

**IN THE MATTER OF AN ARBITRATION UNDER  
CHAPTER ELEVEN OF THE NORTH AMERICAN FREE TRADE AGREEMENT  
AND THE UNCITRAL RULES OF 1976**

**BETWEEN:**

**WILLIAM RALPH CLAYTON, WILLIAM RICHARD CLAYTON, DOUGLAS  
CLAYTON, DANIEL CLAYTON AND BILCON OF DELAWARE, INC.**

Claimants/Investors

**AND:**

**GOVERNMENT OF CANADA**

Respondent

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**REPLY WITNESS STATEMENT OF**

**JOHN WALL**



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August 18, 2017

**I. INTRODUCTION**

1. This statement is supplemental to my Witness Statement dated December 8, 2016 (“my December Witness Statement”) in these proceedings. I make this statement in response to the expert report of SC Market Analytics dated June 9, 2017 (the “SCMA report”).

**II. OVERVIEW**

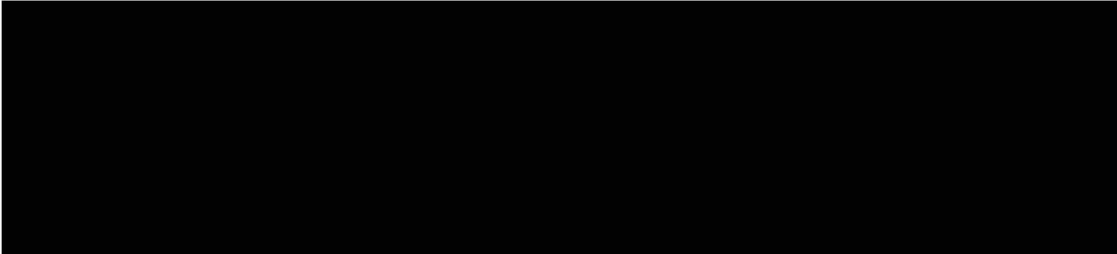
2. My Witness Statement summarizes my 40 years of experience in the construction and aggregates industry, primarily in quarry operations and management. Presently, I remain employed with Braen Stone Industries as the Manager of two aggregate quarries in New Jersey with annual production of 1 million and 1.6 million tons of aggregate.
3. As I describe in my December Witness Statement, the Claytons hired me as the Whites Point Quarry Manager and gave me a broad mandate to plan, design and construct the quarry. I engaged LB&W Engineering Inc. (“LB&W”) as the engineering firm to assist with the plan for the crushing plant. By early 2006, the quarry design was substantially completed and depicted in the Revision D flow sheet, which is attached as Exhibit 2 to my December Witness Statement (the “Revision D Design”).<sup>1</sup>
4. As I explain below, the SCMA report contains mistaken statements and conclusions about the Whites Point Quarry’s design and yield, operating costs and personnel requirements.   


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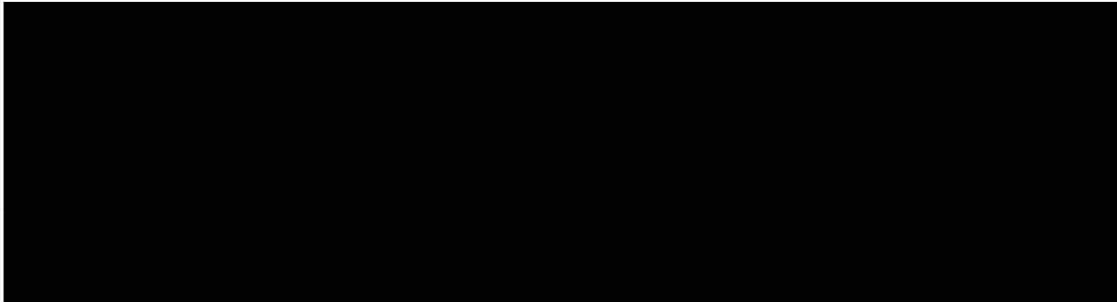
<sup>1</sup> Witness Statement of John Wall dated December 8, 2016, Exhibit 2 (*Investors’ Schedule of Documents, Tab C1001*).

**III. DESIGN AND YIELD**

5.

