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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

DEWAYNE JOHNSON,

Plaintiff,

vs.

Case No. CGC-16-550128

MONSANTO COMPANY, et al.,

Defendants.

-----/

Proceedings held on Wednesday, August 8, 2018,
Volume 26, before the Honorable Suzanne R. Bolanos,
at 9:21 a.m.

REPORTED BY:

LESLIE ROCKWOOD ROSAS, RPR, CSR 3462

Job No. 2983884

Pages 5250 - 5286

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INDEX OF PROCEEDINGS

WITNESS

DIRECT CROSS REDIRECT RECROSS

(None.)

EXHIBITS

(None.)

1 Wednesday, August 8, 2018

2 9:21 a.m.

3 Volume 26

4 San Francisco, California

5 Department 504

6 Judge Suzanne Ramos Bolanos

7
8 PROCEEDINGS

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10 08:59:21

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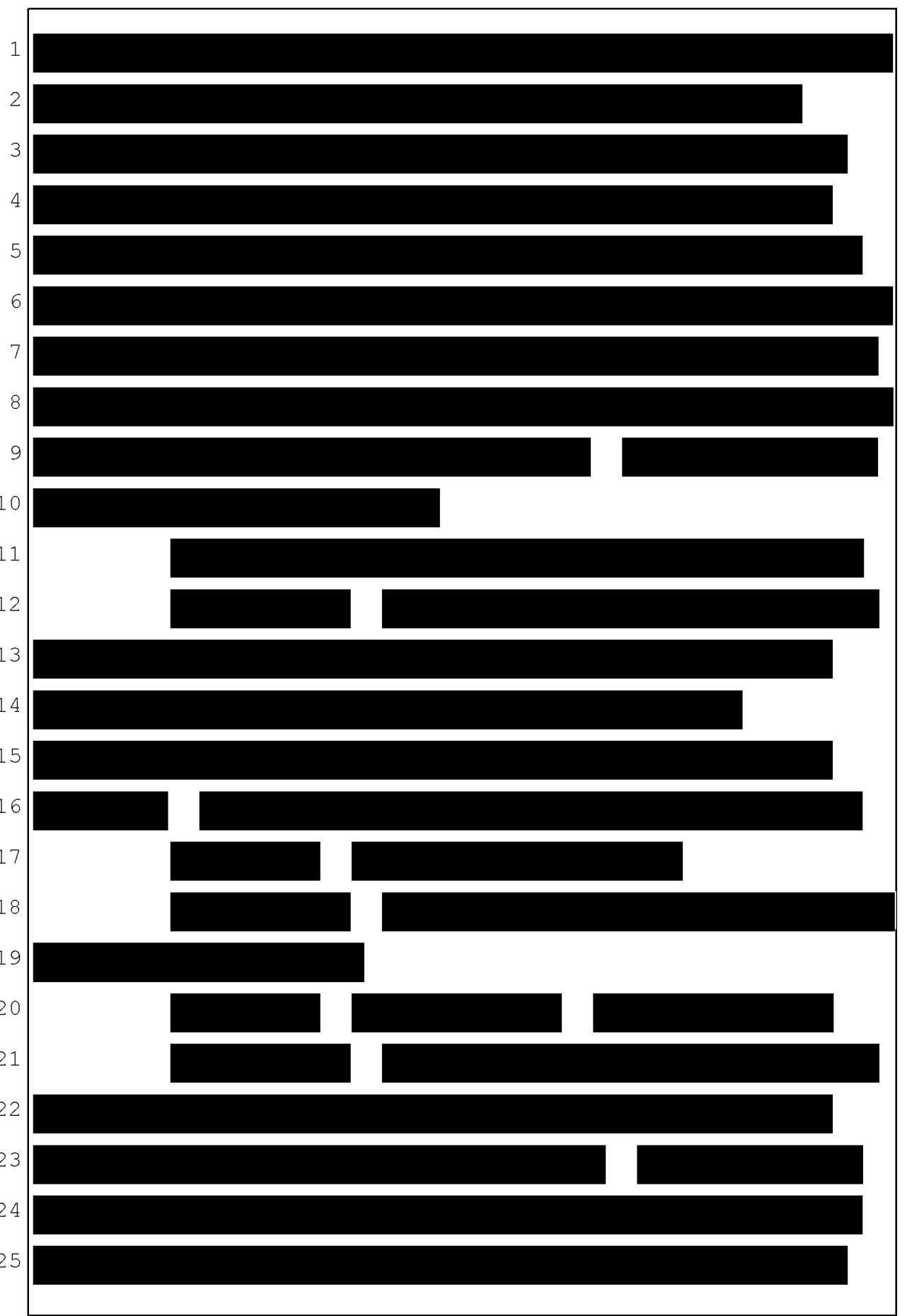
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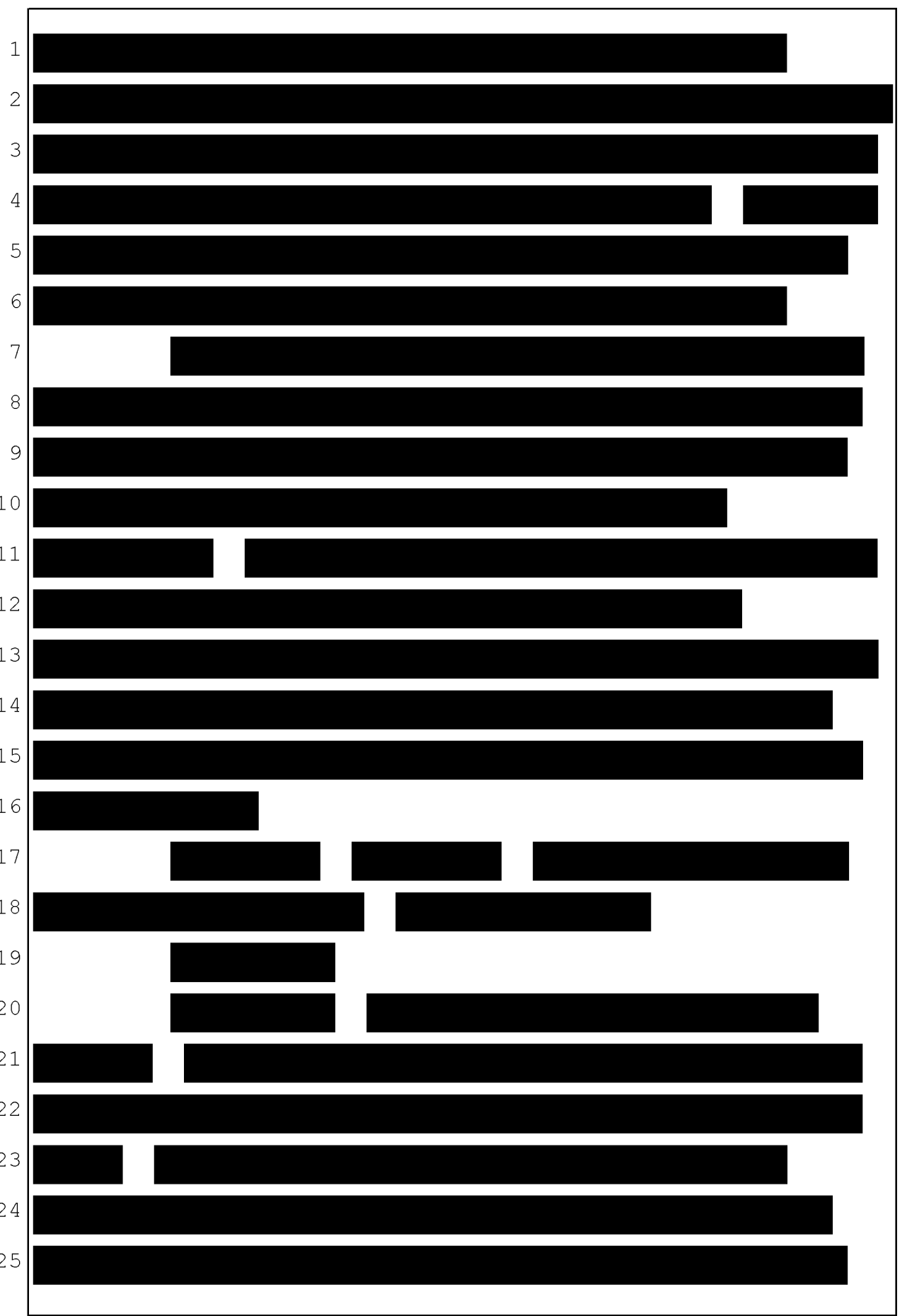
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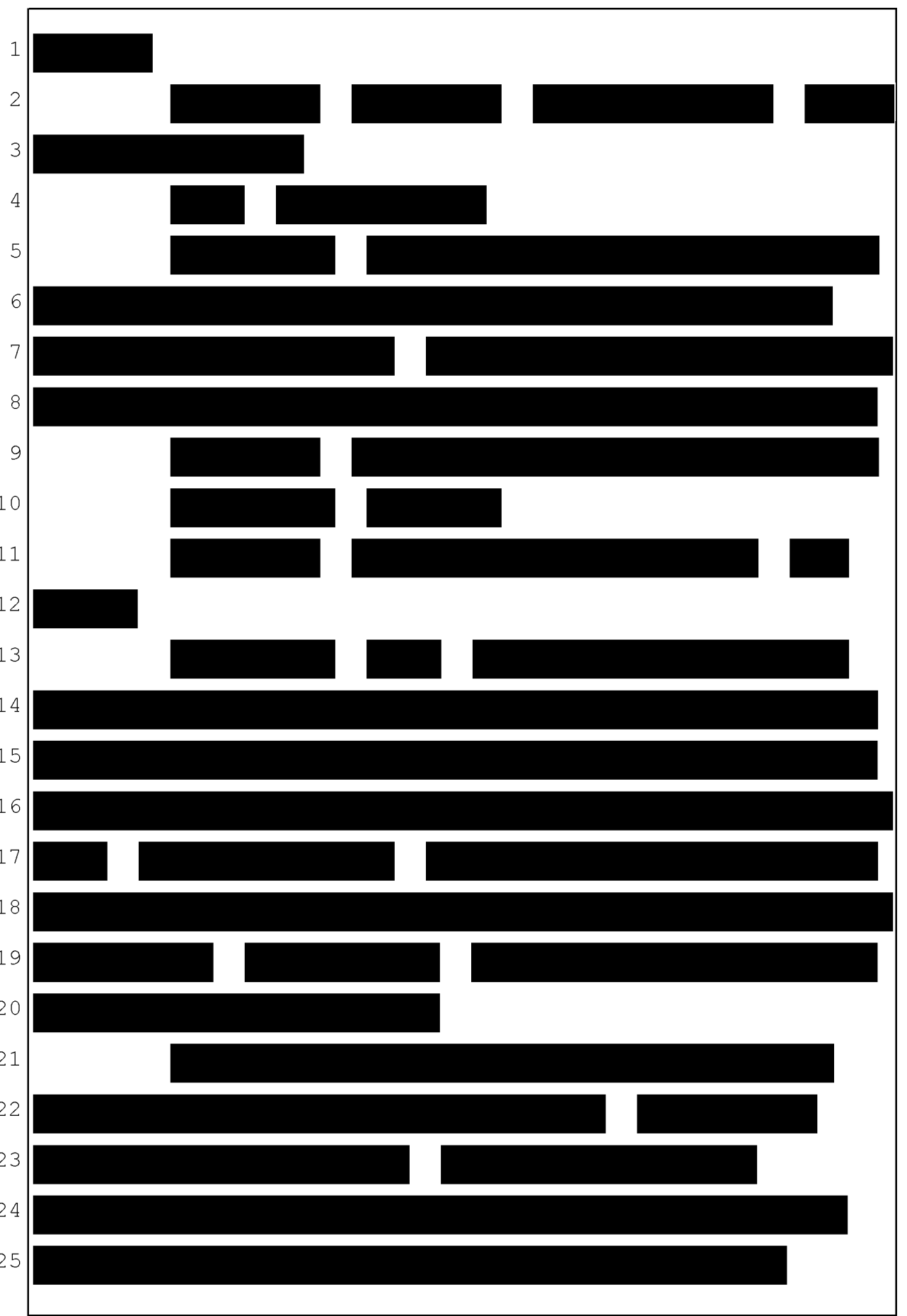
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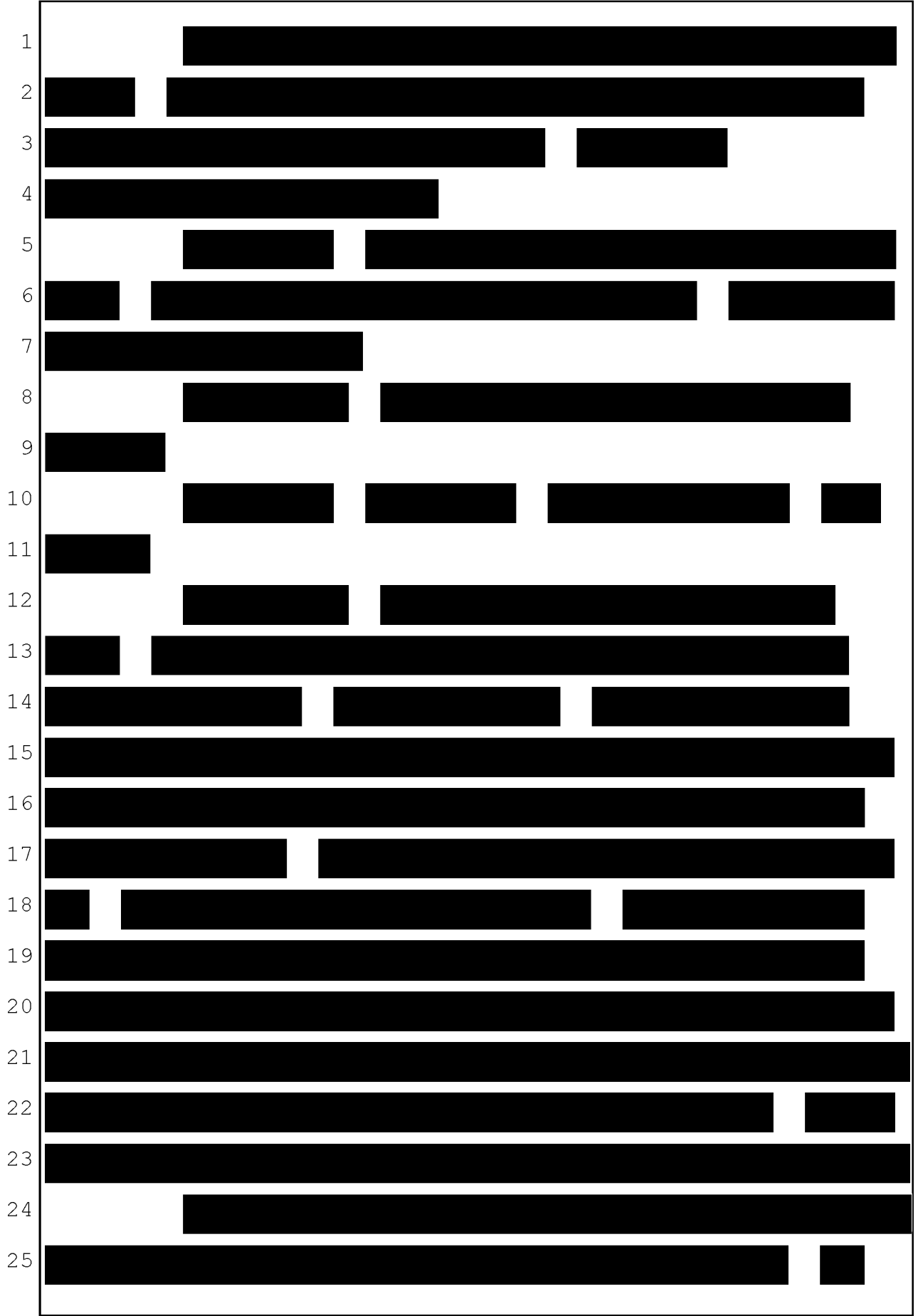
