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BEFORE THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, et al., .
Plaintiffs, . Case Number 20-cv-3010
vs. .
GOOGLE LLC, . Washington, D.C.
Defendant. . September 28, 2023
1:00 p.m.

PUBLIC TRANSCRIPT OF BENCH TRIAL, DAY 12
(AFTERNOON SESSION)
BEFORE THE HONORABLE AMIT P. MEHTA
UNITED STATES DISTRICT JUDGE

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P R O C E E D I N G S

(Call to order of the court.)

THE COURT: Counsel?

MS. BELLSHAW: Good afternoon, Your Honor.

So we conferred with Microsoft's counsel over lunch, and consistent with the Court's guidance, we are going to be able to proceed for at least some portion of the remainder of the exam in open session.

THE COURT: Perfect. Thank you. I appreciate the collaboration.

MR. LARRABEE: One request, Your Honor, if you might. Any comfort you could give the witness about reconciling his obligations to testify with his NDA obligations would be greatly appreciated.

THE COURT: Sure. So this is not legal advice, but most NDAs do have a provision that do allow you to make disclosures if you're required to by court order. And you are required to appear here, so that this would be testimony under a court order.

THE WITNESS: Okay. So if my partners call me, I'm going to have them call you. He told me I have to do it.

MS. BELLSHAW: There are still a few topics that we believe Microsoft has asserted are competitively sensitive that we would ask to do -- or that we would do in closed session, but we're going to proceed for as long as we can in open session.

1 COURT REPORTER: Counsel, could you identify yourself
2 for me.

3 MS. BELLSHAW: Yes. My apologies. Meagan Bellshaw
4 for the United States.

5 JON TINTER, WITNESS FOR THE PLAINTIFFS, RESUMED STAND
6 DIRECT EXAMINATION (Continued)

7 BY MS. BELLSHAW:

8 Q. Mr. Tinter, has Microsoft ever proposed working with a
9 distribution partner on privacy-related search innovations?

10 A. Yes.

11 Q. Can you describe any of those privacy-related innovations
12 that Microsoft has proposed?

13 A. There's two that we've discussed at least that come to mind
14 that we sort of discussed with partners. One was with Samsung.

15 Just as some background for that, Microsoft had done a
16 bunch of work in Bing on what it meant to put a search engine in
17 private mode, which fundamentally mostly changed the data
18 retention policies in terms of what queries got saved, you know,
19 how they were sort of used. It changed a little bit. If I
20 remember correctly, it may have changed some things on sort of
21 ad targeting.

22 But we created this concept of private mode, and that is
23 something we had deployed on our own. Like, for instance, if
24 you are in a browser and you put that browser into private
25 mode -- most browsers have private -- most users don't actually

1 realize that if you -- even if the browser's in private mode, if
2 you go to a search engine, the search engine is not.

3 So we actually came up with a version of Bing that said if
4 your browser is in private mode, Bing will act like a search
5 engine in private mode. If you have the Bing mobile app., I
6 believe you still can put it into private mode.

7 So at one point in time, we had explored with Samsung
8 whether there was an opportunity where they could essentially
9 create new search entry points on the device, which is an entry
10 point to a private version of search, and could Bing power that,
11 and we had explored that as a potential idea with Samsung.

12 The other thing we had talked about is we had talked to
13 Apple pretty extensively about this idea. Obviously, they have
14 at various points in time strongly pushed privacy as a value
15 proposition for their phones, and they said you should buy our
16 phones because the extent to which we as a company respect your
17 privacy.

18 What we articulated to them was, hey, search doesn't really
19 do that. Google collects a very large amount of information
20 about users when they use Google Search. And so while your
21 phones themselves are very private, the default search
22 experience that you've created on your device is very not
23 private. And we had talked to them about if we could do things
24 that would be more private.

25 So, for example, one of the ideas that we had was could you

1 do more processing on the device, not on the cloud. Like so
2 what would it mean? And again, we never -- we didn't get
3 super-deep into this, but what would it mean if you had to run
4 the ad targeting algorithm on the device versus on the phone?
5 What it would it mean if you had to run some of the
6 personalization algorithms to decide what search results to be?
7 If you kept more key data on the device and it never went to the
8 cloud, you could argue that that was more private.

9 And so we were exploring with them that we thought it was a
10 ripe opportunity for innovation. It would have required a lot
11 of work on the search engine side to change the way search
12 worked, because it sort of assumes that all the data flows to
13 the cloud.

14 The ability to do that with the device manufacturer that
15 can control the operating system and how you do data handling
16 and processing in the operating system, we thought it was a
17 fruitful theoretical area for innovation.

18 Apple expressed some amount of curiosity about it. We
19 talked about it a little bit, but it never came to fruition.

20 Q. How does keeping a search query on the device, or running
21 search on device, relate to privacy? Like, how does that help
22 with privacy?

23 A. So, at the most basic level, if the -- if the device -- if
24 the query, if the history of the searches never leave it, then
25 the search engine doesn't have it. Right?

1 So if you sort of say -- that description alive, you know,
2 my wife yells at me about it all time, which is I search for
3 something on Google or I search for something on Bing, and then
4 four days later, I see an ad for it when I've on X, Y, Z
5 website. Right? That's what happens when data goes to the
6 cloud. Right? We all knit these services together. We do ad
7 targeting based on it. So, you know, information leaks.

8 And if that data never leaves the device, you know, if I go
9 back to that same thing, which is if you do that search on the
10 device and it never leaves on the device, then you can't target
11 based on that search later as an example. That's one example of
12 how it's more private.

13 And again, that's a lot of, you know, how Apple has always
14 positioned their devices. Right? We have these very, very
15 powerful phones. Because they are powerful, we don't have to
16 send data off to some less trustworthy cloud.

17 Q. And is this type of on-device search privacy something that
18 Microsoft has been able to develop on its own?

19 A. No. We always felt like we would need deep collaboration
20 with a device manufacturer, because it would involve how you did
21 things on the operating system.

22 You also had to have a big enough distribution for it to
23 make it worthwhile; right? So we couldn't do it on our own.
24 Like, given the app. store app. framework, we couldn't ship a
25 device, as the technical folks have explained it to me, that

1 have that level of privacy value proposition just through the
2 app. store. We would need it to work with either the OS or the
3 device manufacturer.

4 Q. And, Mr. Tinter, you mentioned private browsing mode
5 proposal that Microsoft had made to Samsung. What was Samsung's
6 response to your private browsing mode proposal?

7 MR. GREENBLUM: Objection.

8 THE WITNESS: Maybe I wasn't precise --

9 THE COURT: Hang on, Mr. Tinter.

10 The objection is?

11 MR. GREENBLUM: On hearsay grounds, Your Honor.

12 Can we just have a standing objection on that on the same
13 basis --

14 THE COURT: You all have asked questions about what
15 folks have said out of court, too. So, as I said, it's got to
16 go both ways.

17 MR. GREENBLUM: Understood, Your Honor. I won't stand
18 up. That's something we can work out in the briefing we're
19 going to submit to you.

20 THE COURT: That's fine. Thank you.

21 You can answer, Mr. Tinter.

22 THE WITNESS: First of all, to be precise, if I said
23 "proposal," I apologize. I don't know that that was -- if
24 proposal is the word that I would have used. We would have much
25 more informal brainstorming conversations where we would say to

1 Samsung, What if we did this, what if we do that, would that be
2 interesting, would it not be interesting. There's a formality
3 to proposal that I don't think adequately characterizes the
4 conversation. It was more ideas that we had that we brought
5 forward.

6 We always had a very strong desire to work with Samsung for
7 the dynamics that I talked about this morning. It wasn't quite
8 as big as Apple, but we thought that could be a very, very big
9 opportunity.

10 Samsung was always pretty clear with us about their level
11 of concern around working with us on search and what the impact
12 of working with us on search would be on their relationship with
13 Google, which is obviously a multifaceted sort of slightly
14 complicated relationship.

15 I still remember, it sticks with me, because it's one of
16 those funny things you hear in your career that will last with
17 you forever, the way the CEO of Samsung at the time, D.J. Koh,
18 in a meeting with Satya and I described the Google relationship.
19 He's like, in any marriage, there are three rings: There's your
20 engagement ring, your wedding ring, your suffering. He's like,
21 we're now in the suffering stage. But the implication there
22 being that this is a tense relationship, and we're worried, if
23 we get too close with Microsoft on search, that it will be made
24 worse.

25 And so we were mostly with Samsung looking for things

1 around the margins that would not have been purely disruptive,
2 you know, disruptive to kind of that core Google deal. So we
3 thought -- I think the conversation I had with Samsung was, hey,
4 could we do this private thing, would that be of interest to
5 you, do you think that's something that is sort of adjacent
6 enough that we could sort of get away with it.

7 That's the spirit in which it was brought up, and they
8 ultimately didn't pull on it.

9 Q. And, I guess, taking a step back and focusing on Samsung,
10 can you describe sort of at a high level for the Court what
11 types of conversations you've had with Samsung regarding search?

12 A. So as background for people who may be less familiar,
13 Microsoft has a pretty deep partnership with Samsung where we
14 provide the productivity services on their devices. So every
15 device that they ship comes with Outlook as the mail client; it
16 comes with Office preinstalled. OneDrive, which is our cloud
17 file storage, is actually integrated in with the photo gallery
18 on the phone. So the devices -- so we've always had this pretty
19 deep, what we've described with Samsung as the productivity
20 partnership, that we've been working with them for several
21 years.

22 We have obviously always looked for ways to deepen that,
23 and I have pretty regular interactions with my peers at Samsung.
24 Satya as our CEO would have a semiregular cadence of meetings
25 with the CEO of Samsung to again talk about how the overall

1 partnership is going. We would often explore what are new
2 things that we could go do together. And in that context, we
3 would, you know, occasionally brainstorm things like the private
4 search idea.

5 I think Satya was always very, very focused on, you know,
6 how do we get search into the relationship, we have such a good
7 relationship, how do we try and get search included in it.

8 Q. And over the course of your discussions with Samsung, have
9 you come to any conclusions about the likelihood that Microsoft
10 would be able to negotiate a deal with Samsung where Bing was
11 set as the default search on any of the access points on Samsung
12 phones?

13 A. The conclusion that I had come to was that Samsung would
14 not be willing to enter into a partnership, which changed the
15 kind of what I will call the big entry points, the browser, the
16 widget, the preinstalled search app.

17 And that was a function of, you know, how they communicated
18 to me they were managing the Google relationship and what risks
19 they were taking. What they communicated to me was that they
20 believed their ability to even negotiate a license agreement
21 that allowed them to do that, as we talked about this morning,
22 you sort of -- they would have needed to negotiate some MADA
23 that allowed them to shift search. And I ultimately came to the
24 conclusion that that was not going to happen.

25 Which again, the reason I pushed on private and I pushed on

1 sort of other things is I always said, oh -- the coaching I gave
2 to the team and that I tried to give as we had executive
3 strategy conversations was one of let's treat the MADA as a
4 fixed constraint. Let's treat the fact that Samsung will have
5 Chrome on the device with Google as the search, will have Google
6 as the search in the Samsung Internet application, will have the
7 widget there, and then let's see if there's other things we can
8 figure out how to do.

9 And even in exploration of those other things, there
10 continues to be, you know, massive overhangs of, you know,
11 Samsung's concern about we don't want to make Google mad, we are
12 highly dependent on them for product collaboration on Android,
13 we need them to do these things for us over here, this over
14 there. And they are very, very -- you know, to this day, even
15 as I've been exploring ideas with them in the last couple of
16 weeks, they're constantly like, hey, Jon, we've got to manage
17 this Google relationship, we have to manage it very carefully.

18 Q. Mr. Tinter, if I could please have you turn to UPX302 --

19 A. Yours is the white one; right?

20 Q. Yes, it is. 302 in your binder.

21 A. I'm sorry. Say that again.

22 Q. UPX302.

23 A. Correct, yes.

24 Q. This document has been admitted into evidence, and we are
25 able to show a copy of it on -- a redacted copy of it on the

1 screen.

2 A. Yep.

3 Q. Mr. Tinter, is this an e-mail from you to just Mr. Nadella
4 dated December 15, 2019?

5 A. Yes, it is.

6 Q. Do you recognize this e-mail?

7 A. Give me a chance to.

8 Okay, yes, it is an e-mail I sent Satya.

9 Q. Why did you send UPX302 to Mr. Nadella?

10 A. So I think it probably explains it there directly in the
11 e-mail. We had an upcoming executive meeting with Samsung
12 including -- D.J. in here was D.J. Koh, who I believe was the
13 CEO of Samsung Mobile at the time.

14 One of the roles I play in my job is to advise him on how
15 we approach executive meetings, and it was very clear to me that
16 the way we had been approaching the meetings with D.J. to date,
17 which was being pretty aggressively pushing D.J., I really want
18 to work with you on search, was not effective.

19 So this was me providing counsel and guidance to Satya to
20 say let's try a different approach.

21 Q. If you would look at the first line of the second paragraph
22 of your e-mail in UPX302, you wrote to Mr. Nadella, "We need to
23 take a different approach to how we talk to them about search
24 and browser."

25 Does the "them" there refer to Samsung?

1 A. Yes.

2 Q. "Right now we are stuck."

3 Does that reflect your advice to Mr. Nadella about your
4 understanding of Microsoft's position with Samsung on the
5 negotiations over search?

6 A. No. So again, I want to be very clear, there was no
7 negotiation over search. This was more -- we were in a dynamic,
8 as I described kind of in the entirety of the paragraph, but
9 just so you understand, we would have an executive meeting.
10 Satya would meet with D.J. He would say, I really want to work
11 with you on search and browser, and D.J. would say, yes, we
12 should explore it. And D.J. would go down to his team and say
13 go work with Microsoft and explore this, and then we would have
14 people go and sort of have conversations.

15 As I relate in the thing, I was getting a lot of feedback
16 from Samsung that says we're not going to do this. D.J. does
17 not want to -- he respects Satya too much and is too polite to
18 come out and say no. Can you get Satya to stop asking because
19 we get stuck in these not productive cycles. He asks; D.J. puts
20 down. We spend a bunch of time and come to the same conclusion
21 every time.

22 I think the whole paragraph kind of describes the coaching
23 I was giving him and why.

24 Q. If you look at the third paragraph, you write, "I have
25 spent some time outlining a more pragmatic short-term approach

1 that gets us working with them on search, browser ads, and news
2 now, while leaving the door open for a bigger search deal in the
3 future."

4 You wrote that; is that right?

5 A. That sentence?

6 Q. Yes.

7 A. Yes.

8 Q. And why were you proposing a more pragmatic short-term
9 approach with Samsung?

10 A. So again, it goes back to sort of two things. One is the
11 dynamic I described in the prior paragraph that we just talked
12 about. We weren't going anywhere. We were stuck. Right?

13 The second thing actually goes back to some of the logic
14 that you and I talked about this morning when we talked about,
15 hey, why did you guys do the Siri and Spotlight deal with Apple,
16 which is, what are the experiments we can do, what are the
17 things that we can do, you know, adjacency on the margins that
18 may work.

19 Because this was so important to us that we had to sort of
20 simultaneously go for the big things, the search default deal on
21 Apple, the search default deal on Samsung, as well as just, you
22 know, drain every available option and alternative to try.

23 And so what I really was doing was saying okay, the big
24 thing's not going to happen, so let's brainstorm some smaller
25 things that we may get traction on.

1 Q. If we could please turn to UPX -- actually, I'm sorry.
2 Before we do that, do you see in your e-mail in UPX302, it looks
3 like you share -- you attach a memo to Mr. Nadella in your
4 e-mail?

5 A. Yes.

6 Q. Do you see that? If you could please turn to UPX133.
7 And this one we will not put on the screen.

8 A. You said 0133?

9 Q. Yes. Thank you.

10 A. Yes.

11 MS. BELLSHAW: Your Honor, UPX0133 is also in
12 evidence.

13 THE COURT: Okay.

14 THE WITNESS: Okay. Yeah, I see it.

15 BY MS. BELLSHAW:

16 Q. So looking at the first section of -- sorry.

17 Is this the memo that you attached to your e-mail in
18 UPX302?

19 A. Yeah, I believe so.

20 Q. And who drafted this memo?

21 A. I don't remember if I drafted this myself or I drafted it
22 with people who are on my team. But ultimately, I was deeply
23 involved in the drafting and was the one who sent it to Satya.

24 Q. And what was the purpose of sending the memo in UPX133 to
25 Mr. Nadella?

1 A. So, it was in the context of the e-mail I sent, which is,
2 hey, we need to do a different approach. And so to get --
3 achieve that, I knew I needed to kind of accomplish two or three
4 things, which is, one, I needed to educate Satya about how -- at
5 a level of detail about how the search on the actual devices
6 work. Because if you don't carry the device every single day,
7 what does it look like out of the box, you know. By the time
8 Satya gets a phone, it's -- the Microsoft tech people have taken
9 all the Google stuff off it and put the Microsoft stuff on. So
10 it's like, hey, here's what these devices actually look like in
11 the real world.

12 I had explained to him my understanding and interpretation
13 of the motivation of Samsung, a history of the conversations,
14 what's going on, what is the feedback that is heard to me that I
15 am relaying to him.

16 And then I want to say, but hey, we're not giving up,
17 here's some things we're going to go try, and maybe you can
18 pitch those things we're going to go try.

19 Q. So looking at the first paragraph or the first section of
20 UPX133, "Current search adds news and browse experience on
21 Samsung devices."

22 Just at a high level, what was the purpose of this section?

23 A. That was what I just described, to sort of say in the real
24 world, what does one of these devices look like and how does it
25 work.

1 Q. And what was the basis for the information that you
2 included in this first section of UPX133?

3 A. So if I remember -- and part of the reason I'm doing this
4 is because I'm seeing later in the memo we have some pictures,
5 was I think this was a combination of me asking my team that
6 dealt with Samsung every day describe what Samsung does, and
7 let's go walk into a couple retail stores and look at the
8 devices and take pictures and make sure we are right.

9 Q. If you would look at the second section in the memo, it's
10 partway down the page on UPX133. There's a section
11 entitled "overview of past partnership discussions."

12 Do you see that?

13 A. Yes.

14 Q. Focusing on that first paragraph -- we're not going to put
15 the specific language on the screen, but does this paragraph and
16 this section accurately represent the past discussions that
17 Samsung -- or that Microsoft had had with Samsung about Bing
18 Search?

19 A. Let me just read the paragraph again, please.

20 Yeah, this was a summary of either conversations with
21 Samsung that I directly had or conversations with Samsung that
22 members of my team had had and briefed me on.

23 So this was my -- this was my belief on, yes, the history.

24 Q. And was it your understanding, based on these discussions
25 with Samsung and the other information that's reflected in

1 UPX133, that Microsoft could have competed for the search
2 default on Samsung phones by offering Samsung more money?

3 THE COURT: Sorry. Could you rephrase the question?

4 MS. BELLSHAW: Sure.

5 BY MS. BELLSHAW:

6 Q. Was it your understanding that Microsoft could have
7 competed for the search default on Samsung devices by offering
8 Samsung more money?

9 A. Sorry. There was like double-negatives there, but I think
10 I understand what you're asking.

11 I did not believe that it was going to be an economic
12 decision. In fact, I believed that in some ways, even if the
13 economics were superior of working with Microsoft, they would
14 have not moved off Google. And that was a function both of
15 direct feedback that they had given me, along with -- it's
16 interesting. One of the things that I said to Samsung and --
17 let me take a step back, or what I said to Samsung won't make
18 sense.

19 There was this interesting dynamic we observed as we went
20 through the various conversations with Apple, which is they
21 would be on these multiyear partnership cycles. We would tend
22 to talk to Apple in the last year of their multiyear partnership
23 with Google. We were making increasingly aggressive bids.

24 They were continuously -- they were continuously kind of
25 renegotiating with Google then. And you could see in the kind

1 of report of Google financials that they were paying more as
2 they were renewing this agreement. In fact, I think a couple of
3 times the Google CFO actually even said on earnings calls,
4 vaguely referred to renegotiated agreements or the impact of the
5 shift to greater levels of mobile.

6 So very clearly, even though we weren't winning, we were
7 helping Apple get more money, and it was costing Google more
8 money.

9 And I remember actually describing to -- because I had
10 gotten friendly with some of the folks at Samsung. I remember
11 describing to them the dynamics, and I said, let me make you a
12 bid. Like if nothing else, let me give you a huge number, and
13 then D.J. can take that number to Sundar, and maybe you guys can
14 get a little bit more money like Apple is. If you're not going
15 to give me search, at least let me help you make search better
16 for you.

17 And that was kind of when they were like, you know, Jon,
18 it's not even worth it, we don't even want to go down this path.

19 Q. If you would turn to the last page of UPX -- I'm sorry, the
20 second page of UPX113, do you see the heading "pragmatic
21 approach to partnership"?

22 A. Yes.

23 Q. Are the ideas -- do you see those three ideas listed here?

24 A. Yes.

25 Q. Are these ideas some of the sort of smaller, around the

1 margins ideas that you were talking about earlier that Microsoft
2 could think about pursuing with Samsung?

3 A. Yes.

4 Q. And has Microsoft been able to negotiate -- I'm sorry.

5 Has Microsoft successfully implemented any of these ideas
6 reflected in UPX113 with Samsung?

7 A. No.

8 Q. Have you actually discussed each of the ideas with Samsung?

9 A. We definitely have discussed idea number 1. We definitely
10 have discussed idea number 2. We definitely discussed idea
11 number 3.

12 Q. Mr. Tinter, if you would please turn to UPX301.

13 And again, this is a document that we're not going to put
14 on the screen.

15 Mr. Tinter, is UPX301 an e-mail that you sent to
16 Mr. Nadella and others at Microsoft?

17 A. Yes.

18 Q. On the date reflected there on the e-mail?

19 A. Yes.

20 MS. BELLSHAW: Your Honor, we would move to admit
21 UPX301 into evidence.

22 MR. GREENBLUM: I believe it's in evidence, but no
23 objection.

24 THE COURT: Okay. Thank you, Counsel.

25 So it will be admitted if it's not already.

1 (Government Exhibit UPX301 received into evidence.)

2 MS. BELLSHAW: Thank you, Your Honor.

3 BY MS. BELLSHAW:

4 Q. Mr. Tinter, in the first sentence of UPX301, at the end of
5 the sentence, do you see a reference to the Samsung team?

6 A. Yes.

7 Q. Who, if you recall, was on the Samsung team that you were
8 having discussions with as reflected in UPX301?

9 A. So most likely, it would have been a gentleman named Jay
10 Kim. So, Jay was the individual who was my counterpart at
11 Samsung who I tended to have most of my conversations with.

12 Jay worked for a gentleman named Patrick Chomet. So
13 Patrick reported to D.J., Jay reported to Patrick. Patrick may
14 have been potentially been involved in some of those
15 conversations. It may have been some folks on Jay's team. It
16 may have been some of the engineering and product leaders that
17 they work with.

18 But that's the -- my -- based on this note, my assumption
19 is it was most likely Jay. A lot of what happened to these
20 dynamics was Satya would meet with D.J., and then Jay and I
21 would have to do a follow-up. One of the first follow-ups is,
22 you know, what happens when you have a conversation in English
23 with someone whose English is not their first language, so it's
24 a little bit, what did you guys hear, oh, we didn't mean that,
25 we meant that. That tended to be me and Jay who would have

1 those conversations.

2 Q. And are Mr. Koh, Mr. Chomet, and Mr. Kim all located in
3 Korea?

4 A. Mr. Kim is located in -- I'm sorry. Mr. Koh is located
5 in -- I don't know where he's located now. He's since retired
6 from that role. At this time, he was in Korea.

7 Mr. Kim was at the time located in Korea. I think he may
8 have recently relocated to someplace else. I don't remember
9 where.

10 And Mr. Chomet, I believe his family lives in London, and I
11 think he's located in London but commuted periodically to Korea.

12 Q. Okay. Thank you.

13 Has Microsoft ever proposed to Samsung -- withdraw that.

14 Has Microsoft ever had discussions with Samsung about
15 preloading the Edge browser on Samsung devices?

16 A. Yes.

17 Q. And can you tell the Court briefly what Microsoft's
18 proposal for browsers on Samsung devices was?

19 A. Yeah. So again, I think we had discussed probably two
20 different ideas with them. Idea number 1, which was always our
21 preference, was -- sorry.

22 Taking a step back, and then we're treading a little bit on
23 the memo we described earlier, when you get a Samsung device
24 today, it has two browsers on it. It has a Chrome browser, and
25 there's an application called Internet, which is a browser built

1 by Samsung. Chrome, as we understand it, as has been
2 represented to us by Samsung, they're required to install under
3 their agreements with Google.

4 We had proposed to them on multiple occasions, why don't
5 you replace Edge with -- I'm sorry, why don't you replace your
6 Internet browser with Edge. Right? And the basics of our
7 argument to them was, hey, we have a team that is this big
8 that's working on the browser, it's working across platform,
9 this is -- it's twice the size as your team, we're innovating
10 faster, we're sort of doing more.

11 And the reason we did this is, if you take a step back,
12 there was a point in time where Samsung actually gave up
13 their -- they used to ship a Samsung mail app. and Gmail app. on
14 the phones, and then they gave up their mail app., and then they
15 started shipping Gmail and Outlook as a default.

