

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

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IN THE MATTER OF: :
 :
Southeast Restaurant :
Group, LLC, :
t/a DCity Smokehouse :
203 Florida Ave NW : Protest
Retailer CT-ANC 5E : Hearing
License #98368 :
Case # 23-PRO-00001 :
 :
(Application to Renew the:
License) :
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Wednesday
April 5th, 2023

The Alcoholic Beverage Control Board
met via WebEx videoconference, Chairperson
Donovan W. Anderson presiding.

PRESENT:

DONOVAN W. ANDERSON, Chairperson
BOBBY CATO, JR., Member
EDWARD S. GRANDIS, Member
JENI HANSEN, Member
JAMES SHORT, JR., Member
RAFI ALIYA CROCKETT, Member

ALSO PRESENT:

RICHARD BIANCO, Applicant Counsel
CORY BROWN, Protestant
JACQUELINE SCHUMACHER CUTTEN, Protestant
MELVIN HINES, Applicant
JOHN MCCUE, Protestant
JOSE ORELLANA, DC ABRA Staff
TAVRIL PROUT, DC ABRA Investigator
TERI JANINE QUINN, Witness

CONTENTS

WITNESS	DIRECT CROSS	REDIRECT	RECROSS
Tavril Prout	37	56	
Teri Quinn	74	83	
Melvin Hines	95	124	
C. Pennachio	158	165	
Jacqueline Cutten	168	178	
John Mccue	205	227	
Cory Brown	237	245	

1 P-R-O-C-E-E-D-I-N-G-S

2 1:34 p.m.

3 CHAIR ANDERSON: So the final case on
4 our calendar for this afternoon, is a protest
5 hearing, Case Number 23-PRO-00001, DCity
6 Smokehouse, License Number 98368.

7 Good afternoon, Mr. Orellana. Can you
8 please elevate the rights of the licensee, and
9 the protestants in this case, along with the ABRA
10 investigator, please?

11 MR. ORELLANA: Cory Brown, your access
12 has been elevated.

13 Jacqueline Schumacher Cutten, your
14 access has been elevated.

15 John McCue, your access has been
16 elevated.

17 Melvin Hines, your access has been
18 elevated.

19 Richard Bianco, your access has been
20 elevated.

21 And, Tavrill Prout, your access has
22 been elevated.

23 That is all, Chairman.

24 CHAIR ANDERSON: Thank you.

25 Hi, good afternoon again, everyone.

1 Let me have the parties identify themselves for
2 the record. Let's start with you, Mr. Bianco.

3 MR. BIANCO: Good afternoon, Mr.
4 Henderson, and members of the Board. My name is
5 Richard Bianco, spelled R-I-C-H-A-R-D B-I-A-N-C-
6 O.

7 And, I am counsel for the applicant.
8 Mr. Hines is the owner, and he is present and can
9 introduce himself, as well.

10 CHAIR ANDERSON: Mr. Hines, can you
11 please identify yourself for the record by
12 spelling and stating your name, please?

13 MR. HINES: My name is Melvin Hines, M-
14 E-L-V-I-N H-I-N-E-S. I am the owner of Southeast
15 Restaurant Group, parent company for DCity
16 Smokehouse.

17 CHAIR ANDERSON: Good afternoon, sir.

18 So, let's have the protestors, let the
19 protestor identify themselves, the protestors
20 identify themselves for the record by spelling
21 and stating their names.

22 MR. BROWN: Good afternoon everyone, my
23 name is Cory Brown, I'm a protestant and abutting
24 property owner at 1700 2nd Street Northwest.

25 CHAIR ANDERSON: Good afternoon, Mr.

1 Brown.

2 MS. SCHUMACHER CUTTEN: Hi, good
3 morning. This is Jacqueline Schumacher Cutten.
4 I am also a protestant and abutting property
5 owner. I am in Unit 6 at 1700 2nd Street
6 Northwest.

7 Thanks so much.

8 CHAIR ANDERSON: Good afternoon.

9 And who else do we have? Do we have
10 any other witnesses?

11 MR. MCCUE: Yes, my name's John McCue,
12 and I was an occupant at 1700 2nd Street
13 Northwest, Apartment 3, as well.

14 CHAIR ANDERSON: All right, Mr. Prout?
15 Mr. Prout?

16 INVESTIGATOR PROUT: My name is ABRA
17 Investigator Tavril Prout.

18 CHAIR ANDERSON: Spell your name for
19 the record please, sir.

20 INVESTIGATOR PROUT: Yes, T-A-V-R-I-L
21 last name Prout, P-R-O-U-T.

22 CHAIR ANDERSON: Good afternoon, sir.

23 All right, good afternoon everyone.

24 This is a protest hearing on the renewal of a
25 license.

1 We're hearing a protest filed by two
2 abutting property owners against the renewal
3 application filed by DCity Smokehouse, located at
4 203 Florida Avenue Northwest.

5 It has come to the Board's attention
6 that one of the preliminary matters we need to
7 address before we proceed to the hearing, is the
8 motion filed by the applicant to dismiss the
9 protest, or in the alternative, to limit the
10 issues in dispute to that of noise.

11 It is also the Board's understanding
12 that the applicant's motion was filed this past
13 Monday, which did not leave the protestants an
14 opportunity to file a written response.

15 Because we have live motions pending
16 before the Board, and because the motion affects
17 the hearing at hand, the Board will make, will
18 take oral arguments on the motion and allow the
19 applicant and the protestants to speak on it.

20 Mr. Bianco, this is your motion. Can
21 you repeat what your motion is, sir?

22 MR. BIANCO: Absolutely. So, Mr.
23 Anderson, our motion is really to dismiss in
24 part, the protest.

25 So, I don't want to waste the Board's

1 time, I'm sure everybody's read it, and I'm very
2 aware of the Board's decision in the Flash case,
3 which addresses somewhat of the same issue.

4 Essentially, is a bare bones protest
5 letter sufficient to allow a protest to go
6 forward. And by bare bones, I mean a simple
7 recitation of the statutory factors.

8 Regardless of my agreement or
9 disagreement with that, that is the current state
10 of the law.

11 I understand that completely, so I am
12 not here arguing for a complete dismissal of the
13 case.

14 But if we look within the Flash case,
15 there are some other I think important and open
16 issues, that the Board raised but did not have
17 the opportunity to address.

18 As I understand that decision, it was
19 okay, a bare bones letter is sufficient
20 notwithstanding the statutory language, because
21 that's the beginning of a process.

22 And it's the beginning of a process
23 within which the parties to some extent at least,
24 exchange information in the course of a
25 mediation, in the course of an investigation, and

1 in the course of a week out from the hearing
2 filing the PIF.

3 And I think noteworthy here, was the,
4 most noteworthy in the Board's decision is that
5 the motion, a motion of the type that I have
6 filed in this case, is not ripe to be considered
7 until after the PIF has been filed.

8 So, we received the PIF at some point
9 Wednesday night of last week, looked at it, saw
10 that it only addressed the one issue that we
11 believe is before the Board today. And based on
12 that, put together and submitted this motion.

13 And just to go through the facts very,
14 very quickly, we understand that the protestants
15 in this case have in the past, complained about
16 the noise emanating from this establishment.

17 The protest letter was a recitation of
18 the statutory factors within the context of the
19 case, and without getting into the exact subject
20 matter covered in the mediation because I don't
21 think that would be appropriate, the issue of
22 noise was raised and discussed as the issue to be
23 resolved.

24 Following the mediation is when I came
25 into the case. One of my first orders of

1 business when coming into the case, is to figure
2 out A) what's this all about.

3 So I communicated with the protestants
4 designated representative, Mr. Brown. I asked
5 several times other than noise, what is this case
6 all about. And, the relevant communications are
7 attached to my motion.

8 Mr. Brown was not inclined to answer
9 that question. So we proceeded from there, which
10 was on or about March 24, proceeded from there.

11 PIFs were filed. PIFs identified the
12 protestants, and one witness. PIF identified the
13 issue to be decided by the Board as one of noise.

14 And PIF contained an attachment, or
15 I'm sorry, two exhibits, both of which are
16 labeled noise log.

17 So, as we sit here today, the issue
18 that I'm aware of that is before the Board, is
19 one of noise, or inappropriate noise level
20 emanating from the establishment, and none of the
21 other factors that were mentioned in the cut and
22 paste protest letter.

23 So, what my request is, is that we
24 proceed today based on the protestants' claims of
25 noise issues, and nothing else cited in the check

1 box, or copy and paste original protest letter
2 from some months ago.

3 If the Board has additional questions,
4 I am happy to answer them. But that is the
5 hopefully brief enough version of what our
6 argument is here.

7 CHAIR ANDERSON: Mr. Brown, you
8 received a copy of the motion, is that correct?

9 MR. BROWN: Yes, I received a copy.

10 CHAIR ANDERSON: And, you heard Mr.,
11 you did not file a response so you heard the oral
12 motion being raised again this afternoon by Mr.
13 Bianco.

14 What is your response, sir?

15 MR. BROWN: In response, there were a
16 few pieces within the motion that Mr. Bianco
17 filed that we agree with.

18 Biggest among them would be his late
19 appearance into the case. At the very end of
20 March, this left no time for either myself or
21 Jackie to have interactions, to have discussion
22 with him around the development of the case.

23 What happened prior to Mr. Bianco's
24 late appearance in the case, was my request that
25 we stay the case for up to 60 days so that the

1 parties would have time to engage.

2 We had already reached out to ABRA,
3 another ABRA investigator. We were, as we've
4 always been willing to grant them access into
5 both of our units, cleared it with our tenants,
6 in order to try to find some resolve, some
7 agreement between the parties.

8 Upon Mr. Bianco's entrance into the
9 case, that was immediately cancelled. I received
10 notification from the ABRA investigator that they
11 were not interested in participating, and that
12 they would see how things shake out at the
13 protest hearing that was scheduled for today.

14 From there, after Mr. Bianco's
15 appearance into the case, I didn't see any
16 traffic of where my request to delay the case had
17 been forwarded to him.

18 So I took it upon myself to send it
19 over to him, to make sure that he was aware.

20 Thereafter, he started asking me a
21 series of questions, specifically asked me for
22 interpretation of law in regard to ABRA's legal
23 standards.

24 I referred him to ABRA. I'm not an
25 attorney. I'm representing us pro se here, and

1 I'm not equipped to answer those specific
2 questions of law, that are under the jurisdiction
3 of ABRA.

4 And then as well, he was asking me
5 specifics in regards to the case that his client,
6 Mr. Hines, was fully aware of.

7 It came across to me as if they hadn't
8 discussed the case. There was a lot of questions
9 around the development of this -- one of the
10 biggest ones in looking at this motion to
11 dismiss, is that it's looking to move out the
12 negative impacts on the real estate value, which
13 is huge.

14 And having myself and Jackie here as
15 witnesses, that's substantive argument behind us
16 as the unit owners, both of which who have tried
17 to sell our units, and had to have severely de-
18 priced the price of them.

19 And as well as sitting Board members
20 for the condo building association, that we can
21 clearly speak to those issues.

22 As well as closely related is the
23 issue of parking. That's on the surface, tied
24 into everything that we're speaking about today,
25 and the amount of traffic that's in here.

1 All of this has been developed
2 throughout the case as we've engaged with Mr.
3 Hines, and the different arms of ABRA.

4 And as well, it was all in my response
5 to Mr. Prout. I responded to that, as well as
6 Jackie did separately and before me, that further
7 developed the issues beyond the statutory
8 citation that was originally cited.

9 I think the motion is without merit,
10 and it avoids or ignores certain facts, and it
11 certainly doesn't consider any of the
12 circumstances that have led us here.

13 CHAIR ANDERSON: I guess what I'm
14 trying to find out to the effect, are you asking,
15 or is it that you're saying to the Board today
16 that we can renew the license, or deny the
17 renewal of the license but then we need to just
18 have arguments whether or not there's noise and,
19 and what?

20 And then we can listen to arguments
21 and the Board based on the evidence presented,
22 that we can make determinations about whether or
23 not we need to put any, any restrictions on the
24 license based, I'm not sure what restrictions are
25 in place.

1 Are you saying that the license should
2 not be renewed, and the Board should make a
3 determination and on cancelling the license? So,
4 I guess I'm just trying to find from you at this
5 junction.

6 MR. BROWN: From my understanding of
7 the process, not renewing the license would be
8 the most severe remedial action that ABRA would
9 take in that instance.

10 That is not what we have sought at any
11 point, is for that full removal. What we're
12 looking for are these restrictions that allow
13 ourselves, or our tenants, to live in these units
14 and to be able to have the normal life
15 functioning.

16 Such as noise abatement, conducting
17 themselves in an appropriate manner as a
18 business. Working with the condo board and the
19 tenants.

20 And if there's orders related to
21 installing soundproofing, restriction of hours,
22 no outdoor speakers, things of those nature.

23 And then ongoing monitoring of ABRA to
24 ensure that the tenant, or that the licensee is
25 appropriately operating so as not to negatively

1 impact all these folks that live around them, and
2 have paid a lot of money to live in these units.

3 That's what we're looking for today.

4 CHAIR ANDERSON: So does that --

5 (Simultaneous speaking.)

6 MR. BROWN: Any actions that -- go
7 ahead, sir.

8 CHAIR ANDERSON: No, I'm sorry, I
9 thought you were done.

10 So if the parties agree, I mean the
11 Board could agree that the license will be
12 renewed, and then we can spend the rest of this
13 hearing.

14 And then you can present evidence on,
15 on the noise, so both sides and I think that's
16 what Mr. Bianco as part of his motion was that,
17 that the hearing should then be limited, be
18 limited to noise.

19 And then you could, excuse me, you can
20 provide whatever your witnesses and documents on
21 noise on both sides.

22 And then we'll make that, based on
23 what's presented today, then the Board would make
24 a decision on what limitations, if any, should be
25 placed on the license based on what was presented

1 at the hearing today.

2 Would that be agreeable to both sides?

3 MR. BROWN: I have a bit of pause with
4 renewing a license, prior to hearing out any such
5 remedial efforts that the Board would put into
6 place, to make these spaces livable, and to have
7 the value of these spaces hopefully go back up.
8 But if not, retain at their current levels.

9 If there's a way for the Board to
10 proceed to hear everything prior to renewing a
11 license, that would be the position that myself
12 and my fellow protestant would prefer.

13 CHAIR ANDERSON: Yes, I would ask, I
14 mean that is what I'm saying. I was just saying
15 do we need to go through a long hearing if, if
16 your position was that you were not asking the
17 Board to terminate the license? That's all I'm
18 saying.

19 And so if your position is not, if you
20 were saying to the Board that we're asking you to
21 terminate the license, not renew the license,
22 we're asking that.