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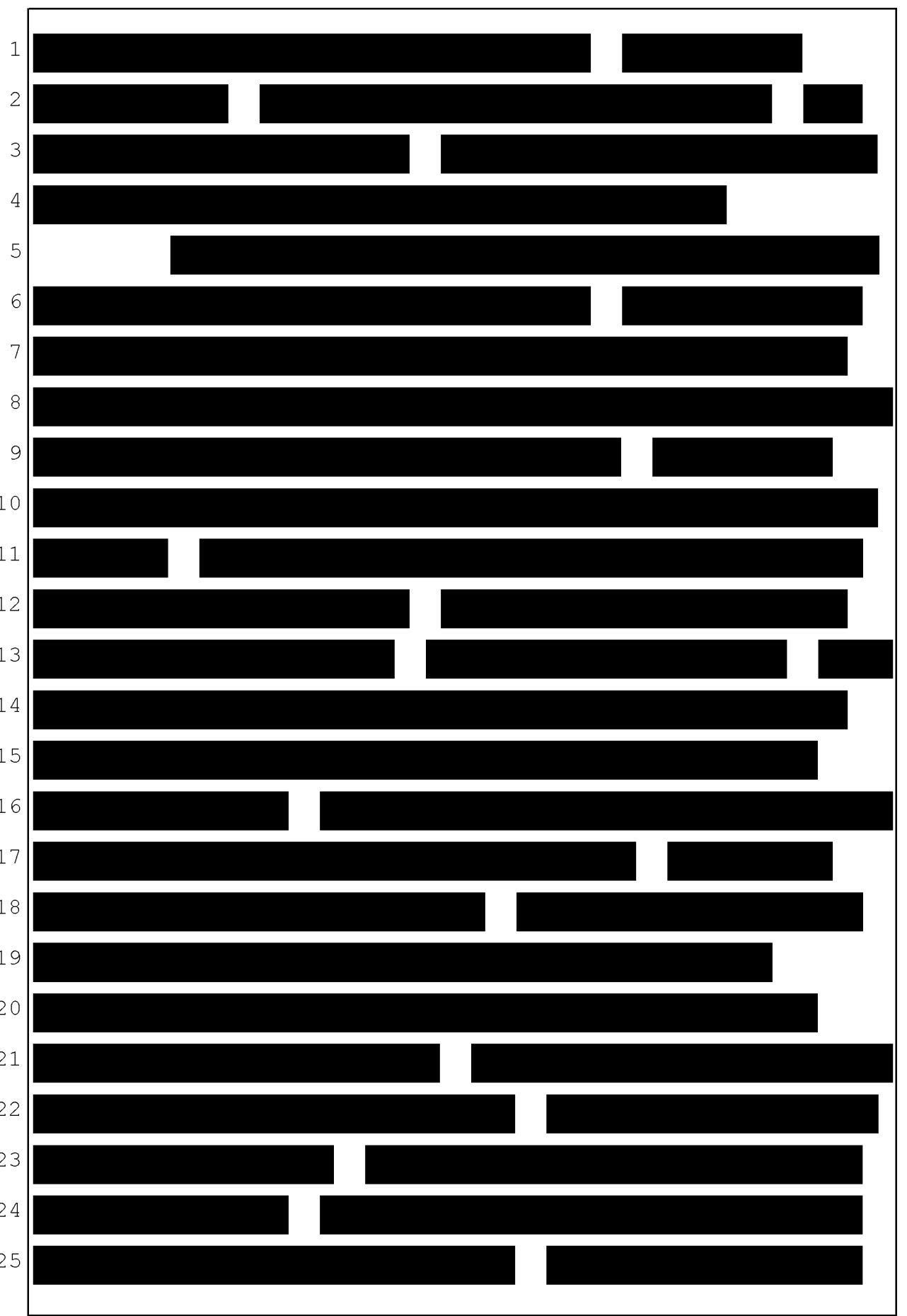
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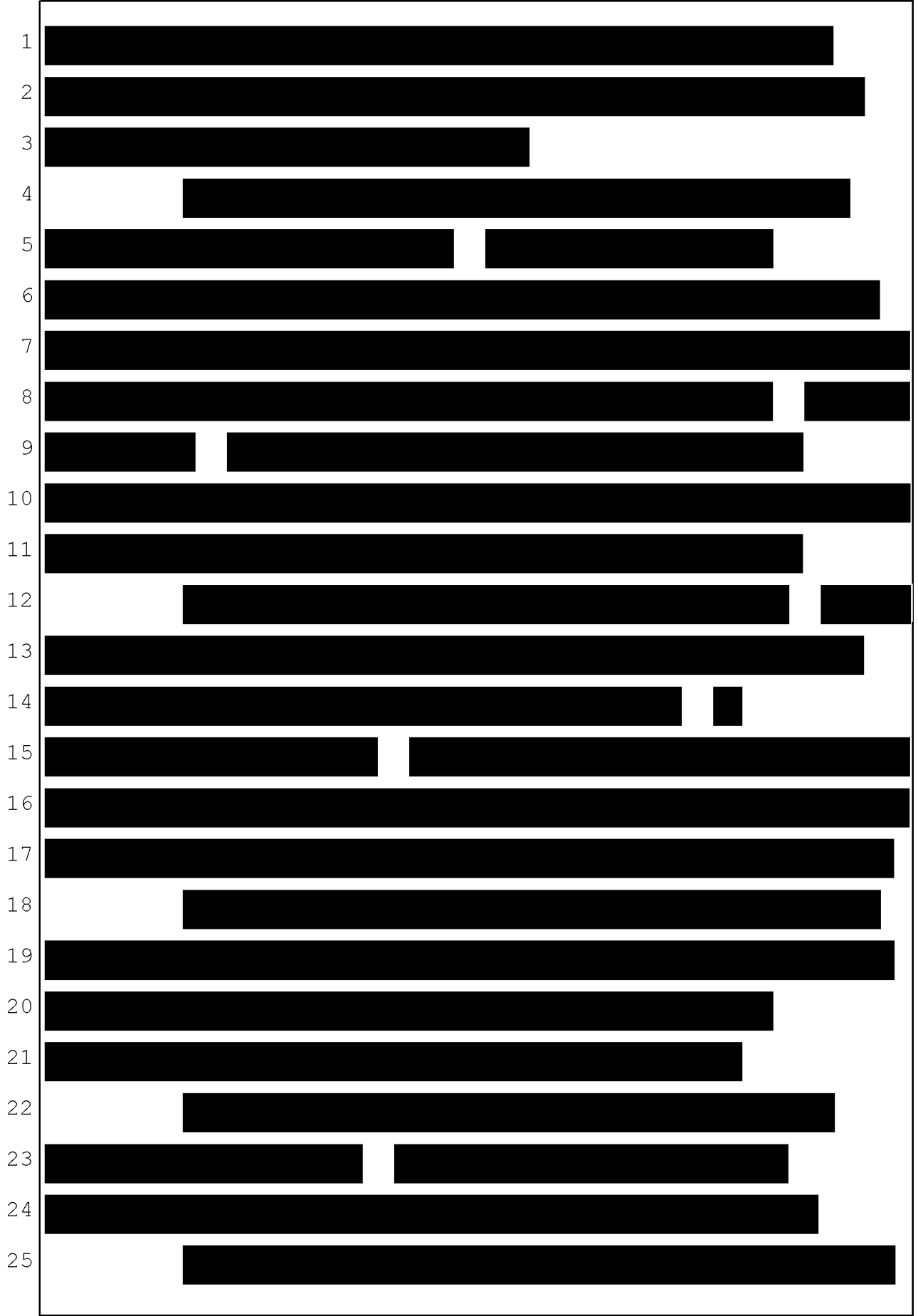
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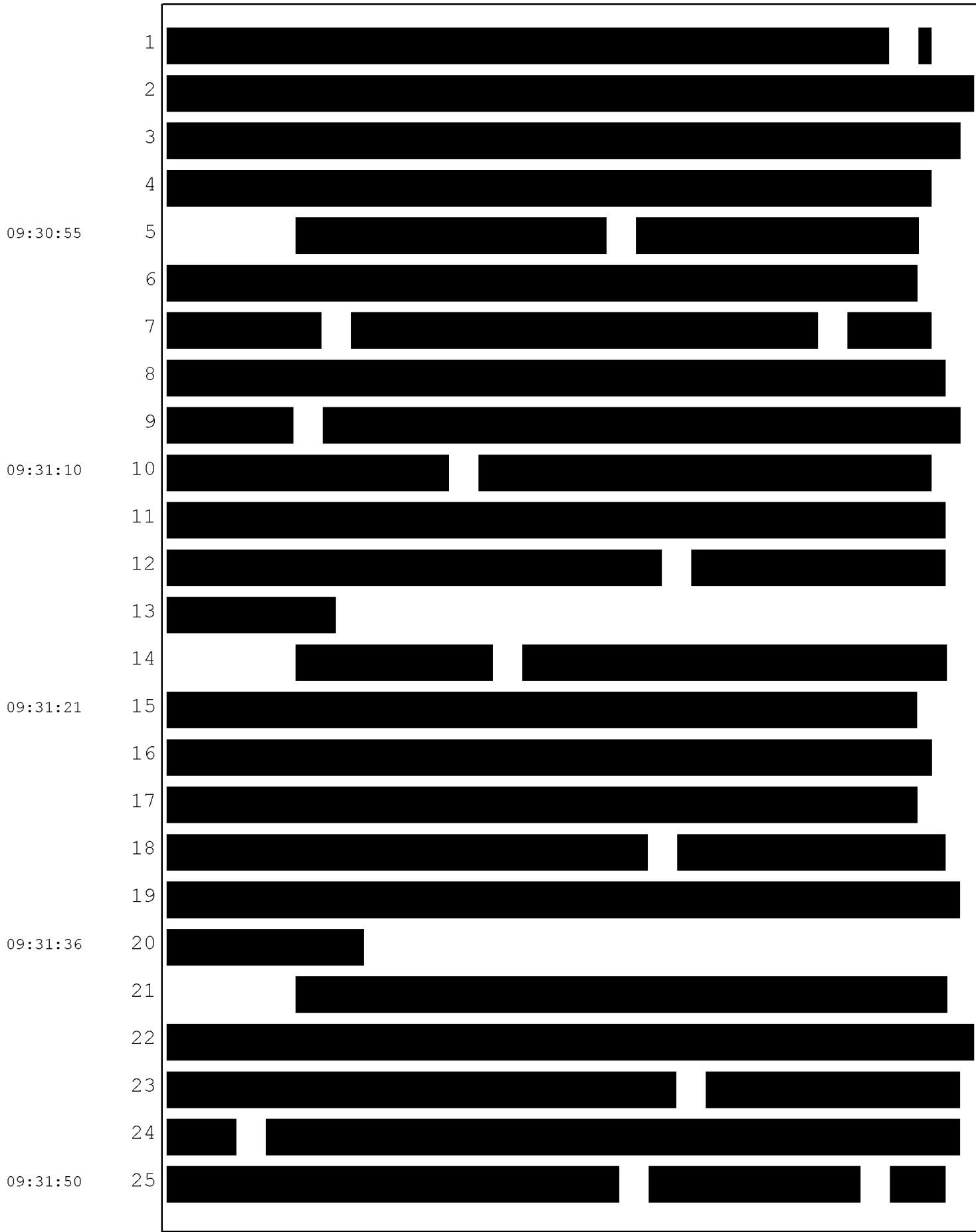
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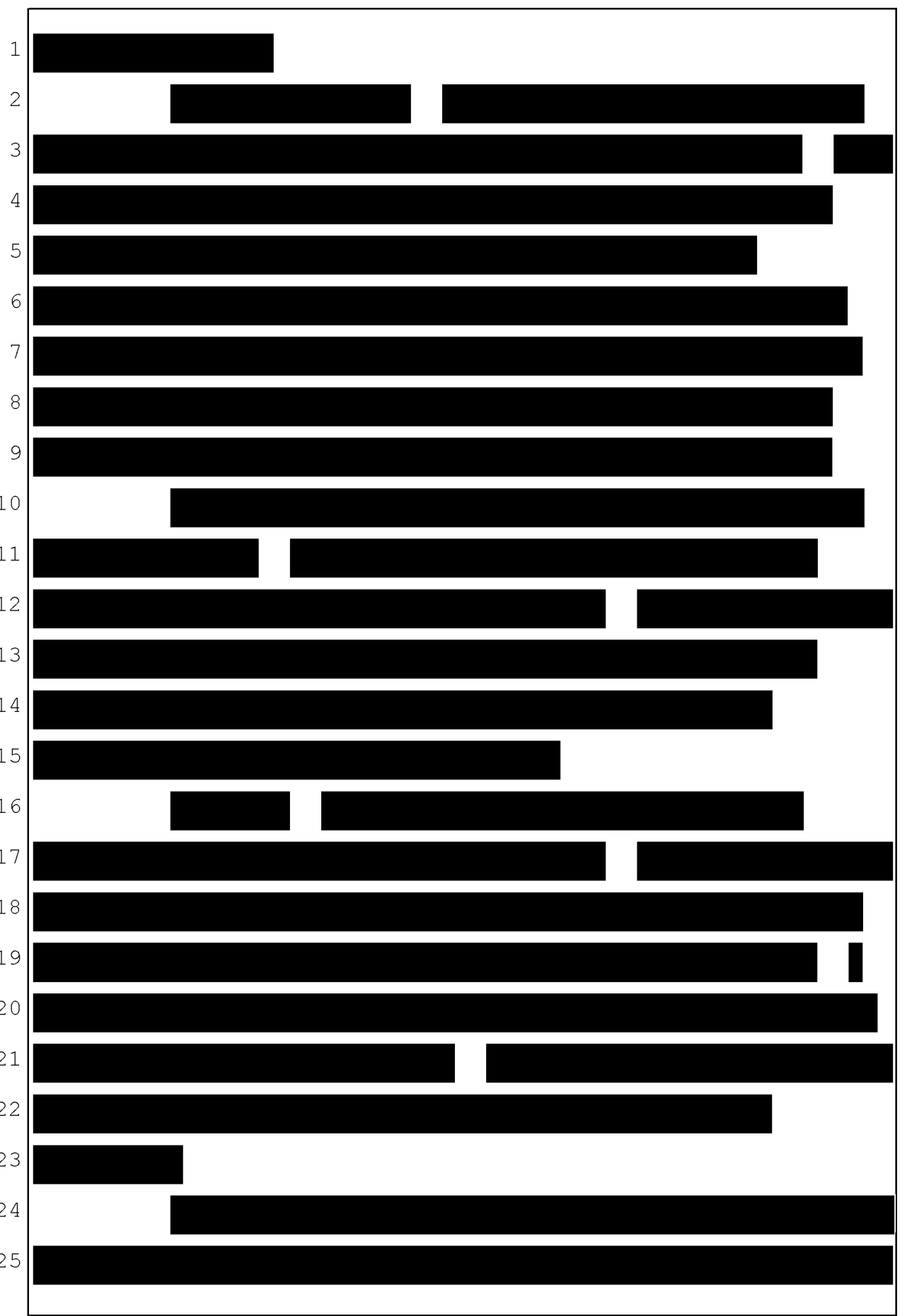