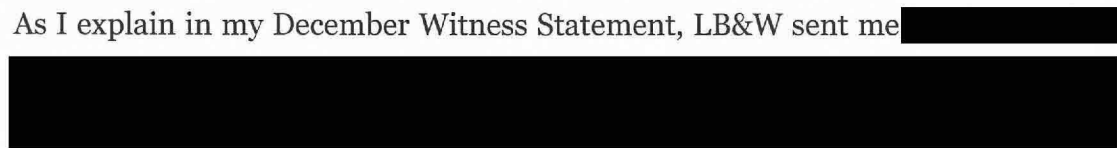


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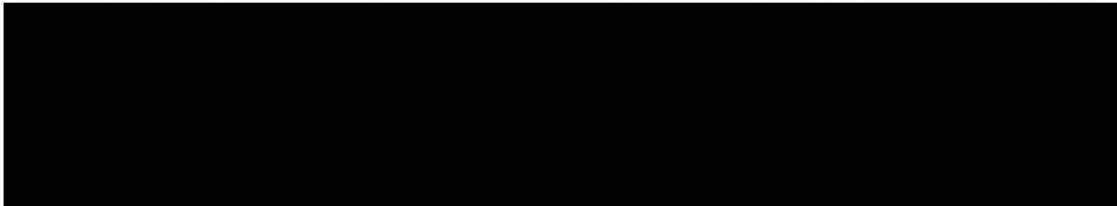


7. As I also explain in my December Witness Statement, I planned for the Whites Point Quarry to be highly efficient. This included processing as much quarried rock as possible into marketable product and minimizing the unusable product or “waste” generated in the crushing process, all to achieve the highest quality of marketable aggregate at the lowest possible cost.

8. I had many discussions with George Bickford about my operational objectives. As I explain in my December Witness Statement, LB&W sent me



9.



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<sup>2</sup> SCMA report, para. 33.

10.

[REDACTED]

11. Through 2005 and into 2006, I worked with LB&W [REDACTED]

[REDACTED]

12.

[REDACTED]

13.

[REDACTED]

14.

[REDACTED]

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<sup>3</sup> [REDACTED] (Wall Reply Exhibit 1; *Investors' Schedule of Documents, Tab C1368*).

15. I have reviewed the Reply Witness Statement of George Bickford, dated August 8, 2017, in these proceedings (“Mr. Bickford’s Reply Statement”). I agree with Mr. Bickford’s description of the operation [REDACTED]

16. [REDACTED]

17. [REDACTED]

18. [REDACTED]

[REDACTED] Indeed, I cannot fully understand the table on page 32 of the SCMA report, especially in the absence of the underlying information or calculation.

19. In my forty years of experience operating and managing a multitude of quarries I have never heard of using equipment manufacturers’ specifications in isolation to

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<sup>4</sup> LB&W Engineering, Inc., [REDACTED] (Wall Reply Exhibit 2; *Investors’ Schedule of Documents, Tab C1369*).

reliably simulate the operation of an entire crushing plant. I have also not worked at, nor have I ever heard of any quarry at all comparable to the Whites Point Quarry that has [REDACTED]  
[REDACTED]

**IV. OPERATING COSTS**

20.

[REDACTED]

21.

[REDACTED]

22.

[REDACTED]

23.

[REDACTED]

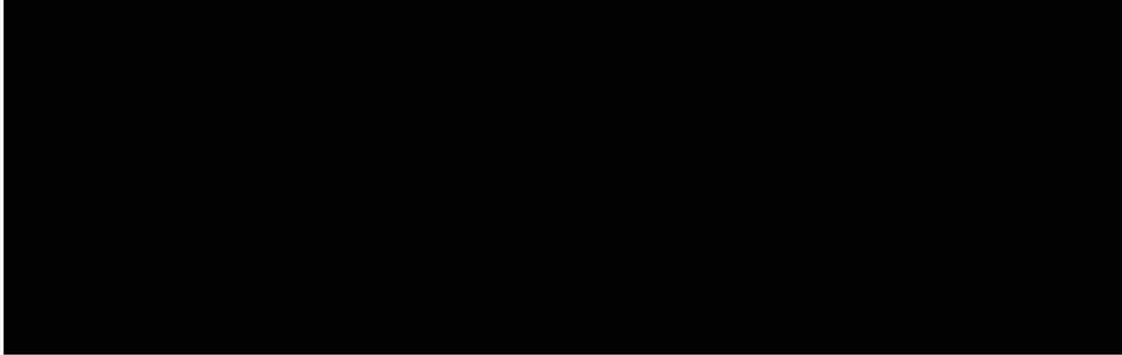
[REDACTED] most of the SCMA report's discussion of operating costs is irrelevant to the actual operation of the Whites Point Quarry.

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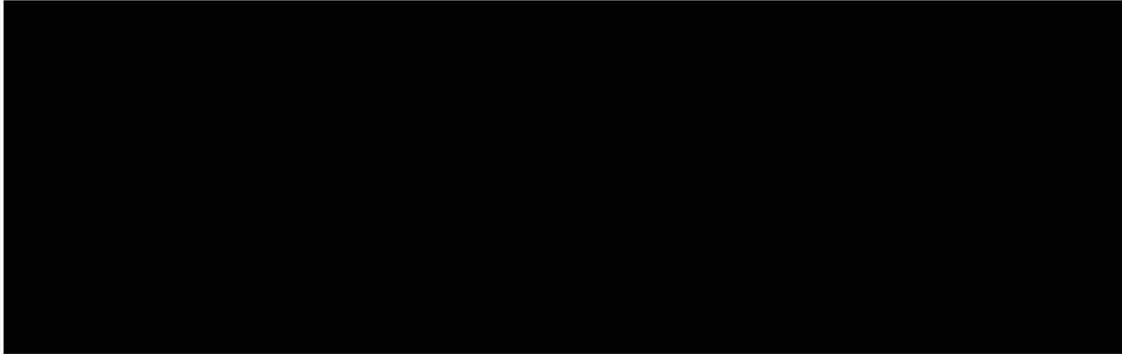
<sup>5</sup> SCMA report, p. 33.