23 But if the Board decides to renew the
24 license, these are the conditions that we are, we
25 want, then we would go through it, the full

1 hearing.

2 But if you're not saying to the Board,
3 terminate the license, you can renew the license,
4 however, we are, these are our concerns and I
5 need you to address these concerns once the
6 license renewed, we can move forward.

7 So I'm just, I'm not asking you to do
8 anything. I'm just saying you know, sometimes we
9 have these hearings and the protestants come to
10 us and said, I do not want you to renew that
11 license.

12 And so therefore, we'll have a full
13 hearing on, and folks present those issues.

14 Or other parties will say you know,
15 yes, it's a renewal so yes, you can renew the
16 license, however, these are the concerns that we
17 have.

18 And so these are some of the
19 conditions based on what's going on, that once
20 you renew the license that I want you to impose.

21 I'm just giving options. You tell us
22 which way you want us to go and then the Board,
23 if you're saying that you're not comfortable
24 renewing the license, then we'll have a full
25 hearing and take that in consideration.

1 But if you're stating that yes, we can
2 renew the license, our major concern is noise and
3 so we'll present evidence.

4 And these are the noise mitigation,
5 once you renew the license, these are the noise
6 mitigation conditions that I want you to attach
7 to the license, then we will listen to that and
8 then the Board will make a determination whether
9 or not it, these, what you have presented is
10 appropriate, or some combination of other to
11 mitigate the noise.

12 MR. BROWN: Would the latter still be
13 the option before the Board if we didn't agree
14 for the license to be renewed?

15 Could that still be the resolve then
16 in that case, that if we have the full hearing
17 and it certainly doesn't have to be long, it's
18 already getting late where Jackie is presently,
19 but that we could go through that and before that
20 final assessment's made, it could then turn out
21 to be no, we're not, or yes, we are going to
22 renew the license but we would renew the license
23 with these restrictions in place?

24 CHAIR ANDERSON: The Board is not going
25 to make a, the Board would, unless there's an

1 agreement by the parties, the Board is not going
2 to make that determination until we have gone
3 through all the witnesses, and the evidence, and
4 then the Board will go in executive session.

5 And then the first condition, the
6 first determination would be made based on what's
7 presented, should this license be renewed.

8 So, the Board would not make any
9 determination until after the hearing. The only,
10 I'm just saying if the parties agree, we would
11 make a determination now and then truncate the
12 hearing.

13 But if the parties are not
14 comfortable, if you're not comfortable, then
15 we'll have a full hearing and listen to all the
16 issues.

17 And, then you can tell us at the end
18 of the hearing what is it that you're asking the
19 Board, based on the evidence and witnesses
20 testified, that you will say to us, this is what
21 we're asking for.

22 Like do not renew the license.
23 However, if the Board decides to renew the
24 license, then these are some of the conditions
25 that we want to be attached to the hearing. It's

1 just, to the renewal.

2 That's just basically.

3 MR. BROWN: Yes, I think we would be
4 most comfortable if we went through all these
5 witnesses, and had the hearing before any
6 decision was made.

7 CHAIR ANDERSON: All right, that's
8 fine.

9 All right, any other preliminary
10 matters, any other preliminary matters?

11 MR. BIANCO: Just one, Mr. Anderson,
12 which is we have a witness here in the room who
13 is a non-party. So, I would invoke the rule on
14 witnesses.

15 In addition to Mr. Hines, I have two
16 witnesses. They are not in the conference
17 currently, and I would bring them in at the time
18 of their testimony.

19 CHAIR ANDERSON: Well, unfortunately,
20 Mr. Bianco, I'm not necessarily disagree with you
21 in the rule of witnesses.

22 But here is really, because these
23 hearings are virtual and they're public hearings,
24 there's really no way I can enforce that, sir.

25 Because I could, we could invoke the

1 rule on witnesses, and I could say that these
2 parties are not online but because you know that
3 it's a public hearing, they could log onto the
4 hearing and listen to everything that's being
5 said.

6 And so, and we would not know that
7 they have logged on.

8 MR. BIANCO: Of course. I understand
9 the limitations and I'm willing to accept the
10 instruction, and then him being on the honor
11 system. He seems like a reasonable person.

12 CHAIR ANDERSON: So who is it that
13 you're trying to, you are trying not to be online
14 at the moment, sir?

15 MR. BIANCO: Mr. McCue, who is the
16 identifying witness in the PIF, and present in
17 the room.

18 CHAIR ANDERSON: So you're asking that
19 he, his rights not be elevated and that he not
20 participate, not listen to this hearing until
21 he's called as a witness, is that what you're
22 requesting, sir?

23 MR. BIANCO: That's my request, that
24 the be instructed with the understanding that we
25 really can't control his behavior outside of the

1 presence of the Board.

2 CHAIR ANDERSON: And Mr. Brown, what's
3 your position on that, sir?

4 MR. BROWN: I mean, I think if the ABRA
5 has rights to control the access as we do on all
6 of these platforms, I don't see any harm in the
7 witness staying on the line.

8 Or, if Mr. Bianco were to add his
9 other two witnesses now.

10 CHAIR ANDERSON: Well, as I stated
11 before, the only, the only thing that ABRA can do
12 is that to not elevate Mr. McCue.

13 However, this is a public hearing.
14 And even if I said to him that we're not going to
15 elevate his rights, if he so desired, then we
16 would not know, he could go log onto the public
17 hearing and still listen.

18 So, I'm not, it is, we do have the
19 rule of witnesses that a party can request that a
20 witness not be in the room to listen to the
21 testimony until they have been called.

22 And so, that is a right of the
23 applicant to make that request. You can also
24 make the request that the only witness, and I'm
25 not sure, I think the only person on the

1 applicant's side that have been elevated, is Mr.
2 Hines.

3 So, I'm not sure what other witnesses
4 Mr. Bianco -- are, what other witnesses you are
5 calling Mr. Bianco?

6 MR. BIANCO: So, I have two other
7 witnesses that I intend to call today. I'm going
8 to call the general manager for the
9 establishment; and, then I am also going to call
10 a neighbor and ANC commissioner named Teri
11 Janine.

12 And for the record, the general
13 manager's name is Chris Pennachio.

14 CHAIR ANDERSON: And none of those
15 people have been elevated, and to the best of
16 your knowledge, none of these folks are listening
17 to the hearing?

18 MR. BIANCO: That's correct.

19 So what I had arranged with
20 Commissioner Teri Janine, is that I would
21 understanding there was preliminary issues, and
22 then that the Board's witness testifies first, it
23 was unlikely that she would be needed right at
24 1:30.

25 So, I've got to give her about a 10

1 minute warning before I think she's going to be
2 called. Then she'll come on.

3 And with respect to Mr. Pennachio, he
4 is going to personally appear in my office, and
5 be sitting here next to me.

6 He hasn't arrived yet but we certainly
7 don't need to wait for him, as we still have some
8 ground to cover before we get to the presentation
9 of the applicant's case in chief.

10 CHAIR ANDERSON: All right.

11 Since Mr. Bianco has made, requested
12 that the rule in witness, so I'm asking, I'm
13 going to ask our IT specialist to mute your
14 appearance, Mr. McCue.

15 And, I will request that you not log
16 into the hearing, and that the way the process
17 is, is that the Board will call its witnesses.
18 The Board's witness will testify, then the
19 applicant will put his case on and cross-
20 examination will occur. And then the protestants
21 ask their questions

22 It's 2:00 o'clock, so I don't see the
23 protestants putting their case on until maybe
24 4:00 o'clock or so.

25 And so I would ask that Mr. Brown,

1 that you please contact Mr. McCue at that time,
2 to ask him to log back in when you're about to,
3 to call your case, that he log back into the
4 case.

5 Okay?

6 MR. BROWN: Okay.

7 CHAIR ANDERSON: So, I'll ask that Mr.
8 McCue be in. Mr. Orellana, can you please remove
9 Mr. McCue's rights, please? All right, thank you.

10 All right, the way the process is, and
11 this is we're going to try to keep this at, we're
12 going to try to keep this hearing orderly. And,
13 I don't want people to ask redundant questions.

14 And, I'm going to give, you're going
15 to have an hour to present your case. And so
16 therefore, I need you to focus on the issues that
17 are in, that are the protest issues, and move
18 this along as quickly as possible.

19 All right? So the way the process
20 works is that we'll have opening statements by
21 the, by the, I'm sorry, the applicant, the
22 licensee.

23 The Board will present its case.
24 You'll have five minutes to give, to give your
25 opening statement.

1 Once you have given your opening
2 statement, the Board will call its first witness.
3 The Board members will have an opportunity to
4 cross, to ask direct exam of the Board witness.

5 Once that is done, then the licensee
6 will have an opportunity to question the Board's
7 witness.

8 Once the licensee has questioned the
9 Board's witness and excuse me, the protestants
10 will have an opportunity to question the Board's
11 witness.

12 Once that's done, then the licensee
13 will present its case. They'll call their
14 witness, and the protestants will have an
15 opportunity to cross-examine those, that witness.

16 And the Board would have an
17 opportunity, will have an opportunity. And then
18 we'll move on, and then we'll close the case.

19 Okay? So, any questions before we
20 start?

21 MR. BIANCO: Yes, Mr. Anderson. We
22 have a pending motion. Am I to understand that
23 we're limiting the evidence to noise, or is there
24 some other ruling on our motion?

25 CHAIR ANDERSON: The Board will take

1 this matter under advisement and we'll, we will
2 make a motion and our, and we'll address that
3 issue.

4 I believe that I'm going to recommend
5 at this juncture, that the Board deny the motion.
6 That's my recommendation to the Board.

7 So I make a motion that the -- let me
8 do this, Mr. Bianco. I am going to, we'll
9 reserve your motion. I'll reserve your motion,
10 and we will address that in our decision. Okay?

11 I believe that based on whether, yes.
12 I would have to go into executive session to try
13 to figure out where the other Board members are
14 on this issue.

15 And I'm not sure where the other Board
16 members are, so I'm not going to make a motion to
17 support or deny it without having any idea how
18 the Board members are going to vote.

19 So, therefore, I, yes, Mr. Bianco?

20 MR. BIANCO: I was just going to say
21 that if it, it might save us hours to spend
22 minutes in executive session. But I, of course,
23 defer to the Chair's discretion on the matter.

24 CHAIR ANDERSON: All right, this is
25 what I'm going to do, Mr. Bianco, all right, hold

1 on.

2 Yes, I'll go into executive session to
3 address this issue.

4 As Chairperson of the Alcoholic
5 Beverage Cannabis Board for the District of
6 Columbia, and in accordance with D.C. Official
7 Code Section 25-75 of the Open Meetings Act, I
8 move that ABC Board hold a closed meeting for the
9 purpose of seeking legal advice from our counsel,
10 on Case Number 23-PRO-00001, DCity Smokehouse,
11 pursuant to D.C. Official Code Section 25-
12 75(b)(4)(a) of the Open Meetings Act.

13 Is there a second?

14 MEMBER GRANDIS: Ed Grandis seconds.

15 CHAIR ANDERSON: Mr. Grandis has
16 seconded the motion. We'll have a roll call
17 vote.

18 Mr. Short? Mr. Short?

19 MEMBER SHORT: Mr. Short, I agree.

20 CHAIR ANDERSON: Mr. Cato?

21 MEMBER CATO: Bobby Cato, I agree.

22 CHAIR ANDERSON: Ms. Crockett? I can't
23 hear you, Ms. Crockett.

24 MEMBER CROCKETT: Agree.

25 CHAIR ANDERSON: Ms. Hansen?

1 MEMBER HANSEN: Jeni Hansen, I agree.

2 CHAIR ANDERSON: Mr. Grandis?

3 MEMBER GRANDIS: Edward Grandis, I
4 agree.

5 CHAIR ANDERSON: And Mr. Anderson, I
6 agree. The motion passes 6:0:0.

7 We're going to go into executive
8 session. You guys can stay online. We're going
9 to sign off, and we will come back on.

10 I'm not sure how long it's going to
11 take, but we will come back on so just hold
12 tight, okay?

13 All right, thanks.

14 (Whereupon, the above-entitled matter
15 went off the record at 2:05 p.m. and resumed at
16 2:11 p.m.)

17 CHAIR ANDERSON: Mr. Bianco, I see
18 that, so I'm waiting for Mr. Bianco. Mr. Bianco
19 is there. All right.

20 A motion was filed by the license, let
21 me see, let me make sure. One, two, three. All
22 right, a motion was filed by licensee, the
23 applicant.

24 And, the gist of the motion was
25 basically either dismiss the protest, or limit

1 the protest to the noise issue.

2 Because it's their position that on
3 the protest that was filed, it was, it was a
4 boilerplate recitation of what the protest issues
5 are, although there are some more intimation and
6 noise.

7 And also the PIF only address issues
8 regarding noise.

9 One of the things that I want to point
10 out to the parties is that at the protest hearing
11 status, in providing our, in giving the
12 instructions I stated that it's, that seven days
13 before the hearing, that the parties are required
14 to complete and submit the protest information
15 form, and the exhibit form.

16 And that these two forms and
17 accompanying documents, need to submit to ABRA's
18 legal division because what these documents do,
19 it narrows the issues and it puts the parties on
20 point during, it puts the parties on point what
21 the hearing's about.

22 And in reviewing the PIF from the
23 protestant, I see that it says, action being
24 requested: noise remediation, soundproofing, no
25 outdoor sidewalk caf, speakers, noise measurance,

1 ABRA monitoring from condo unit.

2 So, everything that I see within the
3 PIF that was filed by the protestant, is clearly
4 talks about noise.

5 And none of the other issues, none of
6 the other issues that were raised in the protest,
7 in the protest sheet were addressed.

8 And so because the protestants itself,
9 you can do a bare bones when you file the
10 protest.

11 However, as counsel stated, although
12 he did not participate in the mediation but it's
13 my understanding as raised by Mr. Brown, it's
14 noise issues that are being raised by the, by the
15 protestant as an issue.

16 And in their response to the motion
17 today, it's the response of that noise that they,
18 that this issue needs to be addressed in this
19 motion. I'm sorry, in this renewal.

20 So the recommendation that, I'm going
21 to make a recommendation to the Board that the
22 applicant's motion be, be affirmed in part and
23 denied in part in the sense affirmed, we're not
24 going to dismiss the protest.

25 However, we will limit the protestant

1 to the noise issue that was clearly articulated
2 in the PIF, and all, basically we're just going
3 to listen to testimony today on noise.

4 So, that is the motion I'm making to
5 the Board, that the motion be affirmed in part,
6 and denied in part.

7 Affirmed in the sense that we will
8 just limit this protest hearing on the noise
9 issues that were clearly articulated in the PIF
10 that was submitted by the parties.

