasonable approach to 6 calculating returns? 7 A Yeah. 8 Q So what I understand them to be saying 9 there is that they are looking at how much money 10 was spent by the Checkoff at the most, or in total 11 I should say, and how much was spent in the least 12 year. And then they're saying the Checkoff return 13 can be calculated based on the difference between 14 those and difference in demands; is that right? 15 A That is correct. 16 Q Given your concerns about controls, I'm 17 a little bit surprised about why you think this 18 study is reliable given what they are doing is 19 they're comparing demand to expenditures without a 20 control. 21 MS. KOPPLIN: Objection. That's not a 22 question.

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1 BY MR. MURASKIN: 2 Q Why do you think that's reliable? 3 MS. KOPPLIN: Objection. Confusing. 4 THE WITNESS: They are using a control. 5 Their control is the minimum. This row three is 6 what their control is. That's basically saying 7 before we had the national program there was a 8 little bit of money that was being spent by state 9 programs. So what they're doing is they're saying 10 that's the control. That's the baseline. And what 11 happens when we have this higher spending from -- 12 from -- from the National Checkoff. Because I think 13 the National Checkoff came into existence like in 14 1986 or something like that. So there is a control. 15 I don't know what you mean by there's not a control. 16 BY MR. MURASKIN: 17 Q Well, between 1986 and the later years 18 that there's measured, lots of things changed in 19 society. That's a fair statement? 20 A Oh, they are controlling for that. 21 They're controlling for things like changes in -- 22 if you go to table one, those are all control	1 possible omitted variables that may influence the 2 beef price over time. And it's -- it is 3 significant so that's alpha three in their model, 4 but that's exactly -- so they have a baseline and 5 then in the econometric model, they are 6 controlling for changes over time in these 7 variables. 8 Q And that's the way -- 9 A If there is something omitted, you'd 10 have to tell me what's being omitted from their 11 model. 12 Q Well, there are other beef ads besides 13 the Checkoff ads, right? 14 A There are but not to the extent of the 15 Checkoff ads. They're much smaller in magnitude. 16 Much smaller. 17 Q And there are other ads from other 18 checkoffs for other meat products, correct? 19 A That's correct. 20 Q And there are the general societal 21 changes about values of nutrition that occur over 22 time, correct.
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1 variables. Those are all independent variables 2 that are listed in table one, including -- so they 3 have -- they have price as their dependent 4 variable, and then they have things like 5 quantities as their independent variables. So 6 they are controlling for changes in quantity, they 7 are controlling for changes in pork quantity. 8 They're controlling for poultry quantity. Those 9 are market changes that occurred over time, and 10 they are controlling for it. This is an 11 econometric model. 12 Q So society doesn't change in other ways 13 besides quantity over years? 14 A Yes. They are controlling for 15 seasonality. They include a time variable as a 16 proxy for other things that they don't have that 17 they're measuring. That's a control variable. 18 Q What is the time variable? 19 A It's right under income. They're 20 controlling for income. They included time as 21 kind of a -- a lot of times people will include a 22 time for any sort of proxy for any sort of	1 A That is correct. And I think that 2 that's primarily what the time variable is 3 proxying is changes in preferences over time -- 4 over this time period. 5 Q Well, but the United States also 6 promotes a variety of advertising about nutrition, 7 right? 8 A Yes, they do. 9 Q And that would influence people's food 10 selection presumably, right? 11 A Yes, it would. 12 Q Okay. 13 A You know, I would just add that they are 14 controlling for what they have data on. Are they 15 controlling for every possible demand driver, or 16 price driver I should say, in this model? 17 Probably not. But if you look at their R squared, 18 which is 85 percent, that basically means that 85 19 percent of the variation in the beef price over 20 this time period was explained by variation in 21 these control variables. That's a pretty good R 22 squared. I've had -- I've seen higher ones, but

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1 85 percent is pretty good. 2 Q Okay. I'm going to direct you now to 3 the next board article, which is from 1999. It's 4 on page 12 of your report, which is Exhibit 1. 5 A Okay. Let me just get that. 6 Q Sure. 7 A It's on page 12? 8 Q Yeah. And it's the Ward from 1999. 9 A Okay. Depending upon your question, we 10 may have to go to it. But -- okay. Page 12, the 11 second Ward? 1999? 12 Q I don't know whether it's -- yes, it is 13 the second, yes. Thanks. 14 A Okay. Used national demand/price data 15 to estimate an econometric model. Okay. 16 Q Sure. 17 A I am familiar with this. 18 Q Well, on this study he explains -- I 19 assume Ward is a him; is that right? 20 A What's that? 21 Q Ward is a male; is that right? 22 A Yes. He. Ron, Ronald.	1 effective, too. 2 Q I think that's actually what he's 3 talking about here is he's talking about other 4 studies. But y let's just confirm I'm reading it 5 right. 6 A Okay. 7 (KAISER Exhibit Number 5 was marked for 8 identification.) 9 BY MR. MURASKIN: 10 Q You should now have Exhibit 5, which is 11 the Ward from 1999 study. 12 A Got it. Let me open it. Okay. All 13 right. What page? 14 Q I'm looking at page 519, where he talks 15 about brand and elasticities. 16 A At the top, the report. Let me just 17 read it. 18 Q Sure. 19 A So he's talking about the result from -- 20 that Coulibaly, or whatever the guy's name, and 21 Brorson; is that -- is that what this is talking 22 about in this paragraph?
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1 Q So Ward explains that the -- he's been 2 working with the beef board to evaluate the 3 program. That's how he starts the study; is that 4 correct? 5 A I don't have the study in front of me, 6 but he certainly worked with the beef board just 7 like I worked with the beef board on my study. 8 Q Okay. And the beef board is the entity 9 that receives benefits from the Checkoff, right? 10 A That is correct. 11 Q And as part of his study he explains 12 that branding has a significant positive effect 13 for beef; is that right? 14 A I'll take you at your word. I'd -- I'd 15 have to look at the study, but it doesn't surprise 16 me. Should we -- 17 Q Yeah. Let's look at the study. We have 18 time. 19 A Yeah. Let's. 20 Q Give me a second. 21 A And I also am aware that other studies 22 have found branded beef advertising to be	1 Q I read him as talking about -- yeah, 2 Coulibaly and Brorson. 3 A They found -- they found branded 4 advertising to be highly significant, and generic 5 advertising to not be significant. Okay. 6 Q Okay. That's all. I wanted to confirm 7 I was reading it right. We can go back to your 8 report, which is Exhibit 1. 9 A Okay. Exhibit 1. Yeah. Got it. 10 Q And now I want to turn to the Kaiser 11 199- -- or sorry, excuse me -- 2019 study. 12 A Okay. 13 Q And this is the same one we discussed 14 earlier that was funded by the beef board, 15 correct? 16 A That is correct. 17 Q And again, I'm happy to introduce this 18 if you don't recall. This study talks about US 19 beef. Do you know how you were using the term "US 20 beef" in the study? 21 A Hold on a second. Let me get -- let me 22 actually get to -- is this in where -- where --

Page 162 1 where is the term "US beef"? Do you mean the US 2 beef industry? 3 Q Yes. But you use it in a variety of 4 places in that study. I can give you examples if 5 you want them. 6 A "US beef demand" there means basically 7 domestically produced beef and net imports, which 8 would be negative. So we exclude exports and we 9 include imports basically. And that's what our 10 beef demand is. It's basically what people 11 consume and it obviously comes from mainly 12 domestically produced beef but also some imports. 13 Q Well, and this study talks about US beef 14 exports. And when it talks about those US beef 15 exports, it's talking about both domestically 16 raised cattle and beef that's imported and then 17 processed in the US; is that right? 18 A For the export? 19 Q Yes. 20 A Could you say it one more time, please? 21 Q Sure. Maybe it just -- let me introduce 22 this and I can look at what I'm talking about.	Page 164 1 so what I used was I used eight regions, the eight 2 most important regions that we export our beef to. 3 And that's what I mean when I say imports. It's 4 Japanese imports of US beef, Russian imports of US 5 beef, et cetera. That's what I mean there. Is 6 that -- 7 Q So I'm actually interested in the other 8 phrase in that sentence. US beef exports, the 9 first part. 10 A US beef export promotion? 11 Q Yeah. So what is being promoted there, 12 when you talk about US beef? 13 A It's beef -- 14 Q Yeah. Finish -- 15 A Okay. So you're asking what does USMEF 16 and CBB, et cetera, how do they promote US beef? 17 They -- 18 Q I'm not asking how they promote it. 19 What is the meaning of US beef there? Is it just 20 domestic beef or is it domestic beef combined with 21 other imports that are processed in the US? 22 A It's possible there might be some
Page 163 1 Let's do that. 2 (KAISER Exhibit Number 6 was marked for 3 identification.) 4 BY MR. MURASKIN: 5 Q You should now have Exhibit 6, which I 6 believe is your 2019 study. 7 A Okay. What page do you want me to go 8 to? 9 Q Eighteen. 10 A Eighteen. 11 Q Yes. 12 A Okay. I'm on page 18. 13 Q So at the top of page 18 you talk about 14 evidence that US beef export promotion has had a 15 positive impact on US beef imports. And I'm 16 trying to understand what you mean by US beef 17 exports there. Is that just domestic cattle or is 18 it domestic combined with other imports? 19 A Okay. So US beef imports to the eight 20 regions. That's -- so it's not beef -- it's not 21 beef coming into the United States. It's beef 22 exports. But they are imports. So I'm using --	Page 165 1 imported beef, but it's mainly high-valued, 2 domestically produced US domestic beef: A lot of 3 steaks, a lot of high-valued Kobe beef, that sort 4 of thing. We tend to export a lot more higher 5 valued products than we import. We import 6 usually -- well, I shouldn't say that. But we 7 export -- we export our highest-valued beef 8 products. By we, I mean the US. 9 Q Let me rephrase the question this way: 10 The current beef supply does not attempt to track 11 where the beef originated, correct? 12 A I don't know the answer to that. I -- I 13 -- that doesn't sound -- that sounds like it's 14 very possible what you're saying, but I just don't 15 know the answer to that. 16 Q When the US exports products does it 17 list whether the cattle that the beef came from 18 was born, raised, and slaughtered in the United 19 States? 20 A I believe so. 21 Q You believe it lists whether it was 22 born, raised, and slaughtered in the United