16 And the reason they did this is, the argument we basically
17 made is, it's core to Microsoft's business to write mail
18 application software; it's not core to your business. We're
19 going to invest more; we're going to innovate more. We're going
20 to do a better job. Your customers are better off with our mail
21 app. than yours. Samsung ultimately came to that conclusion and
22 replaced the mail app.

23 We made the same basic argument to them about browser, like
24 we're going to invest more, we will innovate more, we are more
25 likely to do it, you should replace Samsung Internet browser

1 with Edge.

2 They decided they did not want to do that. They were very
3 clear they did not want to do that.

4 We had a brief discussion with them of just installing
5 Edge. There is a Microsoft folder on the device -- Samsung
6 devices that includes Microsoft applications; maybe we should
7 put Edge in it.

8 Their feedback was, hey, we get a lot of pressure from our
9 customers, we get a lot of pressure from our channel and
10 distribution partners, we get bad reviews in press that we
11 preinstall too many apps. on our devices, we already have two
12 browsers, we don't really need a third one, and so we're not
13 willing to either replace ours with yours or just ship yours as
14 a third option.

15 Q. And was part of the discussion around preloading the Edge
16 browser on Samsung devices that Edge would be preset to Google
17 as the -- sorry, Bing as the default search engine?

18 A. So -- no, and I will explain why.

19 Our understanding, as Samsung had sort of represented it to
20 us, which again was consistent with what we believed as we went
21 through the MADA work, was that they had independent
22 obligations. Right? So they had an obligation to ship Chrome,
23 and then they independently had an obligation that every browser
24 on the device had to have Google as the search default.

25 So even if they made the decision -- which is why on the

1 device today you have Chrome with Google and you have Samsung
2 Internet with Google. And so even if was Chrome and Edge or
3 Chrome and Samsung Internet and Edge, all of those devices would
4 have had Google. So I think even as we were talking about this,
5 we were talking about a compromise that would have had Edge
6 basically with Google on it.

7 Q. Okay. I'd like to ask you one more set of questions about
8 your discussions with Apple. Earlier, you talked about
9 discussions that you had with Apple about Bing's international
10 search quality.

11 Do you recall that?

12 A. Yeah.

13 Q. Did Microsoft provide Apple with an investment strategy to
14 improve Bing's international quality over the course of its
15 discussions?

16 A. So one of the -- and I think we talked about this a little
17 bit this morning. The frequent conversations, topics of
18 conversation that came up in discussions with Apple was Bing's
19 quality, is Bing good enough to put on our phones.

20 And I think, you know, there was some acknowledged product
21 gaps, and I think in particular when you went to mobile and in
22 particular when you went to international there were real
23 acknowledged product gaps.

24 And one of our beliefs always was that a major contributor
25 to the quality gap was the lack of scale. Right? Again, we

1 talked about that dynamic a little bit this morning.

2 So what we would argue to Apple was, A, if we had access to
3 your query volume, we could then use that scale to rapidly
4 improve the quality of Bing and ship a quality product.

5 You then get into a little bit of a chicken and egg
6 problem, which is, we need the scale in order to improve, they
7 don't really want to make the switch until you improve. Right?

8 And that's the -- one of the tension points that we were
9 trying to resolve. And we kicked around a bunch of different
10 ideas. One thing I think we said, hey, could you give us an
11 offline data dump of all the queries, so could we see all the
12 queries, and could we then use the access to that scale to
13 improve the search engine before you make the switch.

14 And I think ultimately, there was a combination of they
15 didn't have access to all of the queries, there were privacy and
16 data handling, so we said that wasn't working. But that's just
17 one example of things we were brainstorming.

18 What we did believe was we had a playbook that once we had
19 the scale, we knew what investments we needed to make, we knew
20 what engineering work we needed to do that we could improve
21 relatively quickly. And so one of the arguments -- you know,
22 one of the arguments we had with them is, we said, hey, look,
23 you all have experience in your own mapping product of shipping
24 a product that initially wasn't great, but as soon as you
25 started getting usage and taking advantage of scale, you pretty

1 rapidly improved it, and then you ultimately, you know, ended up
2 with a decent solid product.

3 So we could repeat your experience here. Yes, Bing may be
4 less than optimal in France out of the gate, but Apple Maps was
5 less than optimal in France out of the gate. And you'll have
6 the same basic dynamic; people continue to use the defaults.

7 So that was one of the arguments we were making to them.

8 The other arguments we were making to them is, we said,
9 look, there's going to be a decently long lead time. Right?
10 And I think we were talking about, you know, from the time we
11 signed a deal until the deal got announced, it could be 12
12 months, from the time we signed a deal until devices with the
13 new Bing/Apple search experience were in market could have been
14 be another 18 -- could have been 18 months.

15 There was time when we said there are things that we will
16 start doing during that intermittent period of time, like go
17 license more local data in France so, you know, you will have a
18 better quality with local search results. So those were the
19 things we can do.

20 And we tried to put that -- we kind of called it a
21 playbook, like a product quality improvement playbook was the
22 way we described it internally. And so yeah, we did put that in
23 front of Apple on multiple occasions and say, hey, yeah, this is
24 what we're going to go do.

25 It was all around trying to get them confident that they

1 could make the switch, and even if there was a short-term dip
2 after they make the switch, we would be able to close the gap
3 fast enough.

4 Q. If you would please turn to UPX797.

5 And again, this is a document we're not going to put on the
6 screen.

7 Do you recognize UPX797?

8 A. Yeah.

9 Q. Is UPX797 a part of this strategic playbook or strategic
10 investment plan that Microsoft provided to Apple during the
11 course of the discussions in the time period reflected in the
12 e-mail on UPX797?

13 A. Yeah. So what this e-mail was was we had had a meeting
14 with several executives at Apple. They had asked several
15 questions around what would you do, how would we -- you know,
16 what investment would you need to make, you have our scale, what
17 are you going to do with this, how much money are you going to
18 have to spend. So this was sharing our view of the playbook
19 with them.

20 To understand part of what this is is we brought the -- the
21 discussions we had with Apple in 2018 were a little bit
22 different in tone and tenor than the discussions that we had had
23 with Apple previously. And part of it was the CEOs had had a
24 meeting in mid-2018 where they said, hey, let's go look at
25 search again. And they said as a mental framework, before we

1 get into detailed negotiations around dividing the pie, let's
2 get a common understanding of what the pie looks like and how
3 big it was. And so we actually were going through an exercise
4 with Apple that says if you thought about Bing and the Apple
5 search business as a single business, what would that look like,
6 how much revenue would it have, what was the cost structure
7 associated with it.

8 And so one of the questions in there was, you know, to take
9 advantage -- you couldn't just get the scale and then just
10 magically fix. You get the scale, and now that you had the
11 scale, you would have to make engineering investments to take
12 advantage of the scale. And so that gets reflected in this
13 shared P&L, and, you know, so this was our saying, hey, look,
14 here's the amount of engineering we would need to spend, here's
15 what these people would do, all in the spirit of how do you then
16 take advantage of the scale.

17 Q. And in your view, are the -- is the investment plan that's
18 reflected in UPX797, would it make sense for Microsoft to
19 undertake that level of investment in international search
20 quality absent the increase in scaled query volume from a deal
21 with someone like Apple?

22 A. No. So -- because again, you have to understand, there's a
23 couple of things going on here. So for example, one of the
24 reasons why scale matters, right, is a lot of search is
25 experimentation. Right? I try tweaking the algorithm. I try

1 tweaking the page treatment. So you do little experiments. You
2 look at user reactions to the experiments, and those experiments
3 allow you in an iterative way to improve quality.

4 The great thing about improved scale is you have the
5 capability now to run more simultaneous experiments. If the
6 minimum size of an experiment is 2 and you have 100, then you
7 can run 50 experiments. If the minimum size of an experiment is
8 2 and you have 1,000, then you can run 500 experiments. Right?

9 And so one of the reasons we were so excited about getting
10 access to query volume at Apple's scale was you could run more
11 simultaneous experiments. You still need engineers to write the
12 code, build the experiments, generate the experiments, and
13 realize them and use them to improve the product.

14 So, of course, it doesn't make sense to hire those
15 engineers if you don't have the query volume to run the
16 experiments on. Right? So in a lot of cases, like, there would
17 have been nothing for these people to do, because what they were
18 doing was working on the advanced scale.

19 The second thing I will say is there were some things here
20 that just -- that just made no financial success -- I'm sorry,
21 financial sense, right, which is, you know, in a world where
22 your business in an individual country is sort of size X, at
23 some point in time investing Y where Y is significantly higher
24 than X sort of ceases to make sense.

25 We invested ginormous amounts of money in Bing over the

1 years. I think you've seen kind of the cumulative loss was in
2 the 10s of billions of dollars. The actual cumulative
3 investment was a multiple of that, because those cumulative
4 losses don't even include the investments that get offset by
5 revenue.

6 But even there, there were some things that, just given the
7 size of the business in France, the size of the business in
8 Germany, it didn't make sense to do a lot of very
9 country-specific work.

10 But if you had access to the scale from Apple, all of a
11 sudden you had a meaningful-sized business. You could amortize
12 the investment costs over a larger business, and it made more
13 financial sense.

14 MS. BELLSHAW: Your Honor, at this time, we've
15 completed the questions for the open session. I have just two
16 documents I would like to cover in the closed session that do
17 involve financial numbers and revenue projections.

18 THE COURT: Okay. So it sounds like this will be 15
19 minutes, 20 minutes?

20 MS. BELLSHAW: I think probably 10 minutes or so.

21 THE COURT: And then we will have cross.

22 All right. So we're going to go into closed session for,
23 it seems like, maybe a half hour or so at most. So if you're
24 not associated with the parties or with Microsoft, I will ask
25 you to please leave the courtroom, and then we will let you back

1 in shortly after that.

2 (Pause.)

3 (The following occurred under seal.)

4 [Redacted]

5 [Redacted]

6 [Redacted]

7 [Redacted]

8 [Redacted]

9 [Redacted]

10 [Redacted]

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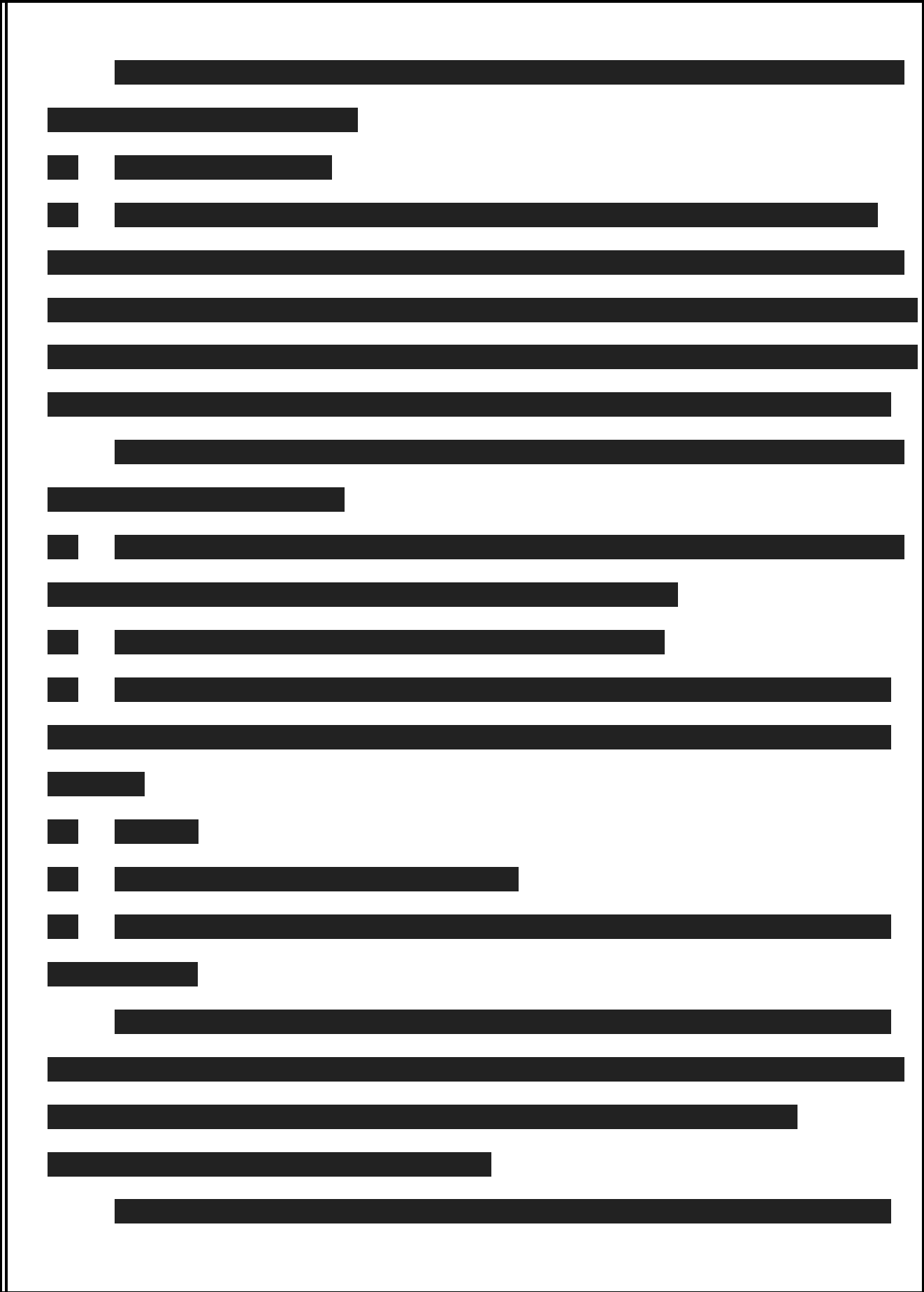
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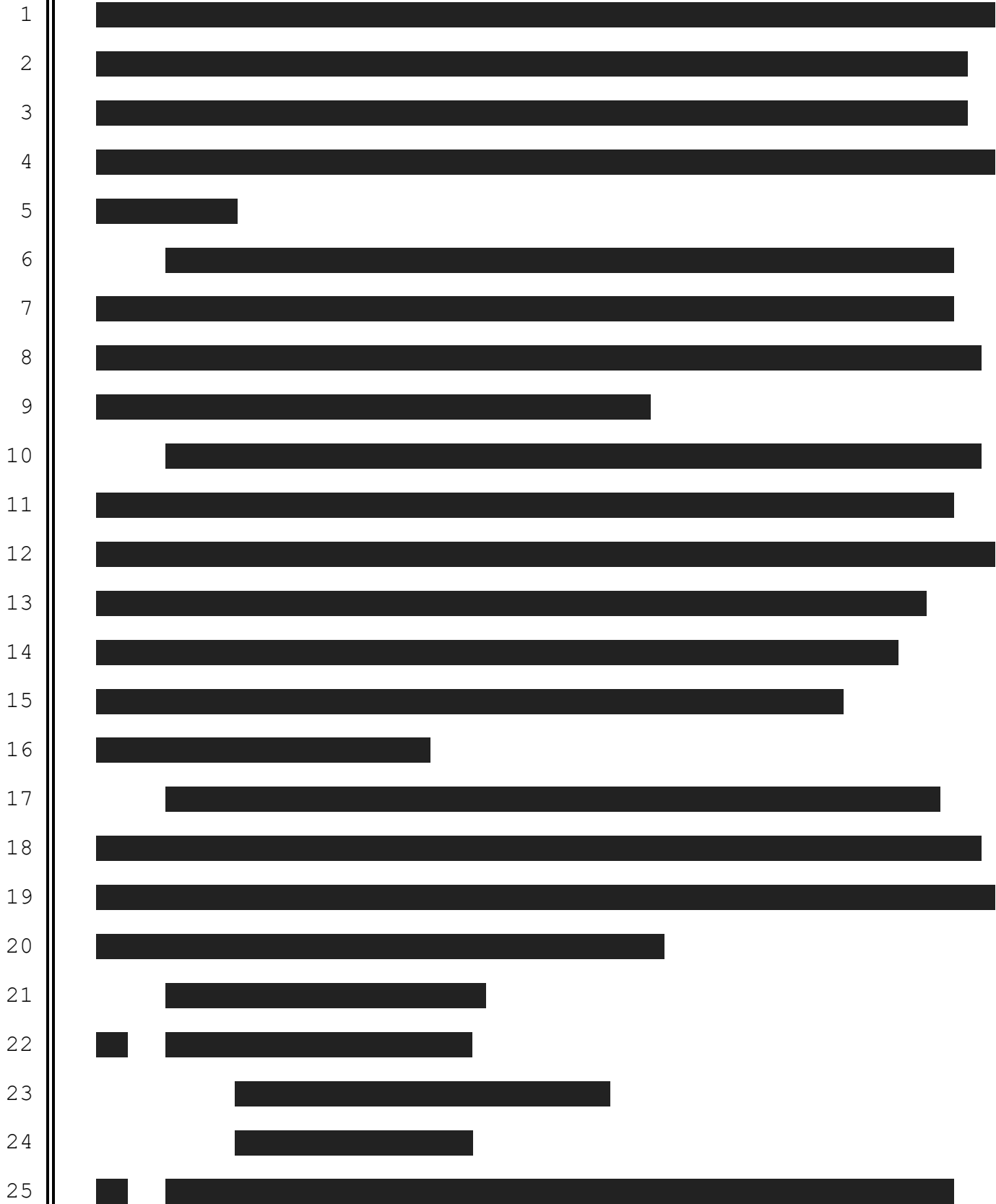
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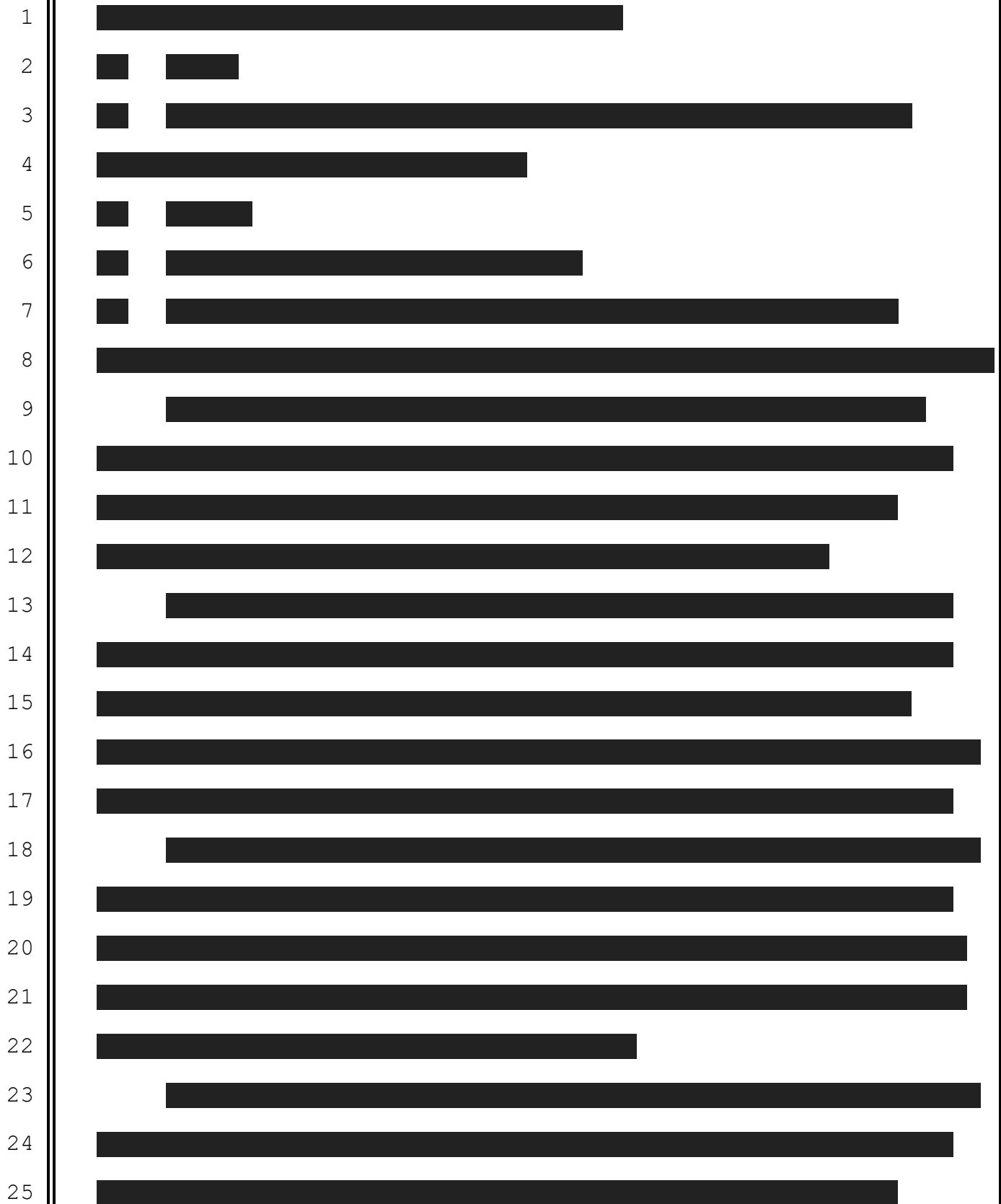
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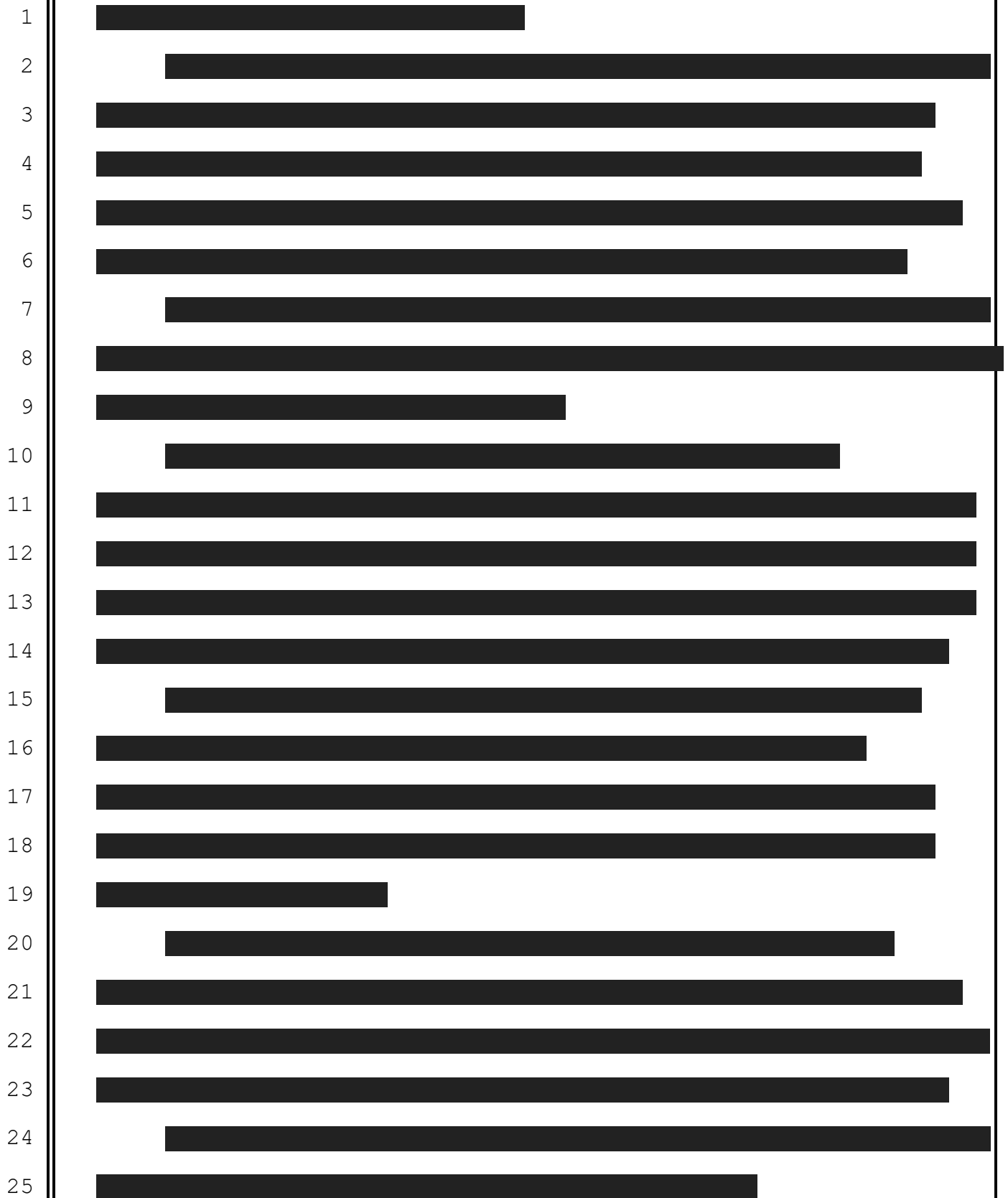
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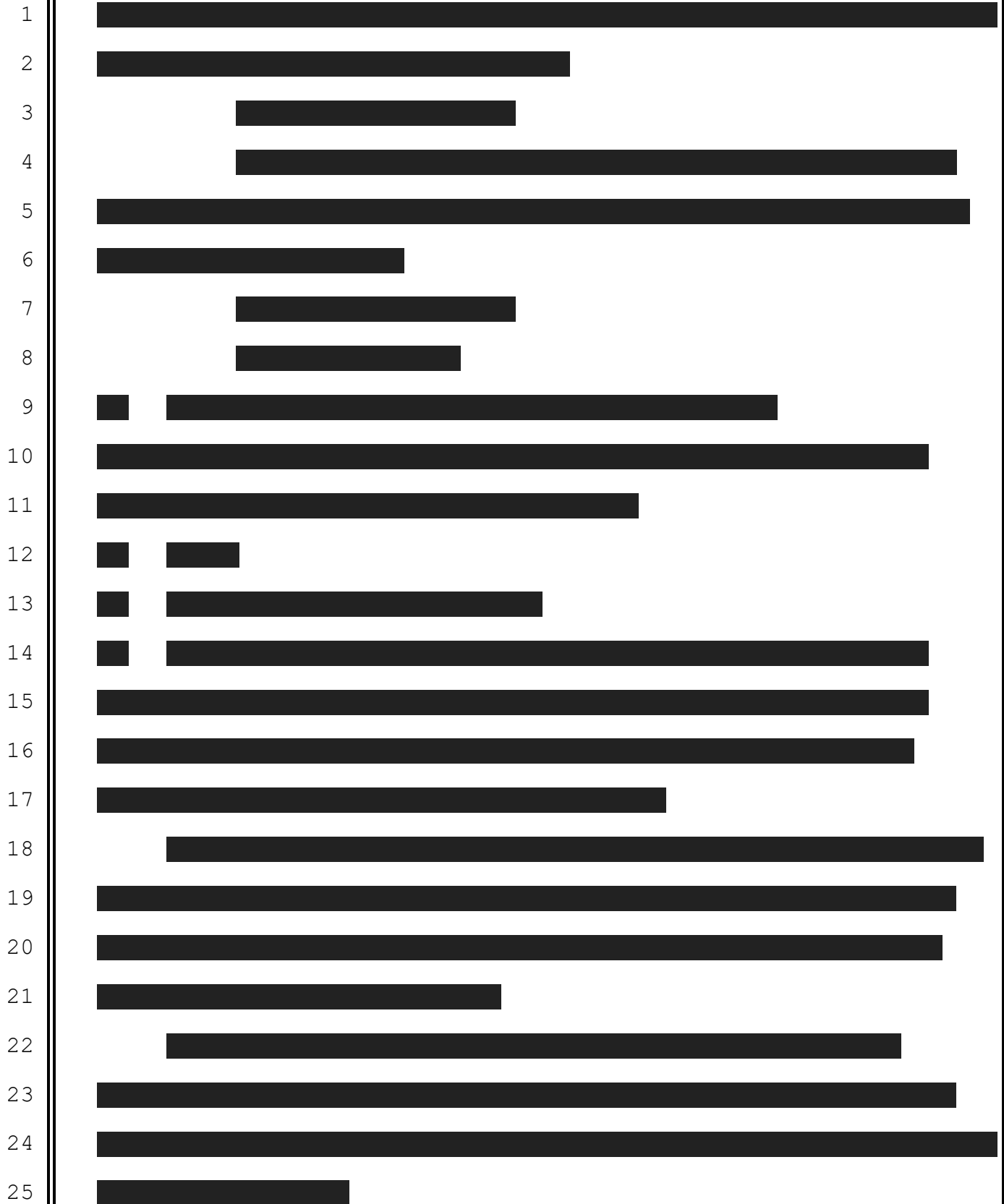