11 So, that's my motion. Any before I
12 have the Board vote on the motion, Mr. Bianco?

13 MR. BIANCO: Yes, sir.

14 CHAIR ANDERSON: I'm going to consider
15 before I call the vote, any, any comments that
16 you want to make before I call on the vote?

17 MR. BIANCO: No, sir, nothing
18 additional. Thank you.

19 CHAIR ANDERSON: Mr. Brown?

20 MR. BROWN: Just for clarification
21 since we're addressing noise in testimony and as
22 we proceed, we'll still be able to address
23 everything that the noise has impacted?

24 CHAIR ANDERSON: Noise, as long as it's
25 about noise, sir. Whatever that deals with

1 noise, you can address, sir.

2 MR. BROWN: Perfect, thank you.

3 CHAIR ANDERSON: All right, with that
4 said, I make a motion that we affirm the portion
5 of Mr. Bianco's motion that limits the, that
6 limits the protest hearing onto noise, and deny
7 the portion that asking to dismiss the protest
8 entirely.

9 Is there a second?

10 MEMBER SHORT: Mr. Short, I second.

11 CHAIR ANDERSON: Mr. Short has seconded
12 the motion. We'll will now have a roll call
13 vote.

14 Mr. Short?

15 MEMBER SHORT: Mr. Short, I agree.

16 CHAIR ANDERSON: Mr. Cato?

17 MEMBER CATO: Bobby Cato, I agree.

18 CHAIR ANDERSON: Ms. Crockett?

19 MEMBER CROCKETT: Crockett, I agree.

20 CHAIR ANDERSON: Ms. Hansen? Mr.

21 Grandis? I think Mr. Grandis did not. Mr.

22 Grandis? And Mr. Anderson, and the matter passes

23 5:0:0.

24 All right, so what we're going to do
25 then, Mr. Prout, I will, we can start and then

1 we'll start with, okay, so the parties, I'm
2 sorry, before I go to Mr. Prout.

3 Mr. Bianco, do you wish to make an
4 opening statement, sir? You have five minutes,
5 the parties have five minutes to make opening
6 statements.

7 MR. BIANCO: Mr. Anderson, I'd like to
8 reserve my opening for the presentation of my
9 case-in-chief.

10 CHAIR ANDERSON: Mr. Brown, you can
11 either make an opening statement now, or you can
12 agree to do that later on, sir.

13 MR. BROWN: Now.

14 CHAIR ANDERSON: Go ahead, sir.

15 MR. BROWN: So, the matter before ABRA
16 today that both Jackie and I have brought before
17 you, has impacted both of our lives, our
18 finances, where we live, and the everyday life
19 activities that we as residents of the District
20 of Columbia have expected, are guaranteed by law
21 to have peace in our homes.

22 And, we've actively engaged the owners
23 and management of DCity Smokehouse as long as
24 I've been a resident, as long as Jackie has been
25 a resident and owner at 1700 2nd Street

1 Northwest.

2 And, we have never experienced a
3 sincere resolve by DCity Smokehouse through its
4 ownership or management, to actively engage to
5 mitigate the issues before the Board today.
6 Namely, the noise issues.

7 At no time has DCity Smokehouse
8 installed proper soundproofing, engaged
9 professionals to come and assess, and set out a
10 plan to install proper soundproofing.

11 They have on several occasions,
12 brought in additional speakers, changed them out.
13 They've failed to actively mitigate and manage
14 noise, their clientele and their staff, through
15 repeated requests.

16 And, they've gone far and beyond their
17 code to cause a nuisance to the abiding property
18 owners at 1700 2nd Street Northwest.

19 All we have set out to do from the
20 beginning of this, engaging anybody that we can
21 who will listen, is to get the noise mitigated.

22 We've at no point, expressed that we
23 want to cause harm to Mr. Hines' business, to
24 shut it down.

25 All we want them to be is a

1 respectable neighbor that we can co-exist with.
2 Namely through soundproofing, and keeping music
3 at a conversational level.

4 To be able to actively engage with
5 ABRA to ensure that these issues are mitigated,
6 and that we can live freely within our spaces.

7 Our tenants, we can have people come
8 in, and we can ensure that we have the ability to
9 protect our livelihoods that we've invested in,
10 to these properties.

11 And with that, I turn my time over.
12 Thank you.

13 CHAIR ANDERSON: All right, thank you,
14 sir.

15 All right, the Board will now call its
16 first witness, Mr. Prout.

17 Mr. Prout, can you raise your right
18 hand, please?

19 WHEREUPON,

20 TAVRIL PROUT

21 Was called for examination by the Board, and
22 after having first been duly sworn, was examined
23 and testified as follows:

24 CHAIR ANDERSON: Can you state your
25 name again for the record please, sir?

1 INVESTIGATOR PROUT: Yes. My name is
2 ABRA Investigator Tavril Prout, T-A-V-R-I-L, last
3 name Prout, P-R-O-U-T.

4 CHAIR ANDERSON: And how long have you
5 been working for ABCA, sir?

6 INVESTIGATOR PROUT: I've been working
7 for ABCA for four years.

8 CHAIR ANDERSON: And what are your
9 duties and responsibilities?

10 INVESTIGATOR PROUT: My duties are to
11 perform regulatory inspections, as well as to
12 conduct investigations in lieu of pending
13 criminal investigations with the Metropolitan
14 Police Department.

15 CHAIR ANDERSON: And, are you familiar
16 with this DCity Smokehouse, sir?

17 INVESTIGATOR PROUT: Yes, I am
18 familiar. I was assigned the protest on, in
19 March, I want to say March 18.

20 CHAIR ANDERSON: And so, did you get a
21 chance to speak to the parties in this case?

22 INVESTIGATOR PROUT: Yes.

23 CHAIR ANDERSON: And, did you draft a
24 report?

25 INVESTIGATOR PROUT: Yes, a report was

1 drafted, sir.

2 CHAIR ANDERSON: And I saw that. All
3 right, so can you please share that report with
4 us?

5 INVESTIGATOR PROUT: Yes, sir. Is the
6 Board able to see my screen at this current time?

7 CHAIR ANDERSON: I was before, but not
8 anymore. I don't know what happened. Yes.

9 INVESTIGATOR PROUT: Perfect.

10 CHAIR ANDERSON: Now, is this report --
11 (Simultaneous speaking.)

12 INVESTIGATOR PROUT: All right --

13 CHAIR ANDERSON: -- is this the report
14 that you drafted?

15 INVESTIGATOR PROUT: Yes, this is the
16 protest report that was drafted.

17 CHAIR ANDERSON: All right, so who did
18 you speak to, who did you speak to as far, who
19 did, in doing your investigation, who did you
20 speak to representing the applicant?

21 INVESTIGATOR PROUT: Yes, so I had the
22 opportunity on the roll call hearing. There were
23 email addresses that were provided for Mr. Cory
24 Brown, as well as Ms. Jackie Schumacher, who are
25 the current protestants on the call at this

1 current time, sir.

2 CHAIR ANDERSON: All right, so what
3 information, I'm sorry, who did you say you spoke
4 to?

5 INVESTIGATOR PROUT: Yes, so --
6 (Simultaneous speaking.)

7 CHAIR ANDERSON: Now --

8 INVESTIGATOR PROUT: -- I sent, I sent
9 email correspondence to Mr. Cory Brown, as well
10 as Ms. Jackie Schumacher, who are the current
11 protestants on this call at this current time,
12 Mr. Chairperson.

13 CHAIR ANDERSON: Did you speak to the
14 applicant?

15 INVESTIGATOR PROUT: I spoke to, I sent
16 an email correspondence to Mr. Hines. Mr. Hines
17 then and during the protest period, pertained
18 legal counsel in which Mr. Bianco did provide me
19 with a formal statement of what the licensee's
20 position on the current protest at this time, as
21 well.

22 CHAIR ANDERSON: So what is it that
23 you, what information did you get from the
24 applicant, sir?

25 INVESTIGATOR PROUT: So, the applicant

1 I will read the formal statement that was
2 provided, all right? Board's indulgence.

3 Okay, so on Wednesday, March 22, 2023,
4 Investigator Prout drafted an email to licensee
5 Mr. Melvin Hines, to request the formal statement
6 of the concerns held.

7 On Monday, March 27, Investigator
8 Prout received a letter from licensee
9 representative Mr. Bianco, to provide a statement
10 on behalf of Mr. Melvin Hines, who was the owner.

11 Mr. Bianco stated that I've recently
12 insert my appearance in this case as counsel for
13 the applicant. He forwarded me your request for
14 a statement, which I've provided below.

15 The applicant has, Board's indulgence
16 while I increase.

17 CHAIR ANDERSON: This hearing is on
18 noise, so I just want you to talk about what is
19 it that, what if anything, did the applicant
20 speak to you about noise, share with you
21 regarding noise, sir?

22 INVESTIGATOR PROUT: Board's
23 indulgence, sir.

24 CHAIR ANDERSON: I don't need you to
25 necessarily read it. Maybe you can review it and

1 just let me know what is it that the applicant
2 state about noise, from his perspective, in their
3 response.

4 INVESTIGATOR PROUT: So, Mr. Bianco
5 asserts that the D.C. Code 25-725 does not apply
6 to the building.

7 As well as the agency proposing, he
8 asked a question of what the agency is proposing
9 to do in terms of the methodology.

10 He stated that the investigator
11 promptly responded, and indicated that it was a
12 service intended to help facilitate settlement.

13 The applicant then agreed to the
14 meeting provided that it would be treated, and
15 the mediation was protected for settlement
16 purposes only.

17 However, due to lack of any additional
18 legal requirements of Mr. Hines' business he then
19 opened, the applicant has bent over backwards to
20 be courteous to the residents.

21 He has installed four layers of
22 drywall, which is far more than the construction
23 code requires, to dampen any noise that is
24 emanating into the surrounding, the abutting
25 property owners' homes.

1 He stated that the applicant has
2 volunteered to lower the volume at 10:00 p.m.,
3 and an hour before the condominiums' quiet hours
4 goes into effect.

5 And he has also offered to change the
6 speaker set up twice, and purchased a new system
7 to reduce any noise infiltration.

8 Presently, the speakers are set to
9 turn off completely at 10:00 p.m., which is not
10 ideal for his business.

11 However, the applicant is having
12 portions of their ceilings replaced that, in
13 which they are voluntarily adding more insulation
14 to dampen the noise.

15 And, that is Mr. Bianco's and Mr.
16 Hines' position at this current time, Mr.
17 Chairperson.

18 CHAIR ANDERSON: Let me ask you. I saw
19 your report like you said Mr. Bianco said D.C.
20 Code 25-725. Did he explain to you what D.C. 25-
21 725, what was that, what was that about?

22 If you don't know the answer, you can
23 say you don't know. I see you put it in the
24 report, and that's why I'm asking you.

25 INVESTIGATOR PROUT: Yes. So, he did

1 not explain to me in his email. However, he did
2 reference it, and he stated that he contacted the
3 agency to ascertain the purpose of the proposed
4 monitoring, and how it would be used given that
5 D.C. Code 725, 725 does not apply to this
6 building.

7 And so I am not, I don't want to
8 misstate what the exact law is in reference to
9 D.C. Code 25-725 at this time, but I know that it
10 is in reference to noise.

11 And to be completely transparent, I am
12 going to from going off of memory as it goes --

13 (Simultaneous speaking.)

14 CHAIR ANDERSON: I don't want you to do
15 that, sir. If you --

16 INVESTIGATOR PROUT: Okay, no problem.

17 CHAIR ANDERSON: My question is that if
18 you, you mention it in your report so if you
19 don't, if it's not explained in your report, then
20 we can move on from there.

21 All right, you had conversations with,
22 who did you speak to as far as the applicant?
23 What information, I'm sorry, the license, I'm
24 sorry, the protestant.

25 Who did you speak to as from the

1 protestant, and what did they share with you
2 regarding noise?

3 INVESTIGATOR PROUT: Yes. So, a formal
4 email was received on March 24 from Ms.
5 Schumacher, who is a abutting property owner in
6 the case.

7 In which she stated that upon the
8 establishment's opening, there has been
9 persistent issues with sound pollution.

10 She further indicated that she could
11 hear the music being played in the restaurant's
12 dining room and kitchen area very loudly,
13 throughout her entire apartment from roughly
14 11:00 a.m. to 11:00 p.m. each day, and 1:00 a.m.
15 on weekends.

16 She then further stated that after she
17 has contacted the manager, she was able to get
18 them to turn the music down to an acceptable
19 level.

20 However, the problem would begin again
21 the very next day. And, that the cycle has
22 persisted until she moved out four months later
23 due to work.

24 And then she further stated that every
25 one of her tenants since then has complained

1 about the level of the music being played, and
2 the noise coming from patron seating and the
3 outside dining area.

4 Nothing has improved over the years
5 and in fact, it has only gotten worse during
6 COVID, as more and more people began sitting
7 outside to eat their food.

8 All efforts to work with the
9 restaurant's management team have failed, and
10 music always go back to an unacceptably loud
11 level.

12 And she stated that she, she now has
13 intentions on never moving back into the unit due
14 to the noise, and thus, that her neighbor and she
15 have decided to pursue the protest at this time.
16 So, that was Ms. Schumacher.

17 Moving forward to Mr. Cory Brown's
18 statement, which he speaks to in his statement on
19 -- through the respective duration of his, of
20 ownership of DCity Smokehouse, there has been
21 persistent nuisance property and pose a menace to
22 the welfare and prosperity of abutting residents.

23 Specifically, DCity Smokehouse plays
24 music at excessive volume and bass within their
25 unit, and through multiple speakers, and the

1 temporary sidewalk caf, structure.

2 The bass then can be felt into
3 neighboring properties, and the music is so loud
4 that one can hear every lyric and identify the
5 song through the Shazam app.

6 This regularly extends beyond the City
7 and building quiet hours, in which DCity
8 Smokehouse plays loud music on the common
9 property outside of their unit at all times of
10 operation.

11 And at times thereafter, adversely
12 impacts everyday life activities such as
13 sleeping, leisure, and abutting properties.

14 The sound of the traffic on Florida
15 Avenue Northwest, electronics, white noise, and
16 ear plugs, does not sufficiently mitigate the
17 extreme nuisance created by DCity Smokehouse
18 music to allow for quality of life, health, and
19 enjoyment of property.

20 Specific to his experience, both his
21 partner and he had prescribed, have been
22 prescribed sleeping pills in order to sleep at
23 night, given the detrimental impacts of DCity
24 Smokehouse and his overall wellbeing.