<sup>6</sup> SCMA report, pp. 33-34 and Appendix IV.

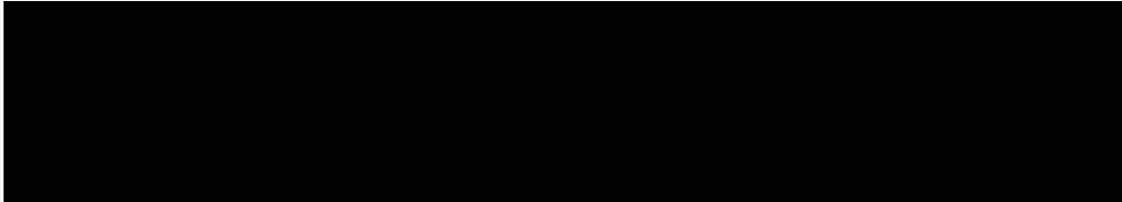
24.



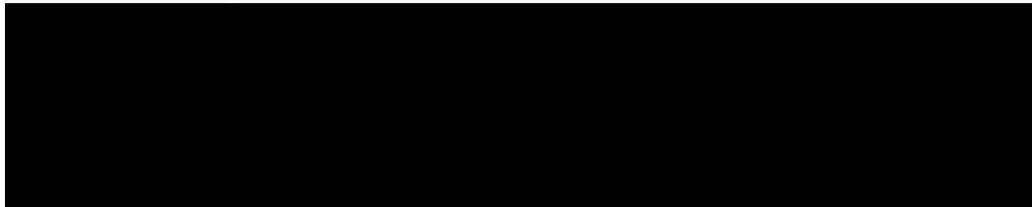
25.



26.



27.



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<sup>7</sup> Orca Overhead Photograph (Wall Reply Exhibit 3; *Investors' Schedule of Documents, Tab C1370*).

<sup>8</sup> Orca Reclaim Tunnel Photograph (Wall Reply Exhibit 4; *Investors' Schedule of Documents, Tab C1371*).

[REDACTED]

[REDACTED]

[REDACTED]

28.

[REDACTED]

29.

[REDACTED]

30.

[REDACTED]

[REDACTED]

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<sup>9</sup> Orca Equipment Photograph (Wall Reply Exhibit 5; *Investors' Schedule of Documents, Tab C1372*).  
<sup>10</sup> Orca Marine Terminal Photograph (Wall Reply Exhibit 6; *Investors' Schedule of Documents, Tab C1373*).  
<sup>11</sup> December Witness Statement at paras. 67-70.  
<sup>12</sup> Bayside Overhead Photograph (Wall Reply Exhibit 7; *Investors' Schedule of Documents, Tab C1374*).  
<sup>13</sup> Bayside Photographs (Wall Reply Exhibit 8; *Investors' Schedule of Documents, Tab C1375 & C1376*).



[REDACTED]

[REDACTED]

c. The Auld's Cove Quarry is also shown in the NSDNR "Opportunities to Develop Deep-Water Aggregate Quarries" document<sup>15</sup> and in the "Take Advantage of Mineral Exploration and Development in Nova Scotia" document.<sup>16</sup> [REDACTED]

[REDACTED]

31.

[REDACTED]

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<sup>14</sup> Appendix 1 to the Investors' Damages Memorial dated March 10, 2017.

<sup>15</sup> Appendix 2 to the Investors' Damages Memorial dated March 10, 2017, p. 12.

<sup>16</sup> Witness Statement of Dan Fougere dated December 12, 2016, Exhibit 5.

<sup>17</sup> Auld's Cove Quarry Overhead Photograph (Wall Reply Exhibit 9; *Investors' Schedule of Documents, Tab C1377*).

<sup>18</sup> SCMA report, p. 42.

32. The personnel costs that are set out in my December Witness Statement at Exhibit 8 are a reasonable projection of the actual personnel costs which would have been incurred in the operation of the Whites Point Quarry as designed.

33. Fuel consumption (and therefore fuel cost) is primarily a function of the actual use made of vehicles and mobile equipment to move material through a quarry site.