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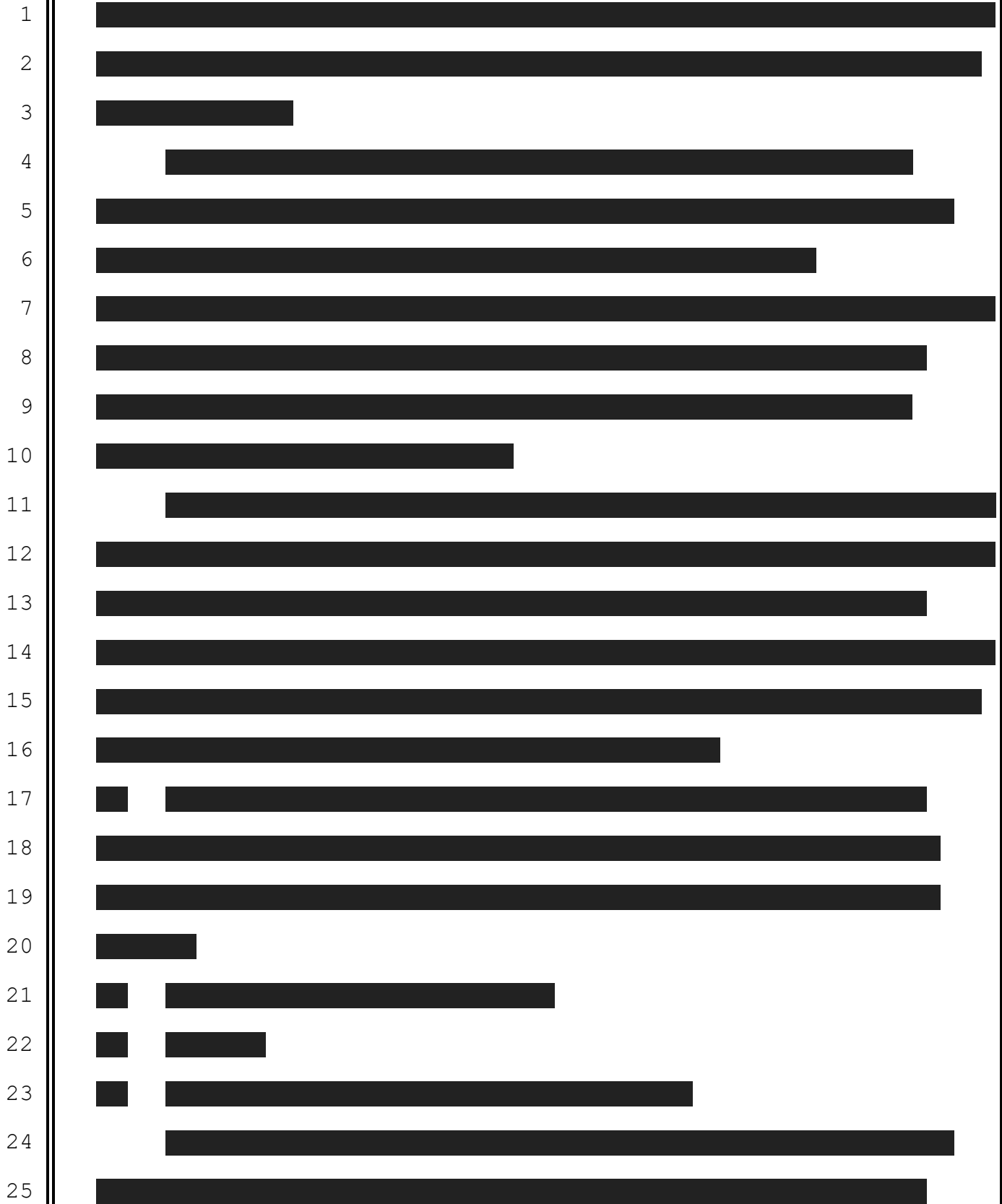


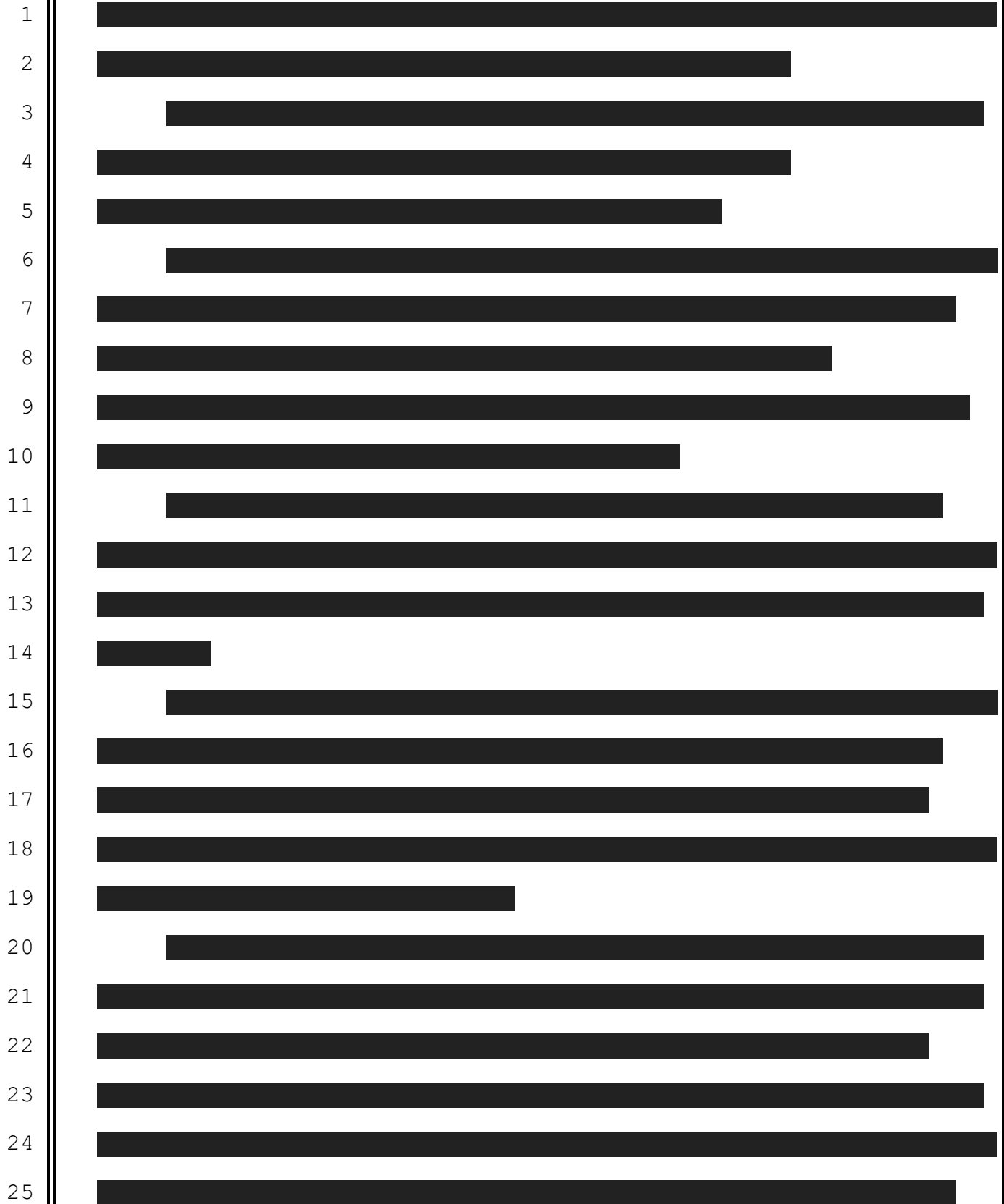
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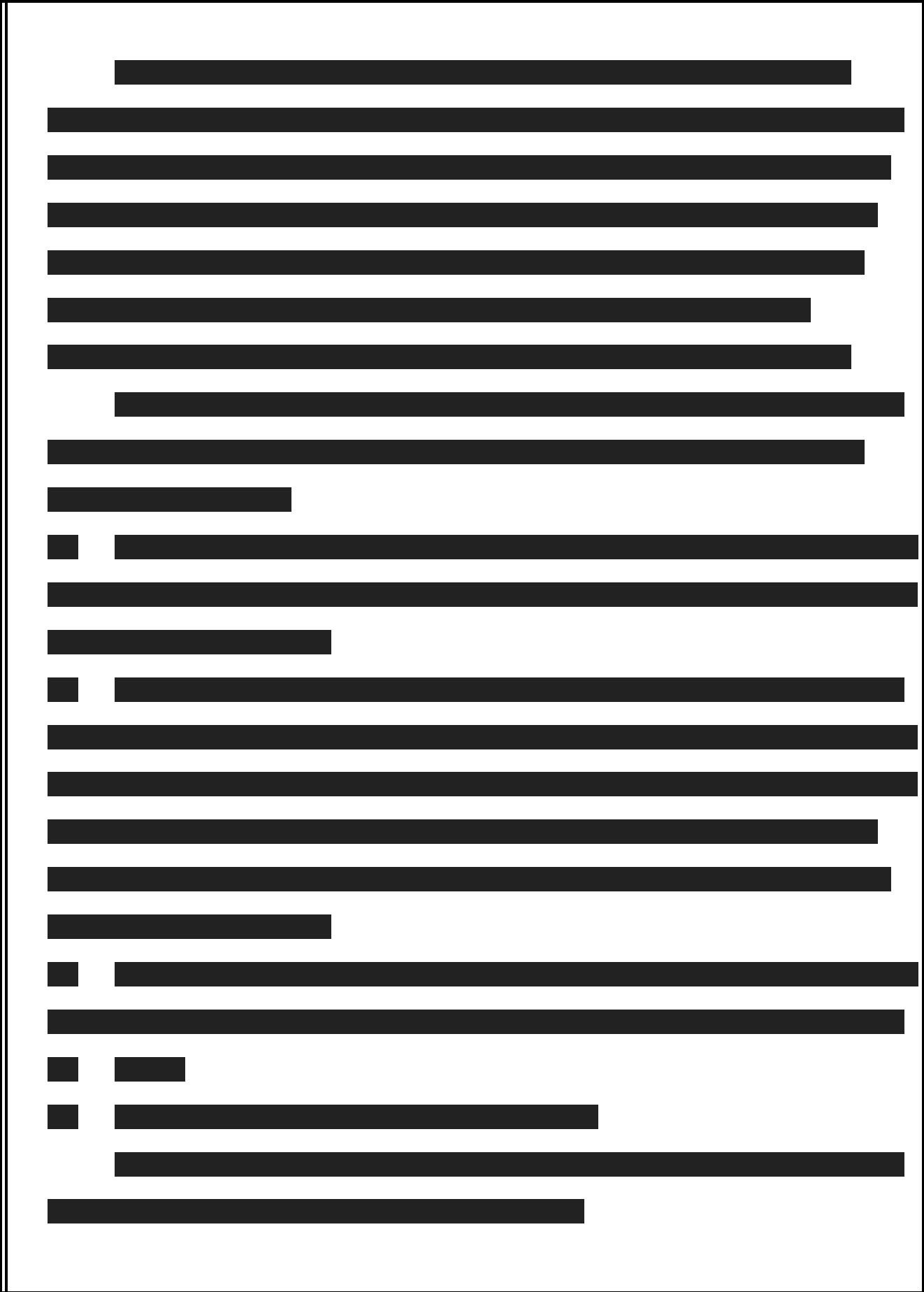




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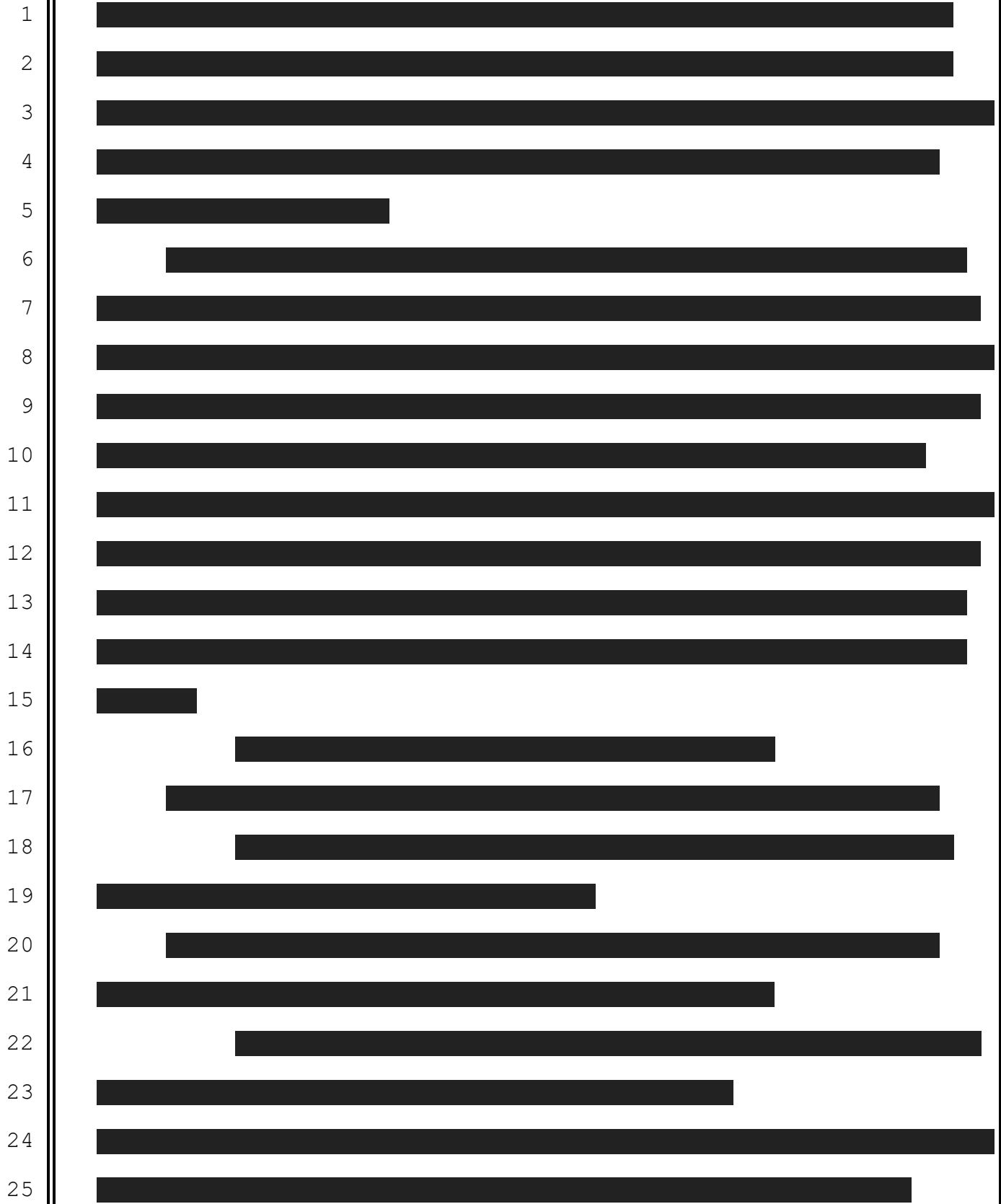


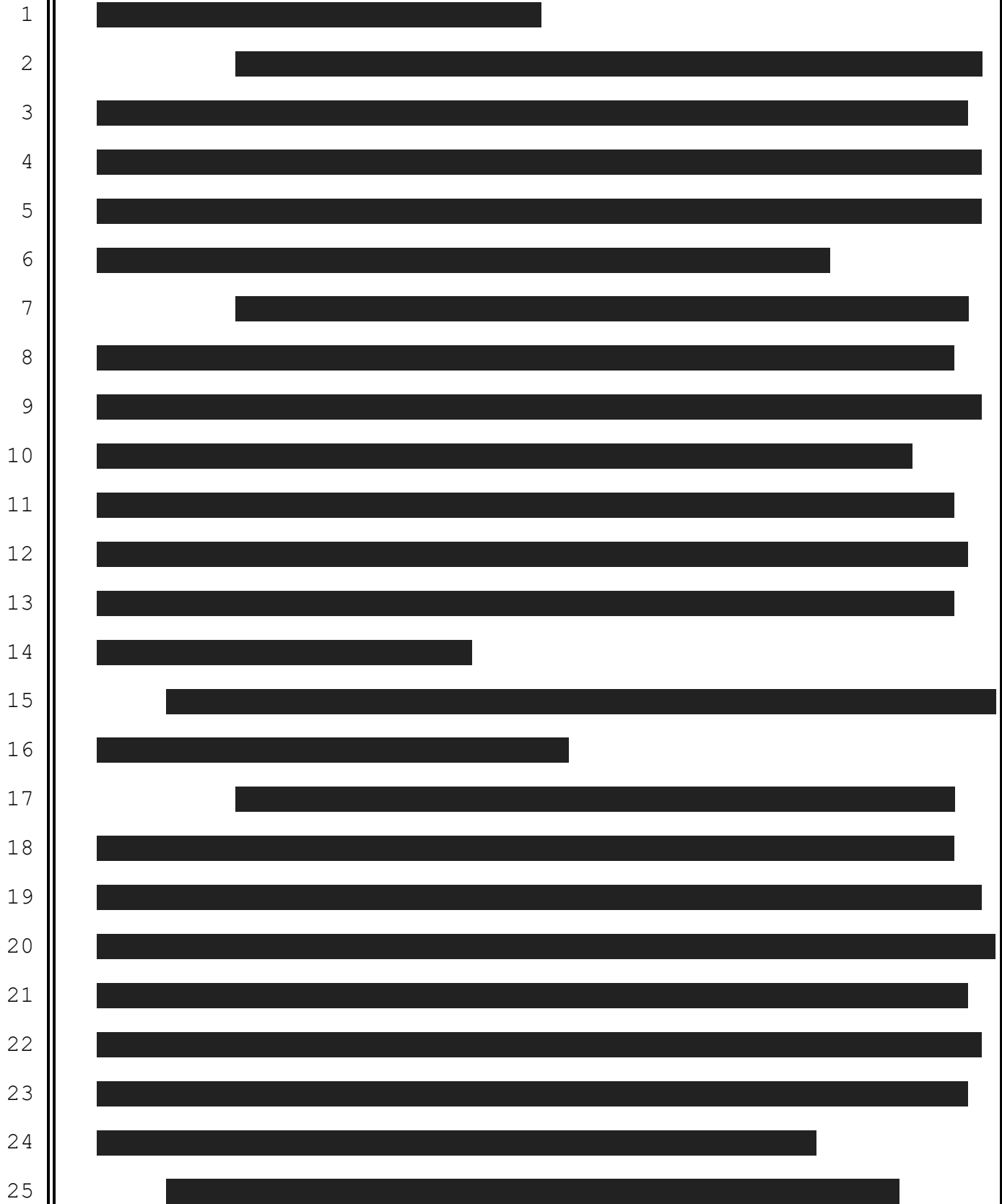
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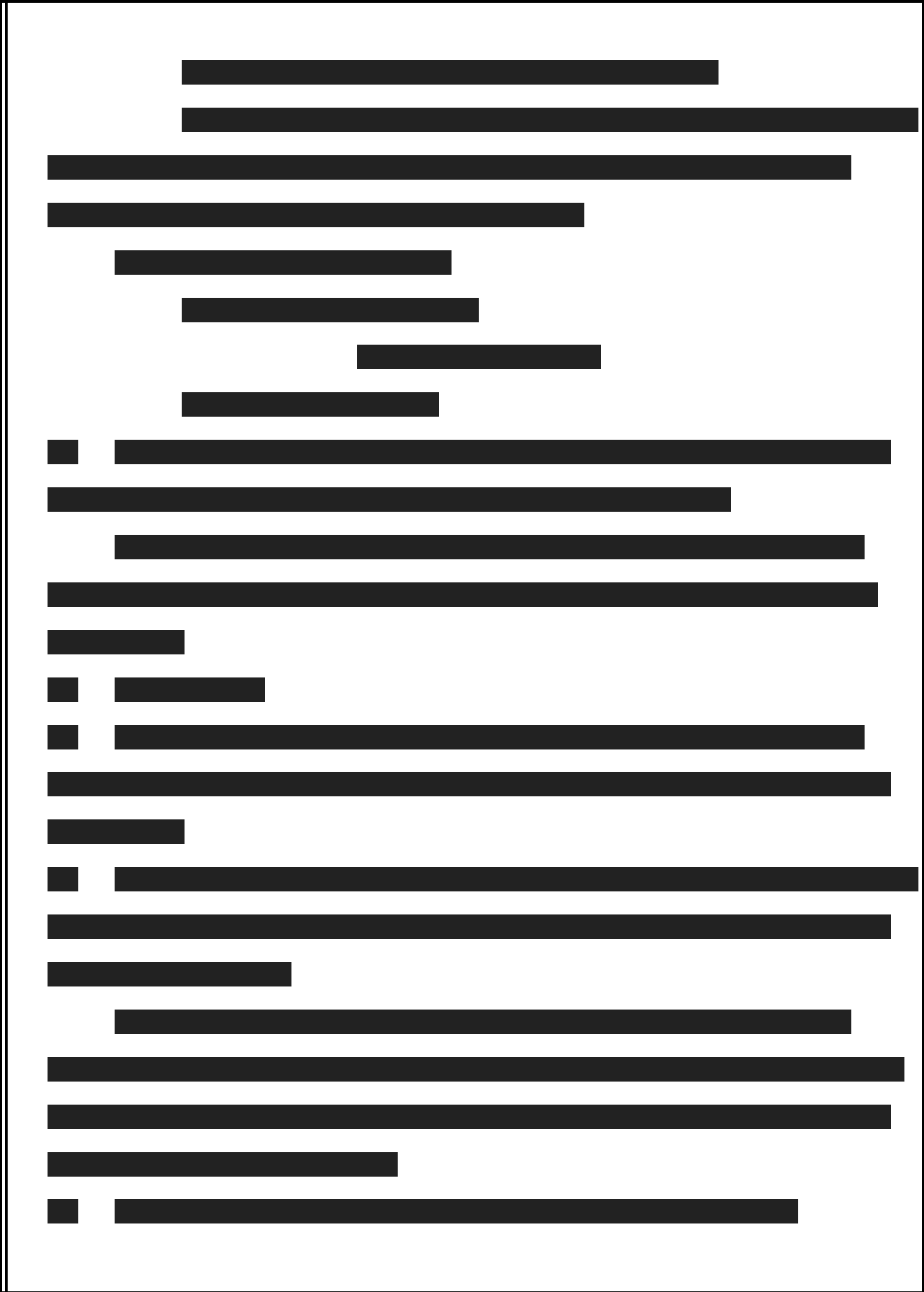