25 Both protestants have appealed to

1 mitigate the persistent nuisance music, in which
2 DCity Smokehouse makes various claims that it is
3 out of their control, and it's been remedied, and
4 that they are within the law to continue
5 operating as a nuisance to abutting property
6 owners.

7 They have refused to set appropriate
8 level of music, to allow property owners and
9 tenants to live in the abutting properties.

10 They have refused to install
11 soundproofing. They have also refused to enclose
12 exposed ceilings throughout their unit, as well
13 as they have refused to set automatic control of
14 the music volume and play times, despite having
15 the technology to do so.

16 CHAIR ANDERSON: Now, what type of, all
17 right, can you tell us, what's the zoning for
18 this establishment? What zone is this? Are, did
19 you address this in your report?

20 INVESTIGATOR PROUT: Yes, sir.

21 The zoning and the area is mixed,
22 mixed use. Typically, DCity Smokehouse is
23 located in the Mixed Use 4 zone, and which
24 provides for mixed use developments that permit a
25 broad range of commercial, institutional, and

1 multiple dwelling unit residential elements at
2 varying densities.

3 Mixed Use 4 zone is a mixed use zone
4 that (audio interference) throughout the city,
5 consistent with the (audio interference).

6 CHAIR ANDERSON: Mr. Prout, I'm not
7 sure. Is everyone having the same problem in the
8 sense that in the middle of his speaking, it's
9 being cut off?

10 I can't, there is a issue going on
11 with your connection, Mr. Prout. You are, in
12 testifying like every other word you are, I can't
13 hear you.

14 INVESTIGATOR PROUT: So, I'm on --
15 (Simultaneous speaking.)

16 CHAIR ANDERSON: And now I can hardly
17 hear you, sir.

18 INVESTIGATOR PROUT: Can you hear me
19 now, Mr. Chairperson?

20 CHAIR ANDERSON: I can hear you better,
21 yes, sir.

22 INVESTIGATOR PROUT: So I just
23 increased my volume.

24 All right, so going back to --
25 (Simultaneous speaking.)

1 CHAIR ANDERSON: There's a problem.
2 There's a problem with your volume. It's like
3 every other word I'm losing you. All right, go
4 ahead, sir.

5 INVESTIGATOR PROUT: Are you able to
6 hear me, Mr. Chairperson?

7 CHAIR ANDERSON: Yes, sir, I can hear
8 you.

9 INVESTIGATOR PROUT: DCity Smokehouse
10 is located in Mixed Use 4 zone. The mixed use
11 zone is provided for mixed use elements that
12 permit a broad range of commercial,
13 institutional, and residential development at
14 varying (audio interference).

15 The permit moderate density mixed use
16 development provides facilities for shopping and
17 business needs, housing, and mixed use for large
18 segments of the District of Columbia, outside of
19 the central core.

20 So, to answer your question, the area
21 is provided for mixed use for people to be able
22 to shop, to be able to dine, and to be able to
23 reside in this general area that is located in
24 Mixed Use Zone 4, Mr. Chairperson.

25 CHAIR ANDERSON: All right, now did you

1 do any monitoring of this, this establishment?

2 INVESTIGATOR PROUT: Yes, sir,
3 monitoring was done at the establishment on the
4 corresponding dates of Wednesday, March 8, 2023,
5 from 11:30 p.m. to 3:00 a.m.; Thursday, March 9,
6 2023, from 1:00 a.m. to 3:00 a.m.; and, Thursday,
7 March 23, 2023, from between 8:00 p.m. and 12:00
8 a.m.

9 There were no ABRA violations observed
10 during the monitoring times that are indicated on
11 my report, Mr. Chairperson.

12 CHAIR ANDERSON: Now were you the one
13 who had been monitoring, or did anyone else
14 monitor (audio interference)?

15 INVESTIGATOR PROUT: No. I performed
16 the monitoring on all -- all three corresponding
17 dates, Mr. Chairperson.

18 CHAIR ANDERSON: Okay. Thanks.

19 All right. In reviewing the
20 investigative history has there been any noise
21 violations by ABRA?

22 INVESTIGATOR PROUT: So, yes, there
23 have not been any within the recent year, however
24 in the investigative history there are
25 indications of citations written as recent as

1 April 2nd, 2021 in reference failure of the
2 establishment to follow the mayor's orders and
3 Board's emergency rulemaking in reference to --
4 Board's indulgence -- that was in reference to
5 mask wearing on.

6 The most recent noise-related incident
7 was on October 15, 2020 in reference to failure
8 to comply with the mayor's orders and Board's
9 emergency rulemaking, providing music that was
10 heard inside a residence. The citation was
11 issued and a fine amount was issued in the amount
12 of \$1,000. From there a -- a Offer in Compromise
13 was performed on September 15, 2021 in which the
14 establishment paid the fine amount of \$1,000.
15 That is the most recent noise.

16 From there a previous noise incidence
17 was -- was done on August 29th of 2020 in
18 reference to once again failure to comply with
19 the mayor's orders and Board's emergency
20 rulemaking, provided music above a conversational
21 level in which a citation was -- a citation was
22 written providing the establishment with a
23 warning.

24 CHAIR ANDERSON: So you're feeling
25 that the noise violations (audio interference)

1 were over the last -- during -- since the onset
2 of COVID? Is that what you're saying?

3 INVESTIGATOR PROUT: Yes, Mr. Chair.

4 CHAIR ANDERSON: All right. Let's
5 see.

6 INVESTIGATOR PROUT: Prior to those
7 there have not been any noise-related instances.
8 They have other -- other ABRA violations, but not
9 in reference to noise.

10 CHAIR ANDERSON: All right. I don't
11 have (audio interference). I don't have any
12 other questions to ask you. All right. I don't
13 have any other questions to ask you. Let me see
14 if the Board members have any questions they need
15 to (audio interference).

16 Go ahead, Mr. Grandis. You could
17 close your screen. Go ahead, Mr. Grandis.

18 MEMBER GRANDIS: Good afternoon,
19 investigator. In your report you mentioned that
20 there were current residents who are disturbed by
21 the noise and they believe it comes from this
22 establishment that interferes with their sleep.
23 Did you go to any of these particular units
24 during your investigation?

25 INVESTIGATOR PROUT: No. So, I did --

1 did not have the opportunity to. I did receive
2 the statements of each Protestant, however since
3 -- for Mr. Brown, since he's not residing in the
4 home, I did not go -- I'm sorry, Ms. Schumacher
5 does not reside in the home so I did not go into
6 the establishment. Normally the rule of thumb is
7 that we go into residence when they make noise
8 complaints. And so there were no noise
9 complaints that were rendered during the time
10 that I was on duty from the time in which I was
11 assigned the protest hearing up until when the --
12 up until when the protest report was submitted to
13 the Board, Mr. Grandis.

14 MEMBER GRANDIS: So just to affirm
15 what I thought I heard, these complaints by
16 current units that -- there were noise problems
17 that was made part of their protest and that's
18 because they were having ongoing noise problems,
19 correct?

20 INVESTIGATOR PROUT: Yes.

21 MEMBER GRANDIS: And the Agency
22 doesn't reach out to these units to confirm
23 whether or not there actually is noise or confirm
24 that the noise is coming from these
25 establishments? We're just left with their

1 statements but no follow up by the Agency,
2 correct?

3 INVESTIGATOR PROUT: So the rule of
4 thumb is that the public when there are issues
5 about noise, noise complaints are normally made
6 through the ABRA hotline after hours. From --
7 from there then ABCA investigators are sent out
8 by the supervisory investigator to investigate
9 that noise complaint. From there the supervisory
10 investigator inquires with the complainant on
11 whether or not they would like an ABCA
12 investigator to be able to access the
13 establishment to verify the actual noise
14 complaint.

15 And so what normally happens is that
16 in -- in order for a ABCA investigator to go into
17 a person's residence that's -- whether it's a --
18 a complainant or the Protestant, would need to
19 make a formal request for the ABCA investigators
20 to come into the home. So that's what normally
21 happens.

22 MEMBER GRANDIS: You were the assigned
23 investigator for this particular protest,
24 correct?

25 INVESTIGATOR PROUT: Yes, sir.

1 MEMBER GRANDIS: So you don't read the
2 noise complaints in the protest as being
3 complaints that need to be investigated?

4 INVESTIGATOR PROUT: I read the -- I
5 -- I read the complaints as -- them as there
6 being complaints, however, in reference to the
7 complaints -- in order for me to go into a
8 person's home they would need to make the formal
9 request for me to enter into their home. I just
10 don't really go into a person's home. It has to
11 be formally requested that an ABCA investigator
12 goes into the person's home.

13 MEMBER GRANDIS: Did you talk to
14 either of these unit owners during your
15 investigation?

16 INVESTIGATOR PROUT: There was only
17 formal statements that were provided via email.
18 There were not phone numbers provided for either
19 one of the Protestants.

20 MEMBER GRANDIS: So you didn't -- you
21 weren't inclined to follow up with the email to
22 say, okay, I've been assigned this protest and
23 you're making this allegation in the protest, and
24 I'm the one receiving it? You did not reach out
25 to say would you like to invite me in your unit?

1 INVESTIGATOR PROUT: No, I --

2 MEMBER GRANDIS: Yes or no?

3 INVESTIGATOR PROUT: -- didn't. I --
4 no. No, sir. No.

5 MEMBER GRANDIS: Thank you. Thank
6 you.

7 Mr. Chairman, thank you.

8 CHAIR ANDERSON: Any other questions
9 by any other Board members? Any questions by any
10 other Board members? Hearing none, Mr. Bianco?

11 BY MR. BIANCO:

12 Q Yes. Investigator Prout, good
13 afternoon. I have just a few questions for you.
14 In your report it indicates as part of this
15 protest report you conducted a regulatory
16 inspection, correct?

17 I'm sorry. Did you respond? I didn't
18 hear your answer.

19 A Yes, a virtual investigation was
20 conducted, Mr. Bianco.

21 Q Okay. And there was no violations in
22 that inspection. That's also correct, right?

23 A No, sir.

24 Q And it looked like on the day that
25 inspection was conducted you were there for a few

1 hours. Is that accurate?

2 A Yes, sir.

3 Q Okay. And how many people were eating
4 in the establishment during the time that you
5 were there?

6 A So on the interior portion of the
7 establishment I would say it was about
8 approximately anywhere from 9 to about 15 people
9 on the interior portion. And then there were
10 people that were sitting on the -- on the
11 exterior portion. I would say anywhere from --
12 from 7 to about 12 people in total. So I would
13 say approximately 30 people at any given time
14 while the establishment was being monitored. And
15 then there were people that were coming in and
16 out of the establishment that were making
17 carryout orders or picking up carryout orders as
18 well.

19 Q Okay. And it looks like you've
20 monitored this establishment several times as
21 part of this protest report. Is it a fair
22 characterization in your opinion that this
23 establishment is a counter service/takeout
24 restaurant? Do you feel that that is a fair
25 characterization of this operation?

1 A That's -- that's one aspect of what
2 the establishment offers.

3 Q Okay. What other aspects does this
4 establishment offer that go beyond that?

5 A They -- that they offer dine -- dine-
6 in services. You have folks that come there that
7 listen to the music that's offered by the
8 establishment and you have persons who come there
9 to socialize as well as to participate in
10 consuming alcoholic beverages as well.

11 Q Okay. There's no dance floor, right?

12 A No, sir.

13 Q And by listen to music you mean
14 recorded background music, correct?

15 A Yes, sir.

16 Q There was no DJ or anything like that
17 when you were there, right, any of the times you
18 --

19 A No, sir.

20 Q Okay.

21 A No, sir.

22 Q So you gave some testimony on the
23 investigative history and it looked like there
24 were a couple of warnings and a violation of the
25 mayor's order in response to the COVID-19 public

1 health emergency, correct?

2 A Yes, sir.

3 Q And those regulations are no longer in
4 effect, correct?

5 A No, sir.

6 Q I'm sorry. By no, sir you mean that
7 that's correct and they are no longer in effect?

8 A Yes, they are no longer in effect at
9 this time, Mr. Bianco.

10 Q All right. So Mr. Grandis asked you
11 a couple of questions about your investigation
12 and I have just a few follow-up on that and then
13 I'll end my cross here.

14 Of the complaints that you have
15 received or reviewed in the course of your
16 investigation did any of them come from anyone
17 other than the Protestants in this case?

18 A We don't -- there have been no noise
19 complaints that have been -- that have been
20 performed during the time in which I was assigned
21 the protest up until the protest being reported.

22 Q Okay.

23 A Sorry. Being submitted to the Board.

24 Q Okay. And the property in which this
25 establishment and the Protestants' units is

1 located, it's a multi-unit condominium building,
2 correct?

3 A Yes, sir.

4 Q So it has more units in it than just
5 the Protestants' units, right?

6 A Yes.

7 Q And I want to just ask you one more
8 follow-up question to some of Mr. Grandis'
9 questions and then your testimony as well related
10 to entering units.

11 It's my understanding that ABRA
12 investigators do not enter units for noise
13 complaints in mixed-use zones. Is that your
14 understanding of the policy as well?

15 A Oh, we -- so we have a app in which we
16 use. And so there can be -- even though a area
17 can be deemed mixed use, there are still areas in
18 which -- in which the app -- in which we actually
19 use which is a DCRA DLCP app in -- in which there
20 is a zoning map and which we used.

21 And -- and so if the home is
22 considered in a residential area, then we are
23 able to enter into that home. If it is a home in
24 which it is a mixed use -- a mixed-use area or
25 it's considered as being commercial, then we can

1 still enter into the home, however, a ABRA
2 violation isn't warranted due -- due to the home
3 residing in that commercial area.

4 So it is only a viable noise complaint
5 if the music is heard in a residential home that
6 is considered residential in accordance to the
7 zoning map on the DLCP app and/or website.

8 Q Okay. And according to your report
9 this is a mixed-use zone, correct?

10 A Yes, sir.

11 Q So this would be the type -- so this
12 property is within the zone where ABRA would not
13 be able to write up a violation for this
14 establishment, correct?

15 A Yes.

16 Q I'm sorry did you say yes? You broke
17 up a little bit.

18 A Yes.

19 Q Okay. But if I understand your
20 testimony correctly, you're still allowed to
21 enter, just not write up a violation. Is that
22 accurate?

23 A Yes. And so from there the
24 establishment would be notified and would be
25 encouraged by the ABCA investigator to lower

1 their volume.

2 Q Okay. And if I understand your report
3 correctly, there was no evidence of noise
4 violations provided to you by MPD or Department
5 of Licensing and Consumer Protection, which I'm
6 still getting used to saying, the new DCRA
7 agency?