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1 States? 2 A I believe so, but I'm not a hundred 3 percent positive. 4 Q When the US sells cattle beef products 5 domestically, do you think it lists where the 6 cattle was born, raised, and slaughtered? 7 A Yes. 8 Q Okay. Moving on -- well, just one -- 9 actually, one more question along these lines. 10 The US imports both beef, which is a 11 slaughter product, and cattle, which is a live 12 product, correct? 13 A Correct. With one exception. When 14 there's -- if there's a mad -- BSE mad cow 15 outbreak, they will ban. And that will be -- go 16 both ways. We will ban Canadian beef for example 17 when that happens and Canada will ban US beef. 18 And that has happened in the past. Since 2006 19 it's happened. 20 Q Okay. Going back to your report which 21 is Exhibit 1. 22 A Okay.	1 newspaper ads are particularly effective, right? 2 A Correct. 3 Q And that's the nature of the types of 4 conclusions in the article, right? 5 A Correct. 6 MS. KOPPLIN: Objection. Confusing. 7 BY MR. MURASKIN: 8 Q Okay. Going on to paragraph 31. 9 A Okay. 10 Q So you talked demand system modeling in 11 this paragraph, right? 12 A Correct. 13 Q Does Dr. Dimofte use demand system 14 modeling in his statistical analysis? 15 A No. 16 Q And these studies that you are talking 17 about here are studies again examining demand for 18 all beef together, correct? 19 A That is correct. 20 Q So none of these studies try to assess 21 whether consumers would have preferred domestic 22 beef to international beef?
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1 Q So I'm now looking at the Brooker, 2 Eastwood, Gray article, which is the bottom of 3 page 12, runs onto page 13. 4 A Okay. 5 Q Does that article mention the checkoffs 6 anywhere? 7 A Hold on a second. I honestly can't 8 remember if they mentioned checkoff or not. 9 Q Would you be surprised if I told you I 10 couldn't find any mention of it anywhere in there? 11 A No. 12 Q What this article does is it looks at 13 types of advertising to assess their impact, 14 right? 15 A Uh-huh. What it does is it looks at the 16 impact of beef advertising on different beef 17 products. 18 Q And it's broken down by type of 19 advertising, correct? It's like TV ads, radio 20 ads, newspaper advertisements. Right? 21 A Correct. 22 Q And one of the conclusions is that	1 A Correct. 2 Q And none of these studies assess whether 3 consumers would pay more for domestic beef than 4 international beef? 5 A Correct. 6 Q And none of these studies assess whether 7 consumers would buy more domestic beef as compared 8 to international beef? 9 A Correct. 10 Q And none of the studies examine whether 11 generic advertising homogenizes beef; is that 12 right? 13 A Correct. 14 Q And all the studies you cite here are 15 published in peer-reviewed journals, right? 16 A No. 17 Q Which ones haven't? 18 A My 2015 study was not -- I'm sorry. The 19 2019 study that I did was just a report. It was 20 not published. The 2015 study was published in 21 Applied Economics. And I am -- let me just see 22 here.

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1 Q So I'm talking -- 2 A But the rest of them -- I'm sorry. The 3 rest of them appear to be published, yes, in 4 journals. 5 Q I'm specifically focused again on 6 paragraph 31. So we're talking about the 7 Coulibaly -- I'm sure I'm butchering his name, I 8 apologize about that -- the Brester, the Kinnucan, 9 those three articles that you talk about at the 10 beginning. Those are all peer-reviewed articles, 11 right? 12 A Correct. 13 Q And so what these articles are showing 14 is that there's a disagreement in the economics 15 field about whether generic advertising increases 16 demand for beef generally; is that right? 17 A Correct. 18 Q Paragraph 32 of your report. So this 19 runs from page 13 to page 14 of your report. 20 A Okay. 21 Q Do you want a second to review it? 22 A Let me just -- okay. Yeah. I know what	1 Can you reconcile those two thoughts to 2 me? 3 A Reconcile -- can you say that one more 4 time? 5 Q Yes. Earlier you said Dr. Dimofte asked 6 leading questions about -- that led consumers to 7 prefer domestic beef. But the way I read 8 paragraph 32 is that you're saying, well, in fact, 9 consumers did not respond to origin particularly 10 significantly. 11 MS. KOPPLIN: Objection. Oh, sorry. 12 BY MR. MURASKIN: 13 Q Can you reconcile those two statements 14 for me? 15 MS. KOPPLIN: Objection. Misstates 16 Dr. Kaiser's prior testimony. 17 THE WITNESS: I don't see any 18 inconsistency there at all. I mean it's not 19 surprising that when you lead a biased question that 20 people will talk about origin, but then comparing 21 the origin to other attributes and ranking them low, 22 I don't -- I don't see any inconsistency at all in
Page 171	Page 173
1 that is. 2 Q So this is talking about the relative 3 weight of origin in the consumer survey responses, 4 right? 5 A Correct. 6 Q And this survey question was asked on a 7 1-to-8 scale in Dr. Dimofte's survey, correct? 8 A Correct. 9 Q And consumers in their responses ranked 10 origin above the middle of that scale, correct? 11 A Correct. 12 Q And we're talking, as you noted, a steak 13 advertisement. So is it surprising that consumers 14 would have placed price above origin given that 15 steak's a expensive cut of meat? 16 A No. 17 Q And elsewhere in your report -- and we 18 talked about this already -- you talk about how 19 Dr. Dimofte was leading respondents regarding 20 origin being important. But now you are saying 21 that consumers didn't have that strong a response 22 on origin.	1 that. 2 BY MR. MURASKIN: 3 Q Well, it's your position that but for 4 Dr. Dimofte's leading questions, origin would have 5 been ranked yet lower? 6 A Say that again. 7 Q Is your position that but for 8 Dr. Dimofte's so-called leading questions, origin 9 would have been ranked yet lower? 10 A I don't understand your question. 11 Q You said he asked leading questions that 12 encouraged people to rank origin high. And I'm 13 asking do you believe those leading questions 14 impacted these responses such that they led 15 consumers to rank origin higher than they would 16 have other than absent those leading questions? 17 A Yes. 18 MS. KOPPLIN: Misstates Dr. Kaiser's 19 testimony. 20 THE WITNESS: I think that the leading 21 questions did produce a higher ranking number on 22 origin by itself, but so what? I mean if you want

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1 to compare it to other attributes that are higher, I 2 don't see how that's inconsistent. Price is more 3 important. I didn't say -- I didn't say that the 4 results caused this ordering of attribute, I just 5 said that it elevated the ranking of origin. 6 BY MR. MURASKIN: 7 Q But you can't tell me whether 8 Dr. Dimofte's survey responses are consistent or 9 inconsistent with the other research on how 10 consumers would have valued domestic beef because 11 you didn't review that research; is that right? 12 A That's correct. 13 Q Okay. The next paragraph. So this is 14 paragraph 33 on page 14. 15 A Okay. Let me read it first. 16 Q Sure. 17 A Okay. 18 Q So here this is where you are 19 criticizing what you call the leading questions. 20 I just want to be clear about what you believe are 21 the leading questions. I identified two in your 22 report. His use of the word "industrial" as	1 the minds of the consumers. I mean, animal 2 welfare. I would think that would be a 3 superior -- consumers would value that. Adding 4 value to the consumer basically. 5 Q You agree that domestic beef is produced 6 under the United States's laws, right? 7 A Yes. 8 Q And you agree domestic beef is produced 9 with US labor, right? 10 A Yes. 11 Q And therefore you agree that US beef 12 production more fully supports the US economy than 13 other beef production, right? 14 A Yes. 15 Q Could consumers regard those qualities 16 of domestic beef as meaningful? 17 A Yes. 18 Q And in fact, paragraph 15 of 19 Dr. Dimofte's report, which we looked at earlier 20 suggests that consumers do regard those qualities 21 of beef as meaningful, right? 22 A Correct.
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1 compared to "domestic" in one question, and the 2 question that characterized domestic ranchers 3 believe that their beef is superior. 4 Were there any other leading questions 5 that you identified that contributed to what you 6 consider a biased response on origin? 7 A I would have to take a look. Those are 8 the two that come to mind. Let me just -- 9 actually, let me go to his questions here. 10 Q Sure. 11 A Okay. Those are the two. Now I need to 12 go back. So what was it? Paragraph 3? 13 Q Page 14, paragraph 33. 14 A Okay. Okay. Okay. 15 Q So you also say in this paragraph 16 there's no proof that domestic beef is superior to 17 imported beef. 18 Do you see that? 19 A Correct. 20 Q What do you mean by the word "superior"? 21 A I mean superior in taste, superior in 22 carbon footprint, superior in -- you know, it's in	1 Q And would you agree that some domestic 2 producers, at least, use practices that have 3 better animal welfare than other producers? 4 A Yes. 5 Q And you'd agree that some producers use 6 practices that are better for the environment than 7 other producers, right? 8 A Yes. 9 Q And some of those beef producers that 10 use better animal welfare or environmental 11 practices are in the United States probably, 12 right? 13 A Yes. 14 Q And animal welfare and environment are 15 things consumers care about? 16 A Yes. 17 Q Okay. Page 16, paragraph 45. 18 A Okay. 19 Q Do you want to look at that? 20 A I'm good. 21 Q You call Dr. Dimofte's meta-analysis 22 cherry-picking in this paragraph, right?

Page 178 1 A I said it has the appearance of cherry 2 picking. I didn't call it cherrypicking. It's a 3 different -- 4 Q What do you mean by the appearance of 5 cherrypicking that isn't actually cherrypicking? 6 A It means that some people could perceive 7 it in that manner. Maybe not everybody. 8 Q Are you perceiving it in that manner? 9 A Yes. 10 MS. KOPPLIN: Objection. Confusing. 11 BY MR. MURASKIN: 12 Q So when -- you in fact are calling it 13 cherrypicking in your opinion, correct? 14 A Not in my opinion. You just asked me -- 15 I mean in my rebuttal. So what it looks like to 16 me is why would he do all these separate studies 17 and not find a significant result and then all of 18 a sudden combine them all and find a significant 19 result? It has the appearance of you're trying to 20 find an answer to -- that supports the position 21 that you're being paid to support. 22 Q Meta-analysis is a regular part of	Page 180 1 you're not familiar with marketing research? 2 A Maybe. But I am familiar with 3 meta-analysis. 4 Q Okay. So going back to his 5 meta-analysis. So to the best of your knowledge 6 he didn't remove any respondents from his 7 meta-analysis, right? 8 A The only respondents he removed was what 9 he stated at the beginning. They removed people 10 like lawyers, advertisers -- and I don't even know 11 why he did that. I mean, aren't they also beef 12 consumers? He removed people that weren't beef 13 consumers, he screened these people out, and I 14 presume -- I have his raw data, and there's a lot 15 of incomplete observations in there. So I assume 16 he threw out, you know, every respondent that had 17 an incomplete response -- didn't respond to every 18 question. 19 Q Well, did he manipulate who he included 20 in the meta-analysis? He chose some of the 21 respondents and not others? 22 A No. I don't think so. That's not what
Page 179 1 research, right? 2 A Yes, it is. 3 Q Can you point me to any other study 4 anywhere that's ever called meta-analysis 5 cherrypicking? 6 A No. 7 Q And when you say Dr. Dimofte was 8 cherrypicking in his meta-analysis did he remove 9 any people from the study? 10 A I am not aware of that. But can I just 11 go back to the meta-analysis? Most 12 meta-analysis -- in fact, I think all 13 meta-analysis that are done is looking at hundreds 14 of other studies that were done by different 15 people to try to find an overall general 16 conclusion. I've never seen a meta-analysis done 17 within one study. 18 Q So you believe this is the first time 19 anyone's ever done this kind of meta-analysis? 20 A I don't know for a fact, but I've never 21 seen it done before like that. 22 Q Could that just be due to the fact that	Page 181 1 I meant by cherrypicking. 2 Q When you performed your study, you put 3 all the respondents into one format -- form 4 together to analyze them. 5 A I took his data and I had to delete 6 everybody that didn't have a complete response 7 because I couldn't do a regression if you have 8 missing -- missing data. So if somebody said what 9 their willingness to pay was or their intent to 10 purchase but didn't put their income level or 11 something else, I excluded them. So I could only 12 deal with complete responses. 13 Q But you put them all onto one file and 14 analyzed together, right? 15 A I did. And I included that with what we 16 sent over. 17 Q And part of the reason you wanted to 18 include all of them together -- and you mentioned 19 this earlier in your report, too -- is the more 20 observations you have, the more likely it is to 21 figure out statistical significant results. 22 Right?