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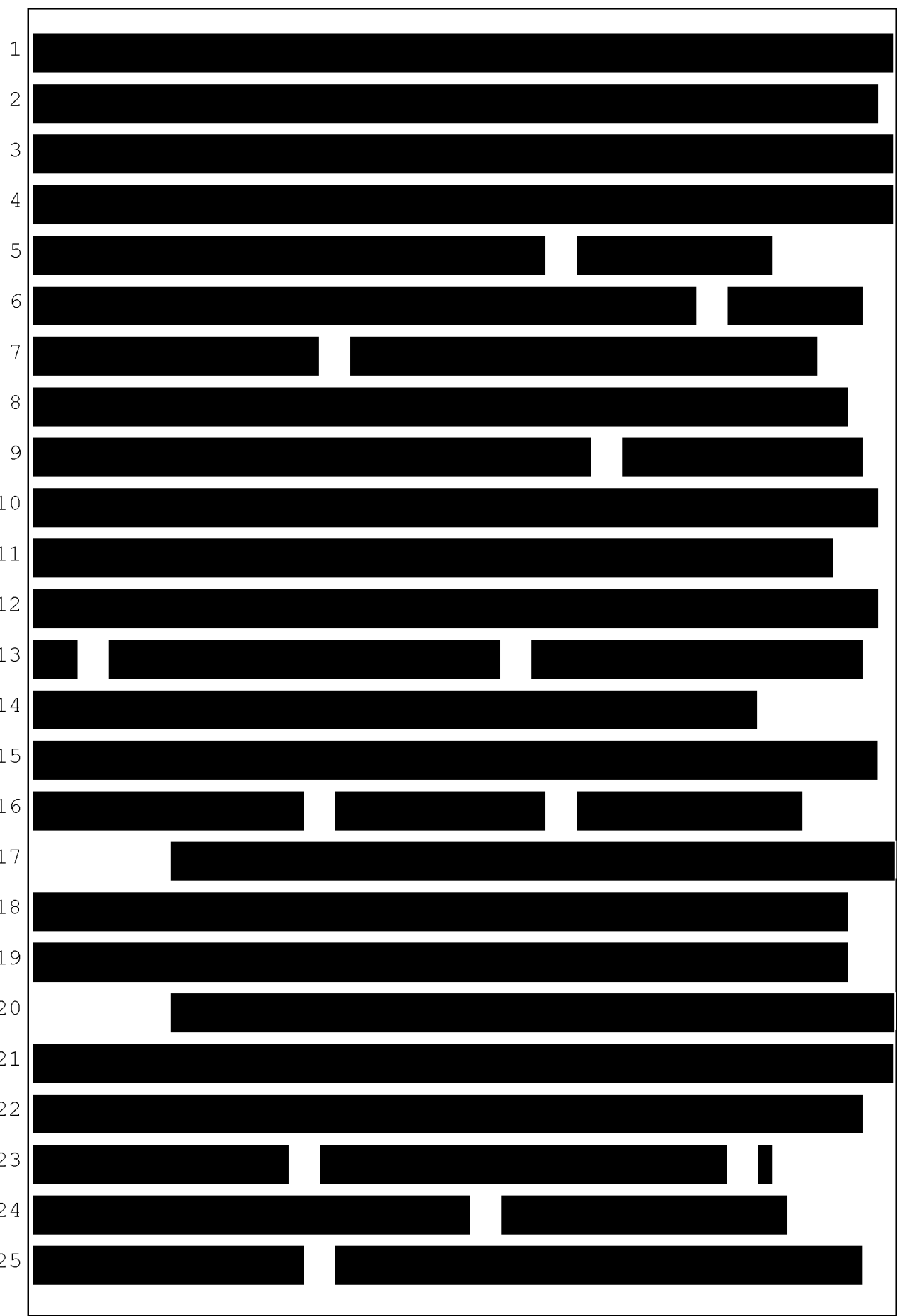
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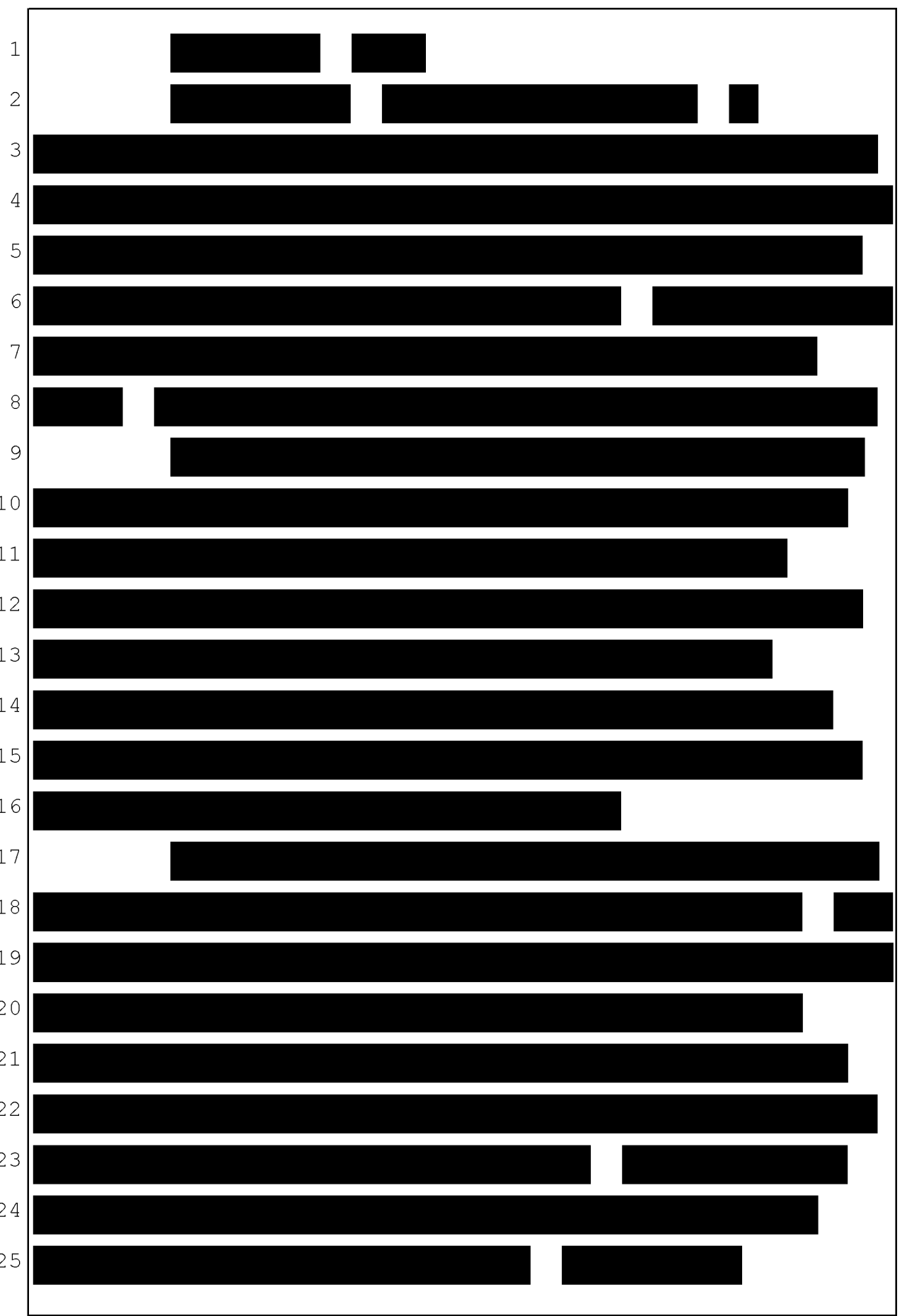
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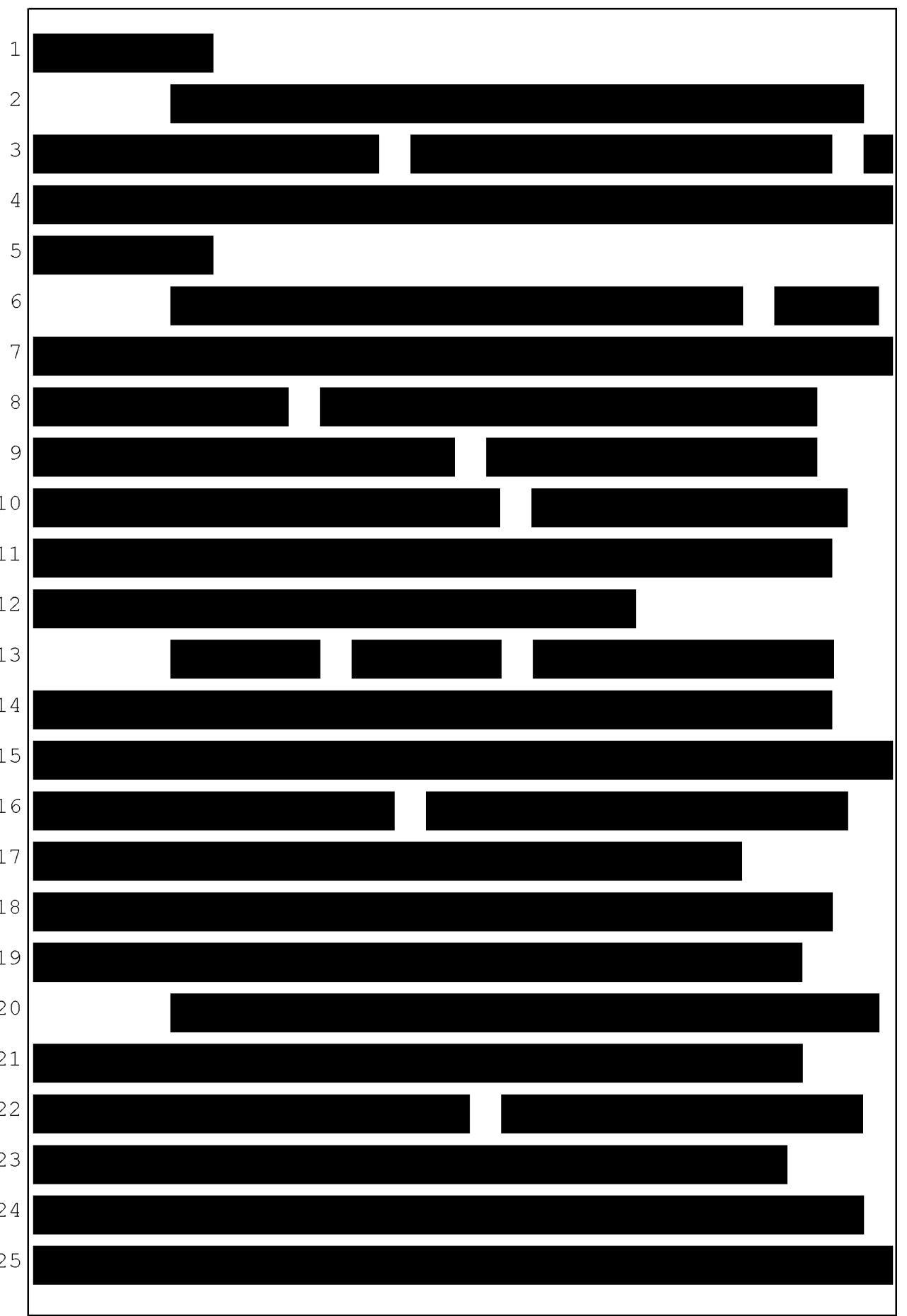
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17 [REDACTED] [REDACTED] [REDACTED]