8 A Yes, sir, there were not formal
9 complaints made during the time of which the
10 establishment was monitored.

11 MR. BIANCO: Great. Thank you very
12 much, Investigator Prout. I don't have any more
13 questions for you.

14 INVESTIGATOR PROUT: You're welcome,
15 Mr. Bianco.

16 CHAIR ANDERSON: Mr. Brown? Do you
17 have any questions for him, Mr. Brown?

18 BY MR. BROWN:

19 Q Investigator Prout, you stated that
20 you had three visits in total? I'm sorry. I
21 couldn't hear you.

22 A Yes, sir.

23 Q Okay. So three visits in total. Did
24 you request to enter any of the units stated here
25 in the protest?

1 A No, I did not request. As stated
2 previously what happens is that they --
3 complainants are encouraged to contact the ABRA
4 hotline. And from there -- when there is a noise
5 complaint -- and then from there the complainant
6 can request for a ABCA investigator to enter into
7 the residential home. But it's not normally
8 customary for us to offer to come into somebody's
9 home. The -- the complainant and/or the
10 residents has to make the formal request for us
11 to be able to come into the residential home.

12 Q Thank you. And in reading the
13 statement of the issues beforehand that
14 specifically cite to the issue being that the
15 noise is heard in the homes you didn't think that
16 it was warranted in this case to request access
17 from either of the tenants that you have the
18 relevant contact information with?

19 A I didn't feel like it was relevant
20 because in the -- in the email request I asked
21 for the formal statement on what the -- what the
22 concerns were for the Protestant. And then from
23 there if it was offered for me to come into the
24 home, I will be more than willing to, but there
25 was no formal request by either Protestant to ask

1 me to come into the home to be able to see
2 whether or not it was a -- whether there were
3 viable noise complaints during the time in which
4 the establishment was monitored.

5 Q So as the assigned investigator you
6 did not yourself see the relevance nor did you
7 request to enter the units in the case that you
8 were investigating about the noise heard inside
9 the homes of tenants?

10 A No, because it's not customary for us
11 to ask.

12 Q Did you avail the Protestants of the
13 fact that you have to request this?

14 A No.

15 Q Did you offer the Protestants the
16 opportunity to speak with you over the phone?

17 A My cell phone number is at the bottom
18 of the email address, and so my phone is -- has
19 been available and is on from 7:30 p.m. to 4:00
20 a.m. while I'm on duty.

21 Q Did you ask the Protestants or offer
22 them the opportunity to speak with you instead of
23 submitting a written statement at any point
24 during your investigation?

25 A No.

1 Q Thank you. You mentioned before that
2 a hotline request would have to come in. Did you
3 pull the hotline records related to this
4 property?

5 A The hotline records were asked by --
6 they were supposed to be requested, however there
7 was no formal noise complaint list that was
8 provided to me by Supervisory Investigator Mark
9 Brashears. I was able to go only off of the
10 investigative history by the establishment.
11 However, while I was --

12 Q (Audio interference) --

13 A However, while I was on duty, while
14 the establishment was monitored, there was no
15 noise complaints that came in while the -- from
16 the time in which the establishment was -- was
17 assigned to me on March 18th, from the time it
18 was -- report was submitted on March 29th.

19 Q Okay. So 11 days, 3 total visits, no
20 complaints came in. And that's the --

21 A No.

22 Q -- totality of your investigation, the
23 time period that you've looked at here, but you
24 did not affirmatively act to pull the hotline
25 records for any period of time?

1 A No.

2 Q Thank you. Did you pull any 911
3 records related to this unit and noise
4 complaints?

5 A I requested them several times, but
6 there was no -- there was none provided.

7 Q Okay. How many times did you request
8 them?

9 A Twice.

10 Q Thank you. On your 3 total visits
11 over the course of the 11 days of your
12 investigation how many speakers did you observe
13 to be installed within DCity Smokehouse?

14 A Speakers?

15 Q Correct.

16 A Approximately 10 -- 10 total.

17 Q Ten speakers? What would you assume
18 the total area of the space is? And did you pull
19 the total square footage of DCity Smokehouse?

20 A That's normally something that is not
21 pulled our normal protest, what the square foot
22 of an establishment is.

23 Q Would you describe it as a large
24 space?

25 A I would consider it a small to medium-

1 size -- sized space, however due to the expansion
2 of the initial premises I would consider it
3 medium to large. So they have extended the -- or
4 initial space would considered small, but there
5 has been a -- a -- a artificial external summer
6 garden/sidewalk area that has been created by a
7 second external wall and which would consider it
8 medium to large, in -- in summary.

9 Q And so this external space, is it
10 brick and mortar? Does it have anything that
11 would dampen sound?

12 A No, it's not brick and mortar. It's
13 made out of plexiglass and metal materials.

14 Q Were there speakers inside the
15 plexiglass and metal interior expansion of the
16 unit?

17 A Yes, there are -- are speakers in that
18 general area.

19 Q Do you recall how many out of the 10
20 total speakers in the small space that now became
21 a medium space by extension of a temporary
22 structure how many speakers would be out there?

23 A No, not offhand.

24 Q Okay. Thank you for that. Did the
25 phone ring while you were at DCity Smokehouse?

1 A Yes. There were phone calls in
2 reference to folks calling about the -- the
3 orders that were actually placed.

4 Q Do you remember the volume of the
5 phone ringing in DCity Smokehouse?

6 A I could hear it.

7 Q Just hear it?

8 A Yes. Ring. Yes.

9 MR. BROWN: That's all the questions
10 that I have.

11 CHAIR ANDERSON: Thank you, sir.

12 All right. Thank you, Mr. Prout, for
13 your testimony. You're now free to go. Thank
14 you, sir.

15 MR. BIANCO: Mr. Anderson, I did have
16 a couple additional questions based on the
17 questions from the Protestant.

18 CHAIR ANDERSON: This is our witness,
19 Mr. Bianco, so I am -- you had one chance to ask
20 the questions. The Board is not asking the
21 witness any for follow-up questions, so we're
22 moving forward, sir. Sorry. Let's move on.

23 MR. BIANCO: I understand. I'd just
24 like to note my objection that questions (audio
25 interference) --

1 CHAIR ANDERSON: Mr. Bianco? Mr.
2 Bianco?

3 MR. BIANCO: I understand the ruling.

4 CHAIR ANDERSON: Mr. Bianco, Mr. Prout
5 is the Board's witness. The Board called its
6 witness. The Board gives an opportunity for
7 counsel to ask questions and then the Board gives
8 an opportunity for the Protestant to ask
9 questions. There is not right to any follow up
10 for the Board's witness. When you call a
11 witness, sir, I will give you an opportunity to
12 do follow up, but not for the Board's witness,
13 sir.

14 Thank you very much, Mr. Prout, for
15 your testimony. You're free to go.

16 Do you wish to make an opening
17 statement, sir?

18 MR. BIANCO: Yes, Mr. Anderson, I do
19 wish to make an opening statement.

20 CHAIR ANDERSON: Go ahead, sir.

21 MR. BIANCO: The Applicant in this
22 case is obligated to show that the ongoing
23 operation of this particular establishment will
24 not adversely impact peace and quiet, as those
25 are the limited issues we are going forward in

1 this protest.

2 The establishment in question is not
3 a bar, it's not a club, it's not some place that
4 offers dancing and raucous music and a late-into-
5 the evening good time. It's a counter service
6 restaurant. Do they have alcohol offering? Yes,
7 they do, but it's not one of these places that
8 morphs into a club or has club-like activities
9 after normal dinner service.

10 In fact, what the evidence will show
11 that although this particular restaurant is able
12 to be open until midnight during the week and
13 1:00 a.m. on the weekends, it isn't. It's not
14 that kind of establishment. There are few seats
15 there. An overwhelming majority of their
16 business comes from food sale, and of that almost
17 all of it is carryout or takeout service. This
18 establishment is not a problem and the evidence
19 that you will hear today will underscore that
20 fact again and again.

21 The relevant consideration that the
22 Board has to look at today is how the impact is
23 not on the person who voluntarily moved in
24 directly above an operating restaurant and
25 complains about the things that go on at

1 restaurants. Rather, it's the adverse impact on
2 the relevant area of a 1,200 square foot radius.

3 You will notice that the only people
4 here are the ones that chose to live directly
5 above an operating restaurant. There are no
6 other people in the exact same condominium
7 building making complaints. There are no
8 adjacent or abutting neighbors to the building
9 making complaints. The ANC declined to be here,
10 declined to protest this particular
11 establishment. We are not dealing with a problem
12 in this neighborhood. We are dealing with a
13 problem of two people.

14 My client will testify today and the
15 evidence will show that they made repeated and
16 serious efforts to deal with the Protestants in
17 this case in a way that is fair and honest. When
18 complaints were received over the course of time
19 my client made adjustments. When complaints
20 continued to be received from again only these
21 two people, my client made physical modifications
22 to the property. They changed out their system.
23 They added insulation. Nothing will make these
24 Protestants happy.

25 It even got to the point where the

1 Protestants complained to the ANC, the mayor,
2 anyone they can think of. They called the MPD
3 daily. They called DCRA daily. They called ABRA
4 daily. And in each instance investigations were
5 conducted, people came out, and no violations
6 were found. And this is over a course of years.
7 It even got to the point where my client
8 participated in a noise test with DCRA and -- at
9 the Protestants' demand, and following that were
10 -- the result of that was no violation
11 whatsoever.

12 What the evidence will show here is
13 that we have a case in a building that is exempt
14 from the noise provisions within ABRA's purview.
15 And there was a question about D.C. Code 25-725,
16 and that is the provision that makes it unlawful
17 to generate noise that is audible inside of
18 somebody's residence provided that residence is
19 in a residential zone. This property is not.

20 Noise emanating from this
21 establishment is within the purview of the
22 Department of Licensing and Consumer Protection,
23 it's within the purview of the Metropolitan
24 Police Department, and perhaps most obviously
25 it's within the purview of the condominium

1 association that governs this building. None of
2 those entities have done anything to indicate in
3 any way, shape, or form that noise is an issue
4 coming out of this counter service restaurant.

5 On that basis we will proceed. We
6 will put the evidence of those facts in the
7 record. And at the end of this case we are
8 confident that you will find that this
9 establishment not only doesn't adversely impact
10 this neighborhood, but is a credit to the
11 neighborhood and provides an amenity. Thank you
12 very much.

13 CHAIR ANDERSON: Your first witness,
14 sir.

15 MR. BIANCO: Our first witness is
16 Commissioner Teri Janine. She should be in the
17 room and can be elevated.

18 CHAIR ANDERSON: Mr. Orellana, can you
19 please elevate Teri Janine, if that person is
20 available?

21 MR. ORELLANA: Ms. Quinn, your access
22 has been elevated.

23 CHAIR ANDERSON: Okay. Turn your
24 camera on, ma'am. Can you raise your right hand,
25 please?

1 WHEREUPON,

2 TERI JANINE QUINN

3 Was called for examination by Counsel for the
4 Applicant, and after having first been duly
5 sworn, was examined and testified as follows:

6 CHAIR ANDERSON: Your witness, Mr.
7 Bianco. Have her spell her name for the record,
8 please.

9 MR. BIANCO: Okay. Commissioner, can
10 you state your name and spell it for the record,
11 please?

12 MS. QUINN: My name is Teri Janine
13 Quinn. It's T-E-R-I, J-A-N-I-N-E, Q-U-I-N-N.

14 DIRECT EXAMINATION

15 BY MR. BIANCO:

16 Q And, Commissioner Quinn, are you
17 familiar with DCity Smokehouse?

18 A I am.

19 Q Okay. And how are you familiar with
20 it?

21 A Well, I live next door. So DCity
22 Smokehouse is located inside a condo building.
23 And next to that condo building on 2nd Street
24 there is an alley. And then I live in the very
25 next house. But I'm familiar with the business

1 even from prior to them being next door. They
2 initially were located at Florida Avenue and
3 North Capitol Street.

4 So I think I probably first became
5 familiar with them, oh, my gosh, maybe even
6 before they were called DCity Smokehouse. I
7 can't -- I think the business was maybe initially
8 called Revive and they were located again at
9 North Capitol and Florida Avenue and they were
10 new to the neighborhood and just starting out and
11 the concept was slightly different at the time.
12 So that's long story short, initially how I
13 became familiar with the business.

14 Q Okay. And how long have you been
15 living in the building that now houses DCity
16 Smokehouse?

17 A I don't live in the building that
18 houses DCity Smokehouse. I live in a building
19 that houses my house.

20 Q Rather I meant next door to the
21 building that houses DCity Smokehouse.

22 A Sure. Fifteen years. So prior to
23 them moving over here and certainly prior to them
24 moving to the space at Florida Avenue and North
25 Capitol.

1 Q Okay. And in the time that you have
2 been living there with DCity Smokehouse as your
3 neighbor have you ever heard any noise coming
4 from the establishment while inside of your home?

5 A I have not.

6 Q Okay. And aside from being a
7 neighbor, as I indicated, you're also an ANC
8 commissioner, correct?

9 A I am not. I'm a commissioner on the
10 Commission on Human Rights. I'm a former ANC
11 commissioner and former chair of ANC 5-E, but I
12 am not currently on this ANC commission.

13 Q Okay. And in your time on the
14 commission had you received any complaints about
15 DCity Smokehouse from anyone other than Mr. Brown
16 and Ms. Schumacher?

17 A I -- I had not heard from either of
18 these individuals. When I was on the commission
19 I think -- I'm -- I'm trying to think back
20 because it has been a while. They were building
21 out this space while I was a commissioner, so I
22 was certainly involved in that settlement
23 process.

24 I remember attending meetings in the
25 condo building with residents, both as a

1 commissioner and also as a concerned citizen,
2 because this was now -- you know, it's one thing
3 to have a restaurant that you frequent or are
4 familiar with; it's another thing to have it next
5 to your house. So I was very concerned about
6 what it would look like to have a -- a commercial
7 establishment in that space which had been vacant
8 up to that point, at least the entire time that I
9 was there. The -- the condo building was vacant
10 when I moved into this house and it was developed
11 and then the commercial space was vacant for a
12 while after people began to move into the
13 building.

14 So I think your question had to do
15 with whether I've heard complaints. Certainly I
16 do not recall any complaints as a commissioner.
17 I think I left the commission in 2014, but that
18 entire time, and really the entire time that any
19 iteration of this business has been in this
20 vicinity, I have been president of the
21 Bloomingdale Civic Association.

22 And in terms of complaints, while I
23 haven't heard from these individuals, I think --
24 I think there may have been someone -- and I --
25 it -- I mean, I -- I don't even know how long ago

1 it was. It -- it would have been really close to
2 the time they opened -- who lived in the building
3 who may have had some issues. And I would assume
4 those would have had to do with noise. So I -- I
5 probably had some conversations with that person.
6 And there is another person further down the
7 block on the other side of the street that I
8 heard from here and there.