34. The SCMA report treats fuel consumption as a constant when, as I have said, in reality, fuel consumption varies depending on the equipment's actual use. [REDACTED]

35. [REDACTED]

36. My estimates of equipment use are based on my experience managing and operating quarries and the use I would have made of each piece of equipment in the Whites Point Quarry in the ordinary course.

37. My projected operating costs, based on my decades of quarry experience, are a reasonable projection of the actual costs which would have been incurred in the operation of the Whites Point Quarry as designed.

38. [REDACTED]

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<sup>19</sup> SCMA report, p. 44.

<sup>20</sup> SCMA report, p. 44.

39. Finally, in general, the extent of necessary regular maintenance is largely a function of the use of a piece of equipment. The SCMA report's estimated maintenance costs are based on SCMA's use estimates and are therefore also overstated.

**V. LOCATION OF WHITES POINT QUARRY**

**A. GEOGRAPHIC ADVANTAGE**

40. The location of Whites Point, compared to other mainland and offshore quarries, was ideal. I know from my own extensive experience managing other quarries in New Jersey and beyond that the proximity and geographical access of a quarry to the market is critical to the delivered cost of aggregate to customers.

[REDACTED]

41. The SCMA report includes Figure 1 which purports to show [REDACTED]

42. [REDACTED]

43. [REDACTED]

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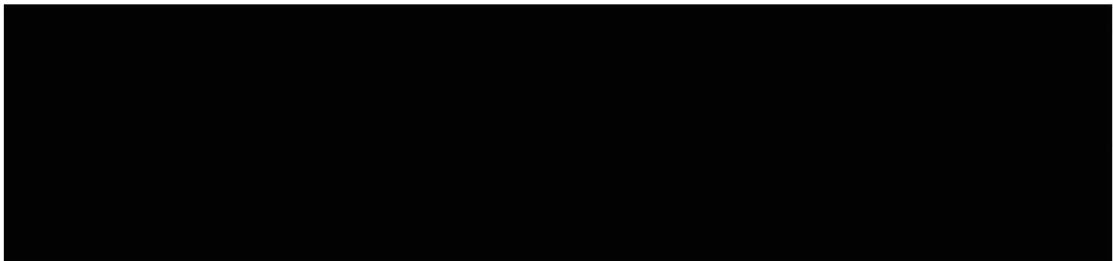
<sup>21</sup> SCMA report, page 10.

<sup>22</sup> SCMA report, para. 28.

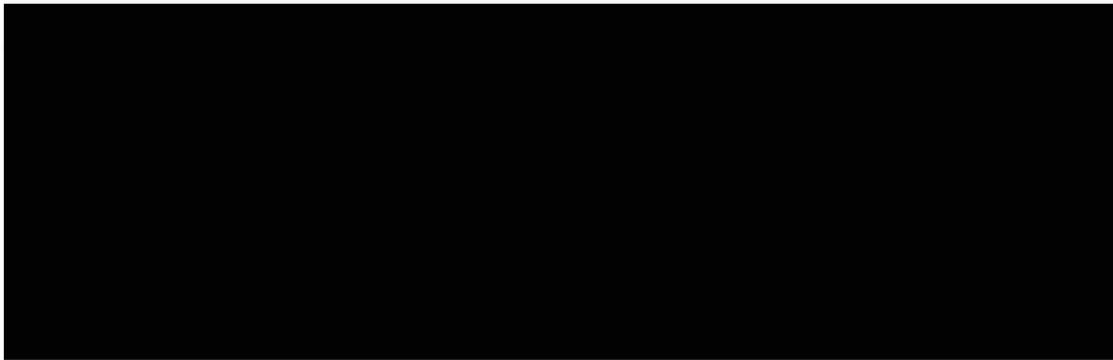
44.



45.



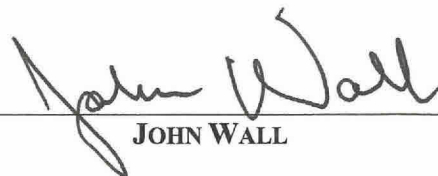
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47.