Page 182 1 A No. The only reason I did it was to see 2 if I could replicate his ANOVA findings that a 3 willingness to pay was statistically higher in the 4 meta-analysis for the altered group than the 5 unaltered group. That's what -- that's -- that's 6 the sole reason I did the regression. 7 Q You do say you wanted more observations 8 earlier in your report, right? 9 A I say that's what he said was the reason 10 he wanted to do the meta-analysis. My 11 meta-analysis was just to see if I could replicate 12 his ANOVA findings in a regression, and I 13 couldn't. 14 Q Sure. The more observations a study 15 has, the more likely it is to be able to distill 16 what actually is significant -- statistically 17 significant. Right? 18 A Right. 19 Q And one of the things a meta-analysis 20 does is it combines the observations together from 21 the different studies, correct? 22 A Correct.	Page 184 1 pretty much the same survey. It's almost 2 identical. Whereas a meta-analysis usually is 3 different studies, completely different studies, 4 different researchers, and they use the aggregate 5 results of the studies as observations. 6 Q But your regression does nothing to 7 recognize the fact that there are different 8 studies here, correct? 9 A Correct. I treat them all as one. 10 Incidentally, all the questions are identical in 11 the same order and everything, so it's just a 12 different subject pool that they are drawing from. 13 It's really the same survey. 14 Q Well, and that's the reason you believe 15 you can treat all as one; is that right? 16 A Again, I was only doing it to see if I 17 could replicate his findings with the ANOVA. So I 18 wouldn't have done the regression had I not found 19 that result there. I was -- I was basically 20 trying to see if that was true or not from a 21 regression standpoint. That's the only reason I 22 did it.
Page 183 1 Q But one of the things that a 2 meta-analysis does that yours doesn't is recognize 3 that the -- there were in fact different studies, 4 right? 5 MS. KOPPLIN: Objection. Confusing. 6 BY MR. MURASKIN: 7 Q You can answer. 8 A I don't think I completely understand 9 your question. Can you ask it again? 10 Q So you combine all the data into one 11 Excel file when in fact that data was the product 12 of different discrete studies, right? 13 A Correct. 14 Q But what a meta-analysis is meant to do 15 is to look at the analysis across different 16 discrete studies, but then determine what can be 17 distilled from them collectively, right? 18 A That is correct. And that's why I kind 19 of don't like the term that he uses meta-analysis 20 because these studies were almost identical. He 21 used the same Qualtrics survey. Just one was a 22 national sample and then he did five states --	Page 185 1 Q Well, but if your regression wasn't done 2 properly, that would be problematic. So I assume 3 you have a justification for being able to put all 4 the data together, right? 5 A Yeah. My justification was I was trying 6 to replicate what he did. I did exactly -- I used 7 the exact same data that he did and used 8 regression instead ANOVA. That was my -- I wasn't 9 trying to do a new study. I was just trying to 10 rep- -- see if I could replicate it. 11 Q He didn't put all the data together, 12 correct? What he did was he did an analysis of 13 the different studies, keeping them separate and 14 then doing a meta-analysis, right? 15 MS. KOPPLIN: Objection. Misstates 16 Dr. Dimofte's report. 17 THE WITNESS: I don't agree with that. He 18 did put the all the data together. I mean he did 19 do -- he did -- he says he did seven studies or 20 something like that. So he did a national study, 21 and then he did five state studies, and then he 22 combined those six studies together in a meta-study.

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1 BY MR. MURASKIN: 2 Q And your belief is that what he did was 3 combine all the respondents into one Excel file, 4 then run some kind of mathematical study? 5 A Yes. In fact, I could replicate his 6 finding in the ANOVA, not exactly, but with the 7 data I used, I found his result in the ANOVA. And 8 I did not find his result when I regressed the 9 regression. And I hypothesize it's because some 10 of the control variables took away some of the 11 significance in the altered ad that he found with 12 the one-way ANOVA. 13 Q Yeah. And I want to be clear. We will 14 get to your data in a minute. So don't worry. We 15 will get there. 16 So paragraph 43 on page 15, you say that 17 the meta-analysis produced contradictory results 18 because it found statistical significance when there 19 wasn't that in the single studies. 20 Do you see that? 21 A Paragraph 43? 22 Q Yeah.	1 meta-analysis. The meta-analysis just found 2 statistical significance and the -- certain of the 3 single studies didn't, right? 4 A Correct. 5 Q And maybe you are not familiar with this 6 because you are not familiar with the literature, 7 but in meta-analysis it's actually common for the 8 results to be reversed in fact. Right? That you 9 can have single study results in one direction and 10 then the meta-analysis comes out in the exact 11 opposite direction. 12 Are you familiar with that? 13 A That's possible. 14 Q Would you call that contradictory? 15 A I would say that the meta-analysis 16 contradicts the independent -- the individual 17 study, yes. 18 Q Okay. 19 A Would you prefer if I used mixed 20 results? I mean -- I mean if you find -- if you 21 find one conclusion in one study no impact versus 22 another that shows a positive impact, I call
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1 A Okay. What's your question about that? 2 Q Do you say -- am I reading this right to 3 say that you claim he produced contradictory 4 results because he found statistical significance 5 in the meta-analysis, but not in the single 6 studies, right? 7 A Yes. 8 Q How is that contradictory? 9 A One says that there's no impact at all. 10 No difference at all between the altered and 11 unaltered, and one that finds there is a 12 difference. So that's contradictory. 13 Q Is that what it says? I thought what it 14 said was one found statistical significance and 15 one did not find statistical significance. 16 A That's -- that's what I just said. 17 That's a contradictory result. One says so if not 18 statistically significant, it's zero. It has zero 19 impact. So one found zero impact, and one found 20 positive impact of the altered ads. 21 Q In fact, each of Dr. Dimofte's studies 22 found results exactly in the same direction as the	1 that -- those two conclusions are contradictory. 2 Q Okay. I'm going to skip a bunch of your 3 discussion of your regression so we can come back 4 to it collectively. So I'm purposely skipping, 5 and we will come back to that. But I want to 6 finish up with your criticism of Dr. Dimofte 7 first. 8 A Okay. 9 Q We're going to go to page 18, 10 paragraph 51. 11 A Okay. 12 Q So in paragraph 51 I want to make sure 13 I'm understanding what you're saying. Right? You 14 say the point of generic advertising is to 15 increase the total consumption of beef, not 16 individual market shares. 17 Is that right? 18 A That is correct. 19 Q And so does that mean that part of the 20 point of generic advertising is to treat beef as 21 an interchangeable generic product? 22 MS. KOPPLIN: Objection. Misstates

Page 190 1 Dr. Kaiser's testimony. 2 THE WITNESS: No. I don't think that -- 3 that follows. Generic advertising tries to grow the 4 whole pie, increase consumption as a whole. So I 5 don't know how that leads to your second -- your 6 second comment. 7 BY MR. MURASKIN: 8 Q Well, so let me ask you about that 9 response then. 10 So, but generic advertising's goal is not 11 to increase the specific slices evenly; it's to 12 increase the total box. Is that right? 13 A That is correct. 14 Q And so that may mean that it increases 15 the pie without increasing specific slices in 16 proportion to what the total pie is; is that 17 right? 18 A That is correct. 19 Q In paragraph 52, you say that you've 20 never seen a study that shows that advertising 21 domestic beef is superior would promote domestic 22 welfare.	Page 192 1 opposite. Consumers do differentiate beef based 2 on where it's produced, right? 3 MS. KOPPLIN: Objection. No foundation. 4 THE WITNESS: Repeat the question. 5 BY MR. MURASKIN: 6 Q In fact, the research shows the 7 opposite, that on page 15 -- or paragraph 15 of 8 Dr. Dimofte's report he produces studies that show 9 consumers do differentiate (audio glitch), right? 10 A Yes. 11 Q In paragraph 53 you use the phrase "US 12 beef" again. So you see, like, in the second part 13 of paragraph 53, the second subparagraph? 14 A I'm reading his footnote first. Okay. 15 Say that again. Where -- let me read it. 16 Q Sure. 17 A Okay. 18 Q So you used the phrase US beef. For 19 instance you say "increased US beef exports" in 20 the second paragraph. 21 A Correct. 22 Q I want to understand what you mean by US
Page 191 1 A Correct. 2 Q Have you ever seen a contradictory 3 study? And by that I mean one that says 4 advertising domestic beef as superior would harm 5 domestic welfare or keep it even? 6 A No. I -- I -- I don't think so. 7 Q In the same paragraph you say: Domestic 8 and foreign producers are selling the same 9 commodity. 10 Why do you say that? 11 A Well -- why am I saying that? Because 12 it's true. I mean, what is the difference between 13 an imported ribeye steak versus a domestic ribeye 14 steak other than that an imported one was produced 15 in another country? So I don't -- I don't see the 16 logic behind your question. 17 Q Well, but that assumes that consumers 18 don't differentiate beef based on where it's 19 produced, right? Isn't that the assumption baked 20 into -- 21 A Yes, yes. 22 Q And in fact, the research shows the	Page 193 1 beef here. 2 A I mean primarily domestically produced 3 beef that's exported to other countries. 4 Q Well, you say primarily, but my point is 5 -- or my question is are you differentiating 6 between domestically produced -- born, raised, and 7 slaughtered and others -- or all US-processed 8 beef? 9 A I'm -- I'm -- I'm referring to what the 10 US Department of Agriculture calls US beef exports 11 on a disappearance basis. And I assume that the 12 overwhelming majority of that is produced in the 13 United States. I can't say factually that there 14 aren't any imported, you know, cattle or something 15 that might be included in there that get 16 slaughtered in the US and exported. I just don't 17 know that. But it's predominantly US produced. 18 But the answer is US exports that the USDA calls 19 US exports. 20 Q Similarly, you talk about US being a net 21 exporter in value and -- but you are not 22 differentiating based on where those cattle came