18 [REDACTED] [REDACTED]

19 [REDACTED] [REDACTED]

09:38:26

20 [REDACTED]

21 [REDACTED] [REDACTED]

22 [REDACTED] [REDACTED] [REDACTED] [REDACTED]

23 [REDACTED]

24 (Jury enters courtroom.)

09:40:44

25 THE COURT: Good morning. And welcome back,

1 Ladies and Gentlemen.

2 I have a few final instructions to read to you
3 before you begin your deliberations in this case. Before
4 we return to the pre-deliberation instructions, there is
09:40:58 5 one matter that I'd like to address with you. And that
6 is: Yesterday during closing arguments, you heard
7 discussion from plaintiff's counsel about the purpose of
8 punitive damages and a reference to changing the world or
9 something to that effect, and I want to remind you and
09:41:19 10 tell you again, as I instructed you yesterday, as to the
11 purpose of punitive damages.

12 The purpose of punitive damages is explained in
13 great detail in Instruction Number 25, which I read to
14 you yesterday. I'm not going to read the entire
09:41:35 15 instruction to you again, but I want to remind you that
16 if, in fact, you find liability in this case and if you
17 decide to award punitive damages, the purpose of punitive
18 damages is only to punish Monsanto for any crime that was
19 visited upon Mr. Johnson. And you'll see at the
09:42:00 20 conclusion of the instruction there, "Punitive damages
21 may not be used to punish Monsanto for the impact of its
22 alleged misconduct on persons other than Mr. Johnson."

23 So keep that in mind during your deliberations.
24 If you have any questions about the proper purpose of
09:42:23 25 punitive damages, should you reach that discussion, refer

1 back to the instruction, and you may, of course, send
2 questions to me as well through the bailiff. All right.

3 And then now returning to the pre-deliberation
4 instructions, we'll start with Instruction Number 32.

09:42:46

5 Today when you go to the jury room, the first
6 thing you should do is choose a presiding juror. The
7 presiding juror should see to it that your discussions
8 are orderly and that everyone has a fair chance to be
9 heard.

09:42:59

10 It is your duty to talk with one another in the
11 jury room and to consider the views of all the jurors.
12 Each of you must decide the case for yourself, but only
13 after you have considered the evidence with the other
14 members of the jury. Feel free to change your mind if
15 you are convinced that your position should be different.

09:43:17

16 You should all try to agree. But do not give up your
17 honest beliefs just because the others think differently.

09:43:34

18 Please do not state your opinions too strongly
19 at the beginning of your deliberations or immediately
20 announce how you plan to vote as it may interfere with an
21 open discussion. Keep an open mind so that you and your
22 fellow jurors can easily share ideas about the case.

09:43:53

23 You should use your common sense and experience
24 in deciding whether testimony is true and accurate.
25 However, during your deliberations, do not make any

1 statements or provide any information to other jurors
2 based on any special training or unique personal
3 experiences that you may have had related to matters
4 involved in this case. What you may know or have learned
09:44:11 5 through your training or experience is not a part of the
6 evidence received in this case.

7 Sometimes jurors disagree or have questions
8 about the evidence or about what the witnesses said in
9 their testimony. If that happens, you may ask to have
09:44:25 10 testimony read back to you or ask to see any exhibits
11 admitted into evidence that have not already been
12 provided to you. Also, jurors may need further
13 explanation about the laws that apply to the case. If
14 this happens during your discussions, write down your
09:44:41 15 questions and give them to the clerk. I will talk with
16 the attorneys before I answer, so it may take some time.
17 You should continue your deliberations while you wait for
18 my answer. I will do my best to answer them. When you
19 write me a note, do not tell me how you voted on an issue
09:44:59 20 until I ask for this information in open court.

21 Your decision must be based on your personal
22 evaluation of the evidence presented in the case. Each
23 of you may be asked in open court how you voted on each
24 question.

09:45:14 25 While I know you would not do this, I am

1 required to advise you that you must not base your
2 decision on chance, such as a flip of a coin. If you
3 decide to award damages, you may not agree in advance to
4 simply add up the amounts each juror thinks is right and
09:45:31 5 then, without further deliberations, make the average
6 your verdict.

7 You may take breaks, but do not discuss this
8 case with anyone, including each other, until all of you
9 are back in the jury room.

09:45:45 10 If you have taken notes during the trial, you
11 may take your notebooks with you into the jury room.

12 You may use your notes only to help you remember
13 what happened during the trial. Your independent
14 recollection of the evidence should govern your verdict.

09:45:59 15 You should not allow yourself to be influenced by the
16 notes of other jurors if those notes differ from what you
17 remember.

18 At the end of the trial, your notes will be
19 collected and destroyed.

09:46:10 20 You may request in writing that trial testimony
21 be read to you. I will ask the court reporter to read
22 the testimony to you. You may request that all or a part
23 of a witness' testimony be read. Your request should be
24 as specific as possible. It will be helpful if you can
09:46:30 25 state:

1 One, the name of the witness;

2 Two, the subject of the testimony you would like
3 to have read; and

4 Three, the name of the attorney or attorneys
09:46:38 5 asking the questions when the testimony was given.

6 The court reporter is not permitted to talk with
7 you when he or she is reading the testimony you have
8 requested.

9 While the court reporter is reading the
09:46:49 10 testimony, you may not deliberate or discuss the case.

11 You may not ask the court reporter to read
12 testimony that was not specifically mentioned in a
13 written request. If your notes differ from the
14 testimony, you must accept the court reporter's record as
09:47:02 15 accurate.

16 I will give you verdict forms with questions you
17 must answer. I have already instructed you on the law
18 that you are to use in answering these questions. You
19 must follow my instructions on the forms carefully. You
09:47:19 20 must consider each question separately. Although you may
21 discuss the evidence and the issues to be decided in any
22 order, you must answer the questions on the verdict forms
23 in the order they appear. After you answer the question,
24 the form tells you what to do next. At least 9 of you
09:47:36 25 must agree on an answer before you can move on to the

1 next question. However, the same 9 or more people do not
2 have to agree on each answer.

3 All 12 of you must deliberate on an answer of
4 each question regardless of how you voted on any earlier
09:47:52 5 question. Unless the jury form tells all 12 jurors to
6 stop and answer no further questions, every juror must
7 deliberate and vote on all of the remaining questions.

8 When you have finished filling out the forms,
9 your presiding juror must write the date and sign it at
09:48:09 10 the bottom of the last page and then notify the court
11 bailiff that you are ready to present your verdict in the
12 courtroom.

13 As to our alternate jurors, the members of the
14 jury panel will soon begin deliberating, but you are
09:48:25 15 still alternate jurors and are bound by my earlier
16 instructions about your conduct. Until the jury is
17 discharged, do not talk about the case or about any of
18 the people or any subject involved in it with anyone, not
19 even your family or friends, and not even with each
09:48:42 20 other. Please do not have any contact with the
21 deliberating jurors. Do not decide how you would vote if
22 you were deliberating. Do not form or express an opinion
23 about the issues in this case unless you are substituted
24 for one of the deliberating jurors.

09:48:59 25 I did not make any comments on the evidence in

1 this case, so Instruction Number 37 does not apply.

2 Instruction Number 38: After your verdict is
3 read in open court, you may be asked individually to
4 indicate whether the verdict expresses your personal
09:49:17 5 vote. This is referred to as "polling" the juror and is
6 done to ensure that at least nine jurors have agreed to
7 each decision.

8 The verdict form that you will receive asks you
9 to answer several questions. You must vote separately on
09:49:32 10 each question. Although nine or more jurors must agree
11 on each answer, it does not have to be the same nine for
12 each answer. Therefore, it is important for each of you
13 to remember how you voted on each question so that if the
14 jury is polled, each of you will be able to answer
09:49:51 15 accurately about how you voted.

16 Each of you will be provided a draft copy of the
17 verdict form for your use in keeping track of your votes.

18 If, during the trial, any of you had a question
19 that you believe should be asked of a witness, you were
09:50:09 20 instructed to write out the question and provide it to me
21 through my courtroom staff. I shared your questions with
22 the attorneys, after which I decided whether the question
23 could be asked.

24 If a question was asked and answered, you are to
09:50:24 25 consider the answer as you would any other evidence

1 received in the trial. Do not give the answer any
2 greater or lesser weight because it was initiated by a
3 juror question.

09:50:35 4 If a question was not asked, do not speculate as
5 to what the answer might have been or why it was not
6 asked. There are many legal reasons why a suggested
7 question cannot be asked of a witness. Give the question
8 no further consideration.

09:50:50 9 During the trial, materials have been shown to
10 you to help explain testimony or other evidence in the
11 case. Some of these materials have been admitted into
12 evidence, and you will be able to review them during your
13 deliberations.