Dated: August 18, 2017

  
JOHN WALL

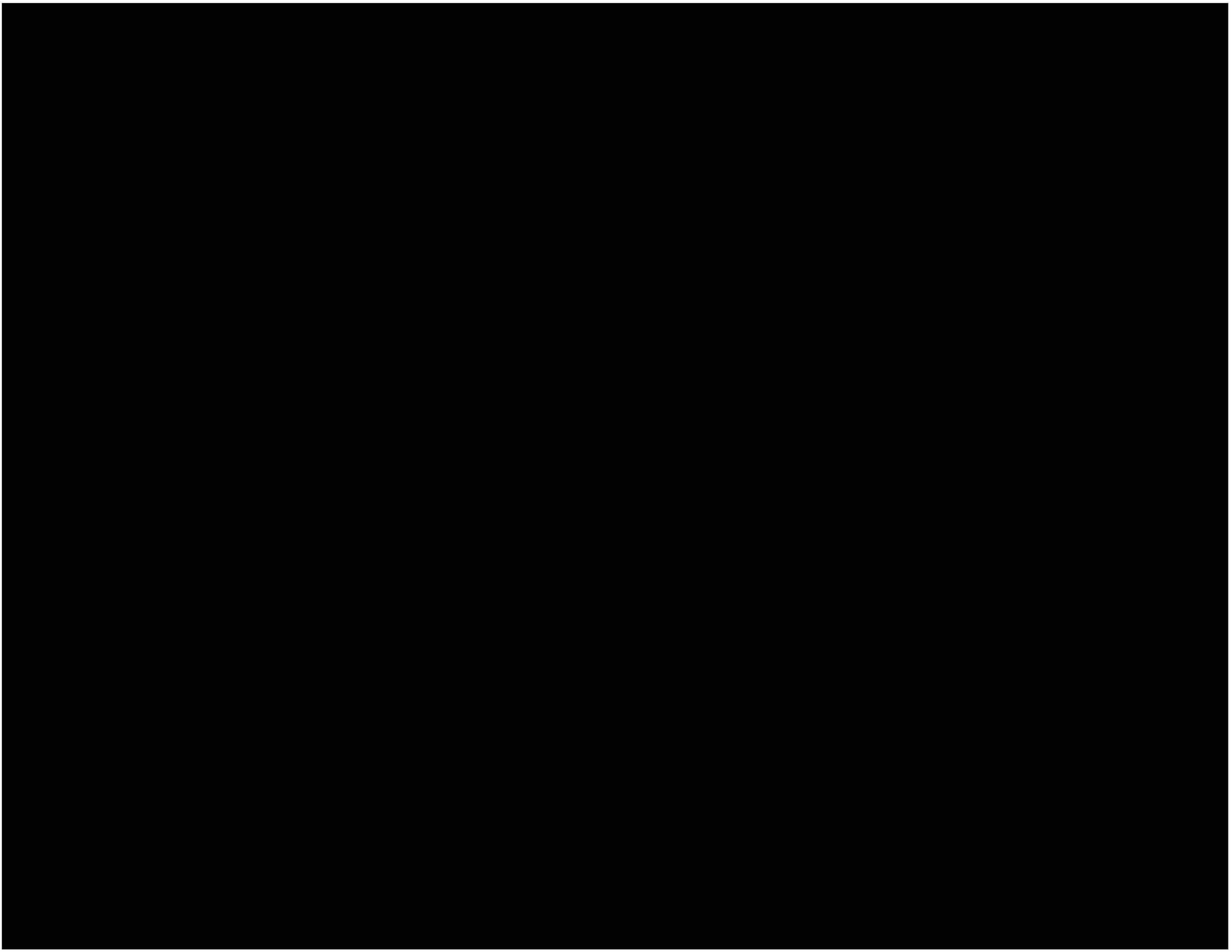
# EXHIBIT 1

## REPLY WITNESS STATEMENT OF JOHN WALL



# EXHIBIT 2

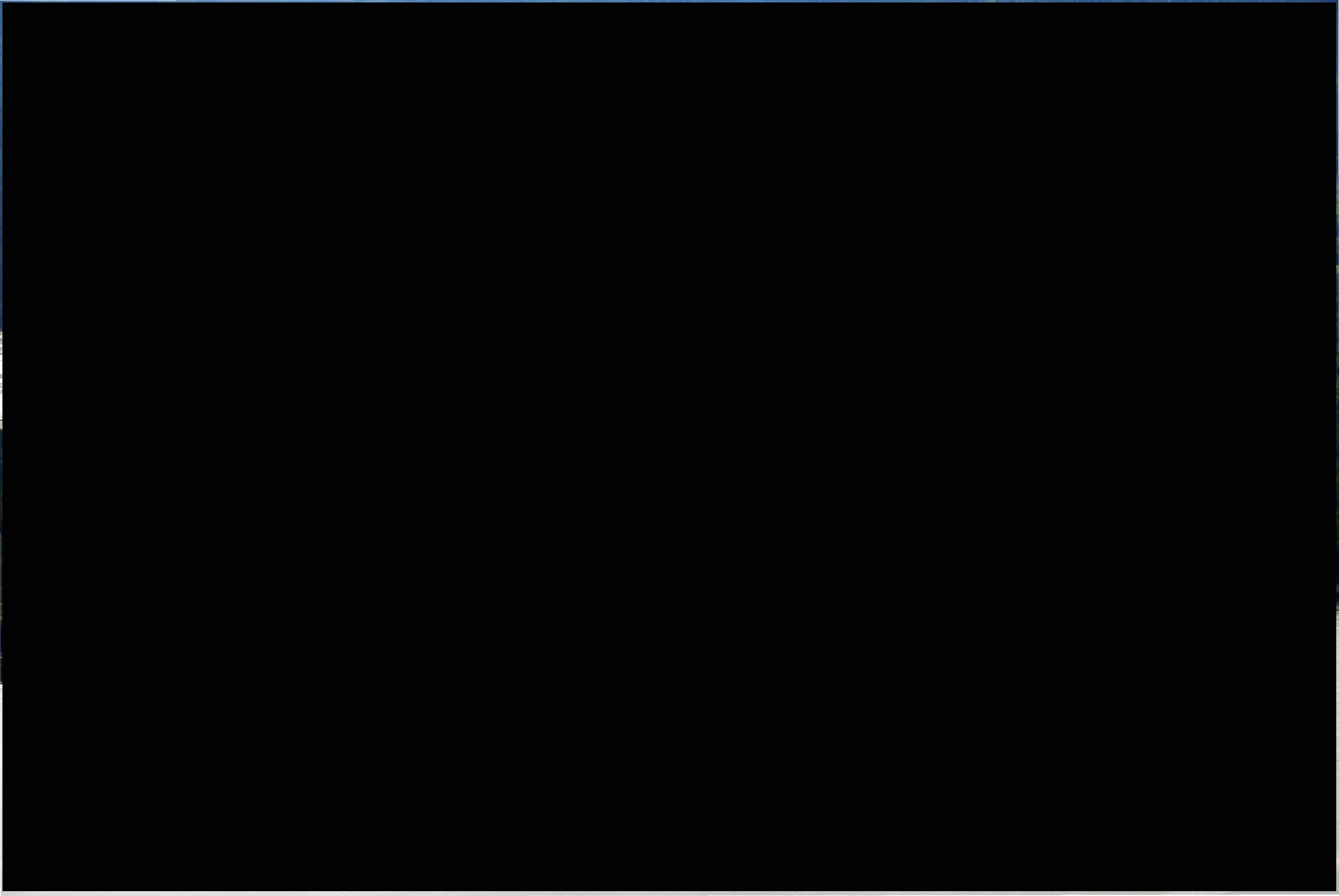