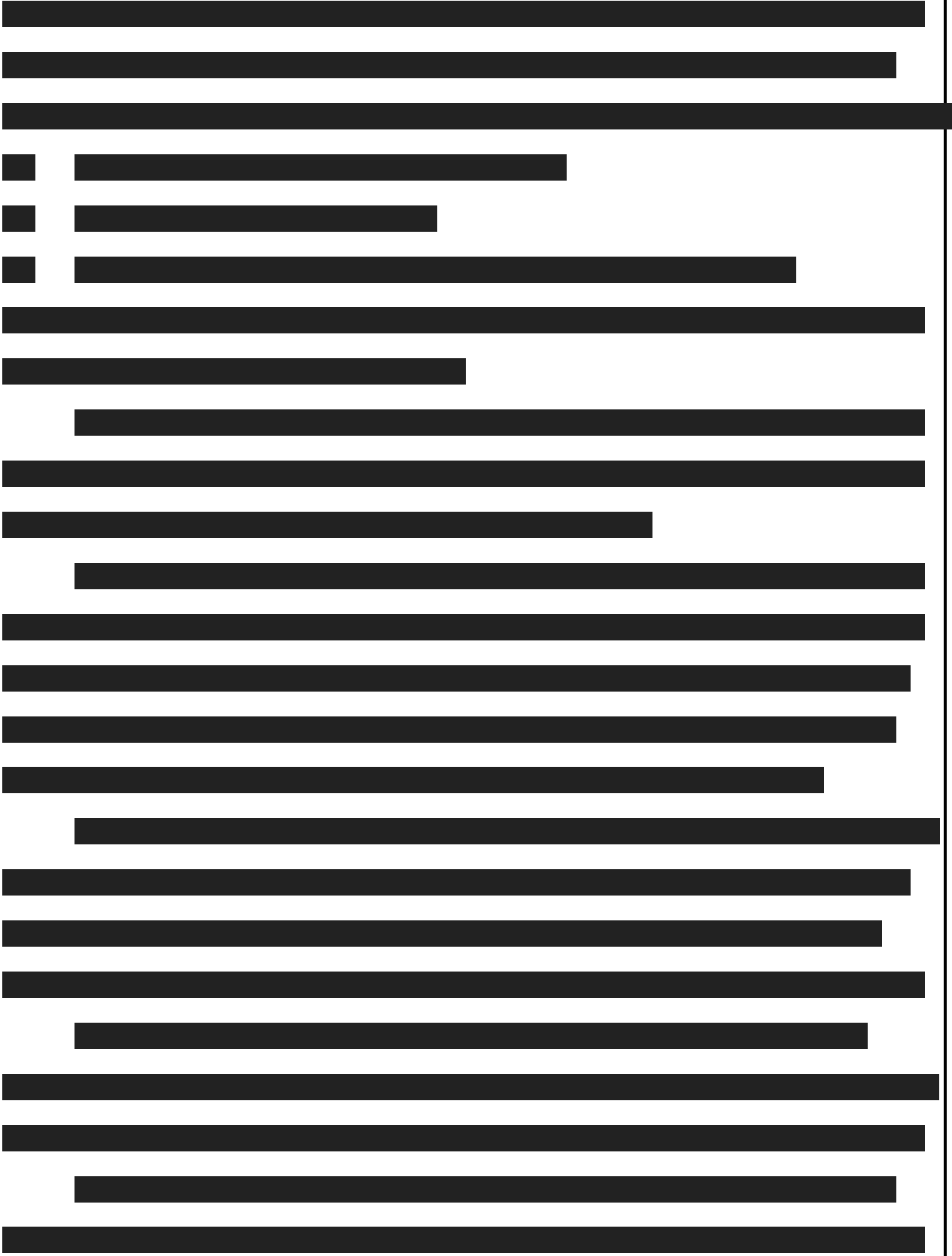


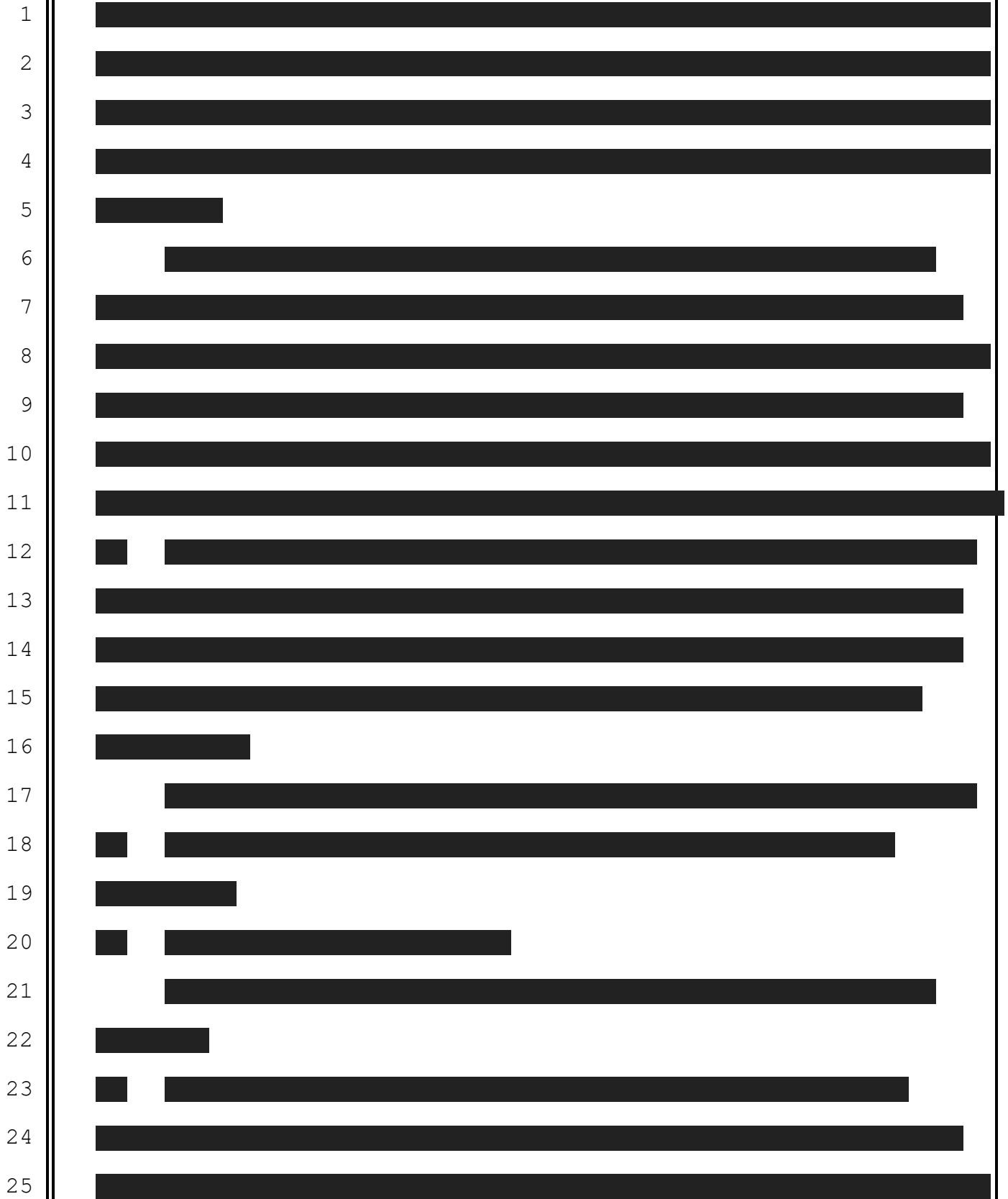


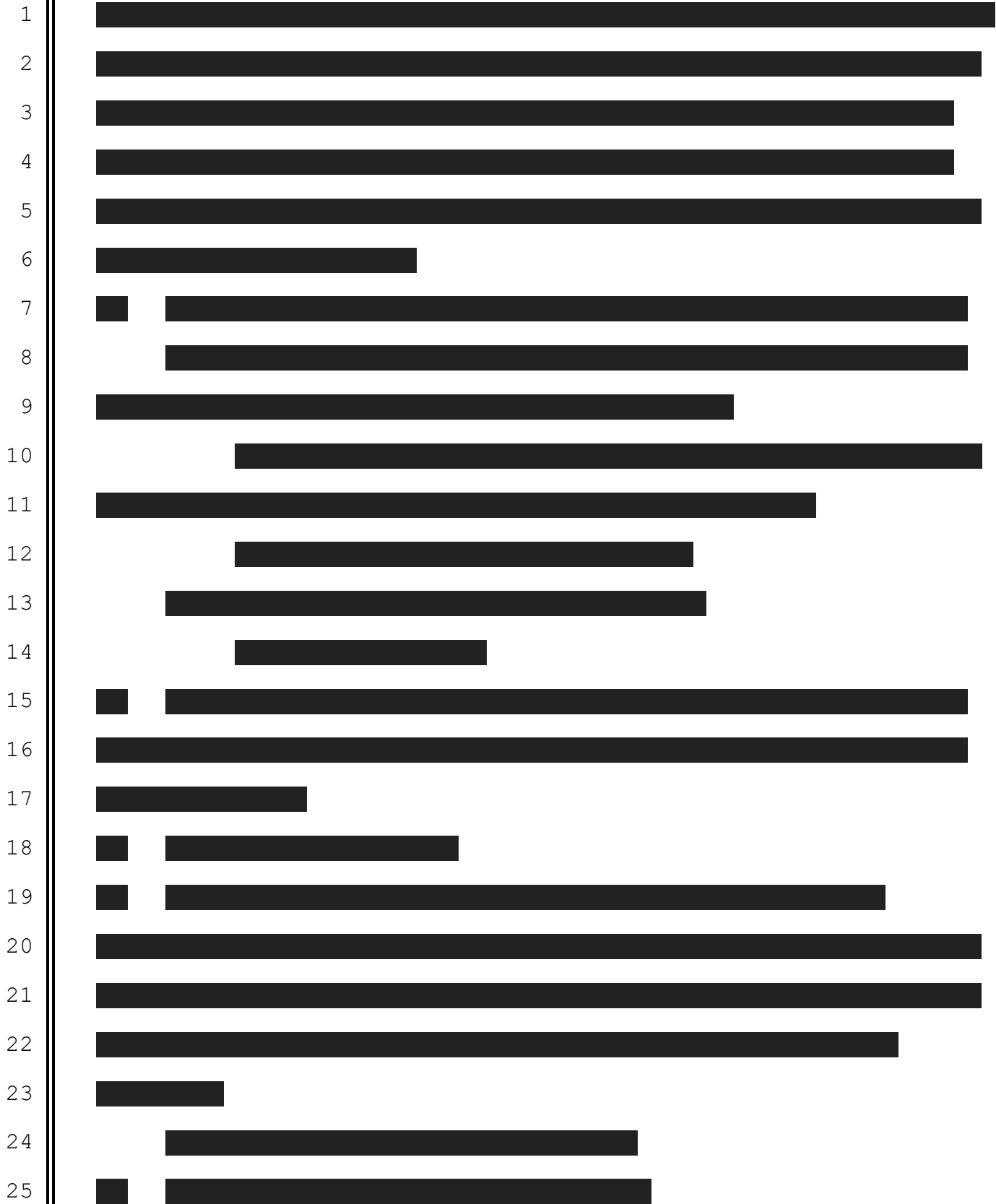
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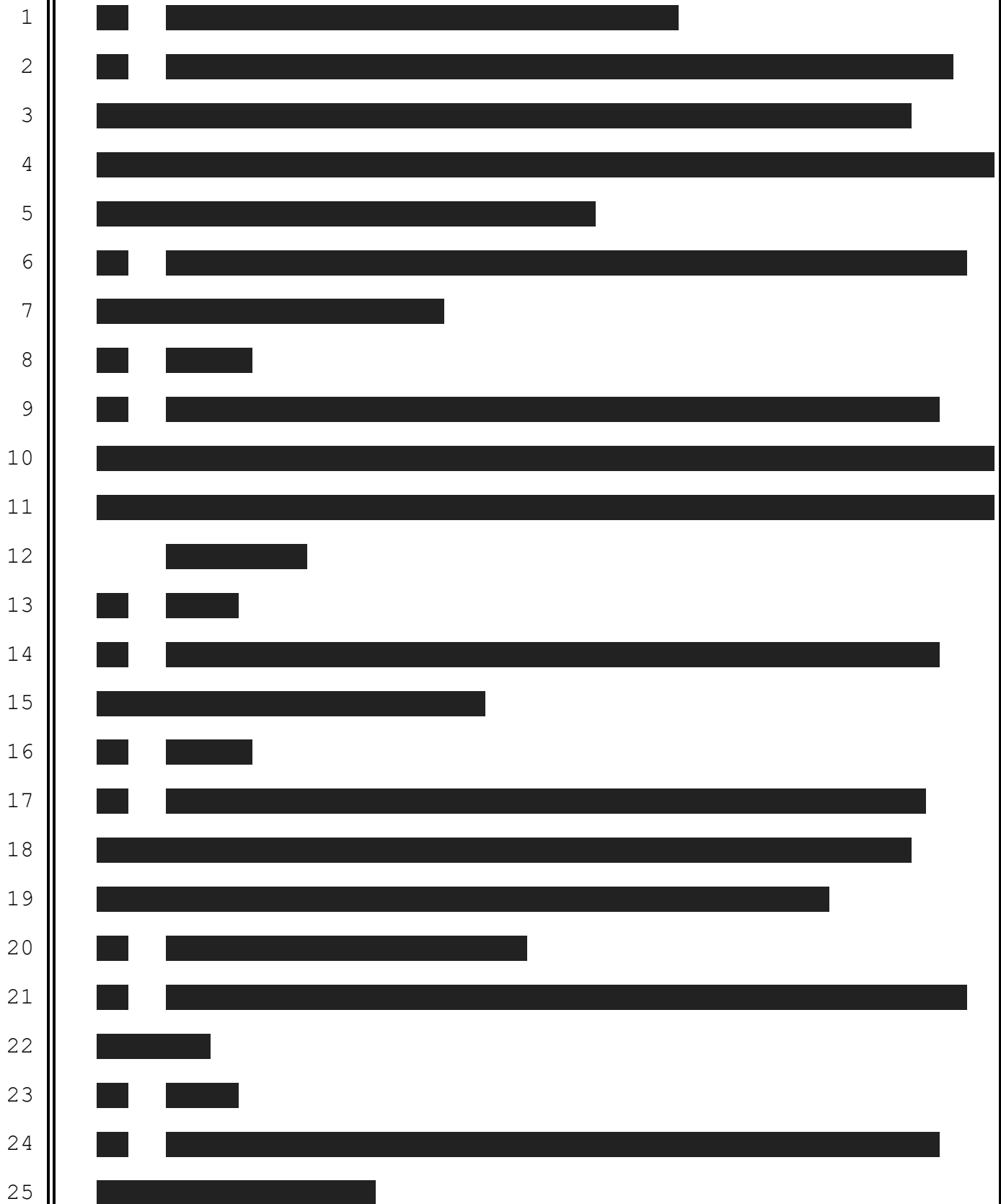


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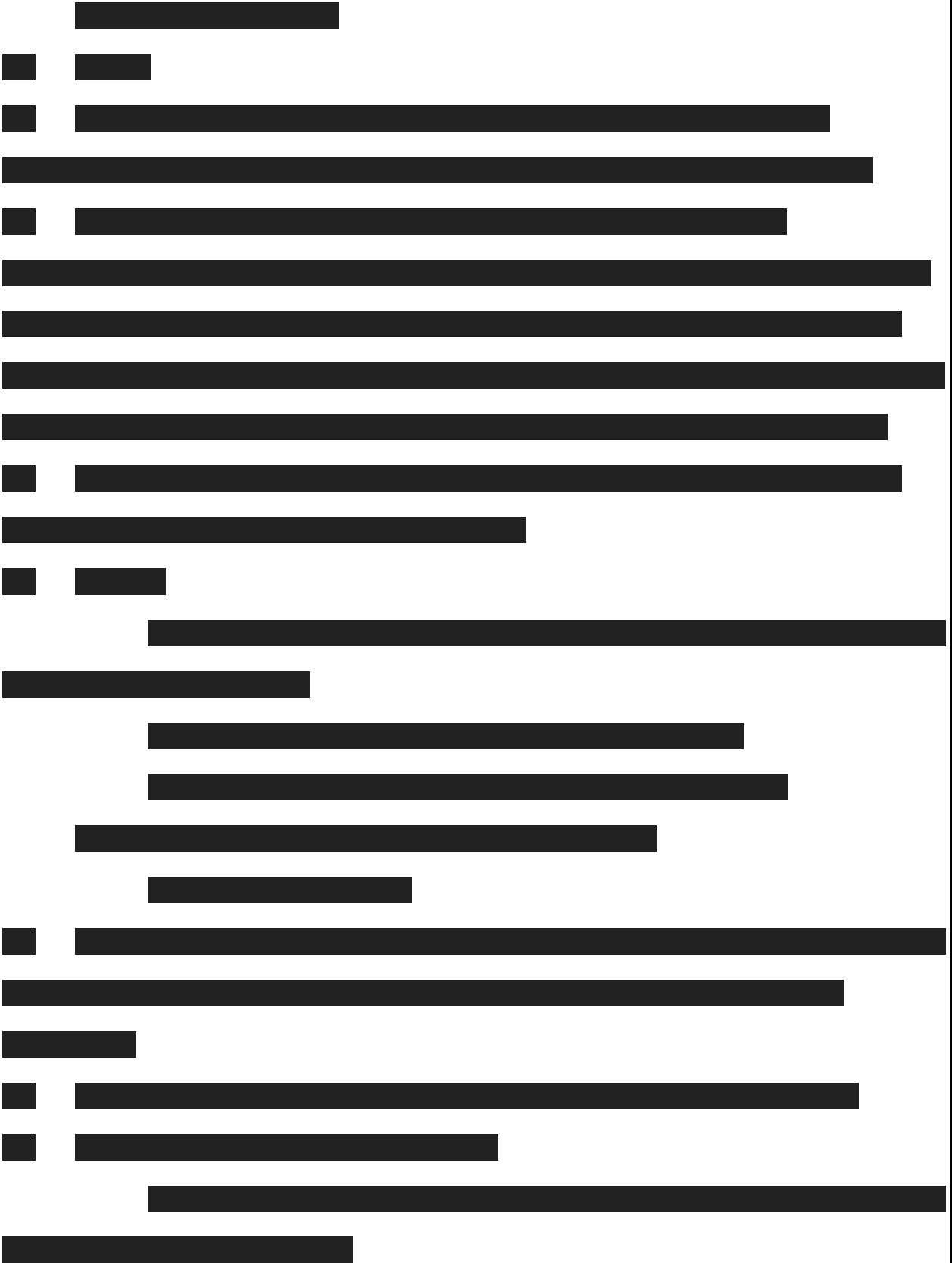








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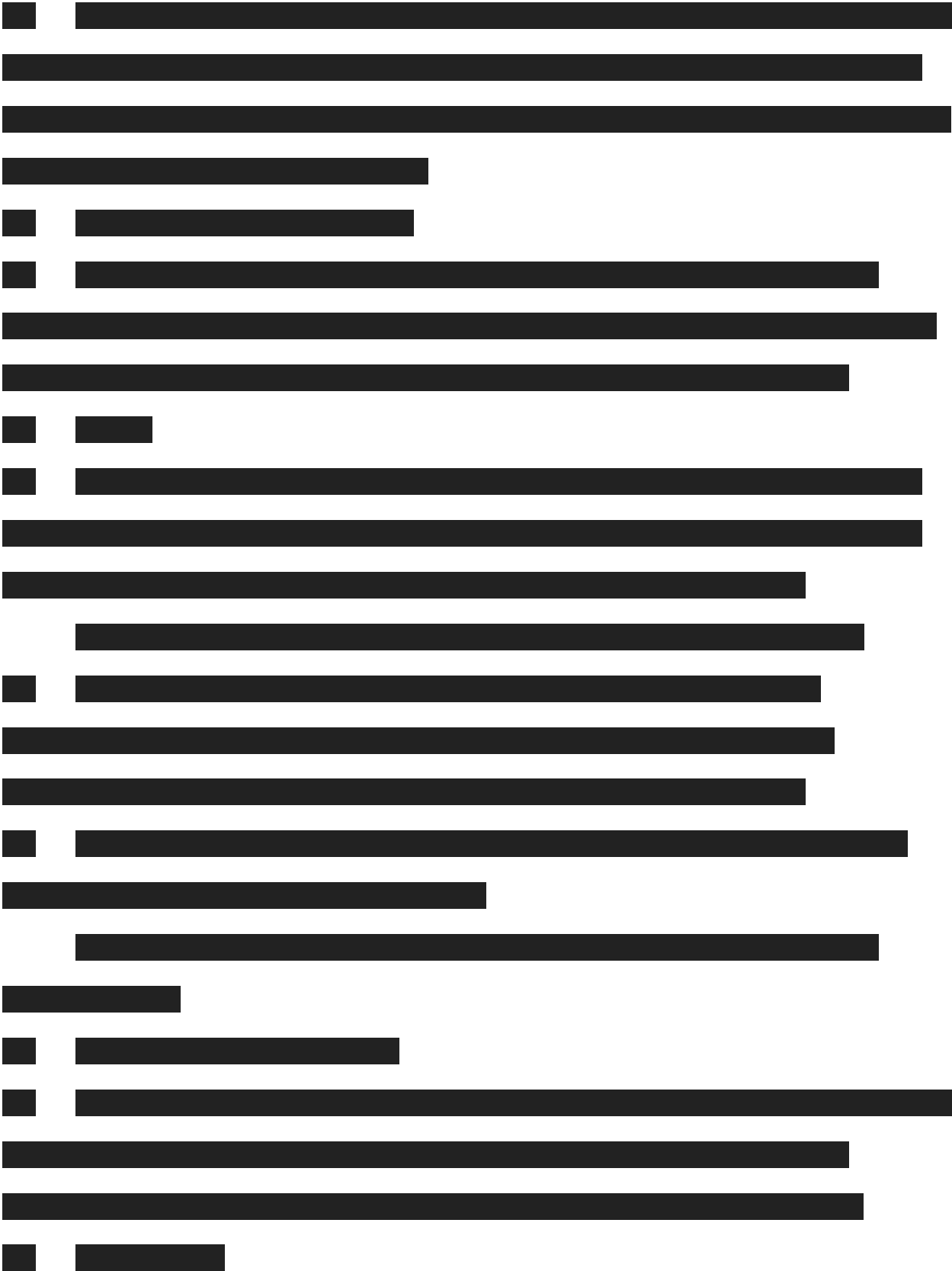