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1 from again. It's all US exports, not where the 2 cattle was born, raised, and slaughtered. 3 Is that right? 4 A Correct. 5 Q So you can't tell me how much of the 6 exported value is in fact cattle that was born, 7 raised, or slaughtered someplace else, correct? 8 A I can't tell you exactly, but I can tell 9 you that it's the overwhelming majority of it. 10 Q And in this paragraph you talk about the 11 Speer article, and it's talking about beef 12 imports. 13 A Uh-huh. 14 Q And again I have the article if you want 15 to look at it. So just let me know. 16 A No. I'm familiar with it. And I think 17 I -- most of it is in my report. 18 Q Beef imports are different than live 19 cattle imports, right? 20 A Yes. 21 Q And when Spears is talking the benefits 22 of impacts, he's mainly talking about the benefits	1 Q And he also uses the phrase "domestic 2 producer." Do you know how he's defining that 3 term? 4 A I would assume he means somebody that 5 lives in the United States that produces beef. 6 Q But you don't know whether he's 7 differentiating between an integrated company 8 that's domestic versus a cattle producer that's 9 domestic, right? 10 A Can you say that again? I didn't hear 11 what the first word was. 12 Q Do you know if he's differentiating 13 between an integrated company that's domestic and 14 a cattle producer that's domestic? 15 A Yeah. I don't think he's -- I don't 16 think he's differentiating between that. 17 Q And the Kaiser study that's here, 2019 18 study, this is the same beef board report that you 19 previously -- we previously discussed, right? 20 A Correct. 21 MR. MURASKIN: Okay. I am now done 22 talking about your criticisms. I want to turn to
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1 of importing trim, right? 2 A Correct. 3 Q And trim is used to sell hamburger meat, 4 right? 5 A Correct. 6 Q So he's not describing the benefits of 7 other imports, right? 8 A I think he is. I think he -- when he 9 talks about -- let me just see. When he says, 10 "However, last year's exports exceeded import 11 value by 1.6 billion," he's talking about all 12 imports -- all import value and all export value. 13 Q But that's not talking about the 14 benefits of imports, right? I'm just trying to 15 understand. When he's talking about the benefits 16 of imports, he's talking about -- exclusively 17 about trim, right? 18 A Yes. One of the benefits of imports, 19 yes. 20 Q Do you know how Speer is defining US 21 beef suppliers? 22 A No.	1 your regression. I think this is a pretty good time 2 for a break. I don't know whether you guys want to 3 break for lunch. I can certainly use a few minutes 4 to stretch my legs, but I will tell you in total my 5 guess is we have about an hour, although I hope you 6 don't hold me to that. 7 THE WITNESS: I could use something to 8 eat, too. 9 MS. KOPPLIN: Yeah. I could use something 10 to eat. So maybe we should go ahead -- 11 VIDEOGRAPHER: Can I go off the record? 12 MR. MURASKIN: Let's go off the record. 13 VIDEOGRAPHER: The time is 12:59 p.m. 14 We're going off the record. 15 (Whereupon, a luncheon recess was 16 taken.) 17 * * * * * 18 19 20 21 22

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1 AFTERNOON SESSION 2 (1:45 p.m.) 3 WHEREUPON, 4 HARRY M. KAISER, PHD 5 was called for continued examination, and having 6 been previously duly sworn, was examined and 7 testified further as follows: 8 EXAMINATION BY COUNSEL FOR PLAINTIFF 9 CONTINUED 10 VIDEOGRAPHER: The time is 1:45 p.m. 11 We're back on the record. Please proceed, counsel. 12 BY MR. MURASKIN: 13 Q Thank you. And welcome back Dr. Kaiser. 14 I'm going to ask you some questions about your 15 study. First, some general questions about how 16 studies are performed and specifics about yours. 17 I'll be particularly referring to your 18 appendix pages, pages 21 through 24. And some 19 question about your data. If at any point you need 20 to refer to other parts of your study, just let me 21 know. And if you want me to introduce the data at 22 any point, I have it and am ready to introduce it.	1 A Correct. 2 Q And that could invalidate the results? 3 A Correct. 4 Q And such a study probably wouldn't be 5 accepted in your field, right? 6 A Correct. 7 Q And you would agree if you identified 8 covariance or independent variables that were 9 actually dependent variables, that would be 10 problematic. 11 A It could be. It's possible. It might 12 not be. 13 Q But it has the possibility of 14 undermining the integrity of the study? 15 A Not necessarily, no. 16 Q Why not? 17 A Let me give you an example. Suppose 18 that you wanted to estimate a demand function and 19 your dependent variable was quantity demanded and 20 your price -- you included price and prices 21 substitutes, income, other demand shifters -- when 22 price could be viewed as possibly a dependent
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1 So if you need that at any point, just let me know. 2 We can get it to you. None of this is meant to be a 3 trick question. 4 I just want to understand generally your 5 views on conducting analysis. Would you agree if 6 you improperly excluded a respondent from the 7 analysis pool that would be problematic? 8 A Yes. 9 Q And that would undermine the integrity 10 of the study? 11 A Yes, it would. 12 Q And it could invalidate the results? 13 A It could. 14 Q And such a study wouldn't be accepted in 15 your field, right? 16 A Correct. 17 Q And would you agree that if you 18 improperly coded results, that would be 19 problematic? 20 A Yes. 21 Q And that would undermine the integrity 22 of the study?	1 variable. That wouldn't val- -- and you did that 2 regression, that wouldn't invalidate your study. 3 I mean the proper way to do that would be 4 to create an instrument -- what's called an 5 instrumental variable, which is a -- you regress the 6 price on some other variables and then you include 7 the predicted value. That's sometimes called 8 instrumental variables. But if you didn't do that, 9 your results could very well still be valid. 10 Q But if you were using something as an 11 independent variable that actually was a dependent 12 variable, and I think we talked about this 13 earlier, wouldn't that skew the results to make it 14 less likely to find statistical significance? 15 A No. But it might bias the results. It 16 might bias the results of the resulting 17 coefficients. It would be helpful if you would be 18 more specific what you mean by a dependent 19 variable that should be an independent variable. 20 Q Don't worry. We're going to get there. 21 A Okay. 22 Q So you said there are a thousand nine

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1 subjects in the study. Dr. Dimofte had 1070. Can 2 you explain why you got different numbers? 3 A I just took his -- he -- he must have 4 included -- since he's only interested in 5 calculating the mean of one variable -- 6 willingness to pay, or the other variable, intent 7 to purchase -- he probably included observations 8 that I excluded because they weren't complete 9 responses on other questions. And that's -- that 10 would -- that would explain why there are 70 11 difference ones. 12 I -- I didn't have -- he sent me the raw 13 data. I didn't even know what all his variable 14 definitions were. And when I went through it, there 15 was a lot of missing observations. I think there 16 might have been like -- I don't know -- 3,000 17 observations at one time. And so the easiest thing 18 to do for me was just to go through line by line and 19 delete any observation that wasn't -- that didn't 20 fill out the whole survey. 21 Q And that's because that made your 22 regression easier; is that right?	1 study is usually about 30 -- 30 or more. So a 2 thousand is quite a few observations. 3 Q Okay. We talked earlier about 4 Dr. Dimofte's willingness-to-pay measurement. Do 5 you remember that measurement? 6 A Yes. 7 Q And there are five categories in that 8 measurement, right? 9 A Yes. 10 Q There's a sixth category that's "do not 11 know" or "no opinion." Right? 12 A Yes. I believe so. 13 Q You coded that sixth category as a 14 response, right? 15 A No. I threw it out. I threw it out. 16 (KAISER Exhibit Number 7 was marked for 17 identification.) 18 BY MR. MURASKIN: 19 Q Let me show you your tab. So this is -- 20 because I'm introducing your data as an Excel 21 sheet -- 22 A Uh-huh.
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1 A That made my regression possible. 2 Because if I tried to do a regression with an 3 observation that -- where there was a missing 4 variable on one of the variables included, some 5 regression packages will just automatically delete 6 it itself, that observation. I went ahead and 7 deleted it. Same result. And that's the sole 8 reason why I did that. 9 Q By reducing the number of subjects from 10 1,070 to 1,009, you are effectively reducing the 11 number of observations, right? 12 A Yes. 13 Q And that means you are less likely to 14 find statistical significance, correct? 15 A No. That's not true at all. When you 16 have over a thousand observations, it doesn't 17 matter whether you have 1100, 1200, or 1300. You 18 are going to -- you're going to find significance 19 usually. So it doesn't really matter that much 20 when you have that many observations. 21 Remember what I said was the minimum 22 number of observations usually in a statistical	1 Q -- you may have to download it to be 2 able to look at it. 3 A Okay. 4 Q But it should be marked as Exhibit 7. 5 A By the way, the data that Dr. Dimofte 6 sent, there was no explanation on anything. I had 7 to kind of decipher things. You know, it's 8 possible I -- I included a willingness to pay with 9 a sixth category; but like I say, none of the 10 variables were defined. I had to guess on what 11 some -- I could tell what willingness to pay was, 12 but -- and I guessed that one of the variables 13 called ACT, I assume that that was the 14 intent-to-purchase variable because it was right 15 next to the willingness-to-pay variable. He 16 didn't give me any information, any definitions, 17 on this. So I just tried to do the best I could 18 with the raw data. All I got were numbers 19 basically. 20 MR. MURASKIN: Okay. So I think -- you 21 asked me to show you -- to share my screen. I'm 22 happy to do that if that's okay with Rebecca.