09:51:02 14 Other materials have also been shown to you
15 during the trial, but they have not been admitted into
16 evidence. You will not be able to review them during
17 your deliberations because they are not themselves
18 evidence or proof of any facts. You may, however,
19 consider the testimony given in conjunction -- in
09:51:18 20 connection with those materials.

21 All right. So that concludes the jury
22 instructions at this juncture. So now I'll ask our
23 jurors in Seats 1 through 12 to please follow the
24 bailiff, who will take you to the jury deliberation room.
09:51:35 25 Please bring along your notebooks and instructions and

1 all of your personal belongings.

2 Oh, and I'm sorry. Just one moment. The clerk
3 has to swear the bailiff.

4 (Bailiffs sworn.)

09:52:04

5 THE COURT: All right. Thank you.

6 All right. So Ladies and Gentlemen, you may now
7 follow the bailiff to the deliberation room, and if the
8 alternate jurors can just stay for one more moment.

9 (Jury leaves courtroom.)

09:52:57

10 THE COURT: All right. And as at our alternate
11 jurors, now that the jury is deliberating, I can put you
12 on standby. We have contact information for all of you,
13 so that if we need you to return to participate in the
14 deliberations, we will contact you.

09:53:14

15 Between now and the time that the jury reaches a
16 verdict, please remember do not discuss the case with
17 anyone and please do not do any research on the case.

18 When the jury does reach a verdict, we will call
19 you and let you know that the jury has arrived at a

09:53:30

20 verdict, and we'll have a 30-minute waiting time to give
21 you an opportunity to return to the courtroom, if you
22 wish, to hear the verdict read, and if you chose to
23 return, then just please return to your seat in the
24 alternate -- to your alternate seat. You're not required

09:53:47

25 to return to hear the verdict if you can't or don't want

1 to.

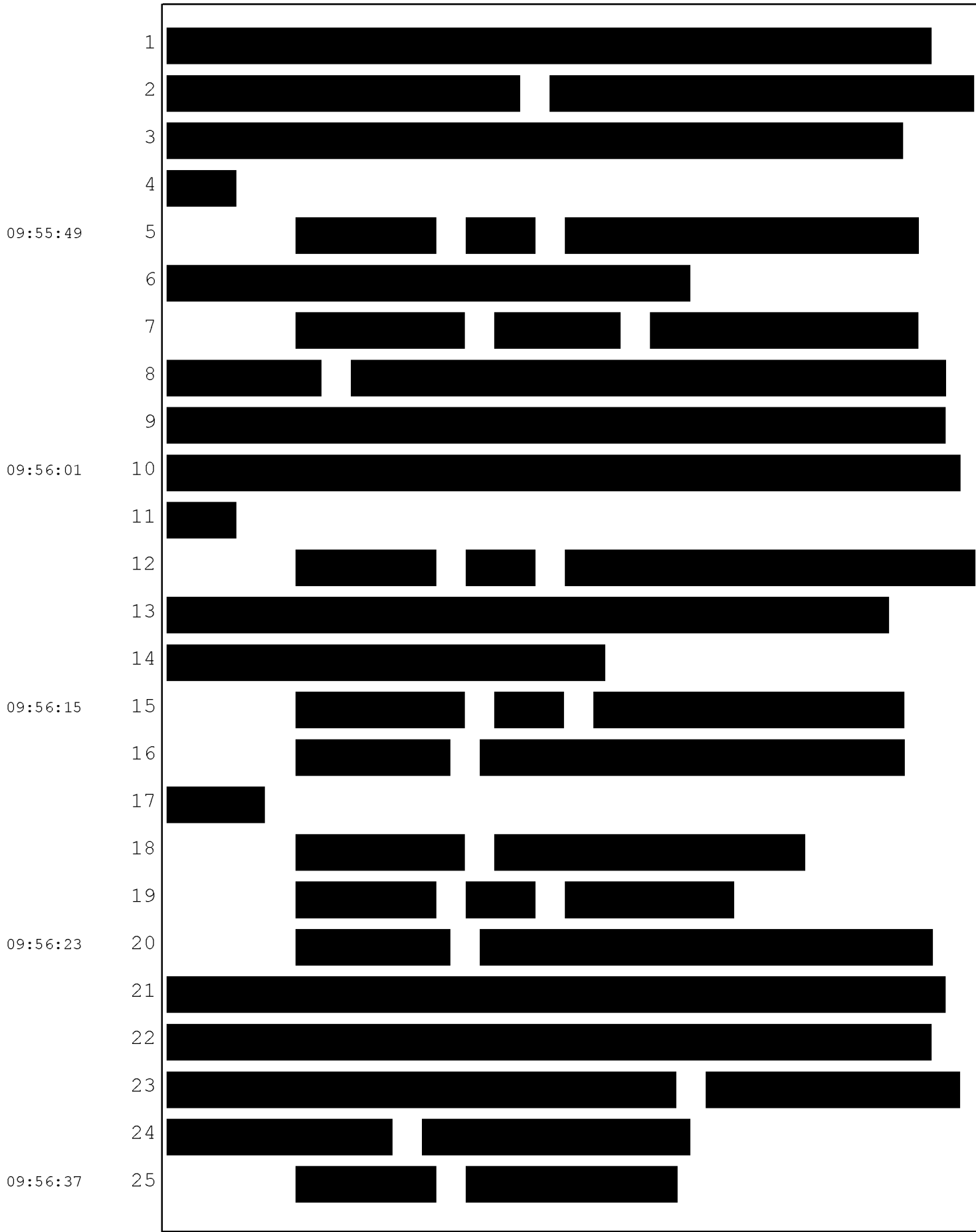
09:54:04 2 Once the verdict is read, if you're not present,
3 then we'll call you and let you know what the verdict
4 was. And after the verdict has been taken, then you are
5 released from any further prohibition on discussion, so
6 at that point, you should feel free to discuss the case
7 with anyone that you would like.

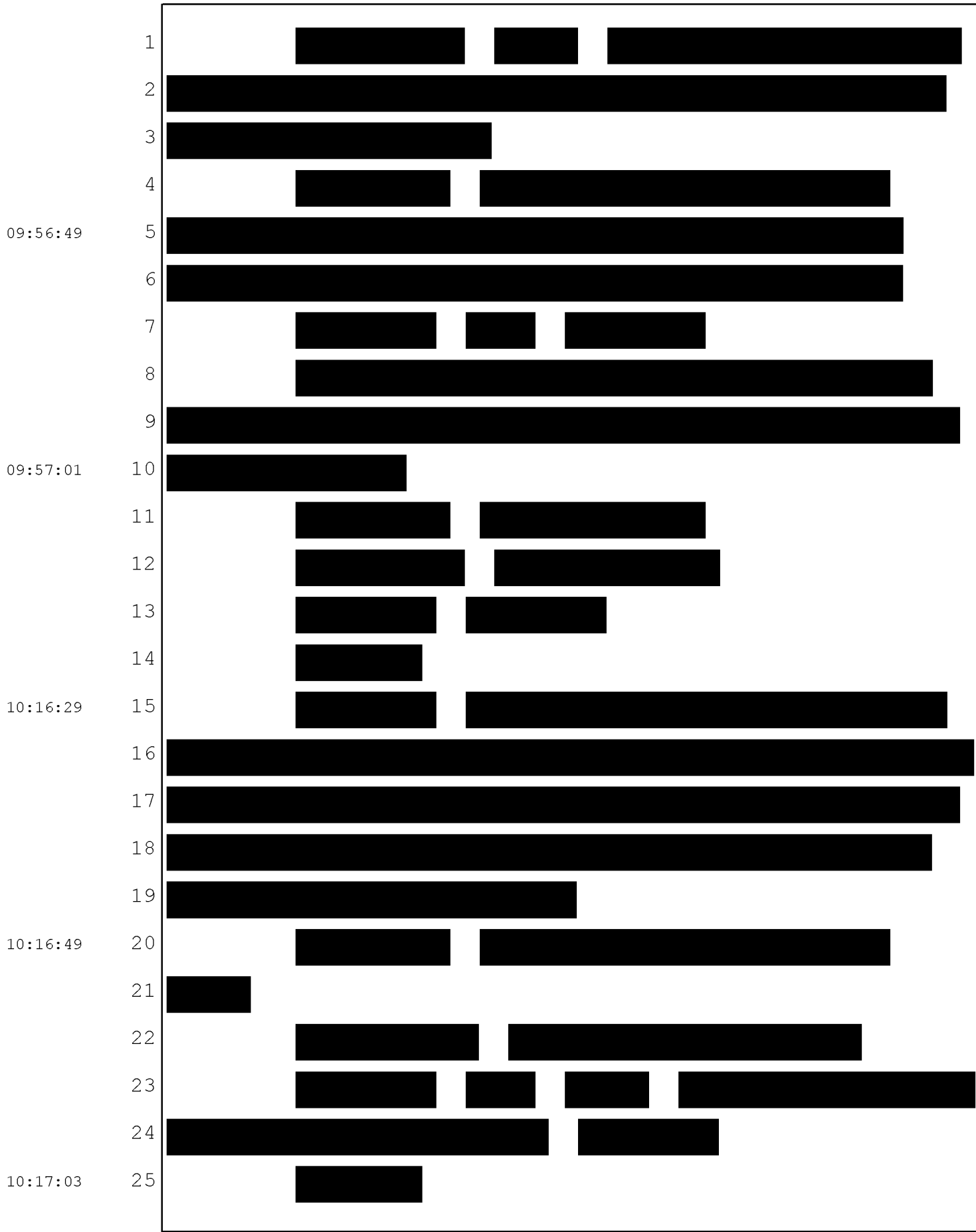
09:54:19 8 But until you get that phone call or are present
9 in the courtroom to have the verdict read, please refrain
10 from doing any research or discussing the case. Please
11 leave your notebooks and materials there, the
12 instructions. If I do not see you again, I want to thank
13 you very, very much for your time and patience and
14 sacrifice as jurors in this case. I know that it was a
09:54:38 15 long case, a lot of material, long days, and I very much
16 appreciate the sacrifice that you made. So thank you
17 very much. Please enjoy the rest of your summer, if I
18 don't see you again.