## REPLY WITNESS STATEMENT OF JOHN WALL





# EXHIBIT 3

## REPLY WITNESS STATEMENT OF JOHN WALL



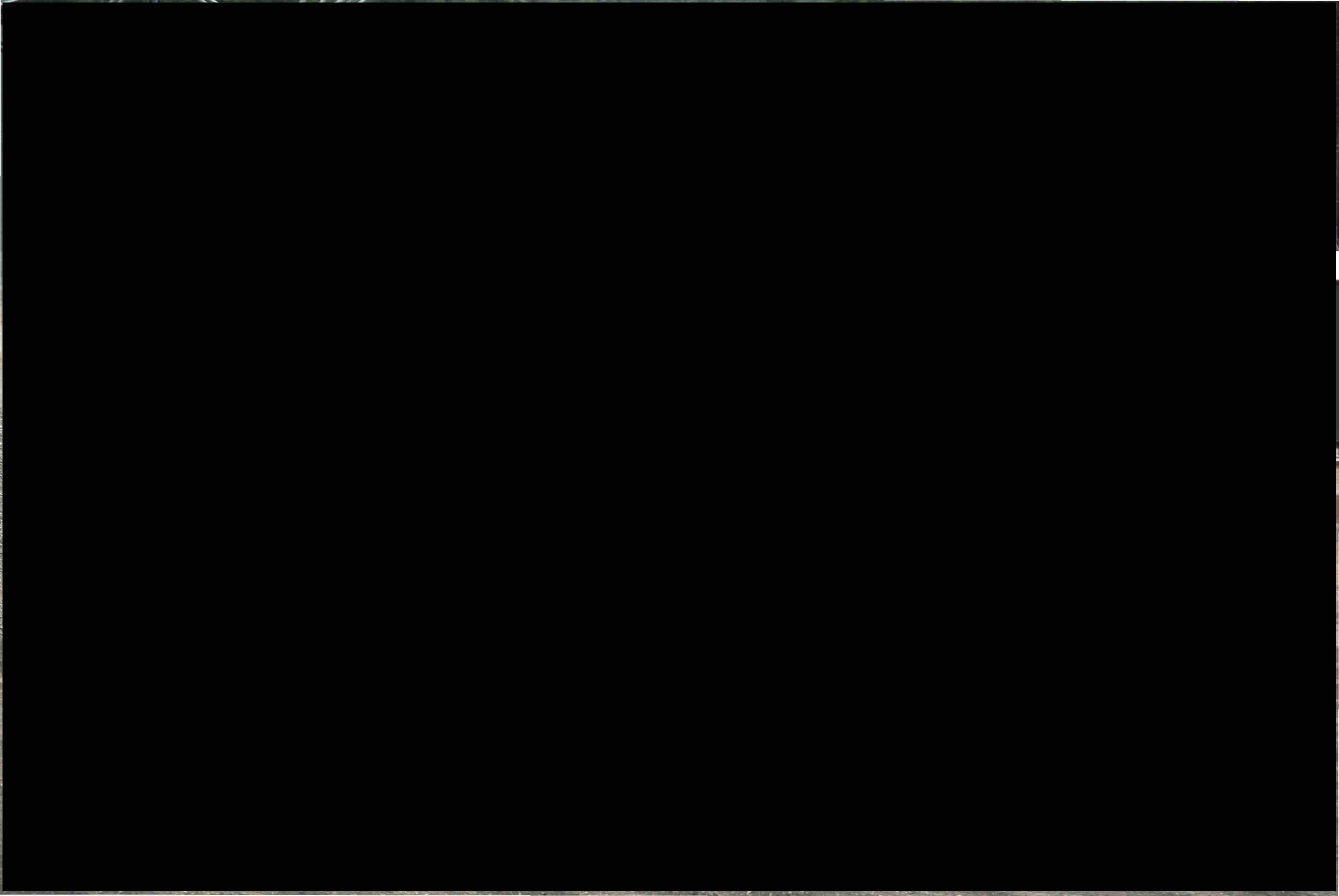
# EXHIBIT 4

## REPLY WITNESS STATEMENT OF