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1 MS. KOPPLIN: That might be easier. 2 THE WITNESS: Yeah. Let's do that because 3 I couldn't open it. 4 BY MR. MURASKIN: 5 Q Okay. You should be seeing what is 6 Exhibit 7 at the top and then is the -- is the 7 data that you have. Is that -- and that's what 8 this looks like, correct? 9 A That -- that -- that's exactly right. 10 Now, you can see by the way that -- some of the 11 variables are obvious. Income, gender, 12 employment, edu, marital, kids, age. But things 13 like AWARE, COMMODITY, DIDBEEF -- I didn't know 14 what those were. 15 Q Okay. Well, right now I'm focused on 16 the second column, which is B, and that's 17 willingness to pay, right? 18 A Right. 19 Q And I'm going to scroll you down to rows 20 413. So that looks like to me that you coded a 21 sixth answer in willingness to pay. 22 A Okay.	1 yeah. They are sorted. It looks like the data 2 was sorted on that. 3 Q Sure. But the same thing is true on 4 rows 1001 to 1010, right? 5 A Correct. 6 Q So you -- if I'm just understanding 7 correctly, you ran a regression where "do not 8 know/no opinion" was coded as 6, so actually the 9 highest of the willingness to pay; is that right? 10 A Correct. I also ran a one-way ANOVA 11 with this same data with the sixes and pretty much 12 got the same result that Dr. Dimofte got. It was 13 that he found the altered ads had a higher -- 14 statistically higher willingness to pay than the 15 unaltered ads. And I found that result. So I -- 16 I basically replicated his result even with this 17 data. 18 Q I'm interested in your analysis, and if 19 you are coding -- 20 A That is my analysis. I did an ANOVA. I 21 replicated his result. 22 Q Where is your ANOVA in your report?
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1 Q Is that what it looks like to you? 2 A It does. 3 Q And that -- you ran that from 413 to 4 429, right? 5 A I did 1 through 1,009. So yeah, that 6 would have been included in that. 7 Q Right. But you coded 413 through 429. 8 A Yes. I didn't code it. I just used the 9 numbers that were given there, yeah. 10 Q That would have been -- the sixth answer 11 is "do not know/no opinion," right? 12 A Okay. Well, that's a mistake on my 13 part. 14 Q Well, the same thing happens at lines 15 720 -- 16 A Uh-huh. 17 Q -- to 726, correct? 18 A Correct. 19 Q And the same thing happens at 1,001? 20 A Yeah. These are all -- these are going 21 in descending order for the control group, for the 22 unaltered group, and for the altered group. So	1 A I don't have it in the report. 2 Q Okay. So my interest is what's actually 3 in the report, and what's in your report is your 4 regression. And you ran a regression where you 5 coded "do not know/no opinion" as to the highest 6 willingness to pay value, right? 7 A Correct. 8 Q Does that not undermine your regression? 9 A It would. But what I just provided 10 that -- I produced the same result that he -- 11 result that he had with doing an ANOVA. So that's 12 important information to have as well. So if 13 it -- if it -- if it didn't compromise the ANOVA 14 result, it doesn't look like it really compromised 15 the regression result. 16 Q Again, the ANOVA that you are describing 17 doesn't appear in your report, correct? 18 A Correct. 19 Q We may have to do some jumping back and 20 forth to screen share because I want to talk about 21 both your report and the data. So I'm going to go 22 to report -- back to your report now. And in your

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1 report, just so I understand what's going on, on 2 pages 21, 22, 23, 24, what you have listed under 3 variables -- this starts with C, right? 4 A Yes. 5 Q Are what you are calling the independent 6 variables are the covariates, right? 7 A Correct. 8 Q And the purpose of these is to control 9 for demographic and socioeconomic differences; is 10 that right? 11 A Correct. 12 Q What's commodity 13? 13 A I don't know. 14 Q Is it anywhere in Dr. Dimofte's data? 15 A Yes. It is. And it says commod- -- I 16 was trying to control for everything that was in 17 his dataset, so I included things that sounded 18 like they would be a control variable. 19 Q Well, I'm going to show you his dataset, 20 and you can tell me where it is in his dataset. 21 So give me one second, I'll show you his dataset 22 again. Do you see his dataset?	1 commodity 3. 2 A That's what it is. I had to put a one 3 in front of it. It's commodity 3. 4 Q You don't know what commodity 3 is? 5 A No. When somebody sends you numbers 6 with a variable name on it, it's kind of hard to 7 know unless the variable name is pretty obvious 8 what it is. I also don't know what "did," the 9 "dids" are in this dataset, "DIDBEEF." AAG, I 10 don't know what that is. 11 Q If I told you that what commodity 3 12 actually represented are the responses to the 13 questions about how much the respondent regards 14 beef as a commodity, would you still have used it 15 as a control variable? 16 A Yes. 17 Q Why? 18 A Because it influences -- it should 19 influence willingness to pay. 20 Q But isn't it -- in paragraph 26 of your 21 report, feel free to look back at that if you need 22 to, you say that other consumer perception
Page 211	Page 213
1 A Yes. 2 Q Where is it? 3 MS. KOPPLIN: I'm sorry. Which exhibit is 4 this? 5 MR. MURASKIN: This is Exhibit 7. It 6 should say Exhibit 7 at the top. 7 MS. KOPPLIN: Oh, the same thing we were 8 looking at earlier? 9 THE WITNESS: This is my data. This is 10 not -- 11 BY MR. MURASKIN: 12 Q Oh, I'm sorry. This is your dataset. 13 A It's in his dataset. Maybe I just 14 didn't print it off on that -- oh, wait. There's 15 commodity -- 16 Q That's what you call commodity 13 is 17 row -- 18 A Yes. I assume he called it that, too. 19 But I don't know what it is. 20 Q Well, would it be interesting for you to 21 learn that there's not exactly a commodity 13 in 22 Dr. Dimofte's dataset? There's something called	1 outcomes are one of the dependent variables in -- 2 A So what? Doesn't matter. You can 3 put -- if -- I can pretty much guarantee you if I 4 instrumented that variable; that is, did a 5 separate regression and put its predicted value in 6 that equation, it would be -- the results would -- 7 would hardly change at all. 8 Q So I'll tell you that we did that and 9 that's not true. But I'll get back to you about 10 that in a second. 11 A Show me the results and I'll believe 12 that then. 13 Q So you believe that it's okay to include 14 a dependent variable as a covariate now? 15 A It's -- it's better to instrument it, 16 but if it's not the variable of interest to 17 include it as a control variable, yes, it's fine. 18 Q Even though -- 19 A If it was the main variable of interest, 20 then I wouldn't -- I wouldn't find that to be -- 21 but I'm using it as a control variable. The main 22 variable of interest in these regressions are the

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1 two indicator variables that are included. 2 Q That's because you labeled them the main 3 variables of interest, right? 4 A No. Because the main variable of 5 interest in this whole lawsuit is whether or not 6 the altered ad is better than the unaltered ad. 7 So that is the main variable of interest. 8 Q Dr. Dimofte thought he was studying 9 whether the altered ads influenced the perception 10 of beef as a commodity, right? 11 A Uh-huh. 12 Q That's correct, right? 13 A Yes. 14 Q So one of the things he was studying was 15 whether the treatments, the different conditions, 16 impacted the responses to whether people regarded 17 beef as a commodity, right? 18 A Correct. 19 Q That makes a dependent variable, right? 20 A Yes. 21 Q And in fact, what you say in your report 22 is that the way the altered ad was presented	1 Q What's your source for that? 2 A How would that work? How -- how -- how 3 could you test whether advertising has an impact 4 on willingness to pay if you did it before they 5 were exposed to the treatment. How would you do 6 that? 7 Q Your independent variables? 8 A That's what I'm talking about -- 9 (crosstalk) an independent variable. 10 Q So you are saying all independent 11 variables should be measured after the treatment? 12 A Yes. 13 Q What's your source for that? 14 A My own knowledge. I have a PhD in 15 economics. 16 Q If I were to quote you a study that 17 says: A second and perhaps more important 18 consideration is that covariates must be 19 independent of the intervention. If covariates 20 are related to it, then removing their effect 21 removes part of the effect of the intervention. 22 Would you disagree with that?
Page 215	Page 217
1 manipulated how people responded to this ad -- 2 this question, right? 3 A Say that -- could you repeat the 4 question? 5 Q You say that the way the altered ad was 6 presented manipulated how people were responding 7 to this question, right? 8 A To the question, yes. 9 Q And one of the ANOVAs Dr. Dimofte 10 expressly runs is to examine the perception of 11 beef as a commodity based on the different 12 conditions, right? 13 A Correct. 14 Q Okay. And so it's fair to say that 15 this -- this response, what you call commodity 13, 16 what Dr. Dimofte called commodity 3, was measured 17 after they were exposed to the ads, right? 18 A Yes. 19 Q Shouldn't your independent variables 20 normally be measured before exposure to the 21 treatment? 22 A No.	1 A No. 2 Q So then tell me how including commodity 3 13/commodity 3 as an independent variable doesn't 4 manipulate your results? 5 A It is -- it is simply included as a 6 control variable. If you ran a regression with it 7 deleted and the results changed, I want to see 8 that. 9 Q We can take a break and I will show you 10 that. 11 How is commodity 13/commodity 3, given 12 what I've told you it represents, related to 13 socioeconomic or demographic information? 14 A Again, when I included it, I didn't -- I 15 didn't know what it was. I was just trying to 16 include all the control variables I could do in 17 the regression. I would be happy to rerun the 18 regressions without that in there and without any 19 other variable that I don't know is in there. I 20 didn't want to make it look like I was just data 21 mining it by excluding it. I -- I just kind of 22 assumed that these were all control variables.

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1 Q Does it -- is it typical of your field 2 to run a regression when you don't know what the 3 variables mean? 4 A No. But I was doing this just to check 5 on his results. I wasn't doing this publish a 6 study or to provide knowledge to the -- provide 7 knowledge to the existing literature on this. I 8 was curious if I could -- I was curious whether 9 any of these control variables would affect the -- 10 the significance of the willingness to pay. And 11 in my regression it did. 12 Q Would any journal accept an article in 13 which you didn't know what the control variable 14 data meant? 15 A No. 16 Q Okay. 17 A Isn't that what I just said? I wasn't 18 doing it in that regard. 19 Q That's fine. What's ad.infl? 20 A I don't know. 21 Q If I told you what's being measured 22 there was that beef advertising influences, would	1 A I would probably not include if I was 2 going to redo the regression. But again, I don't 3 think it's probably going to make a difference. 4 Q Same with commodity 13. If it is what I 5 say it is, was it appropriate to include as a 6 covariate? 7 A Probably not. 8 Q What's "source"? 9 A Where is it? 10 Q S, I believe. 11 A Oh. Source? 12 Q Yes. 13 A I have -- I assume that's the origin 14 question. The source where the beef comes -- what 15 they said the importance of the source of beef -- 16 I mean the origin of the beef. 17 Q So there's a question that says do you 18 believe the source of the beef you buy matters. 19 Is that what you're referring to? 20 A Yes. 21 Q That was also measured after the ads 22 were shown to the respondents, right?
Page 219	Page 221
1 you say that beef advertising influences your meat 2 purchasing behavior? Would that sound correct to 3 you? 4 A Yeah. 5 Q And this is something that was measured 6 after the treatment in Dr. Dimofte's study, 7 correct? 8 A Yes. 9 Q So it was measured after the ad was 10 shown, correct? 11 A Yes. 12 Q Wouldn't ad.infl, meaning -- would you 13 say that beef advertising influences your meat 14 purchasing behavior correspondence to your 15 willingness to pay? 16 A It might. But then, again, it might 17 not. You might like the ad. Just the artistic 18 beauty of the ad you might like, and it might have 19 no impact at all on willingness to pay. It's 20 possible. 21 Q If ad.infl is exactly what I say, is it 22 appropriate to treat it as a covariate.	1 A Correct. 2 Q And wouldn't that response potentially 3 correspond to their willingness to pay? 4 A Oh, yeah. I mean I would hope so. Let 5 me see. Did it show up -- it was significant. 6 Q So why is it appropriate to treat it as 7 a covariate? 8 A It is a covariate. Why is it -- why 9 isn't it a covariate? 10 Q It was measured after treatment, right? 11 A So? All of them are measured after the 12 treatment. 13 Q So that's not actually true. There are 14 things measured in the study before the treatment, 15 right, such as income level and things like that, 16 right? 17 There's demographic data gathered in the 18 study before the exposure to the ad, correct? 19 A I don't know that. I usually -- I 20 usually do those things at the end of the 21 experiment, but maybe he did. 22 Q Give me one second. Sorry.