9 Q So two times in the five years they've
10 been operating?

11 A I would say two individuals in the
12 time that they've been next door.

13 Q Okay. And from your own personal
14 observation do you think that this establishment
15 is a good commercial neighbor?

16 A I do. You know, I have -- while I
17 haven't had the kinds of issues that we are
18 discussing here, I have had other concerns,
19 particularly dealing with parking. I have a
20 garage and I enter my garage off -- this is 2nd
21 Street -- I enter my garage off 2nd Street. And
22 sometimes I would find that customers would
23 either park in the alley or block my driveway to
24 get -- you know, block access to the alley so I
25 couldn't get in and out of my garage. And so

1 I've had those issues.

2 And I've raised those issues and had
3 swift responses. The corrections I've asked for
4 they have done in terms of putting up signage. I
5 mean there's -- there's a limit to what I can ask
6 for because -- and -- and, you know, people are
7 going to people. And they only have so much
8 control over what folks do once they leave their
9 establishment. So I think what they were able to
10 do to mitigate that issue they did do.

11 And, you know, their door, access
12 point to deliver things to the building is right
13 outside of my garage. And so if there are any
14 issues with accessing my garage there -- I mean,
15 if there's someone outside from DCity, they snap
16 to it. They -- I mean, I don't -- I don't have
17 to get out of my car. They -- they see me and
18 they know like I have to -- I have to get this
19 person to move immediately.

20 And so I know that they take my
21 concerns -- at least I have perceived that they
22 take my concerns quite seriously and have been
23 quite responsive. So I think that's -- that's
24 one way that I've seen them as a community
25 partner because, you know, they're -- they're

1 here as a business and I'm here as a resident.
2 We've got to figure out how to make this work
3 together.

4 I think the other thing is -- you
5 know, I'm certainly involved in a lot of
6 community activities and that ranges from things
7 that relate to, you know, either the Civic
8 Association, the ANC, the -- whatever is going on
9 in the neighborhood. And any time I've asked
10 them to do something they have done it. And, you
11 know, I think that's -- that's part of what has
12 built a -- a good relationship.

13 The other piece is the way they have
14 participated when there are block concerns. For
15 a while we had an unsanctioned strip club next
16 door to DCity. And before that in the same space
17 there were illegal sales of marijuana. And
18 before that synthetic drugs and so on and so
19 forth. And each time these things have come up
20 -- you know, certainly I work with residents on
21 the block and adjacent blocks to address these
22 issues. But DCity has also been at the table. I
23 mean, here most recently we had, dealing with the
24 strip club, a meeting with the police commander
25 and one of the captains right across the street

1 and the only business in the area that showed up
2 was DCity.

3 So in terms of taking the issues that
4 relate to this community seriously my experience
5 has been that they do that. In terms of being
6 responsive to concerns that I've heard raised
7 they have done that. I've seen them stretch to
8 respond in ways that I haven't seen other
9 businesses. So, you know, that's just my
10 personal experience.

11 Q Excellent. And there is one exhibit
12 that I want to show you just so the Board can get
13 a sense of where you are in proximity to this
14 establishment.

15 A Sure.

16 Q So I think I have the ability to share
17 screen here. I'm going to try it. And are you
18 able to see a photo --

19 A I do.

20 Q -- on the screen? And at the bottom,
21 for the Board's benefit, it says Applicant 051.
22 I Bate stamped my exhibit package so that you
23 should be able to turn to that.

24 So I'm showing you now, Ms. Quinn, the
25 photograph that I'm marking as Applicant's

1 Exhibit No. 1. And directly in front and center
2 in the photograph is a tan building. And what is
3 that building?

4 (Whereupon, the above-referred to
5 document was marked as Applicant's Exhibit 1 for
6 identification.)

7 A Directly in front of the what?

8 Q Front and center
9 featured --

10 A Yes.

11 Q -- in this photograph, that (audio
12 interference), what building is that?

13 A You're going in and out, but I'll tell
14 you what I see on the screen. There's a cream
15 building with windows that are trimmed in black.
16 That building is the condo building where DCity
17 is established. The place where the black awning
18 is is DCity. The stairway is the -- those are
19 the main steps up to the condo building.

20 And to the right of that condo
21 building, the next building over, it appears like
22 I -- I guess like a dark tan maybe; it's a weird
23 color, maybe pewter-colored building with the --
24 at the bottom there's -- it looks like there's a
25 white piece. That's my garage. That building is

1 my house. It's separated there by the alley so
2 you could see a bit of the shadow across right
3 above my garage.

4 Q Okay. And it's the end row house here
5 where I am pointing on the screen, correct?

6 A That's correct. That's my house.

7 MR. BIANCO: Excellent. Moving
8 admission of Applicant's No. 1.

9 CHAIR ANDERSON: Any objection?
10 That's to you, Mr. Brown. No objection? So
11 moved.

12 (Whereupon, the above-referred to
13 document was received in evidence as Applicant's
14 Exhibit 1.)

15 MR. BIANCO: No further questions, Ms.
16 Quinn. Mr. Brown may have some follow-up
17 questions for you as may the members of the
18 Board. Thank you very much.

19 CHAIR ANDERSON: Thank you. Mr. Brown?

20 CROSS EXAMINATION

21 BY MR. BROWN:

22 Q Thank you. And good afternoon, Ms.
23 Quinn.

24 A Hi.

25 Q So I think in looking you have the two

1 cute little dogs that used to bark at my dog
2 every time I'd walk her down the street. Is that
3 the correct?

4 A Yes. If there's some noise that I'm
5 familiar with it's the noise from my dogs
6 barking, so yes.

7 Q At least they're adorable so they get
8 away with it.

9 A (Audio interference.)

10 Q So we've established that you live in
11 the neighborhood. The photo is very instructive.
12 So between DCity Smokehouse, which is at 203
13 Florida Avenue, Northwest, there's a condominium
14 building, the two front ones being -- belonging
15 to myself and Jackie, two behind them, an alley,
16 and then the physical structure separating the
17 alley, and then your physical structure is the
18 next one there.

19 A That's right.

20 Q So there's an alley in between our
21 building containing condo units and then the
22 property facing. So you wouldn't be an abutting
23 property owner? Your building has no contact
24 with DCity Smokehouse physically?

25 A Yes, my building is not adjacent to

1 their space because there's -- you know, it's
2 like the building is -- it's kind of -- it's
3 almost -- well, I guess the front door is facing
4 Florida Avenue and my house is the first house
5 after the condo building on 2nd Street. I think
6 I came onto the -- or into the hearing as you
7 were discussing something about the -- the
8 outdoor space.

9 So what I do -- I probably wouldn't
10 hear as much of what would go on inside, but
11 noise that permeates outside, or that outdoor
12 structure that -- sometimes there's -- you know,
13 where that awning is there are times when the --
14 there's like nothing separating the inside from
15 the outside. There's like an open walkway
16 between the bar area, there's some seating there,
17 and then you're sitting in a space that kind of
18 feels inside outside. And then that part is --
19 which is now a kind of cover is open to some
20 seating that is a little bit closer to me but
21 still not -- not literally sitting right next to
22 my yard.

23 I mean, you know, I -- as you said,
24 the -- the -- the picture explains it quite well,
25 but I think what I would probably be most exposed

1 to would be noise that is on the patio, that
2 front patio. If it were -- the question is is
3 that loud enough to get to me? And -- and I
4 think my answer is no.

5 Q Yes, as it faces Florida Avenue,
6 Northwest. But as you adequately described, open
7 doors, windows, everything kind of just spills
8 out into the neighborhood but you're well
9 separated from it. Correct?

10 Okay. So then also there was
11 reference to your commissionership on the ANC.
12 And it's fair to say that you were not an ANC
13 commissioner -- as I am to understand it's Karla
14 Lewis that currently represents the neighborhood
15 and was not asked to participate by the
16 Protestants. But you were the ANC commissioner
17 while DCity Smokehouse was up and running on
18 their Florida Avenue location?

19 A Let's see. When did the Florida
20 Avenue location open?

21 CHAIR ANDERSON: No, ma'am. Ma'am.
22 Ma'am, you need to answer the questions. Say --
23 if you don't know -- if you can't answer --

24 MS. QUINN: Sure.

25 CHAIR ANDERSON: -- the question, say

1 I don't know.

2 MS. QUINN: Yes, I -- so here's what
3 I'll say, which is what I think I said earlier:
4 I certainly was the ANC as they were negotiating
5 with the building and adjacent neighbors. I
6 mean, I -- I was probably the only neighbor who
7 showed up. I mean, there was comment from other
8 neighbors, but I don't know that they were there
9 at the meeting that -- that I'm thinking of that
10 occurred inside the condo building. I was
11 certainly the commissioner during that time.

12 When they actually opened -- actually
13 I do think I was the commissioner when they
14 opened. I mean, I remember going to the soft
15 opening and I'm fairly certain I was still
16 commissioner at that time. I think that there
17 was not a lot of overlap in between the time when
18 I left the commission and the time that they
19 opened. And then after me there was another
20 commissioner. I didn't run for reelection. And
21 so someone else came in for two years. And then
22 Karla has been there since.

23 BY MR. BROWN:

24 Q So we have a couple of degrees of
25 separation between then -- your commissionership

1 and then the periods that we're talking about
2 here. So in the past six to eight years you've
3 not served as the ANC commissioner for the
4 neighborhood where the condo building and DCity
5 Smokehouse reside?

6 A No, but that entire time I have been
7 president of the Civic Association, and we hear
8 similar complaints. So generally, not always,
9 but generally when people have raised complaints
10 about these types of issues in the neighborhood,
11 not just on this block, but anywhere in
12 Bloomingdale, that comes to me. Sometimes it
13 comes to me through -- through a commissioner.
14 Often it comes to me directly from the resident.

15 But it is absolutely not uncommon for
16 people to be raising these kinds of issues and
17 bring them to me in the process. And especially
18 on this block because people on this block, you
19 know, especially the folks who've been here a
20 long time, know that, you know, I'm very active.
21 They know that I'm a person who you would bring
22 these kinds of issues to.

23 So no. Yes, I think your -- your
24 answer is still -- still stands that no, I was
25 not the commissioner in the last six years for

1 sure, but it's not like the -- I, you know,
2 wouldn't be a person to whom you would hear
3 bringing these kinds of complaints.

4 Q So you bring up an interesting point
5 there. So we're -- both agree that you're not
6 the ANC commissioner in that area during the
7 relevant time period and that the Civic
8 Association is an entity separate and aside from
9 the ANC. And it would be upon the resident to
10 choose whether they would raise the issue to you
11 as the Civic Association president as opposed to
12 going directly to ABRA, 911, MPD, or any other
13 sanctioned government entity of the District of
14 Columbia, correct?

15 A (Audio interference) you have all the
16 options. You can do all the things.

17 Q Excellent. Thank you very much for
18 that.

19 All right. And then you had mentioned
20 that you do have -- in your recollection from
21 this time period you had two verified individuals
22 that live within the building that had made
23 contact with you. Do you recollect if one of
24 those individuals was Nadira Kabir?

25 A I do not. And that was one individual

1 from the building and one individual on the
2 block.

3 Q Correct. So two verified complaints
4 in your short tenure of when they were open as
5 the ANC commissioner?

6 A No, not -- not necessarily as ANC
7 commissioner. The neighbor on the block, that
8 would have been as Civic Association president.
9 The neighbor in the building would have been as
10 commissioner.

11 MR. BROWN: Excellent. Thank you for
12 verifying that. No further questions.

13 CHAIR ANDERSON: Thank you, sir. Any
14 questions of this witness by the Board?

15 MEMBER SHORT: Mr. Chair?

16 CHAIR ANDERSON: Yes, Mr. Short?

17 MEMBER SHORT: Yes, thank you. Good
18 afternoon, Ms. Quinn.

19 MS. QUINN: Good afternoon, Mr. Short.

20 MEMBER SHORT: Or should I say
21 President Quinn.

22 MS. QUINN: Either is fine.

23 MEMBER SHORT: Okay. And so how long
24 have you been living in Bloomingdale?

25 MS. QUINN: Fifteen years.

1 MEMBER SHORT: Fifteen years?

2 MS. QUINN: Yes.

3 MEMBER SHORT: And how many years have
4 you served as president of the Bloomingdale Civic
5 Association?

6 MS. QUINN: This is my 13th
7 consecutive year.

8 MEMBER SHORT: So 15 years in the
9 neighborhood, 13 as president?

10 MS. QUINN: Yes.

11 MEMBER SHORT: How many as ANC
12 commissioner?

13 MS. QUINN: I was on the commission
14 for two terms, so that's four years, and I was
15 chair for two -- the last two of those years.

16 MEMBER SHORT: You've been a busy lady
17 in the community.

18 MS. QUINN: You know, there's work to
19 be done.

20 MEMBER SHORT: Thank you for your
21 service.

22 MS. QUINN: No problem. Thank you.

23 MEMBER SHORT: I guess what really
24 comes to mind to myself as a Board member is the
25 question of peace, order, and quiet. As a

1 president current of the Civic Association,
2 Bloomingdale, and a past president or past
3 chairman of the ANC Commission what is your down-
4 to-earth opinion of this licensee and their ABC
5 license?

6 MS. QUINN: Well, you know, in that
7 time I've had a lot of experiences with
8 businesses in this kind of circumstance and my
9 opinion is that this has been one of the most
10 cooperative businesses, most willing to go the
11 extra mile to do the thing you're like but you
12 don't even have to do that. And so I -- I -- I
13 think that this has been one of the good examples
14 of what it looks like to try to live well with --
15 within a community while also trying to make a
16 profit. So that -- that's -- that's the way I
17 think about it.

18 MEMBER SHORT: Okay. With this
19 question I'm going to ask I want you to answer
20 agree or disagree.

21 MS. QUINN: Sure.

22 MEMBER SHORT: Should businesses like
23 the licensee who's up for renewal for this
24 hearing and also the citizens who make up the
25 community and neighbors of this business --

1 should they try as best they can to coexist, the
2 community as well as the business because they're
3 both needed by the city to make it a vibrant
4 community environment neighborhood? And so again
5 agree or disagree, should --

6 MS. QUINN: Agree.

7 MEMBER SHORT: -- businesses reach out
8 and should the -- also the residents reach out to
9 one another to make the best situation out of a
10 situation like this?

11 MS. QUINN: I agree.

12 MEMBER SHORT: Does it happen in a lot
13 of other businesses? We're not speaking of the
14 licensee who's here today for the hearing, but
15 are there other ABC establishments that have made
16 their way into the community and found a way to
17 coexist?