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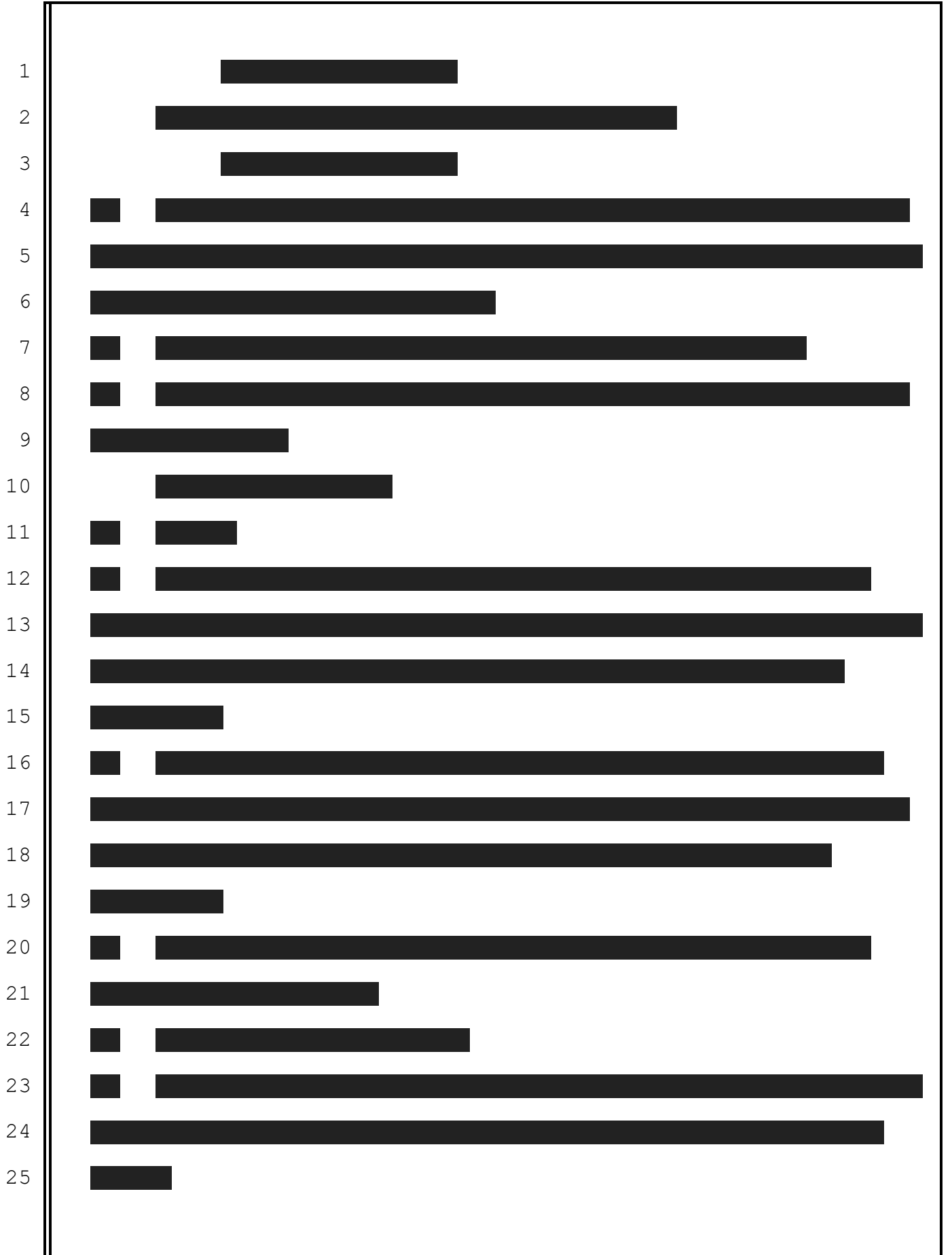


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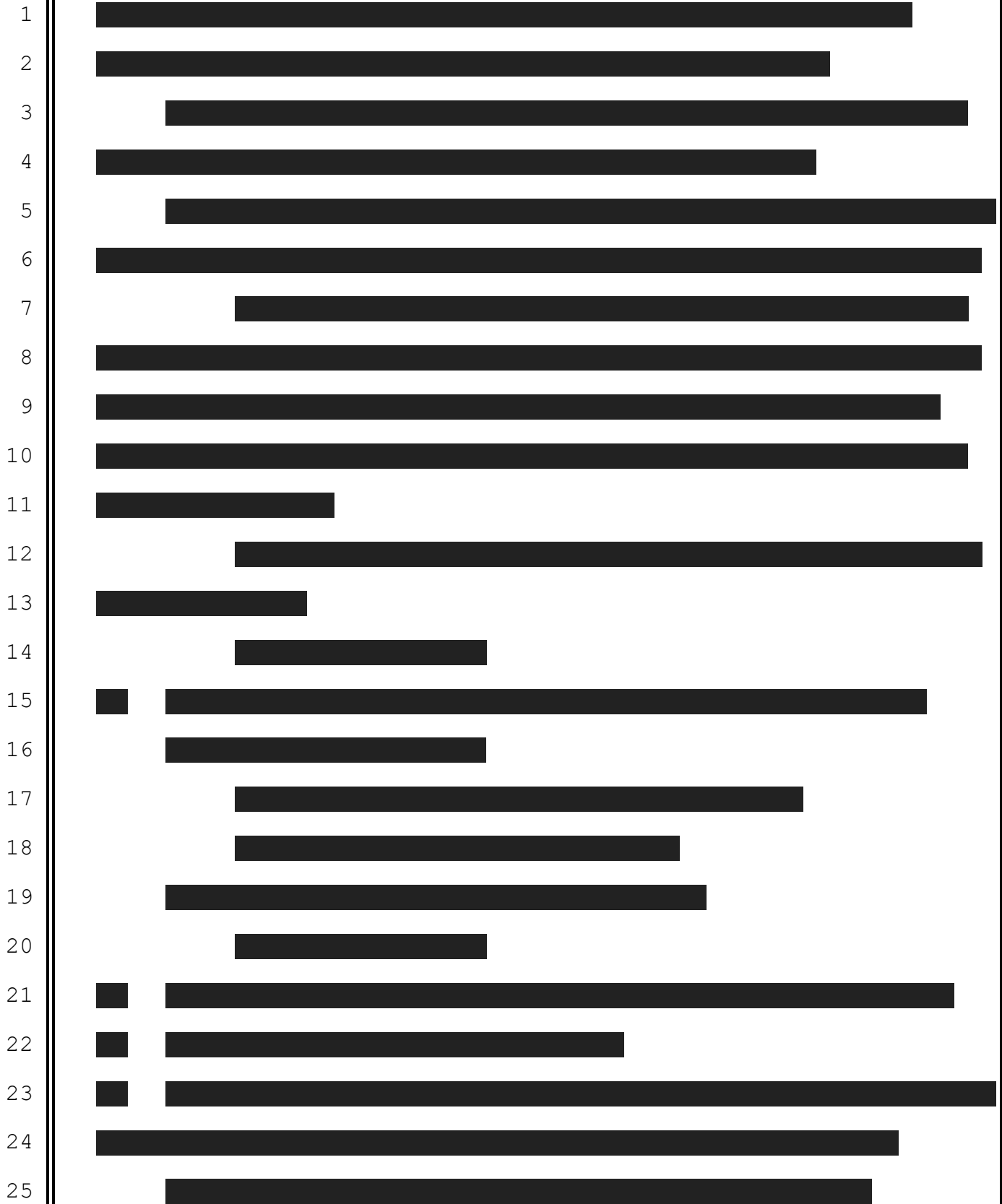
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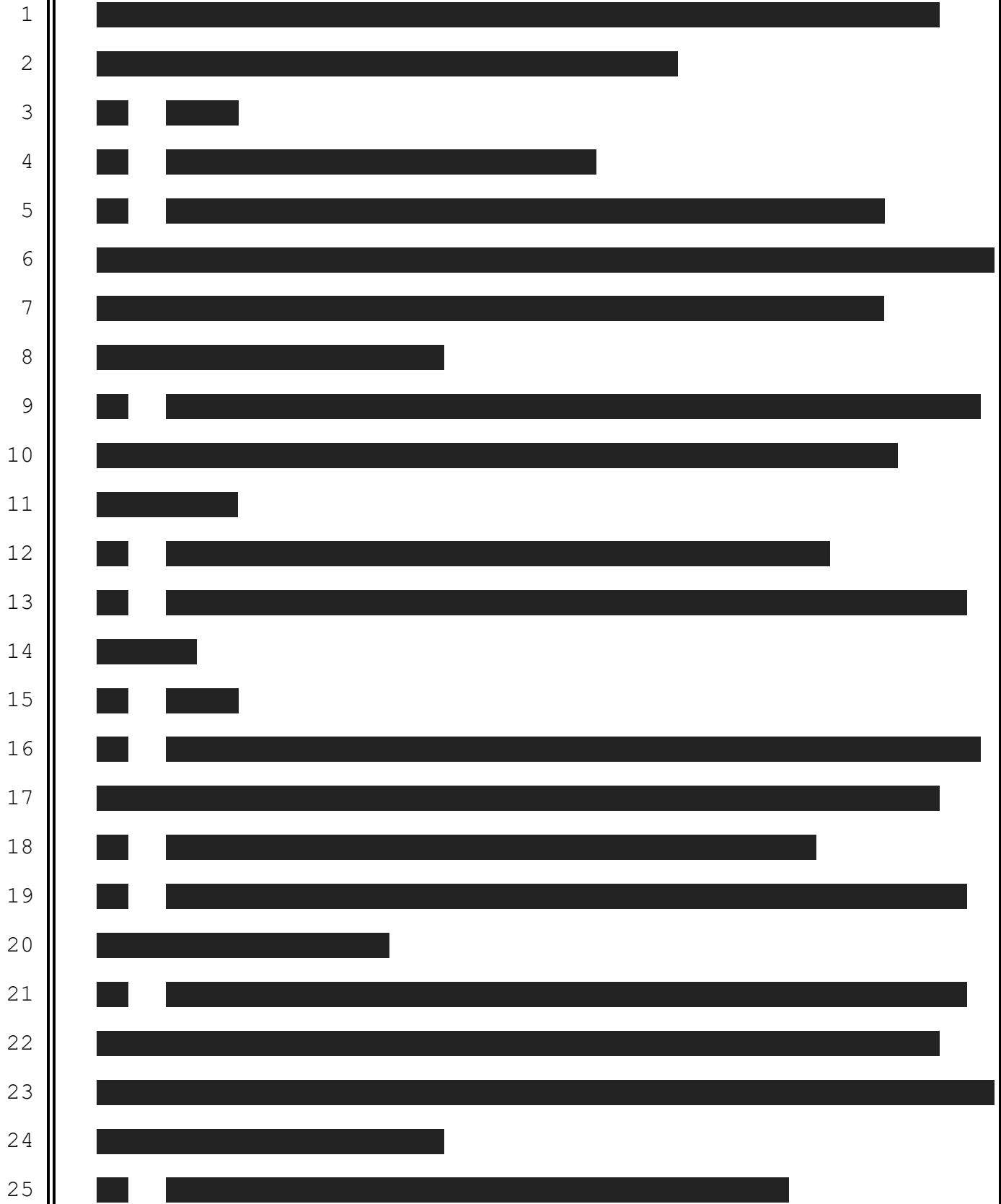
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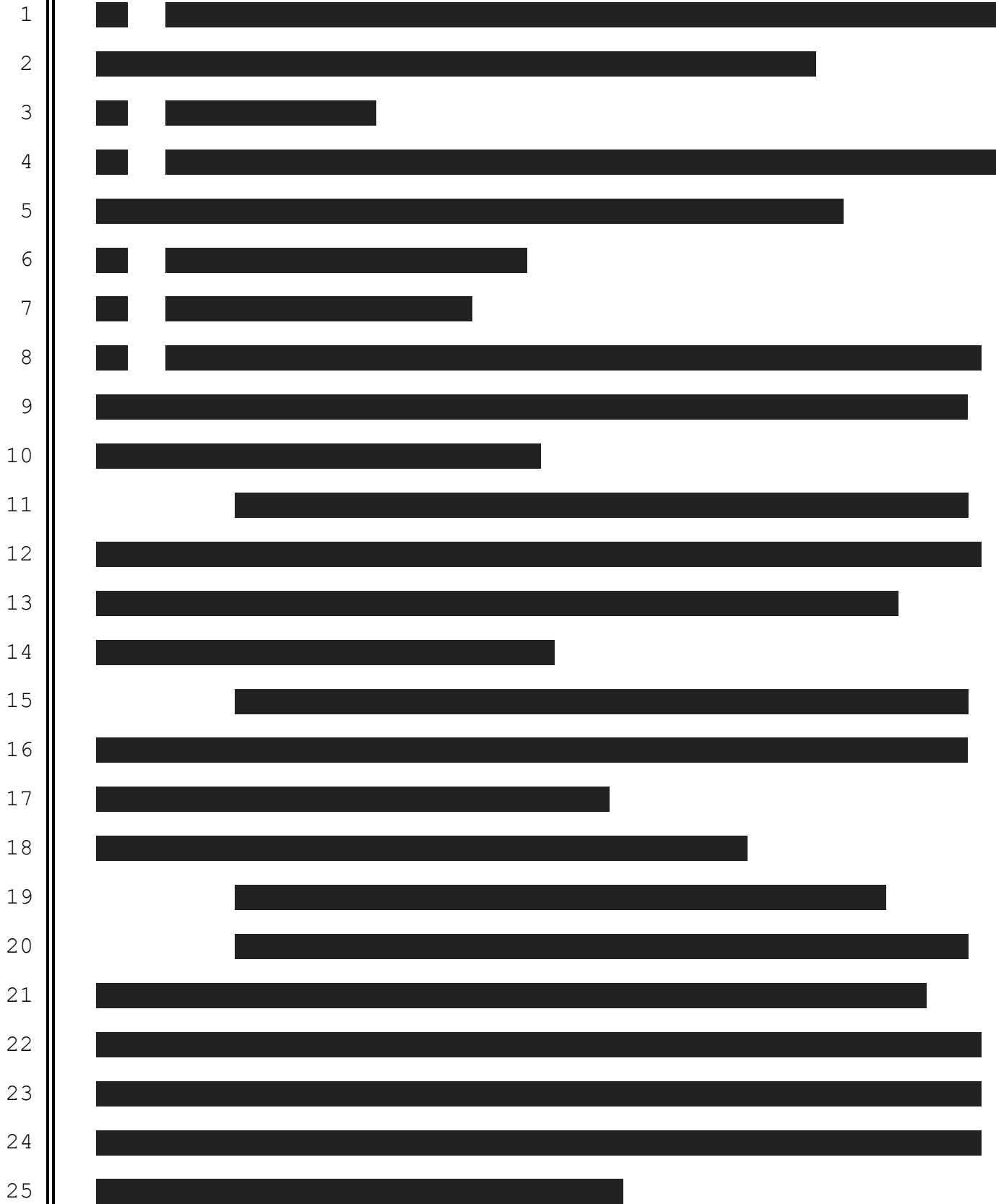


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(End of sealed session.)

11

MR. GREENBLUM: I should proceed?

12

THE COURT: Hang on. I need to make sure that the

13

media room line is reconnected.

14

Why don't we go ahead and get started. I assume the line

15

will get connected any moment now.

16

MR. GREENBLUM: Thank you, Your Honor.

17

BY MR. GREENBLUM:

18

Q. I want to go back to some questions that you were asked by

19

counsel for the Department of Justice. You were asked some

20

questions about in the context of your discussions with Apple in

21

2018.

22

Do you recall generally those questions?

23

A. Generally.

24

Q. And you were asked some questions about projections that

25

Microsoft made to Apple about what percentage of queries

1 Microsoft thought it would keep if Bing were the default on
2 Safari in the iPhone.

3 Do you recall those questions?

4 A. I recall those questions.

5 Q. And I'm not going to say the number out loud. Do you
6 recall that the number -- do you recall that the percentage of
7 queries that Microsoft told Apple Microsoft thought it would
8 keep was quite high in the default?

9 A. So just in the spirit of precision, what I actually sort of
10 talked about was not necessarily the percentage of queries that
11 Microsoft would keep. I talked about the percentage of the
12 queries that the Microsoft-powered technology solution we would
13 create with Apple would keep.

14 It's an important nuance in terms of how we thought about
15 the model and what we were building.

16 Q. Okay. Do you recall the percentage that you told Apple you
17 thought you would keep in the default? Do you recall the
18 number?

19 I'm not asking you to say it out loud.

20 A. I don't remember the number. I remember the general range.
21 I don't remember the specific number.

22 Q. Let me ask you to turn to UPX116, and I'm going to ask you
23 to turn to the slide 028 at the end.

24 A. Yeah.

25 Q. And I can't put these things on the screen.

1 A. It's all right.

2 Q. So I apologize. It's really small. I will tell you that
3 I've had to use a magnifying glass for some of these.

4 But if you look at in the bottom -- in the lower left-hand
5 quadrant of the document where it says "post deal," do you see
6 that?

7 A. Correct.

8 Q. And it says "Safari default," and then there's a number
9 next to it with a percentage.

10 Do you see that?

11 A. Yes.

12 Q. Okay. Do you have that number in mind?

13 A. That's not the number you referenced 35 seconds ago,
14 though.

15 Q. Okay. How would you describe that number, sir?

16 A. So again, and I apologize because this is -- give me a
17 chance to sort of squint.

18 Q. Can I pass you a magnifying glass?

19 A. If you have one, it would honestly be helpful.

20 Q. I do. My colleagues are very gracious.

21 A. So just to give you an orientation for how to read this
22 table --

23 THE COURT: Just to be clear, we're in the table in
24 the lower right corner?

25 MR. GREENBLUM: Lower left-hand corner, Your Honor.

1 THE WITNESS: The left-hand side of the page refers to
2 iPhone; the right-hand side of the page refers to iPad. The top
3 table, so the upper left, refers to our estimate of before a
4 switch. The lower left refers to our estimate on the iPhone
5 post-switch, just to orient.

6 The first two rows there look at queries that come through
7 the Safari browser. Okay? And so if you -- the way to sort of
8 think about it is, there is default --

9 Q. Mr. Tinter, I'm sorry to interrupt you. I realize I
10 directed you to the wrong number, and you're correcting me, and
11 I appreciate that. Let me try to speed this along. We want to
12 get you out of here today.

13 Would you move over a few columns to where it says "capture
14 rate" and "Bing" and that first number in that first row there.
15 It's the same percentage. So I got confused. I apologize.

16 That number, do you have that number in your mind?

17 A. Again, I don't think that number is what you think that
18 number is.

19 Q. Tell the Court what that number is.

20 A. That number is the percentage of defaults that we believe
21 would be kept by Bing. It is not a percentage of queries.

22 Q. Okay. Percentage of defaults; fair?

23 A. Yes. I -- yes.

24 Q. Are you aware of a single other Microsoft device that
25 you've ever sold where you've kept that percentage of defaults

1 for search?

2 A. So --

3 Q. Yes or no, sir?

4 A. -- again, as we've talked about previously, there were not
5 very many devices where we did. I do not remember the specific
6 percent of defaults that we kept on Windows phone. But given
7 that we did look earlier at a percentage number of total share
8 on Windows phone, to achieve that total share on Windows phone,
9 it is highly likely that you would have had to retain defaults
10 at greater than this rate.

11 THE COURT: Just to be clear, when you say "retain,"
12 you're talking about searching on the default; correct? Queries
13 on the default? Is that what you're referring to?

14 THE WITNESS: Again, if you want me to explain the
15 table for a second.

16 THE COURT: Sure.

17 THE WITNESS: The first row is the percentage of
18 queries that go through the default. I go to the box, and I do
19 it.

20 The second row, if I'm remembering -- one second.

21 The second row includes things like people direct
22 navigating. Right? So the first dynamic that's going on here,
23 if you go from the table on the top to the table on the bottom,
24 is that more people will direct navigate. Okay?

25 And then the things labeled "capture rate" says the

1 percentage -- so defaults represent X percent of the queries
2 that go through the browser. That's that number with the little
3 yellow 1 next to it. And then the capture rate is how that gets
4 distributed across the various search engines.

5 THE COURT: I see. Okay.

6 THE WITNESS: And essentially, what we assumed was
7 that it would be equivalently hard to change the settings. So
8 therefore, you will notice that that number, the number in the
9 Bing column, approximates the number in the Google column at the
10 top.

11 So essentially, what we assumed is, in a world where it is
12 equivalently hard to change the defaults, that they will -- the
13 same thing would sort of happen. The dynamic being because it's
14 hard for people to do defaults, less people would use the
15 defaults, and more people would then go and direct navigate.

16 THE COURT: Thank you.

17 BY MR. GREENBLUM:

18 Q. So you're not aware of another device where you would have
19 that type of, to use the phrase on the slide, "capture rate";
20 right?

21 A. I literally just said that I believe in order to achieve
22 the math that we talked about for Windows phone, the capture
23 rate would have had to have been that high.

24 But again, I also said the foundation of the assumption was
25 also based on the capture rate for the existing device

1 experience.

2 The last thing I will add is, we presented this to Apple.
3 They gave us lots of feedback as we went through this
4 presentation on places where they agreed and disagreed with us
5 on assumptions that we were making. And through the process,
6 there were places where we changed assumptions. They never
7 disagreed with us on this specific assumption.

8 Q. It was your understanding that Apple believed you when you
9 told them this, this specific number here on the slide?

10 A. If they disagreed with this number, they did not give us
11 feedback that they disagreed. There were other numbers
12 throughout these presentations where they did disagree and gave
13 us feedback. And so I'm assuming, based on lack of
14 communication of disagreement, that they didn't disagree,
15 because they were not shy in other places.

16 Q. Let me ask you to turn in your binder -- sorry. We're back
17 to my binder, Mr. Tinter, to DX2011.

18 The cover e-mail here, when you get there, sir, is an
19 e-mail you received in 2010. I'm not going to put the document
20 up on the screen for confidentiality reasons. I believe the
21 PowerPoint that's attached I'm permitted to mostly use on the
22 screen.

23 So let me give you a second to familiarize yourself with
24 it. My first question is going to be whether this is an
25 analysis of Bing mobile user intent that you received in

1 September of 2010.

2 A. Yeah, so it looks like someone forwarded me a presentation
3 and summary of a meeting on some user intent research.

4 Q. Okay. I'm going to ask you to turn to the second page of
5 the e-mail. There's some discussion there of different
6 operating systems or platforms on which mobile search was being
7 distributed at that point in time, in 2010.

8 A. Correct.

9 Q. And the document, the analysis describes at that point in
10 time that Blackberry and Windows Mobile are far from dead and
11 can drive significant volume with an improved product.

12 A. The question is?

13 Q. That's what the document says; correct?

14 A. That is the bullet point on the document, yes.

15 Q. Was that your understanding at the time?

16 A. So again, I don't remember this particular presentation.
17 This was text written by the guy who wrote the e-mail. So that
18 was what he purported. I don't remember the presentation of the
19 analysis. So I don't know that I had a personal understanding.

20 Q. You don't have a reason to disagree with that state of
21 affairs back in 2010 sitting here today, do you?

22 A. I don't have a reason to agree with it either.

23 THE COURT: Sir, can you just point me? Because I
24 didn't find where you were looking.

25 MR. GREENBLUM: Sorry, Your Honor. Second page, the

1 first number 1 in the upper left-hand corner.

2 THE COURT: I was looking at the --

3 MR. GREENBLUM: Sorry about that.

4 BY MR. GREENBLUM:

5 Q. On the bullet point that follows, there's a projection of
6 the percentage of mobile query volume that runs through
7 Blackberry and Windows as of that point in time; correct?

8 A. I do not believe it is a projection. I think it's a
9 backward-looking statement.

10 Q. Okay. It's a factual statement as of that point in time of
11 the percentage of mobile query volume running through Blackberry
12 and Windows as of 2010?

13 A. Again, I have not seen this before, and so I don't know if
14 it was right or wrong. I don't even remember this guy Justin
15 who sent this. So I'm not going to -- I think you're asking me
16 to say that something's accurate that I really have no knowledge
17 of.

18 Q. The next bullet says, "Browse is overwhelming driver of
19 mobile query volume for core mobile search. Dependence on a
20 client-only strategy is not sufficient"; is that correct?

21 A. That is what it says.

22 Q. If you look down to the third set of bullets there, it's
23 actually misnumbered number 1, do you see that there are
24 statistics there on the number of new Bing mobile users?

25 A. Can you tell me where you are?

1 Q. Sure. It's the first sub-bullet. It begins with a
2 percentage, and then it says "of new Bing mobile users, churn
3 within one week."

4 A. Yes.

5 Q. Okay. And then the document provides there a series of
6 percentages of the number of new Bing mobile users that churn
7 over different periods of time, first within a week, then within
8 four weeks, and the number of new Bing mobile users that become
9 regular Bing users.

10 Do you see that?

11 A. Yes.

12 Q. And do you see that the number of new Bing mobile users
13 that stay regular Bing mobile users is in the single digits?

14 A. I see that.

15 Q. You don't have any reason to disagree with that assessment
16 of the state of affairs in 2010?

17 A. This is where, you know, there's a lot of very, very
18 specific terms in here that I do not know how they are defined.
19 I do not know what the definition of "new" was. I don't know
20 what the definition of "regular" was. I do not know what the
21 definition of "churn" was. I don't know the universe of users
22 they started with. Like, there's so much about this analysis
23 that I just don't know that I'm in no position to agree,
24 disagree, or have any opinion about it.

25 Q. Do you see that the next bullet says that more than half of

1 new users have only one active day on Bing mobile before
2 leaving?

3 A. Sorry. The question is?

4 Q. Do you see that?

5 A. I see that.

6 Q. Okay. Do you have any reason to think that wasn't the case
7 in 2010?

8 A. The same thing I would just sort of say, I don't know if it
9 was the case or not. I don't know the definitions here. I
10 don't know the analytic sample.

11 I mean, this is clearly a relatively detailed analysis and
12 precision that I don't remember, and I don't know how it was
13 done. And so I don't know if I agree or disagree.

14 Q. A lot of the details are contained in the slide deck that
15 you see attached starting on the next page from Keystone
16 Strategies?

17 A. Yes.

18 Q. Keystone Strategies was a consulting firm that Microsoft
19 has used over the years; is that correct?

20 A. I don't know.

21 Q. You don't recall?

22 A. I don't recall.

23 Q. Do you recall Dr. Susan Athey?

24 A. The name rings a bell.

25 Q. Dr. Athey, I'll represent to you, worked at Keystone

1 Strategies.

2 Do you recall working with Dr. Athey on calculations around
3 Bing Search?

4 A. I never worked with Dr. Athey. I had heard her name as
5 doing some analysis related to some things. I never met her. I
6 never heard her. I never worked with her.