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1 A So basically, a respondent's answer to 2 the question about source of beef, you know, is a 3 covariate for willingness to pay or it's a 4 possible covariate. And in fact, in the 5 regression it seems to be positive. 6 Q So if you go back to Dr. Dimofte's 7 report and you look at page 42 -- 8 A What exhibit is his report again? 9 Q Give me a second. Oh, it's Exhibit 3, 10 page 42. 11 A Okay. I'm on page 42. 12 Q Right. That's the start of his survey, 13 right? 14 A Uh-huh. 15 Q And if you scroll through there's a 16 variety of data that's collected before a person 17 is ever shown an ad, right? 18 A Yes. 19 Q So in fact, there was control data 20 collected before the intervention of treatment. 21 Right? 22 Q And you could have used that data as a	1 that question exactly? Where is that in the survey? 2 What question is it? 3 Q I don't have -- I apologize. I don't 4 actually -- I can look for it. I have it in my 5 notes that what the source is -- that the question 6 is do you believe the source of the beef you buy 7 matters. But I don't have the page it's on. 8 A Okay. Okay. Well, that -- that's 9 helpful. So, you know -- 10 Q It's on page 60. I just found it. 11 A Page 60? 12 Q Yeah. 13 A Let me just look at that a second. 14 Yeah. I would expect that that would be 15 positively correlated with the willingness to pay 16 because people that would be very much agreeing 17 with that probably would be people that would be 18 willing to pay more to go to a source, you know, 19 maybe a butcher shop or something like that, than 20 to Walmart or Sam's Club, or something like that. 21 So I would expect that to be an important control 22 variable. So yes, I would include it as a
Page 223	Page 225
1 control rather than using data after treatment, 2 right? 3 A And I did. I use income; I use 4 education; I used marital status. That's all in 5 the regression. 6 Q Sure. But you also used data after 7 treatment, right? 8 A Yes, I did. 9 Q And my question is, if source 10 corresponds to willingness to pay and it's 11 affected by the treatments, why is that 12 appropriate to use as a control? 13 A All right. I'll answer it the same way 14 I answered it last time. It's not the variable of 15 interest, here, and it's entirely -- you are not 16 going to screw up the regression by including 17 something that's a control variable if it's 18 significantly related to willingness to pay. 19 So why wouldn't willingness to pay be 20 dependent upon what they believe the source, the 21 question to the source is. 22 And what is the -- can I -- can we get	1 covariate. It doesn't matter what the -- if you 2 asked it after they saw the treatment or not. 3 Q So I'll point you to -- do you see next 4 to the question on page 60, the lower-case 5 letters? 6 A What page is it? 7 Q So page 60, the same question. Do you 8 see how the word "source" comes before the 9 question? 10 A Oh, yeah. "Source" and then "do you 11 believe"? 12 Q Yeah. 13 A Yeah. I see that. 14 Q And do you see on how on page 62, when 15 you go to "would you say that the beef advertising 16 influences your purchasing behavior," the letters 17 before that say "ad.infl"? 18 A Okay. Now I see that, yes. 19 Q So, in fact, if you had looked at his 20 questionnaire, you would have been able to figure 21 out exactly what all the different data meant, 22 right?

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1 A Yes. 2 MS. KOPPLIN: Objection. Misstates prior 3 testimony. 4 BY MR. MURASKIN: 5 Q So now looking at the questionnaire you 6 now can see what each of the codings mean, 7 correct? 8 A Correct. 9 Q If I were to quote an article that says, 10 it's important to verify that the treatment has -- 11 treatments have had no effect on the covariate, 12 would you agree with that? 13 A Can you ask that one more time? I 14 didn't catch -- 15 Q If I were to quote you a published 16 journal article that says, "It's important to 17 verify that the treatments have had no effect on 18 the covariates," would you disagree with that? 19 A On the covariates? 20 Q Yeah. 21 A I don't understand what -- I don't even 22 understand what that means.	1 MS. KOPPLIN: Objection. Calls for 2 speculation. 3 THE WITNESS: I don't really understand 4 your question. 5 BY MR. MURASKIN: 6 Q Sure. Let me -- let me rephrase it 7 then. A question that's gathering socioeconomic 8 or demographic information would be something like 9 "state your race." Right? 10 A Uh-huh. Yes. 11 Q And something like "what's your income." 12 Correct? 13 A Correct. 14 Q Does the question, "Do you believe the 15 source of your beef buy matters" at all relate to 16 those other inquiries? 17 A Yes. 18 Q How? 19 A As I just said, higher educated, maybe 20 your political beliefs, maybe the more liberal you 21 are, maybe the more educated you are, would be 22 more probable to answer affirmative, whereas the
Page 227	Page 229
1 Q Okay. If I were to quote you a 2 published report that says, "A final assumption in 3 ANCOVA design is that the covariate and the 4 treatment are independent," would you disagree 5 with that? 6 A I don't know what that means. 7 Q Okay. How is the question "do you 8 believe the source of the beef you buy matters" 9 related to demographic or socioeconomic 10 information? 11 A I would think that it would be 12 related -- as I kind of just said -- I would think 13 higher educated and higher income people would be 14 more prone to answer that in the affirmative, and 15 maybe poorer people and people with less formal 16 education would do the opposite. 17 Q But let me rephrase the question this 18 way: The question, "Do you believe that the 19 source of the beef you buy matters" doesn't 20 actually correspond to -- is not meant to 21 reproduce demographic and social -- socioeconomic 22 information.	1 reverse should be true for the opposite of that -- 2 of those characteristics. 3 Q If you were trying to gather demographic 4 and social information -- socioeconomic 5 information, would you ask the question, "Do you 6 believe the source of your beef buy matters," to 7 gather that information? 8 A No. 9 Q Okay. Why didn't you perform a 10 regression controlling for socioeconomic or 11 demographic information regarding whether beef is 12 a commodity? 13 MS. KOPPLIN: Objection. Foundation. 14 THE WITNESS: As I said before, I don't 15 consider those to be important questions. I think 16 the only -- the only relevant outcome variables that 17 he asked were willingness to pay and intent to 18 purchase. 19 BY MR. MURASKIN: 20 Q And you couldn't actually perform that 21 inquiry based on how you set up the covariates, 22 correct? Because one of the covariates was the

Page 230	Page 232
1 response to whether they were regarding beef as a 2 commodity, right? 3 A Well, I still could have done it. I 4 would have just used it as a dependent variable. 5 Q But you couldn't have done the same 6 regression you did and examined whether 7 socioeconomic or demographic data related to 8 whether beef is a commodity because you included 9 the answers to whether beef is a commodity in the 10 independent variables. Right? 11 A Well, I would have reversed it. I would 12 have -- if I wanted to include that as a dependent 13 variable, of course, I wouldn't have put it as an 14 independent variable. You would get a singular 15 matrix and you couldn't get a result. 16 So -- but I'm saying that I could have 17 done the regression making that a dependent variable 18 and putting all the other independent variables in 19 the model. 20 Q If you look at paragraph 118 of 21 Dr. Dimofte's report, he says part of his 22 conclusions are based on consumers' different	1 actually examine whether the different ads affect 2 perceptions of the commodity. And I'm asking how 3 you can therefore challenge his conclusions when you 4 haven't done the analysis that he's done. 5 A I didn't -- I didn't challenge his 6 conclusions based on any regression analysis. I 7 challenged them on the way -- on the hypothetical 8 bias and the fact that how can you ask a consumer 9 how -- you can ask a consumer what their 10 perceptions are of something like an advertisement 11 like that and how it -- your perceptions of beef 12 as a commodity or whatever is, but that doesn't -- 13 that only tells you that you might change 14 perceptions. You are not necessarily changing the 15 actual behavior in a market -- marketplace. 16 And that's why I -- I didn't really look 17 at those other questions because all they are are 18 consumer perception questions. It doesn't -- I 19 don't find those very meaningful. 20 Q Can you turn to paragraph 47 on page 16 21 of your report, Exhibit 1? 22 A Okay. What page was it?
Page 231	Page 233
1 perceptions of beef as a commodity. 2 A What page is this on? 3 Q Paragraph 118. Give me a second to find 4 you the page. 5 A Okay. It's up. I have to go up. I was 6 way in the survey thing. 7 Q It's page 26. 8 A Twenty-six. Okay. Paragraph 118? 9 Q Yup. 10 A Okay. So what's the question? 11 Q So part of what Dr. Dimofte is doing in 12 paragraph 118, which he says is part of 13 formulating his opinions, is to examine the 14 different perceptions of beef as a commodity 15 across the conditions, right? 16 A Uh-huh. Yes. 17 Q How can you challenge the analysis 18 without considering whether this is affected by 19 the conditions when he relies on that question in 20 analysis? 21 Let me ask that question again. Sorry. 22 You challenge his results, but you never	1 Q Page 16, paragraph 47. 2 A Okay. 3 Q So you just testified you didn't 4 challenge Dr. Dimofte's conclusions based on your 5 regression. The first sentence of this paragraph 6 says: The findings from my regression analysis 7 using the combined data pool refute Dr. Dimofte 8 finding. 9 Am I reading it wrong? 10 A I'm talking about willingness -- in the 11 regression I'm talking about willingness to pay, 12 the willingness-to-pay finding and the 13 intent-to-purchase finding, not the perception of 14 beef as a commodity finding. 15 Q But what -- 16 A That's just -- isn't that what we were 17 just talking about? Perceptions of beef as a 18 commodity? 19 Q Correct. But Dr. Dimofte does base his 20 conclusions on the different effects of beef as a 21 commodity from the different treatments, right? 22 That's what we just examined in his report, right?