18 MS. QUINN: Absolutely. Yes.

19 MEMBER SHORT: Thank you very much.
20 Your testimony has been quite compelling and your
21 history is even more compelling.

22 That's all I have, Mr. Chair.

23 CHAIR ANDERSON: Thank you, Mr. Short.
24 Any other questions by other Board
25 members? Redirect, Mr. Bianco?

1 MR. BIANCO: No, sir.

2 CHAIR ANDERSON: Thank you, Ms. Quinn.
3 Thank you for your testimony. You're free to go.

4 MS. QUINN: Thank you.

5 CHAIR ANDERSON: How many total
6 witnesses do you have, Mr. Bianco?

7 MR. BIANCO: I'm sorry. How many
8 witnesses do I have? Was that the question?

9 CHAIR ANDERSON: Yes, sir.

10 MR. BIANCO: I have two more: Mr.
11 Hines and then our general manager. Our general
12 manager will be short; Mr. Hines is going to take
13 a little bit of time.

14 CHAIR ANDERSON: All right. Just want
15 you to be mindful of the time, your time, sir, to
16 conduct this hearing.

17 All right. So who's your next
18 witness?

19 MR. BIANCO: My next witness is Mr.
20 Hines. He's the owner of the establishment.

21 CHAIR ANDERSON: All right. Mr.
22 Hines, I need you to be on camera, sir.

23 Mr. Hines, I need you to be on camera,
24 sir.

25 MR. HINES: Hello.

1 CHAIR ANDERSON: I need you to be on
2 camera, Mr. Hines.

3 MR. HINES: Mine is showing. Oh, I'm
4 sorry. I'm not familiar with all this
5 technology. I apologize.

6 CHAIR ANDERSON: Can you please raise
7 your right hand, sir?

8 MR. HINES: Sure.

9 WHEREUPON,

10 MELVIN HINES

11 Was called for examination by Counsel for the
12 Applicant, and after having first been duly
13 sworn, was examined and testified as follows:

14 CHAIR ANDERSON: Your witness, Mr.
15 Bianco.

16 MR. BIANCO: Hey, can you state your
17 name for the record and spell it for the court
18 reporter?

19 MR. HINES: Melvin Hines. M-E-L-V-I-
20 N, H-I-N-E-S.

21 DIRECT EXAMINATION

22 BY MR. BIANCO:

23 Q Okay. And, Mr. Hines, what is your
24 relationship to DCity Smokehouse?

25 A I'm the owner of DCity Smokehouse.

1 Q Okay. And do you own it as an
2 individual or through an entity?

3 A Own -- Southeast Restaurant Group, who
4 is the parent company of DCity Smokehouse. We
5 DBA as DCity Smokehouse.

6 Q Okay. The location we're talking
7 about here today, is it the only location of
8 DCity Smokehouse?

9 A Currently, but we -- we just had a
10 soft opening for a new location at 1301 Good Hope
11 Road, Southeast in Historic Anacostia. We plan
12 to be -- have full hours starting this coming
13 Saturday.

14 Q Great. Congratulations. Focusing on
15 this particular establishment how long has it
16 been at this location on Florida Avenue?

17 A We kicked off at 203 Florida Avenue
18 starting in -- January 1, 2017.

19 Q Okay. And is this the first location
20 for DCity Smokehouse?

21 A No, we originally opened -- and the
22 previous witness mentioned, we started out at 8
23 Florida Avenue, at the corner of Florida and
24 North Capitol Street.

25 Q So all in how long has DCity

1 Smokehouse been in operation?

2 A Since 2013. We kicked off October
3 16th, 2013.

4 Q Okay. Now attached to the
5 investigator's report a copy of your ABRA
6 license, and your ABRA license allows you to
7 operate until midnight during the week and 1:00
8 a.m. on the weekends. Can you please tell the
9 Board what your hours of operation actually are?

10 A We operate 11:00 to 11:00 Monday
11 through -- well, Sunday through Thursday, and
12 Saturday and Sunday 11:00 to 12:00 midnight.

13 Q Okay. And can you describe the
14 building at 203 Florida Avenue?

15 A It is a mixed-use building with
16 approximately nine units. Myself as well as a --
17 a smaller unit occupy the first floor and some
18 storage space as well on that first floor. And
19 then the -- the top two floors are all
20 residential units.

21 Q Okay. And do you know the Protestants
22 in this case?

23 A I do.

24 Q How do you know them?

25 A They are residents of the building.

1 Q Okay. And where are their units
2 situated in relation to DCity Smokehouse?

3 A Directly above with Cory's unit -- I
4 believe the majority of Cory's unit is over top
5 and I believe her -- Ms. Jackie, I think part of
6 her unit is on top of our restaurant.

7 Q Okay. Have you had interactions with
8 them (audio interference)?

9 A Very little. Jackie, maybe a phone
10 call, a group phone call dealing with Board
11 business. Cory, much more extensive
12 interactions.

13 Q Okay. Over what period of time?

14 A I'm not exactly sure when he moved in.
15 I'm -- I believe was maybe sometime late 2020 or
16 perhaps 2021. So essentially not too long after
17 he moved in.

18 Q Okay. I want to talk about the layout
19 of your particular establishment. Could you
20 describe briefly what I would see walking in the
21 door?

22 A If you walk directly in you would see
23 the sort of menu boards to the left, seating area
24 to the right. If you were to go straight in
25 you'd go right to the customer -- well, customer

1 area to place your order. There's a POS and a
2 cash register right there that greet you.

3 Q Okay. Do you have table service at
4 your restaurant?

5 A We do not.

6 Q Okay. I want to share my screen here
7 and walk through a couple of photos, so if you'll
8 bear with me while I do that. You should see on
9 your screen now the photo that Ms. Quinn
10 testified about. We're going to move on from
11 there. She's already talked about that, I think.
12 So now we're going to look at what is marked as -
13 - Bates stamped -- I'm sorry -- as page 52, and
14 we're going to make this for identification
15 purposes as Applicant Exhibit Number 2. Do you
16 recognize that?

17 A I do. That's the front of DCity
18 Smokehouse.

19 (Whereupon, the above-referred to
20 document was marked as Applicant's Exhibit 2 for
21 identification.)

22 BY MR. BIANCO:

23 Q And is that on the Florida Avenue
24 side?

25 A It is on -- directly facing Florida

1 Avenue.

2 Q Okay. And the portion of the building
3 here where there's window lettering that says "We
4 Smoke Meats." What's that part of your
5 establishment?

6 A That's a additional cafe area that
7 I've got fully permitted through the city and
8 which is basically additional seating area.

9 Q Okay. And that enclosure, what's that
10 constructed of?

11 A So that -- what is that? I'm not a
12 expert in building, but it's cloth, plastic, you
13 know, steel poles.

14 MR. BIANCO: Okay. And -- move
15 admission of Applicant's Number 2.

16 CHAIR ANDERSON: Mr. Brown, any
17 objection?

18 MR. BROWN: No objection.

19 CHAIR ANDERSON: So moved.

20 (Whereupon, the above-referred to
21 document was received in evidence as Applicant's
22 Exhibit 2.)

23 BY MR. BIANCO:

24 Q Moving on to page number 53. I'm
25 going to fix the orientation here. We're going

1 to mark this for identification as Applicant
2 Exhibit Number 3. Do you recognize that?

3 A Yes. That's -- I would call that the
4 side entrance as well as the park area outside of
5 DCity Smokehouse.

6 (Whereupon, the above-referred to
7 document was marked as Applicant's Exhibit 3 for
8 identification.)

9 Q Is that on the Florida Avenue side or
10 the 2nd Street side?

11 A It's more the corner of -- of Florida
12 and 2nd.

13 Q Okay. And do you use that area all
14 year, or is it -- are there limitations in place?

15 A There are no limitations. It's, you
16 know, whoever wants to use it, whoever wants to
17 sit whenever they want to sit.

18 MR. BIANCO: All right. Move
19 admission of Applicant's Number 3.

20 CHAIR ANDERSON: Any objection, Mr.
21 Brown?

22 MR. BROWN: No objection.

23 CHAIR ANDERSON: Without objection.

24 (Whereupon, the above-referred to
25 document was received in evidence as Applicant's

1 Exhibit 3.)

2 BY MR. BIANCO:

3 Q All right. We're moving on to page
4 54. We're going to mark that as Applicant
5 Exhibit Number 4. What does that show?

6 A This is a sign that we placed outside
7 just trying to be respectful of our neighbors
8 both within the building as well as in the area.
9 That is placed directly next to the steps that
10 lead into the residential portion of the building
11 at 1700 2nd Street.

12 (Whereupon, the above-referred to
13 document was marked as Applicant's Exhibit 4 for
14 identification.)

15 Q Okay. And when did you put that
16 there?

17 A Let's see, sometime in 2021 maybe,
18 maybe late '21 or mid '21. I believe just with
19 COVID and the fact that everyone was, you know,
20 sitting outside, things were a little more
21 stretched out. We did have, you know, I guess, a
22 higher utilization of the space outside, so we,
23 you know, in an effort to try to make sure folks
24 were respectful of our neighbors, we placed -- we
25 placed that there as well as a couple other

1 signs.

2 MR. BIANCO: Okay. Move admission of
3 Applicant's 4.

4 CHAIR ANDERSON: Mr. Brown, any
5 objection?

6 MR. BROWN: No object.

7 CHAIR ANDERSON: Without objection.

8 (Whereupon, the above-referred to
9 document was received in evidence as Applicant's
10 Exhibit 4.)

11 MR. BIANCO: I'm showing you what's
12 been marked as -- what we're marking a Applicant
13 5. It appears to be another sign. Where is that
14 one located?

15 MR. HINES: This is at that side
16 entrance that we were just referring to. It
17 welcomes the guests as they're entering or
18 approaching the restaurant.

19 (Whereupon, the above-referred to
20 document was marked as Applicant's Exhibit 5 for
21 identification.)

22 BY MR. BIANCO:

23 Q Okay. And you put that up at the same
24 time, or did you put it up at a different sign --
25 a different time?

1 A The same time.

2 MR. BIANCO: Okay. Move admission of
3 Applicant's 5.

4 CHAIR ANDERSON: Mr. Brown?

5 MR. BROWN: No object.

6 CHAIR ANDERSON: Without objection.

7 (Whereupon, the above-referred to
8 document was received in evidence as Applicant's
9 Exhibit 5.)

10 MR. BIANCO: Moving on to Applicant
11 Exhibit Number 6, what does that show?

12 MR. HINES: That's the interior of the
13 additional cafe space.

14 (Whereupon, the above-referred to
15 document was marked as Applicant's Exhibit 6 for
16 identification.)

17 BY MR. BIANCO:

18 Q Okay. And how much seating is there?

19 A It's three of those benches, if you
20 will, picnic tables. They hold approximately six
21 people, so I would say 18.

22 MR. BIANCO: Okay. And move admission
23 of Applicant's Number 6.

24 CHAIR ANDERSON: Mr. Brown?

25 MR. BROWN: No objection.

1 CHAIR ANDERSON: Without objection.

2 (Whereupon, the above-referred to
3 document was received in evidence as Applicant's
4 Exhibit 6.)

5 MR. BIANCO: Okay. Now we're going to
6 jump down to page 60. Okay. And I'm going to
7 mark this as Applicant Exhibit Number 7. What
8 does that show?

9 MR. HINES: This is the -- when you
10 come into the restaurant, directly to the right,
11 that is what we consider the seating area.

12 (Whereupon, the above-referred to
13 document was marked as Applicant's Exhibit 7 for
14 identification.)

15 BY MR. BIANCO:

16 Q Okay. And what's your -- what seating
17 do you have set up for that particular area?

18 A Right there as we -- it's shown as we
19 operate now, approximately four by four -- four -
20 - seating for four times two, so that's seating
21 for eight. And then there may be three or four
22 bar stools directly at the counter.

23 MR. BIANCO: Okay. Move admission of
24 Applicant's 7.

25 CHAIR ANDERSON: Mr. Brown? Any

1 objection, Mr. Brown?

2 MR. BROWN: No objection. Would it be
3 possible to maybe go through all the photos and
4 we can jointly agree to admit them and move
5 things along?

6 (Whereupon, the above-referred to
7 document was received in evidence as Applicant's
8 Exhibit 7.)

9 CHAIR ANDERSON: I think,
10 unfortunately, in order for him to get his
11 documents in, he has to identify them. And so he
12 has to have a witness identify the document, and
13 then he has to ask to move them in, and we have
14 to go through this process unfortunately, sir.
15 But if you're -- if you do not object to any of
16 his documents, then we can just say they're
17 admitted without. I don't have to ask you if you
18 have -- if you're going to agree. All the
19 documents can be admitted without objection.

20 MR. BROWN: The pictures, I've seen
21 the inside of the unit. I don't have any
22 objections to the pictures of the unit.

23 CHAIR ANDERSON: All right.

24 MR. BIANCO: Great. I'll just run
25 through them and indicate what Exhibit they are

1 so that's on the record if that's okay?

2 CHAIR ANDERSON: Okay.

3 BY MR. BIANCO:

4 Q So I'm showing you what's been
5 admitted as Applicant's Number 8, and that is --
6 what does that show there?

7 A So when you walk into the front door,
8 this is what is -- would greet you, if you will.
9 Directly in front is the cash register, then the
10 soda machine, then sort of the space -- the
11 staging area is what we call it where people will
12 deliver their food.

13 (Whereupon, the above-referred to
14 document was marked as Applicant's Exhibit 8 for
15 identification and received in evidence.)

16 Q Okay. And do you track your
17 percentage of food sales versus your percentage
18 of alcohol sales?

19 A I do.

20 Q And what are -- what are those
21 percentages?

22 A It's about 80 to 20, 85/15 mix with 15
23 percent alcohol and the 85 percent being food
24 sales.

25 Q Okay. How about do you track takeout

1 versus dine-in service?

2 A Yes. We -- yes, we do.

3 Q Okay. And how does that breakdown?

4 A So we utilize the three deliver
5 services, Uber-like services as well as utilize
6 just pickup. People can call and pick up and go.
7 And I would say all together, that's about 65
8 percent of our business. Most -- the majority of
9 our business are people picking up and leaving.

10 Q Okay. I want to talk for a moment
11 about your sound system --

12 A Sure.

13 Q -- in the establishment. Can you
14 describe the sound system you presently have?

15 A We utilizing a Sonos system that
16 operates off of four speakers, and it's
17 controlled by either a iPad or a iPhone.

18 Q Okay. And have you changed your sound
19 system in the course of your operations?

20 A Yes.

21 Q Okay. And can you describe how you
22 changed it?

23 A Well, when we -- the place was
24 originally built, we had four speakers placed in
25 the ceiling, and they operated off of a computer

1 interface as well as timing controls with a
2 speaker -- with a volume control on the wall of
3 the -- right by the bar area.