7 Q. Do you know that today she is the chief economist at the
8 Department of Justice's Antitrust Division?

9 A. I did not know that.

10 Q. Okay. So let's take a look at her team's analysis in the
11 deck. I'm going to ask you to look at slide 8.

12 And I think we are allowed to put this up on the screen.

13 A. I'm sorry. Just so I'm very clear, I'm using your 8 or the
14 presentation's --

15 Q. The presentation's 8. It says, "Bing mobile is a small
16 percentage of overall smartphone queries."

17 A. Okay.

18 Q. Do you see this table is a snapshot of the smartphone
19 industry as of May of 2010?

20 A. I see the table, yeah. I would need to study it for a
21 little while to say what this is a snapshot of, but yes, I see
22 the table.

23 Q. It has four platforms on there, right, iPhone, Blackberry,
24 Windows Mobile, and Android; right?

25 A. Yes.

1 Q. And you spoke with DOJ this morning about iPhone, and you
2 spoke with DOJ about Android.

3 Do you recall that?

4 A. Yes.

5 Q. The second and third platforms on here are Blackberry and
6 Windows Mobile; right?

7 A. Correct.

8 Q. Windows Mobile was the -- was Microsoft's proprietary
9 operating system for the Windows phone; correct?

10 A. Correct.

11 Q. Those phones shipped with Microsoft's browser exclusively;
12 correct?

13 A. I don't remember.

14 Q. They shipped with Microsoft's search engine exclusively;
15 correct?

16 A. I don't remember.

17 Q. Do you remember whether users could change those default
18 settings?

19 A. I don't remember.

20 Q. Now, if you take a look at the number of users at this
21 point in time that were -- well, actually, let me just ask you,
22 on Blackberry, Microsoft had some search distribution deals on
23 Blackberry; correct?

24 A. Yeah, I don't remember the time frame of when we did it.

25 We had entered into a partnership where Bing was the search

1 default on Blackberry, but I don't remember if that was before
2 or after 2010 or when we did it.

3 Q. I think one of those deals that you spoke about on direct
4 with DOJ was with Verizon in or around 2008, 2009. So that
5 would precede this; correct?

6 A. That's correct. We had also done -- we had a direct
7 partnership that we had entered into Blackberry, and then
8 Blackberry was also covered through the Verizon partnership.
9 When I said I did not understand -- remember the dates, it was
10 the specific direct with Blackberry partnership.

11 Q. Understood. Thank you for that clarification.

12 So you had the ability to compete, in your view, for the
13 default on at least Blackberry and Windows Mobile at this point
14 in time; correct?

15 A. Sorry. I'm not following the question.

16 Q. You entered into arrangements, or you just did them
17 yourself in the case of Windows Mobile, to be the default search
18 engine on Windows Mobile and Blackberry in or around the point
19 in time that this analysis was created?

20 A. So again, to be very precise, I don't remember what the
21 product experience was for Windows Mobile. So I'm not going to
22 talk about what it was or what it was not.

23 And yes, Blackberry, we negotiated a partnership for -- to
24 be their search engine partner.

25 Q. Sir, you don't really think that Google was the default

1 search engine on the Windows phone, do you, out of the box?

2 A. We talked this morning about a Google -- a phone that
3 Microsoft shipped with Google as the default, and I honestly
4 don't remember.

5 Q. That was an Android phone; right, sir?

6 A. Yes.

7 Q. Okay. Windows phone, you just don't know?

8 A. I don't remember.

9 Q. Okay. So let's focus on the number of users. I'm in the
10 row called "install base."

11 Do you see that it says at this point in time there were
12 20 million users on iPhone? Right?

13 A. Yeah. Where I am --

14 Q. Sir, let me just get the numbers.

15 A. You said something that I find confusing. I want to be
16 very clear on what is confusing.

17 It is unclear where on this page users is being used to
18 describe users and where users is actually being used to
19 describe a count of devices. I think they're using it both, and
20 it's sort of confusing.

21 So when you say there were 20 million users on iPhone, I'm
22 not sure that I would have necessarily read it this way just
23 because it's sort of confusing.

24 Q. Okay. Well, there's 20 million users on iPhone. And then
25 you see in the next two columns, there's 36 million between

1 Blackberry and Windows Mobile; correct?

2 A. Correct.

3 Q. And at this point in time, Android was pretty small, only
4 9 million users listed on here; correct?

5 A. That's what this shows.

6 Q. So when I do the rough math, and you're a deal person, so I
7 bet you can do it faster than me, that means that there's about
8 55 percent of the users are in Blackberry and Windows Mobile
9 across the whole space; is that correct?

10 A. It seems roughly correct, though again the way I would have
11 read this was that it was roughly 55 percent of devices, but --
12 and the more interesting thing, when you stare at this slide, is
13 actually the search intensity numbers, not the install base
14 numbers, because ultimately what you care about is the volume of
15 searches.

16 So if you look at this, for instance, this would say, hey,
17 an Android user is more valuable to a search engine than a
18 Windows Mobile user. At least that's what this would say. So
19 you should be probably be looking at percent of searches as much
20 as you're looking at percent of users.

21 Q. You're not blaming Google for the fact that the Windows
22 Mobile or the Windows phone device wasn't conducive to searching
23 on the Internet, are you?

24 A. I didn't say that it wasn't conducive. I just said there's
25 a user behavior difference, that if you ask me as a deal guy to

1 do this analysis, one of the most important things to me is I
2 would look at this and I would say, of the four columns, Android
3 is the most important. If you said Jon, you can only buy one of
4 these, I would buy Android.

5 Q. Let me ask you to turn to slide 12.

6 At the bottom, there's two takeaways here: "Create a
7 browse experience that retains user trials" and "drive client to
8 replace Safari."

9 Do you see that?

10 A. Hold on one second.

11 I see those words, yes.

12 Q. Part of what's being conveyed here, sir, is that if you
13 wanted to compete in search and for query volume in search, you
14 would need to be able to have a browsing experience that
15 competed with or could replace Safari, the Safari browser in the
16 iPhone; correct?

17 A. So what this shows is that, you know, there was an increase
18 in the number of people using the browser on the iPhone to
19 search for Bing. I believe, though I would have to check on
20 dates, that was probably roughly the point in time where Bing
21 was offered as an option on the iPhone. If I remember
22 correctly, I think we offered that -- I think we announced it at
23 WWDC in 2010, which would put you at the end of May, beginning
24 of June, if I remember correctly.

25 So there's some discontinued up-tick in the number of users

1 I think as a result of the Apple partnership, and it showed that
2 we got effectively a one-time increase from that and it leveled
3 off.

4 That's what the chart on the left shows.

5 Q. Competing with Safari for browser users was important,
6 according to this analysis; correct?

7 A. Again, I just want to -- I'm not sure what on the slide
8 you're dealing with. What I'm saying is --

9 Q. I'm focusing on the text that I read to you under 1 and 2.

10 A. Again, just so I'm very clear, the text is not my text.
11 The text is somebody else's text. So I can tell you what the
12 text says, or I can tell you what I believe as someone who has
13 sort of worked in this looking at these numbers -- again, it's
14 the first time I remember ever seeing them -- how I'm
15 interpreting it.

16 I personally would not have written the text below the
17 table on the left for the table on the left. But you are -- you
18 accurately read the text on the left to me.

19 Q. Okay. When did Microsoft first launch a browser -- a
20 mobile browser on iOS to compete with Safari?

21 A. Again, I want to make sure I understand exactly the
22 question you're asking. When did we have -- I don't remember
23 the day where we shipped a mobile version of Edge to compete
24 with Safari.

25 Q. Would it be accurate if I -- would it refresh your

1 recollection if I told you it was about 2017?

2 A. That seems reasonable.

3 Q. Okay. So it took seven years after this document was
4 created to launch a Microsoft mobile browser to compete with
5 Safari on iOS; do I have that correct?

6 A. Yes, but there is nothing here anywhere either, the words
7 on this page or the trial, that talks about -- even the words
8 that I disagreed with that you pointed out do not say go create
9 a browser. They say create a browse experience. So you're
10 connecting two things like they're just random points in time.

11 Q. 2017 was also the first time that you launched a mobile
12 browser to compete with Chrome on Android; correct?

13 A. I'm not sure actually if that is true, because I think you
14 were always able to browse within the context of the Bing mobile
15 app. And so even if we did not have things that were a pure
16 stand-alone browser, I think we did offer browsing functionality
17 in the experience.

18 Q. Today, Edge is the mobile browser that you urge customers
19 to use, correct, not the Bing app.; right?

20 A. Actually, we encourage users to use a variety of things.
21 We encourage them to use Edge. We encourage them to use the MSN
22 start app. We encourage them to use the Bing app. All of them
23 have browser functionality within them.

24 Q. You can take that document down.

25 When Microsoft originally launched Bing in 2009, it was

1 buying literally any search distribution deal that it could get
2 its hands on; is that correct, sir?

3 A. Sorry. Say that again, please.

4 Q. When you launched Bing in 2009, Microsoft was buying
5 literally any search distribution deal it could get its hands
6 on?

7 A. We were investing very aggressively into search
8 distribution deals at that point in time.

9 Q. At this point in time -- well, actually, just generally,
10 typically, search distribution deals were exclusive, meaning
11 that an OEM or an Internet service provider would only ship
12 devices or software containing a single search engine default?

13 A. Sorry. Just what's the question?

14 Q. Is that correct?

15 A. Is what correct?

16 Q. I will read it again. Typically, search distribution deals
17 are exclusive, meaning that an OEM or ISV, Internet service
18 vendor, only will ship devices or software containing a single
19 search engine default.

20 A. In what time period?

21 Q. 2014.

22 A. What is your definition of "exclusive"?

23 Q. The definition that you used when you signed a declaration
24 with that language, sir.

25 A. I just wanted to -- so if you enter the period of time of

1 2014, and I think it's -- let me sort of build up, because I
2 think it's important to build up in terms of how I talk about
3 this. Right?

4 At the individual search entry point, the thing would be
5 exclusive. Like, I'm going to say for this individual search
6 entry point on this individual device, there's only going to be
7 one, and almost by definition, there can only be one that is a
8 default out of the box. Sometimes they will have what we call
9 nondefault secondary options. Right?

10 Most devices are made with a coherent set of things where
11 all of the search entry points will point to a single device if
12 it's on a device as an example. But that's not, you know -- Duo
13 was sort of one example of sort of an exception to that. Off
14 the top of my head, I could probably think of some other
15 exceptions.

16 I will give you another example where there were
17 potentially some exceptions to that, which is often the default
18 home page in a device, kind of what you opened up, the start
19 page may have a different search engine than was built into the
20 browser. But in general, people tried to ship sort of coherent
21 experiences.

22 Everything I just talked about is sort of at the single
23 device level. You then get to the question of is the across a
24 sort of family or a suite of devices, right, is every phone that
25 I ship or every PC that I ship configured the same, and, you

1 know, there was certainly sort of varieties there. Like, there
2 was certainly -- we would often enter into partnerships with
3 people who were geographically focused. Like, you're a global
4 person, let's work with you just in the United Kingdom or just
5 in the United States, and maybe it would be exclusive within the
6 confines of a single country, but it wouldn't be, you know, sort
7 of exclusive on a global basis, or maybe we go and work with you
8 and we'd say it's exclusive for this model but it is not
9 exclusive for that model, as sort of another example.

10 So as I think -- you referenced my deposition. I think we
11 sort of talked about it. There was a lot more nuance to what
12 these things looked like. Obviously, our goal was to make the
13 deals as comprehensive as possible and as exclusive as possible,
14 but not every one we did would be as comprehensive always as we
15 would have liked.

16 THE COURT: Mr. Tinter, we would like for you to be
17 able to be finished today, and it's now quarter of 4:00, and I
18 understand counsel has quite a few more questions to ask. So
19 more succinct answers will get you out of here sooner. Let's
20 put it that way.

21 THE WITNESS: I figured you wanted accurate more than
22 succinct.

23 THE COURT: No, if you're ready to stay overnight,
24 that's a different issue.

25 THE WITNESS: In all honesty, I would prefer to be

1 accurate than leave anyone in this courtroom with inaccurate
2 impressions, even if that meant tomorrow.

3 THE COURT: Accuracy is clearly the most important
4 thing.

5 Go ahead, Counsel.

6 MR. GREENBLUM: Your Honor, I've been reminded by a
7 colleague I didn't move for admission of DX2011. I think the
8 attachment is in evidence, but the cover e-mail had not been.

9 MS. BELLSHAW: No objection.

10 THE COURT: It will be admitted.

11 (Exhibit DX2011 received into evidence.)

12 BY MR. GREENBLUM:

13 Q. In the early days that you were working on these
14 distribution deals, Mr. Tinter, you were willing to invest
15 unprofitably for scale; is that correct?

16 A. What's the definition of early days?

17 Q. Why don't we go with before 2014.

18 A. Yes, we were willing to enter into deals. As I talked
19 about this morning, I talked about that direct and indirect
20 basis, and we were willing to enter into deals that were
21 unprofitable on a direct basis.

22 Q. And there came a point in time where you started to only do
23 what you called sort of green volume deals; is that right?

24 A. Not only green volume deals. There was a point in time,
25 and I think it was roughly in that 2014-ish period of time that

1 you talked about, where we started to realize that -- sort of a
2 couple of things. One is we started to realize that an
3 individually small deal that did not contribute a lot to scale
4 was not worth doing unprofitably and that there could be a very
5 high cost to doing it.

6 So what we started looking at for some of our smaller
7 partnerships that were not material to scale, we said it's not
8 worth losing money on them. The indirect benefit of them isn't
9 high enough to justify losing money. And so when we had the
10 green versus yellow versus red distinction descriptions of
11 deals, that was really mostly focused on our smaller deals, and
12 let's walk away from and stop doing deals where -- that are
13 money losing unless we are convinced that the indirect benefit
14 makes them profitable.

15 Q. Mr. Tinter, let me ask you to turn to DX455 in your binder.

16 Don't put this up on the screen.

17 A. You said 455?

18 Q. Yes.

19 A. All right. Sorry. I was in the wrong place. Now I'm
20 here.

21 Q. DX0455, do you have that?

22 A. Yes.

23 Q. And this is an e-mail conversation between you and others,
24 including Dr. Qi and Dr. Shum at Microsoft?

25 A. Correct.

1 Q. And Mr. Connell; is that correct?

2 A. That's correct.

3 Q. Mr. Connell was, at this point in time -- was he the head
4 of search at Microsoft?

5 A. He was probably a senior executive in our search product
6 team. I don't know if he was head of search at this point in
7 time.

8 Q. Do you recall there was a point in time where he was
9 appointed the head of the search product team?

10 A. Yes, I do.

11 Q. Okay. I want to direct your attention on the second page
12 of the e-mail to your e-mail on June 12th, 2013, to Dr. Qi and
13 others.

14 A. Yes.

15 Q. I just want to understand, you wrote at the end of the
16 first bullet there regarding Android, you wrote, "Our focus on
17 green volume means we haven't bid past" --

18 A. Sorry. Where are you?

19 Q. At the end of that first bullet.

20 "Our focus on green volume means we haven't bid past break
21 even"; correct?

22 A. Hold on a second.

23 Q. Sure.

24 A. This is exactly sort of what I described, which is there
25 were a bunch of small experiments that we could run on Android,

1 but those experiments were not profitable, so we chose to not do
2 them.

3 Q. So on Android, you were not willing at this point in time
4 to invest unprofitably for scale?

5 A. No, what we were not willing to do at this point in time
6 was, again, if you go back to the dynamic I described of how we
7 always did the math, was it was direct plus indirect, and any
8 place where we thought the indirect would be a meaningful enough
9 volume to contribute to scale, we were willing to do it. The
10 places where we pulled back were the small things where they
11 were not meaningful contributors to scale.

12 So for example, if you look at what is described in this
13 particular thing, hey, we can -- you can distribute a sort of
14 home screen widget. It did not have enough benefit number 2
15 where it was profitable on an aggregated basis, and so
16 therefore, we were not doing things that lost money if they were
17 not -- on a direct if they didn't contribute on an indirect.

18 Q. You didn't think there was an indirect scale benefit from
19 the home screen widget?

20 A. Yeah, the experiments we were running we were not finding
21 them, yes.

22 Q. The next bullet down, I don't want you to say the name of
23 the OEM allowed in open session, but you will see there that
24 they have recently provided you, Microsoft, with API to prompt
25 browser default change.

1 Do you see that?

2 A. Yes.

3 Q. And so at this point in time, you had the ability on
4 devices sold by that OEM to prompt users to switch their default
5 to Bing if they were trying Bing out and they wanted to switch
6 it to be their default; correct?

7 A. Yeah, I don't remember this person actually sort of
8 shipping it, but it sounds like based on what I wrote here, it
9 sounds as if they did ship it. I remember talking to them. I
10 don't actually remember them actually shipping it.

11 Q. The third bullet down says that on Kindle devices, if
12 they -- I take it that's Amazon -- launch a phone, you have the
13 default; correct?

14 A. Yes.

15 Q. And I take it that you also negotiated to have the default
16 on Kindle -- they're not phones. They're sort of iPads?

17 A. They had their Fire table --

18 THE COURT: Fire tablets.

19 BY MR. GREENBLUM:

20 Q. The things that my kids watch movies on on long flights.

21 A. They have a browser on there called the Silk browser, and
22 we were the default search engine in the Silk browser.

23 Q. You still are?

24 A. I believe we are.

25 Q. On all of them?

1 A. The only thing I know conclusively is on all of them in the
2 United States. I don't remember the terms of the deal
3 outside --

4 Q. It's exclusive in the United States, you have to be the
5 default on all the Fire tablets that ship in the United States;
6 correct?

7 A. So I do not know -- I'm being very genuine because I have
8 not looked at the agreement in a long time, if it's actually
9 written that it's all or nothing. I believe in practice they
10 are shipping us on everything. I don't remember if that's how
11 the agreement is written.

12 Q. And you wrote, "Bottom line, unless we are willing to
13 invest unprofitably for scale, similar to initial PC approach,
14 we are stuck at low share."

15 Do you see that?

16 A. Yes, I see that.

17 Q. Okay. And you believed that when you wrote it; correct?

18 A. Yeah, again, going back to sort of the conversation,
19 because I want to make sure what I believe wasn't uninterpreted,
20 which is that unless we were revealing -- that the only way at
21 that point in time, unless in a world where iPhone was off the
22 table, in a world where the big default deal with Samsung was
23 off the table, which as we've talked earlier both were, that
24 there weren't has to investment that were profitable looking in
25 aggregate over the direct plus the indirect.

1 Now, we always had the option to do things that were
2 unprofitable over the direct versus the indirect, but there was
3 no logic strategically or economically to do that.

4 Q. Sir, do you see the next thing you wrote was "best bet is
5 execute well on iOS and Windows phone"?

6 A. Correct.

7 Q. And executing well on iOS meant convincing Apple to switch
8 their default to Bing; correct?

9 A. I don't -- in the context of this, I don't believe that's
10 probably what I would have -- what I said.

11 Q. How else would you execute well on iOS?

12 A. It could have made the Bing app. a better app. We were
13 still doing Siri and Spotlight at this particular point in time.

14 Q. You obviously didn't succeed in making the Bing app. good
15 enough for that to meaningfully drive mobile traffic to Bing;
16 correct?

17 A. Our experiment that you could shift queries out of the
18 browser and off the defaults into an app. proved to be an
19 unsuccessful experiment. But that, again, because I think the
20 predominant user behavior of the searches on a phone happening
21 through the default search engine and the default browser, that
22 was the behavior pattern of users.

23 Q. You also wrote that you should try to execute on the
24 Windows phone; correct?

25 A. Yes.

1 Q. And Microsoft didn't execute well on the Windows phone;
2 right?

3 A. We ended up shutting down the business.

4 Q. Okay. I want to direct your attention to Dr. Lu's e-mail
5 immediately before that, and I want to direct you to the
6 sentence beginning "for now and for the time being."

7 Dr. Lu wrote, "For now and for the time being, we are still
8 entirely Windows and Windows phone focused. That's our all-in
9 bet. We are not doing any development other than browser
10 targeted for non-Windows platforms."

11 Do you see that?

12 A. Yes.

13 Q. You were not doing development of other ways to reach users
14 at this point in time on -- in the Android ecosystem; correct?

15 A. Well, again, just to be -- so we're very clear, you know,
16 what this sort of says is we're going to focus on the browser
17 experience on those -- on the non-Windows things. So making
18 sure that Bing in the browser was sort of very good. This was a
19 statement that we were not going to continue to invest in app.
20 experiences. That's how I read it.

21 Q. And when you say invest in the browser, you mean the
22 browser you launched -- the mobile Edge browser you wound up
23 launching in 2017?

24 A. No, I should have meant the version of www.bing.com that
25 renders in a browser when a customer visits, not the actual

1 browser, the search experience that is reached through a
2 browser.

3 Q. Okay. So you -- do you agree or disagree with Dr. Lu's
4 statement that at this point in time Microsoft was not doing any
5 development other than browser targeted for non-Windows
6 platforms?

7 A. I don't remember specifically our development plans. So I
8 don't disagree or agree.

9 Q. Let me ask you to look down -- actually, just so the Court
10 has context, who was Dr. Lu?

11 A. He was the president of the search business at that point
12 in time.

13 Q. Next e-mail down is from Harry Shum. Can you tell the
14 Court who Harry Shum is?

15 A. I believe in 2013 Harry was the engineering leader for
16 Bing.

17 Q. Dr. Shum wrote, "A significant part of the reason that Bing
18 mobile share is low is that we don't play in Android ecosystem
19 by design."

20 Do you see that?

21 A. Yes.

22 Q. Do you agree or disagree with Dr. Shum's statement as of
23 that point in time in 2013?

24 A. So at that point in time in 2013, as we've sort of talked
25 about because of the way Google was exercising control over the

1 Android ecosystem, we did not believe it was possible to compete
2 for the browser search defaults. And therefore, as I describe
3 above in my prior e-mail, we did not see another path to scale
4 on Android.

5 Q. Coming back to the discussion we had about green volume
6 deals, do you recall that?

7 A. Yes.

8 Q. The agreements that Microsoft has with Windows PC OEMs to
9 preload -- well, let me lay a little foundation here.

10 There are agreements between Microsoft and pretty much all
11 the major OEMs in the United States who ship Windows PCs in the
12 United States for all of those PCs to have as the exclusive
13 browser out of the box Edge set to a Bing default; correct?

14 A. Yeah, I think as I talked about this morning, there are
15 co-marketing programs that -- you said all. I don't know if I
16 would have said all. I would have said most of the PC OEMs in
17 the United States participate in. Those co-marketing programs
18 have multiple elements. One of the elements of the co-marketing
19 programs is Edge is the default browser and Bing is the default
20 in Edge.

21 Q. I take it you can't think of any major OEM in the U.S. that
22 doesn't ship exclusively Windows PC with Edge as the default --
23 let me finish my question, sir, Edge as the default and Bing as
24 the default in the browser; correct?

25 A. Off the top of my head, I cannot think of one.

1 Q. Okay. Those deals are deals in which you give money to the
2 OEMs, and they set it as -- they set Microsoft's products as the
3 default; correct?

4 A. As I said, they -- we give them money, and they have a
5 whole series of requirements what they can do. The Bing
6 defaults and the Edge defaults are some of it. If I remember
7 correctly, there's system configuration requirements they have
8 to do. There's branding requirements. There's the whole thing
9 is about an experience, the PC search and browser being a part
10 of them.

11 Q. Now, part of the deal with these OEMs is that you charge
12 them a license fee for Windows; correct?

13 A. I believe so.

14 Q. And so I take it that this money that you give them for
15 these requirements, in some sense, it helps offset that license
16 fee that you charge them for Windows; correct?

17 A. I want to make sure I understand the question.

18 Q. The money that you give Windows PC OEMs to, among other
19 things, set the default to your browser and your search engine,
20 that helps defray or offset some of the money they have to pay
21 you for a license to Windows; correct?

22 A. Yes, there is two transaction, a transaction where money
23 flows to us and a transaction that money flows to them, and they
24 net against each other.

25 Q. Because Windows is not an open source free product;

1 correct? You have to pay a license fee if you're going to load
2 it on a device that you're going to sell; correct?

3 A. So it is a proprietary software product. It requires a
4 license. I don't always know if that is required to be a paid
5 license or if there are occasions where it is a free license.
6 But yes, it requires a license.

7 Q. Can you think of any major OEM that you would give a free
8 license to for Windows in the United States?

9 A. So for example -- and again, this is not the business I
10 sort of worked in. So you're dealing with a lot of second, sort
11 of third-hand knowledge. For example, like PCs sold into the
12 education ecosystems, at times we've done different things with
13 licensing. I know we've done some different things with low-
14 cost PCs that go to developed countries around the world. I'm
15 just saying, not being an expert in Windows licensing but
16 knowing there have been scenarios where we charged de minimis to
17 zero licenses.