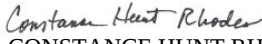
Page 234	Page 236
1 A Correct. 2 Q You don't bother to look at that. And 3 I'm saying how can you disagree with his report 4 when you don't bother to look at that? 5 A I did bother to look at it. I said 6 basically that changing people's perceptions -- 7 doesn't prove anything. 8 Q So you didn't bother to -- 9 A To demonstrate -- to demonstrate harm, 10 show me how it affects demand. Show me how it 11 affects the price, not -- not perceptions. 12 Q You did not bother in your regression, 13 which you are relying on in paragraph 47 to claim 14 to refute his report, to do any form of regression 15 analysis examining whether the different 16 conditions change how people regarded beef as a 17 commodity. Right? 18 A Can you read my first sentence of that 19 out loud? 20 Q The findings of my regression analysis 21 using the combined data pool refute Dr. Dimofte's 22 finding that willingness to pay was statistically	1 MR. MURASKIN: Yeah. 2 MS. KOPPLIN: That's not on page 28. 3 THE WITNESS: On page 17. 4 MR. MURASKIN: I'm sorry if I said 5 page 28. Paragraph 49 is on page 17 and page 18. 6 THE WITNESS: Okay. So repeat then 7 what -- 8 BY MR. MURASKIN: 9 Q You have a sentence at the end of 10 paragraph 49 that says: Hence, contrary to Dr. 11 Dimofte's one-way ANOVA findings, multiple 12 regression analysis showed no harm to R-CALF's 13 members using the meta data -- meta-analysis data 14 because it did not show either willingness to pay 15 or intent to purchase to be any different between 16 the unaltered group and the altered group. 17 Correct? 18 A Correct. 19 Q Dr. Dimofte didn't just do an ANOVA 20 analysis on willingness to pay or intent to 21 purchase. He also did an ANOVA analysis on 22 whether the altered groups affect perceptions of
Page 235	Page 237
1 higher from the altered ad group than either the 2 no-beef groups or the unaltered group? 3 A There you go. 4 Q There I go what? 5 A Nowhere am I saying I'm challenging, 6 based on the regression, his finding that 7 perceptions of beef as a commodity. I'm not 8 saying that based on my regression analysis. I'm 9 saying that based on the fact that I don't think 10 changing perceptions matters. 11 Q In paragraph 49 you have a statement 12 that says there's no harm or R-CALF's members. 13 MS. KOPPLIN: Objection. Misstates 14 Dr. Kaiser's report. 15 BY MR. MURASKIN: 16 Q So at the top of page 28: Hence, 17 contrary to Dr. Dimofte's one-way ANOVA findings, 18 multiple regression. 19 MS. KOPPLIN: I don't think you're on page 20 28. 21 THE WITNESS: You said paragraph 49. 22	1 beef as a commodity, right? 2 A Correct. 3 Q And so in refuting his findings, you did 4 not attempt to analyze or refute that finding, 5 correct? 6 A Correct. Because, again, I find those 7 other perception questions to be meaningless. 8 Q Okay. Does it impact your analysis that 9 -- so we did run a regression, and we -- what we 10 did was we put commodity 13/3, source, ad.infl -- 11 we removed those from the independent variable. 12 We also left in all the respondents who responded 13 to the various questions. And we included all 14 your other results, all your other controls. And 15 the result we got is effectively identical to 16 Dr. Dimofte's meta-analysis. 17 Does that change your view of whether your 18 study was correctly performed? 19 MS. KOPPLIN: Objection. Lack of 20 foundation. 21 BY MR. MURASKIN: 22 Q You can answer.

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1 A I would have to -- send me the data and 2 let me verify for myself. 3 Q Okay. And I guess since you don't know 4 what an ANCOVA is, it wouldn't change your 5 perception of whether your study was properly 6 performed if we got the exact same results through 7 an ANCOVA as Dr. Dimofte's analysis but using your 8 controls, but not commodity 3, source, ad.infl, or 9 removing the other data. I assume that doesn't 10 impact your analysis because you don't know what 11 ANCOVA is. Right? 12 A Correct. 13 MR. MURASKIN: All right. We are going to 14 take a five-minute break. I want to see whether I 15 can show you these -- this data. I'm not positive I 16 can, but I can try to find it. 17 So give me -- can we go off the record 18 for five minutes? 19 VIDEOGRAPHER: The time 2:30 p.m. We're 20 going off the record. 21 (Whereupon, a brief recess was taken.) 22 VIDEOGRAPHER: The time is 2:40 p.m.	1 3 and 4. 2 A Okay. 3 Q Is that what this data is doing? 4 A It looks like regression, but I'm not 5 familiar with the package, but I -- I -- I can 6 recognize things. So... 7 Q And does it also look like this data is 8 effectively replicating Dr. Dimofte's 9 meta-analysis findings when you pull out -- when 10 you run the analysis consistent with what I just 11 said, using all the data points, removing the 12 do-not-know coding and removing the commodity 13 3/13 -- as you call it -- source and ad.infl? 14 A Are you asking if this replicates his 15 original ANOVA findings? 16 Q Original meta-analysis findings. 17 A With the ANOVA? 18 Q Yes. 19 A I don't know. I'd have to look. I 20 don't have -- as I testified before, I don't have 21 a photographic memory. 22 Q Okay. Well, you got his report, too, so
Page 239	Page 241
1 We're back on the record, please proceed, counsel 2 you. 3 (KAISER Exhibit Number 8 was marked for 4 identification.) 5 BY MR. MURASKIN: 6 Q Dr. Kaiser, I'm going to introduce a PDF 7 file of various calculations. I'm not a 8 statistician, to be fair, so I pulled the ones I 9 believe are correct, but if you tell me that 10 there's something missing, let me know, and we'll 11 go from there. 12 A Okay. 13 Q But you should have what I just 14 introduced as Exhibit 8. I believe what the first 15 two are attempting to do -- first two pages are 16 attempting to do are to perform analysis that uses 17 all the available data points, that removes your 18 coding of "do not know" and "willingness to pay" 19 as six, and removes the three covariates listed at 20 the top, but includes all your other covariates. 21 It does this in two different models, and then it 22 runs it against the ACT standard as well on pages	1 go ahead and look. 2 A This is rather awkward having to toggle 3 in between these things so -- 4 Q I agree with you. 5 A -- I'll have to write some things down 6 to check it. Do you know what page number his 7 original ANOVA results were? 8 Q Give me a second and I'll find them for 9 you. I don't know off the top of my head, but I'm 10 happy to look. 11 A Oh, this is the meta-analysis, too. 12 Q Yes. I believe it starts on page 25 and 13 goes to page 26. 14 A Okay. He doesn't give the means. He 15 just gives the results in his meta-analysis that 16 willingness to pay is higher, significantly 17 higher, for the altered versus the unaltered, but 18 he doesn't -- I don't see any mean, what the mean 19 willingness to pay is, just that it's significant. 20 Q Well, do the -- in Exhibit 8 that I just 21 introduced, is the willingness to pay 22 statistically significantly higher for the altered

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1 versus the unaltered? 2 A Which exhibit? 3 Q Exhibit 8, which I just introduced for 4 you. 5 A Okay. I'm not in there right now. 6 That's all I said. I said he just says it's 7 significantly higher. He doesn't say what the 8 mean is. 9 Q No. And I'm saying is that true in -- 10 with his analysis -- 11 MS. KOPPLIN: Objection. Confusing. 12 MR. MURASKIN: Well, I didn't finish the 13 question, but okay. 14 MS. KOPPLIN: Oh, sorry. That's why I'm 15 confused. 16 BY MR. MURASKIN: 17 Q Did his -- does his using your -- his 18 use of your regression in the -- as it's run in 19 Exhibit 8, produce statistically significant 20 variates from willingness to pay based on the 21 altered versus unaltered ad? 22 A What it shows -- the first one shows is	1 A Yes, it is. 2 Q So now I'll go back to your analysis and 3 say does it give you pause that if you simply 4 remove these three controls -- commodity 13, 5 source, ad.infl -- and you use all the data 6 points, and you remove the "do not know" where 7 appropriate, did you get such a different result 8 than you? 9 A Yes. I don't -- I can't -- I don't know 10 which it is. I don't know if it's using the coded 11 six that's causing -- that caused this or -- 12 that's what I would suspect is causing this, as 13 opposed to including not -- my inclusion of the 14 control variables that are not in this. 15 Q But you can't tell me which of those two 16 sitting here is doing -- causing the difference? 17 A That's correct. I cannot tell you that. 18 Q But it does give you cause with your 19 results, correct? 20 A Correct. 21 MR. MURASKIN: Okay. I have no further 22 questions, Dr. Kaiser. Thank you very much for your
Page 243	Page 245
1 that the altered ad is significantly higher than 2 then control group, and the unaltered is not 3 significantly higher than the control group. 4 Q What does the second one show? 5 A I haven't looked. The second one shows 6 that the altered group is significantly higher 7 than the unaltered group at the significance level 8 of .009. 9 Q And the next two are looking at not 10 willingness to pay but the ACT function -- or the 11 ACT results. And what do those two reports find? 12 A They find that the -- both the altered 13 and the unaltered groups are significantly higher 14 than the control that's model one; and that the 15 altered group and the control group are not -- I'm 16 sorry -- the altered group is not higher than the 17 unaltered group, and the control group is lower 18 than the unaltered group. 19 Q And this is directionally, even if you 20 can't look at the exact numbers, consistent with 21 what Dr. Dimofte's said in his meta-analysis 22 findings, correct?	1 time. 2 THE WITNESS: Thank you. 3 MS. KOPPLIN: I do have some redirect 4 before we break, and we also will reserve the right 5 to read and sign, if you don't mind, Ms. Rhodes. 6 So Dr. Kaiser, how that works is I'm 7 just going to ask you some questions, and then 8 Dave can go again afterwards if he wants. So it's 9 sort of -- I don't actually have a good analogy. 10 Let me go to my notes here. 11 EXAMINATION BY COUNSEL FOR DEFENDANTS 12 BY MS. KOPPLIN: 13 Q So could we look at Exhibit 1, which is 14 your report? On page 9. 15 A Okay. 16 Q There was some discussion of the 17 discussion on page 9 of footnote 9 in 18 Dr. Dimofte's report, and that footnote had the 19 text quoted there "the extra statement was." 20 Do you see that? 21 A Yes. 22 Q So if we go to Dr. Dimofte's report