JOHN WALL



# EXHIBIT 5

## REPLY WITNESS STATEMENT OF JOHN WALL



# EXHIBIT 6

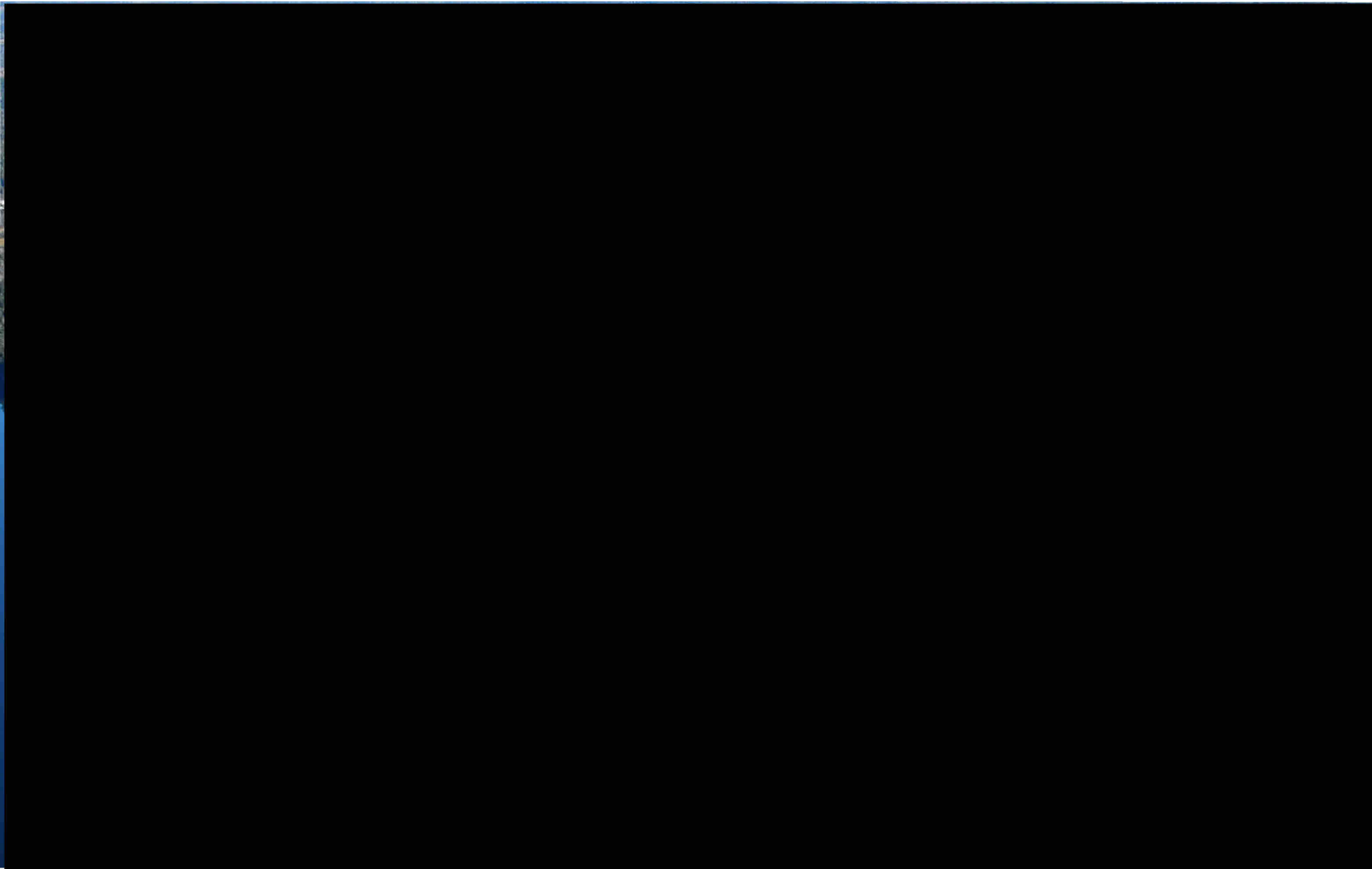
## REPLY WITNESS STATEMENT OF JOHN WALL





# EXHIBIT 7