18 Q. I'm talking about standard commercial licenses in the
19 United States, sir. How about that?

20 A. I believe they're always paid, yes.

21 MR. GREENBLUM: Okay. Let me move the admission, if I
22 can, of DX455.

23 MS. BELLSHAW: No objection.

24 THE COURT: Okay. It will be admitted.

25 (Exhibit DX455 received into evidence.)

1 BY MR. GREENBLUM:

2 Q. Mr. Tinter, if you could turn to DX472.

3 A. Yes.

4 Q. DX472 concerns some e-mail conversation between you and
5 other senior executives, including Mr. Nadella, about a
6 potential change of the default on Mozilla's Firefox browser in
7 2014; correct?

8 A. Yes.

9 Q. And at this point in time, Mozilla was entertaining offers
10 from multiple potential search partners; correct?

11 A. If I remember correctly, yes.

12 Q. One of those was Yahoo!; correct?

13 A. Yes, I believe so.

14 Q. And Mr. Nadella relayed intelligence that Yahoo! had
15 guaranteed Mozilla a specific amount of search revenue to be the
16 default on the Firefox browser; correct?

17 A. Correct.

18 Q. And that amount that Yahoo! was promising was \$375 million?

19 A. That's what his intelligence says, yes.

20 Q. Okay. I take it that a revenue guarantee, that's different
21 than paying the distribution partner a percentage of revenue
22 earned; correct?

23 A. I don't know the specific structure of their agreement, and
24 so I have seen these work in a couple of different places.

25 There's literally a, you know, fixed payment, I will pay you X.

1 Right? For instance, I believe, if I remember from some Mozilla
2 disclosures, I think their original agreement with Google may
3 have been that, hey, we will pay you X.

4 There is payments that have -- where it's variable, but
5 it's variable based on a total. I will pay you the greater of
6 90 percent or X. Right?

7 There are structures where it's guaranteed in a way where
8 you say, you know, I will guarantee you that you will get the
9 greater of 90 percent or X revenue per query. Right?

10 So there's different sort of structures and forms of the
11 guarantee where the risk gets approached between the parties in
12 different ways. And I don't know, when they say a 375 million
13 guarantee here -- there's a couple of different ways you could
14 add up to a guarantee of that dollar value.

15 Q. As a general proposition, just to try to move this along,
16 Mr. Tinter, a revenue guarantee reduces risk to the distribution
17 partner in the shoes of Mozilla relative to a revenue share; is
18 that fair to say?

19 A. Yeah, it basically provides a floor on their risk.

20 Q. You wrote, in response to the intelligence that Mr. Nadella
21 gave you, that "Mozilla is putting 100 percent of the risk of
22 the deal on us."

23 Do you see that? I'm in the third paragraph of your e-mail
24 on October 9, 2014. It's the second page at the top, Your
25 Honor, in the third paragraph.

1 A. Yes.

2 Q. And I take it that you wrote that because at this point in
3 time you were negotiating to instead be the default in Firefox;
4 correct?

5 A. Yes, we were bidding that.

6 Q. And Mozilla had asked you for a revenue guarantee; correct?

7 A. Yeah. And again, what's important here, and this is where
8 if you look at the entirety of the paragraph, is they were
9 asking for a total dollar guarantee. Right? Which is you will
10 get the greater of 90 percent or X total dollars.

11 And the concern essentially we often had when we entered
12 into those arrangements is there are -- there is rate risk and
13 volume risk. Rate risk was majoritively a Microsoft challenge,
14 did we do a good job of building an ad-type platform, did we
15 recruit advertisers, could we get sufficient revenue per search.

16 Volume risk was more shared, and particularly in the
17 browser space on the PC, how you think about protecting default
18 becomes important. There was an issue that was going on in this
19 period of time where there was a lot of programmatic or
20 systematic browser changes. People would download a piece of
21 software, that piece of software would change, the browser
22 changes. Many of the browsers at this point in time were
23 starting to harden those things. Google was shipping features
24 in Chrome, we were shipping features in Edge that were basically
25 designed to prevent these software download programmatic

1 changes.

2 So when you see me talking here and say they have no
3 incentives to help us protect search defaults or protect
4 volumes, that was things like we had gone to Mozilla and said,
5 hey, we want you to ship more aggressive default protections to
6 prevent these programmatic changes, and they were unwilling to
7 do that. So therefore, we were taking all the risk, and they
8 had no incentive to do that because they got the same amount of
9 money no matter what.

10 Q. You expected that some percentage of Firefox users would
11 change their default from Bing back to Google, even if Bing
12 provided a revenue guarantee to set Bing as the default
13 initially; correct?

14 A. We project that. But again, the thing that we were more
15 concerned about was not the user initiated default changes.
16 Yes, there was going to be some user initiated default changes.
17 The things that we were much more concerned about during this
18 period of time were things like the systematic default changes,
19 where it's not necessarily user initiated. I download Adobe
20 Reader and because Google paid Adobe, it changes the search
21 default in Safari -- I'm sorry, in Firefox.

22 Q. Today, every time I use Adobe on my Windows PC, about every
23 fifth or tenth time, it asks me if I want to change the default
24 to Bing on my search engine.

25 Is that because today Microsoft has a deal with Adobe for

1 that type of prompted change?

2 A. We do have a deal with Adobe. It's unfortunately a small
3 deal. The reason it's a small deal is the way Google had
4 structured its original deal with Adobe, it had this very long
5 tail provision. So what the tail provision basically said, any
6 user who has been previously installed, offered a Google Search
7 default when they downloaded Adobe, Adobe can't the next time
8 they talk to them offer them a sort of change. So it protected
9 the tail.

10 So the net effect of that was, if you looked at the
11 installed base of Adobe, it was -- it ended up being sort of
12 much smaller, and the install base is the opportunity because so
13 much of it was carved out and protected. Even though they no
14 longer had a Google deal, the structure of their Google deal had
15 this overhang that made it a much smaller opportunity than we
16 had ever hoped it would be.

17 Q. Coming back to DX472, you did not reach terms, you did not
18 convince Mozilla to switch the default in Firefox to Bing;
19 correct?

20 A. Yeah, they switched to Yahoo!.

21 Q. Okay. Later in the chain, Amy Hood responds. Now I'm on
22 the first page at the bottom. Amy Hood was the chief financial
23 officer of Microsoft; is that correct?

24 A. Yes.

25 Q. And she's talking about why Yahoo!, and she refers to

1 Marissa. I take it that's Marissa Mayer?

2 A. I assume so, yes.

3 Q. And Ms. Hood asks you whether to argue that Yahoo! is being
4 irrational in making this revenue guarantee to Mozilla; correct?

5 A. No, I think she's saying the opposite. She's saying, if we
6 assume she is not irrational, then what is she thinking.

7 Q. So you're discussing with Ms. Hood whether or not it's
8 rational to make that revenue guarantee, to give all that money
9 to Mozilla for the search default; correct?

10 A. Yes.

11 Q. And your response further up is "if she," Marissa Mayer,
12 "is trying to build her own platform independent from ours, she
13 could also be investing for scale"; correct?

14 A. Yeah, that's one of the rationales that I provided.

15 Q. And you also said, "When we, Microsoft, first launched
16 Bing, we made several similar types of investments, early
17 distribution deals with Dell and HP, our original tool bar
18 distribution deal with Sun, the Verizon search deal, in order to
19 build scale"; correct?

20 A. Yes.

21 Q. Those were deals that Microsoft was willing to do, those
22 were deals that Microsoft thought were rational to do; correct?

23 A. Yes, those were rational deals.

24 MR. GREENBLUM: I move the admission of DX472, Your
25 Honor.

1 MS. BELLSHAW: No objection.

2 THE COURT: Admitted.

3 (Exhibit DX472 received into evidence.)

4 THE COURT: I'm sorry. For my own edification, when
5 you write "build a platform independent from ours," at this
6 point, had there been this partnership agreement between
7 Microsoft and Yahoo!?

8 THE WITNESS: Yes, we entered into the partnership
9 with Yahoo!, I believe it was, 2009. So at this point, we were
10 roughly five years into that. We had some disputes with them
11 about that partnership. As I reference in this e-mail, I think
12 we were potentially going to an arbitration with some of the
13 outcomes of that arbitration could have resulted in the
14 agreement being terminated.

15 And as you sort of look here, there's a couple of things
16 they could do, which is, one, they had an ad product they built
17 called Gemini, which was an ad platform that they could have
18 taken to search engines since we thought maybe she wants to get
19 out of her obligation to us to go build their own Gemini
20 platform. Maybe they want to go potentially work with Google,
21 or maybe they just want to win arbitration and then try and
22 negotiate a more economically favorable deal.

23 So what I was talking about here was if Yahoo! believed
24 that they would win arbitration and, therefore, they were
25 bidding for Mozilla assuming that outcome, that could explain a

1 lot of the strategy they had here.

2 THE COURT: Got it. Thank you.

3 BY MR. GREENBLUM:

4 Q. You can put 472 aside. You might as well leave the binder
5 in front of you to save you time. I want to come back to our
6 discussion of Windows, sir.

7 The only variants of Windows that you can buy are the
8 variants that you can license from Microsoft; correct?

9 A. Correct.

10 Q. And that prevents fragmentation of Windows?

11 A. Yes.

12 Q. Fragmentation is challenging for an operating system? It
13 makes it harder for developers to develop for it; correct?

14 A. Yes.

15 Q. Let me come back to our discussion about browsers. We
16 talked about the fact that you're not aware of any Windows PC
17 that ships today in the United States without Microsoft's Edge
18 browser as the default browser; correct?

19 A. Correct.

20 Q. Despite that out-of-the-box default setting, more Windows
21 PC users use Chrome than a Microsoft browser; correct?

22 A. I haven't looked at the market share numbers recently, but
23 the last time I looked at them, that was true.

24 Q. I think we saw a document during DOJ's examination that
25 said that 75 percent of the search -- searches on Windows

1 devices are done through Chrome instead of through Edge.

2 Does that number sound about right to you?

3 A. It's a little higher than if you had asked me to guess, but
4 it doesn't sound wrong if you had looked at data that said that.

5 Q. One reason for user shift to Chrome is that there was a
6 period of time where Microsoft was putting less resources into
7 its browser, and therefore, Chrome was innovating on features
8 faster than Microsoft was?

9 A. So I was -- for a large portion of my career, I was not
10 actually a part of the teams that were building Edge. So I
11 can't really, when you make a statement like we weren't putting
12 resources in, I'm just not in a position to talk about that. I
13 just don't know if that's true or not.

14 Q. Can I ask you to open up the binder in front of you, sir,
15 that says -- or rather, the spiral bounds with your deposition.
16 There's two days on there. One day was with me, and one day was
17 with my friends over here. And it's the first day, March 9,
18 2022 -- sorry, March 8, 2022.

19 A. Some of my fondest memories.

20 Q. And I'm going to ask you to turn to page 281. Sorry.
21 That's not -- give me one second, Mr. Tinter. Sorry, day 2 of
22 your deposition on March 9, so the other. My apologies. Page
23 281. And I'm going to direct your attention to lines 14 to 18.

24 A. Yes.

25 Q. You testified, "There was a period of time" --

1 MS. BELLSHAW: Objection, Your Honor; improper
2 impeachment. He has to read the entire question and answer.

3 MR. GREENBLUM: Your Honor, as Your Honor has seen
4 maybe a little bit today, the answer was like four pages long.
5 I'm trying to save time here. I'm happy to make a proffer of
6 text to the Court afterwards with the entirety of the answer.
7 Given the difficulties of the long answers, I just think that
8 will take several more hours than you want me to take.

9 THE COURT: Why don't we go ahead and read the
10 particular portion and the lines that he wants to bring his
11 attention to, and I can read the entirety of the answer and the
12 question at the end of the day.

13 MS. BELLSHAW: Thank you, Your Honor.

14 BY MR. GREENBLUM:

15 Q. So, sir, you testified there was a period of time where
16 Microsoft was putting less resources into Internet Explorer, and
17 therefore, Chrome was innovating on features faster than
18 Microsoft was; correct?

19 A. I did say that, yes.

20 Q. And that was true when you testified to it; correct?

21 A. Yes.

22 Q. Chrome was considered, when it first shipped, to be a fast
23 browser that loaded websites in a good way; correct?

24 A. Yes.

25 Q. Google's Chrome open-source platform gave Google some

1 advantages in how they built a high-quality sort of performance
2 browser; correct?

3 A. Yes.

4 Q. Google has competed with Microsoft for browser usage on
5 Microsoft's Windows operating system; correct?

6 A. Yes.

7 Q. They competed with you by making their browser available
8 for download on your platform; correct?

9 A. Yes.

10 Q. I want to come back to our discussion before of when you
11 first made Microsoft Edge browser available for download on
12 Android.

13 Do you recall now that that was 2017?

14 A. That's what you said.

15 Q. Do you have any reason to disagree?

16 A. No.

17 Q. In its first week of availability on Android, more than a
18 million users downloaded Edge from the Google Play Store;
19 correct?

20 A. I don't know.

21 Q. May I approach, Your Honor? I'm not going to move this
22 into evidence. It's just to refresh the witness's recollection.

23 Sir, this is an article that I found online that says that
24 Microsoft Edge passed a million downloads on Android only a week
25 out of beta. Correct?

1 A. That is what the article says.

2 Q. And so Google makes it possible for users to choose your
3 browser right from its Play Store on their platform; correct?

4 A. Sorry. Repeat the question.

5 Q. Google makes it possible for users who want to use Edge on
6 Android to simply download it from the Google Play Store;
7 correct?

8 A. Yes, you can download Edge from the Google Play Store.

9 Q. Now, as of 2020, Microsoft Edge browser is based on
10 Chromium; is that correct?

11 A. Yes.

12 Q. Chromium is a free and open-source browser project
13 initially released by Google; correct?

14 A. That's correct.

15 Q. And Microsoft has built its Edge browser on top of the same
16 technology that's in Chrome, adding additional features to that
17 open-source platform; correct?

18 A. Yes.

19 Q. Microsoft believes that its Chromium-based version of Edge
20 is better than Internet Explorer was; correct?

21 A. I just want to make sure -- I'm sorry. You asked sort of
22 two questions, which --

23 Q. Let me ask a different question.

24 A. The trip-up is when you say things like "Microsoft
25 believes," and I know what I believe. I don't want to speak on

1 behalf of 100,000 people. And "better" is a highly subjective
2 term.

3 Q. You believe -- I'm not going to be able to take away
4 "better." I'm not a technologist.

5 You believe that the Chromium-based version of Edge is
6 better than the prior version of Microsoft's browsers; correct?

7 A. Yeah, I was highly supportive of the strategy to switch to
8 Chromium, and I think the benefits of -- the strategies have
9 yielded benefit.

10 Q. And you believe that Edge is at least now on par with
11 Chrome; correct?

12 A. Yes, I do.

13 Q. And Microsoft prompts users in Windows who have downloaded
14 Chrome to instead set Edge as their default if they visit a
15 Microsoft property in Chrome; correct?

16 A. I don't know one way or the other.

17 Q. If I could ask you to turn to DX2014.

18 If you could put the chart up on the page, DX2014.

19 I don't believe -- there's an e-mail you received, sir.
20 We're not going to ask you about that. It just documents that
21 you received it. You received it in 2018.

22 And I'm going to ask to move the admission of DX2014.

23 MS. BELLSHAW: No objection.

24 THE WITNESS: You're looking at the e-mail from
25 Mr. Robertson to me?

1 BY MR. GREENBLUM:

2 Q. Yes, sir. Mr. Robertson is a lawyer at Microsoft?

3 A. Yes.

4 Q. And his team created this chart on search and browser
5 defaults?

6 A. Hold on a second.

7 Q. If you could go to the next page.

8 A. I'm sorry. Could you go back? I want to make sure I can
9 familiarize myself with the chart.

10 Q. Sure.

11 A. Great. Thanks. Yes.

12 Q. Just let me know when you're ready.

13 A. Yeah, whenever you are. Sorry.

14 Q. I want you to look at the row labeled "can users change" --
15 well, let me lay a little foundation.

16 This is a chart that Microsoft created comparing different
17 features of six different platforms; correct?

18 A. Yes.

19 Q. Windows 10, Windows 10S, iOS, Mac, Android, and Chrome OS;
20 correct?

21 A. Correct.

22 Q. Can you look at the row labeled "can users change the
23 default search engine"?

24 A. Yes.

25 Q. And you see that the chart lays out the answer to that

1 question for several different operating systems; correct?

2 A. Correct.

3 Q. The answer for Windows 10 is yes; correct?

4 A. Correct.

5 Q. So in Windows 10, you can change the default search engine;
6 correct?

7 A. Yes.

8 Q. And it takes six clicks once you're in settings; correct?

9 A. At this point in time, it did.

10 Q. Okay. At this point in time being 2018; correct?

11 A. Yes.

12 Q. Okay. The answer for Android is three clicks in settings;
13 correct?

14 A. Yes.

15 Q. And the answer for iOS, which is what runs on the iPhone,
16 is four clicks in settings; correct?

17 A. Yes.

18 Q. Why does it take more clicks to change the browser -- the
19 search engine default, rather, in Windows 10 than it does in
20 either iOS or Android?

21 A. I don't know. I wasn't involved in the Windows 10 product
22 design.

23 Q. Take a look at the column labeled "Windows 10S."

24 A. Yes.

25 Q. There, it says that you cannot change the default search

1 engine.

2 A. Correct.

3 Q. It's impossible to change the default search engine in
4 Windows 10S?

5 A. Correct.

6 Q. It's permanently set to Bing; correct?

7 A. That's what it says.

8 Q. If you look up one row, the chart asks, "What is the
9 default search provider in the OS browser?"

10 Do you see that?

11 A. Yes.

12 THE COURT: Sorry. Where are you again?

13 MR. GREENBLUM: I'm sorry. If you look on the screen,
14 it will help direct you. It's confusing, Your Honor. I
15 apologize. There's two charts on the page. Can you see it?

16 THE COURT: Yes. I was with you the first time.

17 BY MR. GREENBLUM:

18 Q. And if you look at Windows, Mr. Tinter, it says "Bing,"
19 meaning that's the default search provider in the operating
20 system browser, "but OEMs can change it"; correct?

21 A. Yes.

22 Q. And that's accurate; right?

23 A. Yes.

24 Q. As we talked about, you give money to the OEMs who
25 distribute PCs in the United States to set that default to Bing

1 before they ship a Windows PC; correct?

2 A. Yes.

3 Q. Now, if you look over to the column that says "Android," do
4 you see that?

5 A. Yeah.

6 Q. And it says there that Google is the default search
7 provider in the OS browser; correct?

8 A. Correct.

9 Q. But it says that OEMs can change it; correct?

10 A. That's what the words say, yes.

11 Q. And that's a true statement; right?

12 A. Again, my understanding at the time, and I was not involved
13 in the creation of this chart, so I did not have a chance to
14 discuss with the people who did create the chart, was that in
15 order to license Google Play, you could not change it, and
16 that's certainly in my conversations with -- that in my
17 conversations with OEMs.

18 But again, I did not have a chance to participate or input
19 into the creation of this chart, but it's inconsistent with my
20 understanding.

21 Q. You've never seen the MADA that Google signs with these
22 OEMs that you say they've told you indicates otherwise; right?

23 A. Yes. I assume that when an OEM tells me that they are
24 contractually restricted, that they are telling me the truth.

25 Q. Some OEMs have told you that even without regard to

1 contractual restrictions, they would not switch their default to
2 Bing; correct?

3 A. Yes. We talked about that earlier.

4 Q. Apple told you that; right?

5 A. Apple doesn't have a MADA. Samsung did, we talked about
6 earlier.

7 Q. Apple told you that without regard to contractual
8 restrictions in some agreement with Google, they wouldn't switch
9 the default to Bing; correct?

10 A. I want to make sure I understand what you're saying. What
11 Apple has said, we've sort of been consistent about, they've
12 made multiple points where they have said -- because remember,
13 we had not been talking to them about time in contract. We talk
14 about their times under contract. They have at various points
15 in time expressed concerns about Bing product quality --
16 sometimes that's a U.S. based statement, and sometimes that's an
17 international statement -- which is why they have not switched.

18 Q. If you look at the last row on the screen, it says, "Are
19 alternative search engines prepopulated?"

20 A. Yes.

21 Q. Do you see that?

22 A. Yeah.

23 Q. The answer for Windows 10 is no; correct?

24 A. Correct.

25 Q. And that's because if you open up the Microsoft browser in

1 Windows 10, it doesn't tell what you the other options are for a
2 search engine; correct?

3 A. At this point in time, that was correct.

4 Q. Okay. If you look over to iOS and Android, both of those
5 platforms do prepopulate alternative search engines other than
6 the default that's set out of the box; correct?

7 A. Yes.

8 Q. If you look to the previous page to the row labeled "can
9 the user change the browser default," do you see that?

10 A. Yeah.

11 Q. That row likewise reflects that it takes more clicks to
12 change the browser default in Windows 10 than it takes in either
13 Android or iOS; correct?

14 A. That is what it says.

15 Q. And you don't know why that is either, do you, sir?

16 A. I was not involved in the product design.

17 Q. Okay. If you could come back to the row that says "do
18 industry sources report significant usage of search on the OS
19 other than the initial default," do you see that?

20 A. Yes.

21 Q. And you see on Windows 10, it says, "Yes, Google share over
22 75 percent"; correct?

23 A. Yes.

24 Q. Does that refresh your recollection that despite that on
25 every Windows PC Edge is the default and Bing is the default,

1 Google has a 75 percent share, according to this document, of
2 search on Windows PC?

3 A. And again, as I said, I didn't remember a specific number,
4 but I didn't disagree with your assertion that it was a
5 majority.

6 Q. You can take that document down. Thank you.

7 Let's talk about Samsung for a moment, sir. They are the
8 manufacturer of most devices, most smartphones, most Android
9 smartphones sold in the United States; is that right?

10 A. I believe so.

11 Q. And you've made efforts, as you've discussed with
12 Ms. Bellshaw on direct, to negotiate the placement of Bing on
13 Samsung devices?

14 A. That's correct.

15 Q. I want to ask you to turn to UPX133 in your binder. I'm
16 not going to put it up on the screen.

17 A. This is the white binder?

18 Q. Yes.

19 A. And what number again?

20 Q. 133.

21 A. Yep.

22 Q. And I want to ask you to look in the memo at the -- and
23 this is the memo you wrote to Mr. Nadella about Samsung;
24 correct?

25 A. Yes.

1 Q. Okay. There's some language that I want to direct your
2 attention to that I think wasn't covered in your direct
3 examination, if I heard it correctly. It's in the paragraph
4 beginning "overview of the past partnership discussions," and
5 it's the last sentence. I'm not going to read it into the
6 record. I just want you to read it to yourself, and then I'm
7 going to ask you a question.

8 A. As in the last sentence of paragraph 1?

9 Q. The last sentence of the paragraph under the title --

10 A. The sentence starts "they have"?

11 Q. "They have explicitly stated," correct. Do you see that?

12 A. Yeah. Let me read that now. Yes.

13 Q. Is it fair to say, sir, that what you conveyed to your CEO
14 is that even if this OEM had more contractual flexibility and
15 could improve economics from search, they would still be
16 unwilling to move search to Bing; correct?

17 A. Yeah, what I conveyed to the CEO through the memo was that
18 because of their concern of the risk to the overall Google
19 relationship and how Google would likely react if they chose to
20 make a move, even if they had contractual flexibility and even
21 without the money, they would not disrupt the relationship.

22 Q. So even without what you understand to be the MADA and even
23 without the economics, you think -- you understand from your
24 calculations Google is giving to Samsung, you understand from
25 Samsung that despite those things, they would not switch the

1 default to Bing on their Android devices; correct?

2 A. Because they were highly worried about how Google would
3 potentially retaliate and the negative impact on their
4 relationship.

5 Q. Who at Samsung said that to you, sir?

6 A. It came up in multiple occasions. I had multiple
7 conversations with, you know, Jay Kim was concerned about
8 retaliation. We've talked to Patrick Chomet about it. D.J. has
9 mentioned it. It's been continuous. I've had conversations
10 with Samsung as recently as the last couple of weeks where they
11 talk about fear of Google retaliation for collaborations with
12 Bing.

13 Q. Let me ask you to turn to UPX301. It's also in the white
14 binder.

15 You recall discussing this document on direct examination?

16 A. Yeah.

17 Q. You understand that Samsung ships a second browser on its
18 Android smartphones? That's what you testified to with
19 Ms. Bellshaw; correct?

20 A. Something called Internet, which is Samsung Internet, and
21 they ship Chrome.

22 Q. Sometimes I think it's called SBrowser. Are you familiar
23 with that?

24 A. I think if you look at the device, it's labeled as
25 Internet, but it may also be called SBrowser.

1 Q. And your understanding is that Samsung is not permitted by
2 its MADA with Google to set a search engine other than Google as
3 the default in the Samsung SBrowser? Is that your testimony,
4 sir?

5 A. So to be very clear, there are -- I do not know the
6 specific agreement that Samsung has. I know that they have
7 represented that they both have a revenue share agreement with
8 Google for search, they have a MADA, which is a license to
9 Google, Android, and Android Play. I don't know which specific
10 agreement it is, but they have represented to me that they are
11 contractually obligated to keep it to Internet -- I'm sorry, to
12 keep it to Google.