Page 246 1 which is Exhibit 3, I believe, and we look at 2 page -- sorry I was pausing there -- can we look 3 at page 12? 4 A Okay. 5 Q He has Footnote 42 there. Do you see 6 that? 7 A Yes. 8 Q And Footnote 42 starts "that extra 9 statement was." 10 A Yes. 11 Q So does that refresh your memory of 12 where in Dr. Dimofte's report that language came 13 from? 14 MR. MURASKIN: Objection. Leading. 15 THE WITNESS: It does. 16 BY MS. KOPPLIN: 17 Q It's a yes-or-no question. Did that 18 refresh your memory where in Dr. Dimofte's report 19 that language was? 20 MR. MURASKIN: Objection. Leading. 21 BY MS. KOPPLIN: 22 Q You can still answer.	Page 248 1 BY MS. KOPPLIN: 2 Q Is the world that we live in a perfectly 3 competitive market? 4 MR. MURASKIN: Objection. Leading. 5 THE WITNESS: No. 6 BY MS. KOPPLIN: 7 Q Let's see. You and Dave talked a little 8 bit about whether or not your report identified 9 conclusions of Dr. Dimofte that lacked support. I 10 wanted to look at your report in a couple places. 11 Let's see. If we look at paragraph 27 of your 12 report -- 13 A Uh-huh. 14 Q It says: Dr. Dimofte's conclusion that 15 generic beef ads expose US producers to negative 16 effect, Additional competition, or reduced 17 willingness to pay for beef are unsupported. Even 18 Dr. Dimofte's own findings on willingness to pay 19 and intent to purchase from the six consumer 20 protection studies do not support this conclusion. 21 Additionally, other empirical studies cited below 22 show the exact opposite.
Page 247 1 A Yes, it does. I don't know where the -- 2 I don't know why it was called footnote -- why I 3 called it Footnote 9, but that's obviously a 4 mistake. 5 Q So on page 9 of your report, which part 6 of Dr. Dimofte's report are you talking about? 7 MR. MURASKIN: Objection. Leading. 8 THE WITNESS: To that footnote. Was it 9 49? 10 BY MS. KOPPLIN: 11 Q I think it's 42. Sorry. So the record 12 is clear, on page 9 of your report which part of 13 Dr. Dimofte's report are you talking about? 14 MS. KOPPLIN: Same objection. 15 THE WITNESS: Footnote 42. 16 BY MS. KOPPLIN: 17 Q Thanks, okay. 18 Is it common for academicians and 19 professors performing research get funding for 20 performing research? 21 MR. MURASKIN: Objection. Leading. 22 THE WITNESS: Yes. It's very common.	Page 249 1 Did I read that correctly? 2 MR. MURASKIN: Objection. Leading. 3 THE WITNESS: Yes. 4 BY MS. KOPPLIN: 5 Q Does that refresh your recollection of a 6 place in your report where you criticize 7 Dr. Dimofte's conclusion as being unsupported? 8 MR. MURASKIN: Same objection. 9 THE WITNESS: Yes. 10 BY MS. KOPPLIN: 11 Q So where is one place in your report 12 where you criticize Dr. Dimofte's conclusions for 13 being unsupported? 14 MR. MURASKIN: Same objection. 15 THE WITNESS: In paragraph 30. 16 BY MS. KOPPLIN: 17 Q Anywhere else? 18 MR. MURASKIN: Same objection. 19 THE WITNESS: Which was the point to begin 20 with? What paragraph was I -- I'm getting a bit 21 confused. 22

Page 250 1 BY MS. KOPPLIN: 2 Q Paragraph 27. 3 A 27? Okay. What was the question again? 4 Are there other places in the report? I think 5 throughout the -- throughout the whole report I 6 think I talk about that. 7 Q Other than paragraph 30, are there any 8 other specific places that come to mind? 9 MR. MURASKIN: Objection. Leading. 10 THE WITNESS: No. I thought I kind of did 11 it throughout the report, so I -- I don't know. 12 MS. KOPPLIN: That's fine. I was looking 13 at my notes here. That's all I have. So Dave, if 14 you have anything else? 15 MR. MURASKIN: Yeah. A few redirects. 16 MS. KOPPLIN: I think technically speaking 17 you're recross. 18 MR. MURASKIN: Sure. Whatever you want to 19 call it. I have a few questions. 20 FURTHER EXAMINATION BY COUNSEL FOR 21 PLAINTIFF 22	Page 252 1 his original line of questioning if he wanted to 2 ask that. At this stage he can only ask questions 3 that are exploring the areas I covered on 4 redirect. 5 MR. MURASKIN: So that's not true because 6 I'm entitled to know how much you coached this 7 witness to give the answers you did on whatever 8 you're calling your line of questioning. And unless 9 you instruct him not to answer, I'm entitled to ask 10 the question. So I will ask the question again. 11 MS. KOPPLIN: I have a further objection. 12 That was first objection was that this is beyond the 13 scope of appropriate redirect from -- sorry -- 14 appropriate recross from Mr. Muraskin. 15 My second objection is that the 16 objection is that the question is intended to 17 elicit information, which would be covered by the 18 attorney-client privilege. 19 Dr. Kaiser, you can answer to the extent 20 that you can give a yes/no question as to whether 21 or not -- sorry. 22 You can answer to the extent that you
Page 251 1 BY MR. MURASKIN: 2 Q Dr. Kaiser, I'm going to ask you some 3 questions about communications. I'm going to 4 phrase them very carefully, but I want you to 5 pause to let your counsel object. 6 MS. KOPPLIN: I'm sorry. It sounds to me 7 like you are going to go beyond the scope of my 8 redirect, which is improper. If you are going to 9 recross him, you should be limited to the scope of 10 what I asked him about. 11 MR. MURASKIN: And if you just would let 12 me answer, I can do that. You can make your 13 objection after I ask the question. 14 BY MR. MURASKIN: 15 Q Did you talk to your counsel about this 16 deposition during any of the breaks? 17 MS. KOPPLIN: Okay. I'm going to pause 18 and object that this line of questioning is not 19 proper for Mr. Muraskin to pursue on recross because 20 it's beyond the scope of what I just spoke to the 21 witness about on redirect. 22 Mr. Muraskin should have included it in	Page 253 1 can give a yes/no answer as to whether or not you 2 communicated with Liam or I or any other counsel 3 during the breaks today. But do not give any more 4 detail than a yes/no answer. Other than that, I'm 5 going to instruct you not to answer. 6 THE WITNESS: Okay. 7 BY MR. MURASKIN: 8 Q I'll just ask my question again for 9 clarity with the understanding the objection still 10 stands, which is, did you talk to your counsel 11 during any of the breaks today. And I'm just 12 looking for yes/no answer. 13 A No. 14 Q Okay. On paragraph 27 you were asked 15 whether this amounted to a criticism of 16 Dr. Dimofte's findings. This is a criticism -- if 17 I'm understanding correctly of the six consumer 18 perception studies, not the meta-analysis, 19 correct? 20 A Correct. 21 Q And part of your criticism is that the 22 six studies did not produce statistically

Page 254 1 significant results, but the meta-analysis did, 2 correct? 3 A Correct. 4 Q And you looked at Footnote 42 of 5 Dr. Dimofte's study? 6 A Yes. 7 Q And we had -- that was in response to an 8 exchange you and I had about whether his 9 statements in the footnote were meant to be 10 critical of imported beef. And I'm asking you 11 now, since Rebecca has pointed you to Footnote 42, 12 to tell me where in Footnote 42 Dr. Dimofte is 13 critical of imported beef. 14 A Can we -- can you first direct me to the 15 paragraph of mine where I say that? 16 Q So this was -- I'm not directing you to 17 a paragraph. This was an exchange that you and I 18 had during the deposition about this language: 19 Beef that is produced domestically uses high 20 quality feed, advanced standards of care, and a 21 limited carbon footprint. And one of the things 22 that I at least recall you saying is that you	Page 256 1 A As I mentioned in our early lengthy 2 discussion on this that it's -- that I interpreted 3 this statement as meaning that domestic beef was 4 superior to imported beef or the alternative 5 because of the same superlatives are not being be 6 mentioned about anything else other than domestic 7 beef. 8 Q But you can't point me to anything else 9 in this footnote that is critical of imported 10 beef. 11 A No. 12 MR. MURASKIN: That's all I have. 13 MS. KOPPLIN: I think I said this already 14 but we'll reserve the right to read and sign. 15 VIDEOGRAPHER: The time is 3:00 p.m., and 16 this concludes today's testimony given by Dr. Harry 17 M. Kaiser. We are now off the record. 18 (Whereupon, at 3:00 p.m., the deposition 19 of HARRY M. KAISER, PHD, was concluded.) 20 21 * * * * * 22
Page 255 1 thought that he was critical -- something in that 2 footprint where that was mentioned was critical of 3 imported beef. And now that we've identified the 4 footnote, I'm trying to ask you where in that 5 footnote he's critical of imported beef. 6 A I didn't say that. I'll read what I 7 wrote. I said: It does imply that domestic beef 8 is superior to imported beef. 9 That's what I said. I didn't say -- I 10 don't think I said that imported beef is inferior. 11 I think I said that it was superior. 12 Q Yeah. I guess I'm not -- I just want to 13 be clear. It may be the same answer, but your 14 answer may be a bit confused. I'm not suggesting 15 you said imported beef was inferior or superior. 16 What I'm suggesting you said was that somewhere in 17 this footage you had thought that Dr. Dimofte was 18 critical of imported beef. 19 A Yeah. 20 Q And I'm not seeing where he's critical 21 of imported beef in this footnote, so I'm asking 22 you to point me to where that is?	Page 257 1 CERTIFICATE OF NOTARY PUBLIC 2 I, CONSTANCE HUNT RHODES, the officer 3 before whom the foregoing deposition was taken, do 4 hereby certify that the witness whose testimony 5 appears in the foregoing deposition was duly sworn 6 by me; that the testimony of said witness was 7 taken by me in stenotypy and thereafter reduced to 8 typewriting under my direction; that said 9 deposition is a true record of the testimony given 10 by said witness; that I am neither counsel for, 11 related to, nor employed by any of the parties to 12 the action in which this deposition was taken; and 13 further, that I am not a relative or employee of 14 any attorney or counsel employed by the parties 15 thereto, nor financially or otherwise interested 16 in the outcome of the action. 17 18  19 CONSTANCE HUNT RHODES 20 Notary Public in and for 21 the District of Columbia 22 23 My commission expires: 24 January 31, 2028

Page 258 1 Rebecca Kopplin Esq 2 Rebecca.M.Kopplin@usdoj.gov 3 March 22nd, 2023 4 RE:Ranchers-Cattlemen Action Legal Fund v. United States 5 3/17/2023, Harry M. Kaiser , PhD (#5805935) 6 The above-referenced transcript is available for 7 review. 8 Within the applicable timeframe, the witness should 9 read the testimony to verify its accuracy. If there are 10 any changes, the witness should note those with the 11 reason, on the attached Errata Sheet. 12 The witness should sign the Acknowledgment of 13 Deponent and Errata and return to the deposing attorney. 14 Copies should be sent to all counsel, and to Veritext at 15 (erratas-cs@veritext.com). 16 17 Return completed errata within 30 days from 18 receipt of testimony. 19 If the witness fails to do so within the time 20 allotted, the transcript may be used as if signed. 21 22 Yours, 23 Veritext Legal Solutions 24 25	Page 260 1 Ranchers-Cattlemen Action Legal Fund v. United States Department 2 Harry M. Kaiser , PhD (#5805935) 3 ACKNOWLEDGEMENT OF DEPONENT 4 I, Harry M. Kaiser , PhD, do hereby declare that I 5 have read the foregoing transcript, I have made any 6 corrections, additions, or changes I deemed necessary as 7 noted above to be appended hereto, and that the same is 8 a true, correct and complete transcript of the testimony 9 given by me. 10 11 _____ 12 Harry M. Kaiser , PhD Date 13 *If notary is required 14 SUBSCRIBED AND SWORN TO BEFORE ME THIS 15 _____ DAY OF _____, 20____. 16 17 18 _____ 19 NOTARY PUBLIC 20 21 22 23 24 25
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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

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

(A) to review the transcript or recording; and

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

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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