19 MR. WISNER: Thank you.

09:54:56 20 (Alternate jurors leave courtroom.)

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24 ██
09:55:37 25 ██





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13:42:58

[REDACTED]

(Recess.)

(The following testimony was read to the jury by
the reporter.)

1 DIRECT EXAMINATION OF DR. NABHAN

2 Q. And, Doctor, Plaintiff's Exhibit 332, which has
3 already been admitted into evidence, I'm going to show
4 you.

11:49:01 5 MR. LOMBARDI: This is the one we talked about
6 this morning. No objection, your Honor.

7 THE COURT: All right.

8 MR. LOMBARDI: Can you give me the number again?

9 MR. DICKENS: 332.

11:49:19 10 Q. Doctor, on this date -- and what's the date of
11 this document? Can you see?

12 A. It says, "Tuesday, November 11, 2014, at
13 2:12 p.m."

14 Q. Okay. So at this point in time, Mr. Johnson has
11:49:36 15 cancer; correct?

16 A. Yes. He was diagnosed in August.

17 Q. And you knew that based on your review of the
18 medical records?

19 A. And the biopsy of the results.

11:49:47 20 Q. You mentioned some acute accidents or spills.
21 It says, "A hose break on a large tank sprayer
22 approximately nine months before."

23 Do you see that?

24 A. I do.

11:49:57 25 Q. And was that your understanding, based on your

1 review of the records, as well as talking to Mr. Johnson?

2 A. Yeah. He did have two acute spilling episodes.
3 I couldn't really pinpoint exactly the date, but that's
4 what it says.

11:50:09 5 Q. And it mentions that he was -- he became soaked
6 on his skin, face, neck and head --

7 A. Right.

8 Q. -- with Ranger Pro.

9 A. Yes.

11:50:18 10 Q. What's the significance of him being soaked, you
11 know, over his whole body?

12 A. Your -- I mean, your exposure is now magnified
13 significantly. I mean, it's all over your skin. So, you
14 know, there's no -- there's no protective layer between
11:50:32 15 you and an offending hazard. So, I mean, the
16 significance is very high, because now you're -- you
17 know, the impact of how much you got exposed is
18 substantially increased.

19 Q. Do you understand that that happened on more
11:50:47 20 than one occasion for Mr. Johnson, prior to his diagnosis
21 of cancer?

22 A. I saw it happened twice.

23 Q. And I think you mentioned before, were those his
24 only exposure, those two incidents?

11:51:00 25 A. No. These were -- to my knowledge and to my

1 recollection, these were the two acute high-level
2 exposure. But he was obviously exposed constantly and
3 chronically through his job. But these were, like, an
4 aberration. These were just out of the norm of his job.

5

6 CROSS-EXAMINATION OF DR. NABHAN

7 Doctor, if you could look at -- well, let me
8 step back, just so that -- I'm not sure the jury has
9 heard all the detail of this, but there was one that

14:34:10

10 involved -- was at a place called Mary Farmar. Do you
11 remember that?

12 A. Yes.

13 Q. And that's a school in the district where
14 Mr. Johnson worked; is that right?

14:34:18

15 A. Yes. That's the one where he had the -- I think
16 the hose broke from the actual motor and had a lot of
17 spill that came on his skin as well as the truck that he
18 was in. So that was the Mary Farmar incident.

19 Q. Okay. All right. And then there was a second
20 one where he was wearing a backpack; right?

14:34:36

21 A. Right.

22 Q. Okay. So that gives us some way of
23 distinguishing it.

24 So let's go to exhibit -- and I hope I wrote

14:34:47

25 this down right, because my writing's bad. Doctor, 2294.

1 A. Yep, I'm here.

2 Q. Okay. 2294. And let's go to page 57.

3 A. Okay.

14:35:15

4 Q. And do you have that? I actually think you saw
5 this one this morning, didn't you?

6 A. I think I did.

7 MR. LOMBARDI: Okay. Well, I'll ask to publish
8 it, your Honor.

9 THE COURT: Any objection?

14:35:23

10 MR. DICKENS: No objection.

11 MR. LOMBARDI: Okay. Let's put this up on the
12 screen, 2294, 57.

13 And just to orient everybody, this is, again, at
14 the Permanente Medical Group.

14:35:31

15 Q. Do you see that?

16 A. Yes.

17 Q. And it's -- the provider, the doctor, was
18 Carrie Chanson; is that right?

19 A. Yes.

20 Q. All right. And if we go down --

21 A. I think that's the Workers' Comp. When you have
22 incidents, that's who you see.

23 Q. Okay. And that's probably -- is that your
24 understanding, this incident happened, and Mr. Johnson

14:35:52

25 went to the doctors that are provided through Workers'

1 Comp?

2 A. Yes.

3 Q. And this is the record of that; is that right?

4 A. Correct.

14:35:58

5 Q. All right. And so this was -- this says --

6 A. It seems that they thought -- the injury date,
7 though, it says, "April." I think the encounter file, if
8 you look, it's July 23rd, of '14. But at least they're
9 reporting that the injury was April 2014, as you see.

14:36:17

10 Q. Yes. Yeah. Okay.

11 And that's about when he placed -- when
12 Mr. Johnson placed the Mary Farmar situation; right?

13 A. I -- I honestly don't remember those dates, but
14 I -- if you show me, I'm pretty sure that's correct. I
15 told you the dates exactly I struggle with.

14:36:32

16 Q. That's okay. Understood.

17 But anyhow, he said -- he's clearly describing
18 an accident; right?

19 A. Yes.

14:36:40

20 Q. Okay. So, "He has used the pesticide Ranger Pro
21 for two years at work on" -- "date of jury"; is that
22 right, Doctor?

23 A. Yes.

24 Q. "A small amount of pesticide got onto the left
25 side of his face. He did not develop any skin irritation

14:36:53

1 at that time. Patient states that he developed a skin
2 rash to his whole body, sparing the face."

3 Do you see that?

4 A. Yes.

14:37:03

5 Q. And that means -- you understand that to mean
6 his rash was everywhere except where he was exposed; is
7 that right?

8 A. Yeah.

9 Q. When it says, "Sparing"?

14:37:13

10 A. Yes, the rash did not affect the face at that
11 time.

12 Q. Okay. "About one month after the said incident,
13 he is wondering about the relationship between the
14 incident and his skin rash."

14:37:22

15 Do you see that?

16 A. So it looks like, on this note, somehow he noted
17 this rash in late May, May 30th, or something like that.
18 About one month after the incident in April.

14:37:38

19 Q. Okay. And that's a description of his physical
20 condition at that time; is that right?

21 A. Yes.

22 (End of testimony.)

23 (Time Noted: 4:30 p.m.)

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1 REPORTER'S CERTIFICATE

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I certify that the proceedings in the within-titled cause were taken at the time and place herein named; that the proceedings were reported by me, a duly Certified Shorthand Reporter of the State of California authorized to administer oaths and affirmations, and said proceedings were thereafter transcribed into typewriting.

I further certify that I am not of counsel or Attorney for either or any of the parties to said Proceedings, not in any way interested in the outcome of the cause named in said proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand:
August 8th, 2018.

<%signature%>
Leslie Rockwood Rosas
Certified Shorthand Reporter
State of California
Certificate No. 3462