13 Q. So you don't know whether it's in the MADA?

14 A. I don't know if it's in the MADA or the RSA, no.

15 Q. You haven't convinced Samsung to ship your browser instead
16 of the SBrowser as the second browser on the device; correct?

17 A. Yeah, we talked about that earlier.

18 Q. You have not been able to do that?

19 A. Yes.

20 Q. Okay. When we talk about browser competition on Windows, I
21 think we saw in the last document, 75 percent of search,
22 according to the Microsoft documents, is running through Chrome,
23 even though the only browser that's set on the device is Edge;
24 correct?

25 A. That's what the document says.

1 Q. Do you think that makes it more or less difficult for you
2 to convince Samsung to ship your browser on Android smartphones?

3 A. That never came -- that data point never came up as an
4 objection from Samsung in any conversation with them.

5 Q. Do you think they don't know about it?

6 A. I'm just telling you, they have never -- a partner that is
7 relatively candid in sharing with me objections and concerns has
8 not shared that specific objection and concern with me.

9 Q. You can put that document aside, sir.

10 There was a period of time where Microsoft sued a series of
11 Android OEMs for patent infringement.

12 Do you recall that?

13 A. Yes.

14 Q. And in settling those litigations, Microsoft extracted from
15 all of those OEMs royalties on Android; correct?

16 A. I believe so.

17 Q. And you've been able to use that royalty obligation from
18 Android OEMs as sort of a lever point in negotiating for
19 placement on Android smartphones; correct?

20 A. Yes. So in some cases for things like our Office apps.,
21 we've occasionally given people a rebate on the royalty in
22 exchange for distributing one of our Office applications.

23 Q. There was a period of time where Microsoft, at least it was
24 publicly reported, was making more than a billion dollars a year
25 in royalties off of Android; correct?

1 A. I don't know the specific numbers we were making.

2 Q. Do you know the orders of magnitude?

3 A. I don't.

4 Q. Do you think that suing Samsung and forcing it to pay all
5 this money on Android to Microsoft helped or hurt your efforts
6 to get Bing onto Samsung devices?

7 A. I don't think it had an impact.

8 Q. Okay. Sir, Tizen is a Samsung-created operating system for
9 mobile devices; correct?

10 A. It's a Samsung-created operating system that could be done
11 on multiple devices. It was also done on sort of smart homes
12 and other things. I think it ran on TVs for a while. I think
13 it still runs in their refrigerators. It ran on their watch.

14 Q. It was used as a mobile operating system in some --

15 A. I think at one point in time, it was used for a phone for a
16 short period of time.

17 Q. Samsung, not Google, created Tizen; correct?

18 A. I believe they originally created it, yes. I'm not 100
19 percent certain.

20 Q. Okay. I'm going to ask you to take a look at DX452 in your
21 binder.

22 Don't put this up on the screen, please.

23 A. You said 452?

24 Q. Yes, sir, 452.

25 And while you take a look at that, I will move its

1 admission.

2 MS. BELLSHAW: No objection, Your Honor.

3 THE COURT: It will be admitted.

4 (Exhibit DX452 received into evidence.)

5 BY MR. GREENBLUM:

6 Q. Do you have 452 in front of you, sir?

7 A. Yes.

8 Q. And 452, I'm not going to ask you about numbers in the
9 document, but just to -- because we're in open session. This
10 involves a pitch that Microsoft made to Samsung to be the
11 default search engine in Tizen devices; correct?

12 A. Yeah, it looks like it's a copy of a proposal from the
13 team. Yeah, sorry. Yes, go ahead. Sorry. What was the
14 question again?

15 Q. So this was a pitch to Samsung to make Bing the default
16 search engine on Tizen devices; correct?

17 A. Included in the e-mail thread was a term sheet of a
18 proposal to Samsung to make Bing the search default, though the
19 e-mail thread itself looks more like an internal discussion of
20 that proposal than a pitch to Samsung.

21 Q. Okay. Samsung didn't have a MADA with Google for Tizen,
22 right, because Tizen was Samsung's own operating system;
23 correct?

24 A. That is correct. I do not know if they had a revenue share
25 agreement with Google for Samsung, but they would not have had a

1 MADA.

2 Q. As the e-mail thread describes, one of the reasons that
3 Samsung rejected Bing as the default search engine on Tizen was
4 that they tried the search experience in Korea where Samsung is
5 based and found the search experience subpar; fair to say?

6 A. So --

7 Q. Sir, I'm really trying to --

8 A. The phrase "subpar" is certainly not in here. What it says
9 is the experience in Korea was different than the experience in
10 other places, but I'm not specifically seeing the word "subpar."

11 Q. If you can look on the page of the document ending in 735.

12 A. I'm not saying it's not there. I'm just saying I'm not
13 seeing where it is. Where am I looking?

14 Q. On 735, under the heading labeled "Tizen," in the last
15 bullet point. Can you read that to yourself.

16 A. Okay.

17 Q. You agree that Samsung found the search experience with
18 Bing to be subpar; correct?

19 A. This is an e-mail from someone to me summarizing their
20 conversations with Samsung. I have no reason to believe they
21 summarized them wrong.

22 Q. And that subpar search quality was part of the reason that
23 Samsung didn't pick you or your product to be the default on
24 Tizen; correct?

25 A. That's what this says, yes.

1 Q. Okay. We're going to switch back to Apple now.

2 Your Honor, this is where we left off before we conferred.

3 If we could switch to DX466, and don't put this up on the
4 screen, please.

5 Your Honor, I don't think I've moved the admission of the
6 document, and I would ask my colleagues if we can do that now.

7 THE COURT: The last one or the current one?

8 MR. GREENBLUM: This one. I believe we moved the last
9 one in. So this one, DX466.

10 THE COURT: All right. Any objection?

11 MS. BELLSHAW: No objection, Your Honor.

12 THE COURT: All right. It will be admitted.

13 (Exhibit DX466 received into evidence.)

14 BY MR. GREENBLUM:

15 Q. And if you want to see, Mr. Tinter, since I can't put it on
16 the screen, I've provided for you a native version of the deck
17 in print. For Your Honor, it's at 466A. So it's bigger, and
18 it's a little clearer to see. Hopefully, you won't need the
19 magnifying glass.

20 I'm going to ask you to take a look at slide 18.

21 A. Thank you, by the way.

22 Q. Sure.

23 A. I don't need a magnifying glass.

24 Q. Are you there, sir?

25 A. Yeah.

1 Q. So slide 18 talks about the retention of the Bing client by
2 the new user cohort in the United States; correct?

3 A. That's the title of the chart.

4 Q. Okay. And the Bing client, so the Court understands,
5 that's the Bing app.? That's not a browser? That's just a
6 search app.; is that fair to say?

7 A. Honestly, I'm kind of going back through this presentation
8 trying to remember what it is. So I don't know what Bing client
9 is referring to. I don't think what mango was. I don't know
10 the definition of new user cohort.

11 Q. I'm trying to move things along.

12 A. I don't know what Bing client is in this context.

13 Q. Can you think of anything it would be other than the Bing
14 Search app.?

15 A. Off the top of my head, no, but people can be --

16 Q. Okay. Do you see -- I don't want you to read the numbers
17 into the record for confidentiality reasons, but if you look at
18 the bottom of the slide, it says, "New user cohort retention
19 curves are getting worse over time since November 2011."

20 Do you see that?

21 A. Yes, I see that.

22 Q. Okay. To your knowledge, was that accurate?

23 A. I don't know the presentation, and I'm not sure who pulled
24 it together. I don't remember knowing those numbers at that
25 point in time.

1 Q. Then it says, "Less than half of new users are still
2 searching after four months."

3 Do you see that?

4 A. I see that.

5 Q. Same question. Was that accurate at the time?

6 A. Same answer. I don't know who pulled this together. I
7 haven't seen it. I don't remember.

8 Q. Then it says, "Where are all these new users doing if not
9 searching on Bing?" Do you see that?

10 A. Yes.

11 Q. Do you have any idea where they were going if they weren't
12 searching on Bing?

13 A. I would assume they were searching on Google.

14 Q. Okay. Can you turn to slide 21. And again, I'm not going
15 to look at the numbers at the bottom half. I'm going to look at
16 the paragraph up top. Let me ask you to take a minute to
17 familiarize yourself with it.

18 Your Honor, this is the slide entitled "RPM curve
19 background."

20 I'm going to ask you about --

21 A. Let me just read it first.

22 Q. -- the third sentence.

23 A. Okay.

24 Q. The third sentence up top of the presentation says, "We
25 would close most of the advertiser gap. E.g., we are missing

1 advertisers accounting for more than 20 percent of Google's
2 clicks and have other scale-driven engagement gaps, but still
3 have some technology gaps and product gaps."

4 Do you see that?

5 A. Yes.

6 Q. Sir, you don't know what portion of the RPM gap that you
7 described on direct with the Justice Department, you don't know
8 what portion of the RPM gap between Google and Microsoft on
9 mobile is attributable to scale and what portion is attributable
10 to other factors, like the technology gaps and product gaps that
11 are referenced in DX466?

12 A. Hold on a second.

13 Again, if I just look at kind of the page that you provided
14 me, and again, if you look at the pink boxes to the right of the
15 table, which attempts to do some of this math, right, it's
16 representing that -- it looks like it's saying that the entirety
17 of the short-term gap is all scale driven.

18 And if I look in the factors in the long-term gap, it says,
19 bullet point number 1, long-term innovation is scale driven.
20 Advertiser mind share gap is scale driven. Operating profit
21 return for higher scale is scale driven.

22 So again, what it looks like here, again, the large
23 proportion of it is sort of represented on this chart
24 demonstrates that it comes from scale.

25 Q. You don't know whether a substantial portion of the gap has

1 nothing to do with scale, do you, sir?

2 A. The analysis here and the slide on this picture shows a
3 substantial portion of the gap has to do with scale.

4 Q. The analysis describes some technology gaps and product
5 gaps up above. Do you see that?

6 A. I'm actually looking at the data in the graph on the chart.
7 You're cherry-picking --

8 Q. Your counsel won't let me talk to you about those numbers
9 on the bottom in open court, sir. So I'm doing my best to
10 respect their request for confidentiality.

11 A. I understand. What you've done, and you've done it a
12 couple of times, is ultimately the text on the page is designed
13 to describe the pictures. Right? So if you're asking me to
14 offer my opinion about the text on the page, I'm going to offer
15 my opinion about the text on the page based on the picture and
16 the graph. And what I'm saying based on this picture and the
17 graph is the conclusion you're drawing is wrong, and the
18 conclusion -- the words that you read do not match the picture
19 on the page.

20 THE COURT: Counsel?

21 MR. LARRABEE: I would just say, Your Honor, this is
22 one of the one or two examples where if we can't get past this
23 we will request closed session.

24 BY MR. GREENBLUM:

25 Q. Let's talk about it without DX466, in view of your

1 counsel's objection. So you can close that document.

2 A. Okay.

3 Q. I'm going to ask you the same question I asked you at your
4 deposition.

5 You don't know what portion of the RPM gap between Google
6 and Microsoft on mobile is attributable to scale and what
7 portion is attributable to other factors?

8 A. If you're asking me to give you a specific percentage for
9 one or the other, I do not know. But I believe very strongly
10 that the majority of it is as a function of scale.

11 Q. You don't know whether that's 51 percent or 61 percent?

12 A. Again, we were just looking at data that we can't talk
13 about those numbers, but the numbers on those pages are
14 significantly higher than the numbers that you just described.

15 Q. You didn't -- as I think you mentioned, you didn't have
16 opinions about the other slides in that deck; right?

17 A. Again, I was able to --

18 THE COURT: Why don't we move on.

19 MR. GREENBLUM: Understood, Your Honor.

20 BY MR. GREENBLUM:

21 Q. Let's go to DX484.

22 THE COURT: Counsel, can I just ask you where you are
23 in your examination at this point?

24 MR. GREENBLUM: With the Court's leave, if it's
25 possible to go 15 to 30 minutes past 5:00, I can try to finish

1 today. I know that that's more complicated than me just asking.
2 I'm happy to finish tomorrow morning. I lost some time
3 rejiggering everything. I'm doing my best. I'm going as fast
4 as I can.

5 THE COURT: I understand. We'll probably wrap up at
6 5:00. We've kept the courtroom staff here for a very long time.

7 MR. GREENBLUM: We thank the staff for that, Your
8 Honor.

9 THE COURT: Especially since we started early this
10 morning. Let's at least continue for the next ten minutes and
11 see where we are.

12 BY MR. GREENBLUM:

13 Q. If you can look at DX484, Mr. Tinter.

14 A. That's the e-mail from Peter MacDonald?

15 Q. Yeah. So to protect Microsoft's confidentiality, I'm not
16 going to use the name of the smartphone carrier that is
17 described in this e-mail from Peter MacDonald. And just follow
18 me on that, if you would. Okay?

19 A. Uh-huh.

20 Q. The e-mail at DX -- well, let me start by moving the
21 admission of DX484.

22 MS. BELLSHAW: No objection, Your Honor.

23 THE COURT: It will be admitted.

24 BY MR. GREENBLUM:

25 Q. DX484 is an e-mail from Peter MacDonald from April of 2016.

1 I think we covered earlier that Mr. MacDonald was on your search
2 distribution team at Microsoft; correct?

3 A. Yes.

4 THE COURT: You said 478?

5 MR. GREENBLUM: 484, Your Honor.

6 THE COURT: Okay. I'm with you now.

7 BY MR. GREENBLUM:

8 Q. Mr. MacDonald reports here on a meeting that he and some of
9 your other colleagues at Microsoft had with the executive vice
10 president of product at a smartphone carrier in 2016.

11 Do you see that?

12 A. Yes.

13 Q. And Mr. MacDonald reported to you that that executive vice
14 president of product at that smartphone carrier had pointed out
15 to your team that -- and I'm reading here from the third
16 paragraph up from the bottom -- "The reason why Verizon exited
17 the prior Bing partnership a number of years ago was due to an
18 inferior user experience, nothing that the economics from Bing
19 were materially" -- sorry, "noting that the economics from Bing
20 were materially better than those from Google."

21 Do you see that?

22 A. I see that.

23 Q. And so that was at least the reason it was reported to you
24 why that smartphone carrier terminated its search default
25 agreement with Microsoft?

1 A. That is what was purported as the summary in this meeting.
2 Having been involved in the wind-down of that, I think I had a
3 different interpretation as to reasons for why they switched,
4 but that's what was reported here.

5 Q. You didn't respond to Mr. MacDonald with your different
6 interpretation of the reasons that they switched; correct?

7 A. I don't remember sending a response to this e-mail. I
8 don't remember getting this e-mail, but I don't remember sending
9 a response to it.

10 THE COURT: Can you just point out which paragraph.

11 THE WITNESS: Third paragraph.

12 THE COURT: I see.

13 Is the person who is referenced there an executive with --

14 THE WITNESS: That person was the head of product at
15 that carrier at that time. Her title is in the first paragraph.

16 THE COURT: I see. Okay.

17 BY MR. GREENBLUM:

18 Q. If you could turn to -- there was a slide deck that was
19 presented by Microsoft at this meeting by Mr. MacDonald.

20 Do you see that referenced in the cover e-mail?

21 A. Yes.

22 Q. And I've got a small version of that deck and a larger
23 version for those of us like me whose eyes need it. The larger
24 version is at 484A in your binder, just so you have it. I'm
25 going to ask you to turn to slide 13.

1 A. What's your number at the bottom?

2 Q. The number at the bottom is 600.

3 A. What about the big one?

4 Q. 13. In the bigger one? I am going to need you to look at
5 both. The bigger one is a native version, so it doesn't have
6 page numbers. It is the slide that begins "this was due to key
7 mobile investments by Bing."

8 A. Yeah, the one that says A.013 at the bottom? I think I see
9 it.

10 Q. And the prior slide was a slide that Microsoft presented to
11 the smartphone carrier that was titled "investments over the
12 past two years have resulted in Bing now providing better U.S.
13 search results in mobile, just as it has done in PC."

14 A. Yes, I see that.

15 Q. And so your team represented to this smartphone carrier
16 that despite lack of scale, Bing had surpassed Google on mobile
17 in the United States, just as it supposedly had in PC; correct?

18 A. Is the small version of the chart not scrambled? I
19 literally can't read the labels on the chart because of the way
20 it printed.

21 Q. The small version of the chart does have some scrambling.
22 That's actually not a confidentiality issue. It's just how it
23 was produced by Microsoft. I'm just looking at the title, sir.
24 I don't know what the subhead says.

25 A. But there's nothing in the title that says "better than

1 Google." It just says "better," which could be better relative
2 to a prior point in time.

3 Q. Do you see that the blue bars are supposed to be Google,
4 and the green bars are supposed to be Bing? Do you see that?

5 A. I can't see the label. I don't know what this is a measure
6 of. So again, I can't read this. I don't know what the
7 percentages are metrics of. I guess the bars represent
8 something. It looks like there's chunks in time. So I'm having
9 a hard time telling you what this thing says.

10 Q. Do you see the green bar in March of 2016 on the earlier
11 slide is depicted as way higher than the blue bar?

12 A. But I don't know what the green bar is. I don't know what
13 the blue bar is.

14 Q. Do you see it says the blue bar in the key is Google?

15 A. What is the Y axis?

16 Q. Dates.

17 A. No, that's the X axis. What's the Y axis?

18 Q. Good catch. Percentages.

19 A. Of what?

20 Q. I don't know. I'm not the person who made the
21 presentation. So I'm asking you, sir.

22 A. I'm also not the person who made the presentation, and I
23 don't know.

24 THE COURT: Let's move past this since he doesn't have
25 personal knowledge of what this --

1 MR. GREENBLUM: Sure.

2 BY MR. GREENBLUM:

3 Q. There was a representation that in some respect Bing had
4 gotten better on mobile.

5 Can we agree on that?

6 A. That's what the title on the prior page says.

7 Q. The next page says, "This was due to key mobile investments
8 by Bing."

9 Do you see that?

10 A. Yes.

11 Q. And these I'm allowed to say in open court. You had
12 decided in 2016 or Microsoft had decided in 2016 to make Bing
13 mobile friendly? Is that true?

14 A. So again, just -- I know you said a decision that was made
15 in sort of 2016. There's nothing on this slide that puts a
16 timeframe on the decision. Based on the context of the prior
17 slide -- you see, I just don't know, because there's no context
18 of time on here, like when we made the investments in question.

19 Q. Can we agree that slide 13 lists a series of investments
20 that Microsoft represented to the smartphone carrier led Bing to
21 do better on mobile?

22 A. Yes.

23 Q. And that it had done better on mobile by 2016?

24 A. Yes.

25 Q. And those investments were, first, to make Bing mobile

1 friendly?

2 A. That's the first one on the slide.

3 Q. To have a deep focus on local?

4 A. That's the second one on the slide.

5 Q. To do task completion and user sub-intent?

6 A. That's the third.

7 Q. To do semantic ranking and natural language queries?

8 A. I think that's what "NL" stands for here, but --

9 Q. To make investments in mobile fundamentals?

10 A. Yes.

11 Q. To make investments in your universal ranking stack?

12 A. That's -- yeah, those are the six things.

13 Q. Do you know why these investments had not been made before
14 2016?

15 A. Again, I don't know when we started making these
16 investments. And so I don't know -- yeah.

17 MR. GREENBLUM: Your Honor, that's a good point for me
18 to break before I move to a new document.

19 THE COURT: Okay. So we'll have to continue
20 Mr. Tinter's testimony tomorrow. Despite our best efforts, we
21 will ask you to return tomorrow morning.

22 Just bear with me, everyone.

23 All right. How long -- Mr. Larrabee?

24 MR. LARRABEE: Any input from the parties about how
25 long tomorrow this will go so we can adjust?

1 THE COURT: I was just about to ask.

2 MR. GREENBLUM: I will certainly finish within 45, and
3 I will aim for 30 minutes.

4 THE COURT: Okay. What are you currently expecting in
5 terms of redirect?

6 MS. BELLSHAW: Your Honor, I have just a few questions
7 on redirect. One option would be if we could move in as a
8 designation the entire question and answer that counsel read as
9 impeachment earlier, I could skip redirect on that topic.

10 MR. GREENBLUM: That's fine with us, Your Honor.

11 THE COURT: Sure. If you want to -- I didn't mark the
12 pages. So if somebody would be kind enough to either point the
13 pages out or just provide them to me, I can read them.

14 MS. BELLSHAW: I can read them now and will also
15 provide Your Honor with a copy.

16 THE COURT: You want to read them in the record?

17 MS. BELLSHAW: Just the page.

18 THE COURT: It's late in the day for that.

19 Date again? It's the 3/9 transcript?

20 MS. BELLSHAW: Yes, Your Honor, the March 9, 2022,
21 transcript, and it's page 278, line 22, through 282, line 3.

22 THE COURT: Okay.

23 MS. BELLSHAW: Other than that, we only have a handful
24 of questions as of this time.

25 THE COURT: And Mr. Sallet?

1 MR. SALLET: I think at the moment we have none.

2 THE COURT: Okay. So it sounds like it shouldn't be
3 long. So why don't we plan to -- let's resume at 9:00 tomorrow,
4 and hopefully, we can get wrapped up by mid-morning.

5 Thank you, everyone. Mr. Tinter, I will ask you to not
6 discuss your testimony overnight.

7 THE WITNESS: No worries. I have a day job to go to
8 now.

9 THE COURT: I would ask if you would just wait outside
10 the courtroom. I want to have a conversation with the lawyers
11 and actually include your counsel as well.

12 Mr. Larrabee, I need at least one counsel from Microsoft to
13 hang back on the topic that I asked my law clerk to give you a
14 heads up about.

15 So two things that I want to raise. I understand
16 Mr. Nadella is being called on Monday; correct?

17 MR. LARRABEE: Yes, Your Honor.

18 THE COURT: What is the parties' current vision in
19 terms of any need for a closed session with Mr. Nadella?

20 MR. LARRABEE: We're not entirely sure, but we can
21 work between now and Monday --

22 THE COURT: That's why I'm raising it now and asking
23 what the parties' current thinking --

24 MR. LARRABEE: We will engage in the process between
25 now and Monday that we engaged in today.

1 THE COURT: I appreciate that.

2 MR. CAVANAUGH: Your Honor, for the States, nothing.
3 We have some questioning, but no reason to believe it will be
4 closed.

5 MR. DINTZER: I don't have the exact number. We will
6 go back and take a look based on some of the Court's guidance.
7 It is our understanding that if there is a closed session, we
8 will make it a small closed session.

9 THE COURT: Why don't you talk to Mr. Larrabee, and
10 hopefully, we can narrow it.

11 MR. DINTZER: Yes, Your Honor.

12 THE COURT: Mr. Schmidtlein, any thoughts from Google?
13 I know it may depend upon the nature of the direct, but at least
14 your current thinking.

15 MR. SCHMIDTLEIN: My expectation is that most of this
16 should be able to be done in open.

17 THE COURT: Terrific. So to the extent that anybody
18 is contemplating it, if you could just please talk to
19 Mr. Larrabee and his colleagues, and hopefully, we can resolve
20 that to eliminate any need for a closed session. That would be
21 grateful appreciated.

22 The other thing I would like to start thinking about --
23 well, actually do is to start getting some proposed redactions
24 of the currently closed session transcripts from the parties and
25 the relevant third parties, and at least as a starting point, I

1 would like to get unredacted proposals or redacted proposals of
2 the transcripts for Mr. Giannandrea and Mr. Cue and Mr. Weinberg
3 from DuckDuckGo. So if I could get those proposals from the
4 parties and third-party counsel by Monday, that would be
5 helpful. If you all need to color code the proposed transcript
6 releases, if there are any disputes -- you all seem to have a
7 facility on how to do that -- that would be appreciated, so we
8 can at least get started with some of those witnesses and
9 getting their testimonies on the public record. Okay?

10 Anything else before we adjourn for the evening?

11 MR. DINTZER: Your Honor, Google has challenged our
12 proposed schedule.

13 THE COURT: Oh, right. Can we talk about that
14 tomorrow?

15 MR. DINTZER: At the Court's pleasure.

16 THE COURT: Since it's late in the day, and even I'm
17 fading.

18 MR. DINTZER: Absolutely, Your Honor.

19 MR. DAHLQUIST: Your Honor, David Dahlquist for the
20 United States. I have something that is agreed, the agreed
21 order on the public posting.

22 THE COURT: Great. You put "proposed." I'm going to
23 cross that out.

24 MR. DAHLQUIST: We will e-mail a copy to the Court as
25 well.

1 THE COURT: All right. Anything else, Counsel?

2 MR. DINTZER: No, Your Honor.

3 MR. CAVANAUGH: No, Your Honor.

4 MR. SCHMIDTLEIN: No, Your Honor.

5 THE COURT: All right. Thank you. See you tomorrow.

6 (Proceedings adjourned at 5:03 p.m.)

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CERTIFICATE OF OFFICIAL COURT REPORTER

I, Sara A. Wick, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Sara A. Wick

September 29, 2023

SIGNATURE OF COURT REPORTER

DATE

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