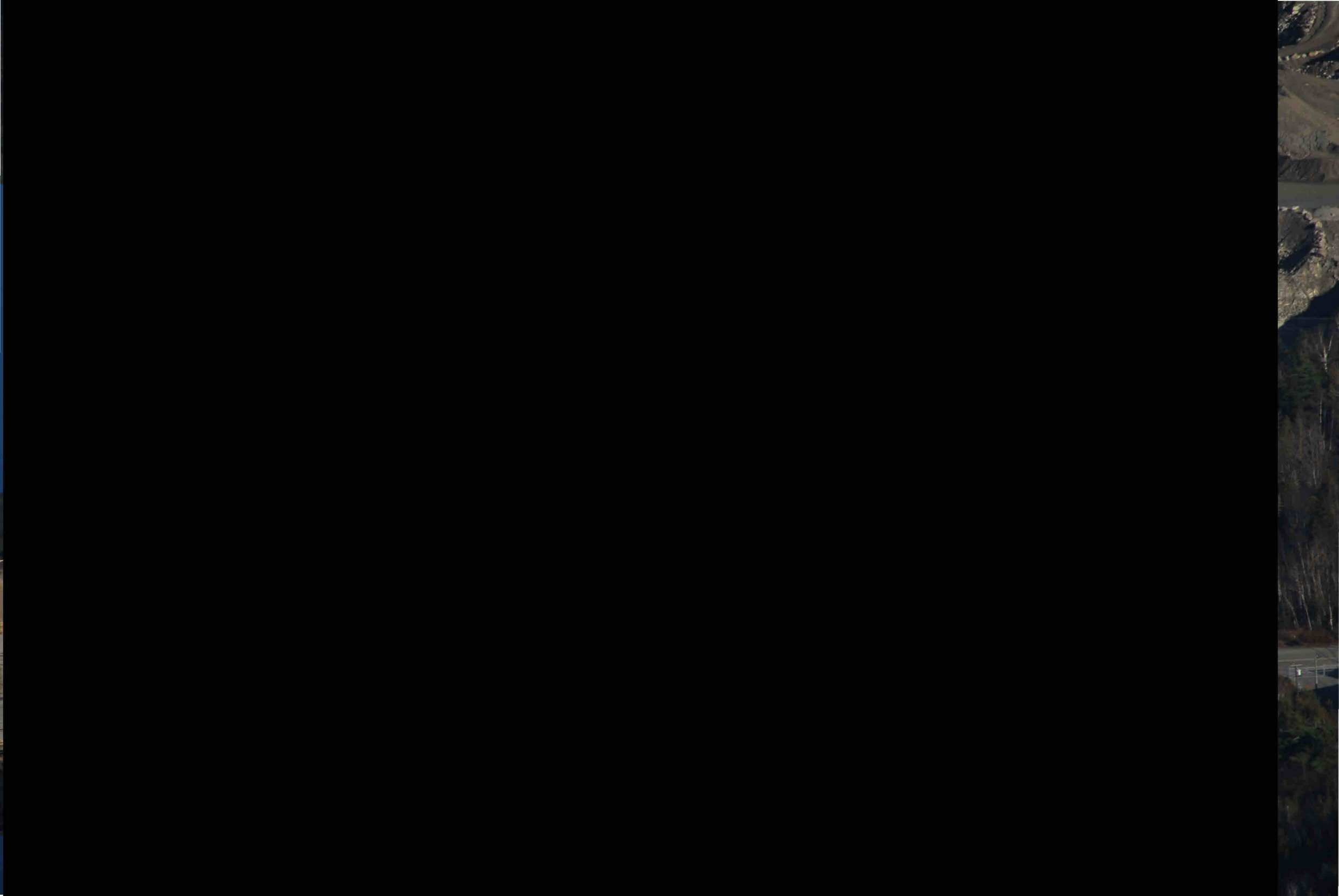
## REPLY WITNESS STATEMENT OF JOHN WALL



# EXHIBIT 8

## REPLY WITNESS STATEMENT OF JOHN WALL





# EXHIBIT 9

## REPLY WITNESS STATEMENT OF JOHN WALL