4 Q Okay. And when did you make that
5 change from that built-in speaker system to the
6 Sonos system?

7 A Oh, that was somewhere around November
8 or December of this year.

9 Q Okay. So that --

10 A I'm sorry, November or December of
11 2022.

12 Q Okay. And why did you make that
13 change from the built-in speakers to the Sonos
14 system?

15 A Trying to address the sound issues
16 that we were having between Cory and myself.

17 Q Okay. And there was some testimony
18 earlier from Investigator Prout in response to
19 questions by Mr. Brown that there are 10 speakers
20 in the property; is that the case?

21 A Well, we never took -- the ceiling
22 speakers, we never took those out. We just
23 ceased using them. We did have two additional
24 bluetooth speakers that we tried as a means to
25 alleviate the issue where those speakers were

1 placed on the floor so not to be right in the
2 ceiling area, but we ceased using those as well
3 when we went fully to the Sonos system.

4 Q Okay. So presently, in your business,
5 how many speakers do you have actually in
6 operation?

7 A Four.

8 Q And am I correct that if we look at
9 Exhibit Number 9 in the upper left-hand corner,
10 does that show what one of the built-in speakers
11 look like?

12 A Is this Exhibit 9 here?

13 Q Yes. It's up on the screen.

14 A That's one of the built-in -- yes.
15 That white cone, that's one of the ceiling units
16 that, you know, pre-existed I guess.

17 (Whereupon, the above-referred to
18 document was marked as Applicant's Exhibit 9 for
19 identification and received in evidence.)

20 Q Okay. Other than changing from the
21 built-in speakers to the Sonos system, have you
22 done -- made any other changes to deal with Mr.
23 Brown's noise complaints?

24 A Well, again, trying to utilize the --
25 the bluetooth speakers and place them on the

1 floor. I've instructed my staff to turn down the
2 music at 10:00 p.m. regardless of, you know,
3 whether there was a lot of activity or not. We -
4 - based on the recommendation, I utilize the
5 Sonos alarm system now so that music shuts off
6 automatically at 10:00 p.m.

7 Q Okay. So I want to drill down on that
8 just a little bit. You said based on the
9 recommendation, you use the Sonos alarm system.
10 Okay. So based on whose recommendation?

11 A That was Cory. We -- in the -- during
12 a Board meeting, we were -- a Building Board
13 meeting, we were discussing just things that I
14 was -- I was trying to utilize just to address
15 his issues. He -- I mentioned that it was a
16 Sonos system, and he mentioned that that -- it
17 had that functionality.

18 Q Okay.

19 A So the very next day I placed an alarm
20 on it to go off at 10:00 p.m.

21 Q And when did you implement that music
22 10:00 p.m. cutoff?

23 A That was probably in February, late
24 February, I think, is when our last board meeting
25 was.

1 Q Okay. And that's February of 2023?

2 A Yes.

3 Q Okay. Now did you do any -- make any
4 physical modifications to the premises to
5 insulate sound?

6 A We're making it sort of piece by
7 piece. There has been some leaking issues from
8 the units above that comes directly down on us,
9 so we've had to tear out ceiling in places and as
10 we add back in, we have been adding additional
11 layers of insulation to try to soundproof
12 different -- different areas within the building
13 or within our unit.

14 Q And how long has that been ongoing?

15 A It's been going on for a few months
16 now, since, I would say, late 2022. Every time
17 we think we solve the issue, more water comes
18 down so -- and in fact, we have -- we had to tear
19 out a piece not too long ago. So we -- we're
20 scheduled to have more repairs made in the next
21 week.

22 Q Okay. And when you did your initial
23 build-out, did you take any measures to try and
24 insulate your unit for sound?

25 A Yes. My contractor specifically

1 stated that they applied four layers of -- of
2 sheetrock or what is it, drywall, in an effort to
3 soundproof our space. We were the last unit to
4 be built in, if you will, so we were taking
5 special effort to try to mitigate the noise of
6 the build-out as well as, you know, potentially,
7 you know, just operating noise down the road.

8 Q Okay. All right. This is going to be
9 Exhibit Number 10, Applicant 10, and what's that?

10 A That's one of the Sonos speakers that
11 we recently had put in.

12 (Whereupon, the above-referred to
13 documents was marked as Applicant's Exhibit 10
14 for identification and received in evidence.)

15 BY MR. BIANCO:

16 Q Okay. And where is that located?

17 A That looks like it's in the -- the
18 cafe -- additional cafe area space.

19 Q Okay. Are they all that size or are
20 they different --

21 A Yes. They're all that size.

22 Q Okay. And how many are in the
23 enclosed cafe area?

24 A There are two in that cafe area.

25 Q Okay. And how many are inside the

1 actual structure of the restaurant?

2 A Just one.

3 Q Okay. So I want to talk about the
4 condominium for a moment. I think there was some
5 testimony that your unit is situated inside of
6 the condominium. Is that a space that you rent,
7 or is that a space that you own?

8 A I own.

9 Q Okay. And when did you purchase that
10 space?

11 A I purchased it in 2016.

12 Q Okay. And at the time you purchased,
13 did you receive any information from the
14 developer?

15 A Sure. The -- what do they call it --
16 the condominium rules and regulations,
17 principles, bylaws, the condo bylaws.

18 Q Okay. I'm going to show you a
19 document that we're marking as Exhibit Number 11.
20 Going to fix the orientation of this very
21 quickly. And do you recognize this document?

22 A Sure.

23 (Whereupon, the above-referred to
24 document was marked as Applicant's Exhibit 11 for
25 identification.)

1 BY MR. BIANCO:

2 Q What is that?

3 A Those are the bylaws.

4 Q Okay. So I am on page 71 in the
5 packet, which is part of Exhibit 11. And this,
6 reading from the first paragraph here, it says,
7 "D.C. law requires the original seller of a
8 condominium unit disclose fully and accurately
9 the character of the condominium units being
10 offered for sale. This public offering statement
11 is the means by which such disclosure is made."
12 Do you see that?

13 A Yes.

14 Q Okay. And this is the actual document
15 that you received at the outset of your purchase,
16 right?

17 A Yes.

18 Q And you did not obviously cancel the
19 sale because of any issues with the condo, right?

20 A Correct.

21 Q Okay. And moving down to the second
22 paragraph here, it says, "The purchaser should
23 inspect the condominium and all common areas and
24 obtain professional advice." Did you do that?

25 A Yes.

1 Q Okay. Now I want to go down to page
2 85 in the public offering statement package --
3 I'm sorry, 85 in the exhibit package, which is
4 part of the public offering statement. And
5 specifically, I want to look at the paragraph
6 that deals with rule and regulations of the
7 condominium. And if you'll bear with me, I can
8 point you to a specific provision here. And
9 we're looking at -- on page 85, the one, two --
10 the third paragraph down. It says, "The bylaws
11 also permit the board of directors to prescribe
12 rules and regulations applicable only to the
13 commercial unit of the condominium." Do you see
14 where it says that there?

15 A Yes.

16 Q Okay. And has the board of directors
17 of the condominium prescribed special rules for
18 the commercial unit as of today?

19 A No.

20 Q Okay. Is -- are you -- do you
21 participate in the condominium association?

22 A Yes.

23 Q What's your role?

24 A I am a -- I am the treasurer.

25 Q Okay. And does Mr. Brown participate

1 in the condominium association?

2 A Yes.

3 Q What's his rule?

4 A He is the treasurer.

5 Q Okay. I thought you were the
6 treasurer.

7 A I'm sorry. He is the treasurer. I'm
8 the secretary. I'm sorry. Got my roles mixed
9 up.

10 Q And now I want to jump down to page
11 176 of the packet, and this says, "Flats at
12 Florida Avenue Condominium: Rules and
13 Regulations." And specifically what I want to
14 look at here is the second paragraph, the -- it
15 looks like second to last sentence says, "The
16 failure to comply with any of these provisions
17 shall be cause for imposing a fine, an action to
18 recover sums due for damages, or injunctive
19 relief, or all of these." Do you see where it
20 says that there?

21 A Yes.

22 Q Has the condominium taken any such
23 action against you?

24 A No.

25 Q Okay. And scrolling down to 2c, there

1 is a provision governing noise, correct?

2 A Yes.

3 Q And it says here, which is what I want
4 you to address, is "There shall be no playing of
5 any musical instruments, radio, television,
6 record player, tape recorder, or the like between
7 the hours of 11 p.m. and the following 8 a.m. if
8 such activity disturbs or annoys other
9 occupants." And you adhere to that?

10 A Yes.

11 Q And I think there was some earlier
12 testimony about when your music cuts off. When
13 is that?

14 A Ten p.m.

15 MR. BIANCO: Okay. At this time, I
16 would move admission of the public offering
17 statement, which I believe is Applicant's Number
18 11.

19 CHAIR ANDERSON: Do you have any
20 objection, Mr. Brown?

21 MR. BROWN: No objection.

22 CHAIR ANDERSON: So moved.

23 (Whereupon, the above-referred to
24 document was received in evidence as Applicant's
25 Exhibit 11.)

1 MR. BIANCO: Okay. That's all for the
2 exhibits, Mr. Hines. I do want to ask you a few
3 more questions about your interactions with the
4 protestants. Did you have communications with
5 them regarding noise?

6 MR. HINES: With Cory, yes.

7 BY MR. BIANCO:

8 Q Okay.

9 A Not with --

10 Q Go ahead, you can finish your answer.

11 A -- not with Jackie.

12 Q And can you describe those
13 interactions?

14 A Well, it started --

15 CHAIR ANDERSON: Can you close your
16 screen, please, for the --

17 MR. BIANCO: I'm sorry, what?

18 CHAIR ANDERSON: Close your screen,
19 please. Okay. Go ahead.

20 MR. BIANCO: Yes. I will. I think
21 somebody beat me to it here. It's closed on my
22 end. Okay.

23 MR. HINES: Well, just to answer your
24 question, early on, I was introduced to -- I
25 think I may have introduced myself to Cory. I

1 heard he had moved into the building, introduced
2 myself, said hello. Later the ANC, Karla Lewis
3 brought it to my attention that he was upset
4 regarding noise and I may be forgetting some
5 steps. He may have called the police prior to
6 that. That's sort of the interaction I was used
7 to. But Karla brought us together on a
8 conference call to try to resolve the issue,
9 which I participated in. During that call, I
10 expressed to Cory, you know, I -- you know,
11 everything starts and stops with me so if
12 necessary, please contact me if there is any
13 issue, but I, you know, prefer not to get police
14 involved, not to have, you know, folks come out
15 because it -- it kind of puts my staff on edge as
16 if they're doing something wrong. But during
17 that call, Cory, you know, threatened me,
18 immediately said that he was a labor lawyer, he's
19 ready for a fight and, you know, he'll make sure
20 that whatever happens, you know, that he'll get
21 what he wants out of this. From that point
22 forward, he would text me from time-to-time. I'm
23 sorry. He would text me on a regular basis
24 saying that the music was too loud. I would try
25 to respond but again, you know, if -- whether I

1 was there or not there. If he were to text me
2 and I was not there and I saw the text, I
3 contacted my staff.

4 What would happen over time is if I
5 didn't respond in time and eventually, with no
6 indication, he would send the police or send a
7 ABRA investigator to the location to a point
8 where it felt like harassment. And I say that
9 because there was never an instance of a finding,
10 a warning of anything based on him calling.

11 So we continued, you know, sort of
12 that back and forth until again, he just stopped
13 contacting me. Then Karla -- the ANC, Karla
14 Lewis, would reach out to me. She was looking
15 for solutions. I was forwarded emails showing
16 that he had contacted the Mayor's Office, DCRA,
17 any authority that would actually listen to, you
18 know, bring some attention. And because he
19 contacted them, all of them had to come out.
20 That was sort of the point. If they're
21 contacted, they have to come out.

22 I've talked to ABRA investigators.
23 I've talked to the MPD where they're just -- you
24 know, at their wits end cause they didn't feel
25 like we had a violation.

1 Eventually, Karla coordinated a sound
2 test to go along with, and I believe, an ABRA
3 investigator accompanied them for the sound test
4 which was done and at which point there was no --
5 there was -- the finding was there was no issue.
6 We were below the threshold in terms of noise
7 coming out of our location. So --

8 BY MR. BIANCO:

9 Q Okay. So I want to go back and ask
10 you a couple of follow-up questions with respect
11 to your latest testimony.

12 A Okay.

13 Q So first, with regard to this
14 conference call that you had with Mr. Brown and
15 Commissioner Lewis, when did that occur, to the
16 best of your recollection?

17 A That was, I believe, in August of
18 2021.

19 Q Okay.

20 A I believe.

21 Q And thereafter, you testified that
22 there was a sound test of some kind done,
23 correct?

24 A Yes.

25 Q And that -- what -- who set that up?

1 A I believe Cory and Ms. Lewis.

2 Q Okay. And who conducted the test?
3 Was it private or was it a government agency?

4 A It was a government agency.

5 Q Oh. And to the best of your
6 knowledge, when did that test take place?

7 A I believe September of 2021.

8 Q Okay. And I think you already
9 testified about the results of that test, so I'm
10 not going to go back over that again. And I
11 believe you also testified that MPD has never
12 cited you. How about DCRA, have they --

13 A Can I -- I do need to correct myself.
14 The test took place in April of 2022.

15 Q Okay. So --

16 A The test took place. DCRA came out in
17 April of 2022.

18 Q Okay. And they found no violation?

19 A And they found no violation.

20 Q Okay. And DCRA, have they ever cited
21 you?

22 A No.

23 Q There was some testimony earlier from
24 Investigator Prout about there being exposed
25 ceiling within the business. Could you explain

1 how the ceiling is set up in the business?

2 A No. We have drywall throughout. If
3 there was anything exposed, it may have been
4 because of this leaking issue. I'm not exactly
5 sure when he came out, but as I said, we're
6 scheduled to have some repairs done this -- next
7 week to fill in. And when I -- when I say a
8 square, I'm talking maybe a 24 by 12 space, cause
9 we just cut out directly for -- you know, for
10 where the -- where the leaks take place. So
11 we're going to go back in and fill that in, but
12 there is -- the way the -- the restaurant is
13 built is there's -- there's nothing exposed in
14 the ceilings.

15 MR. BIANCO: Okay. Thank you very
16 much, Mr. Hines. I don't have any further
17 questions. Mr. Brown will have some cross and
18 the Board may have some questions as well; okay?

19 MR. HINES: Sure.

20 CHAIR ANDERSON: Mr. Brown, do you
21 have any questions?

22 MR. BROWN: Yes, please. Good
23 afternoon, Melvin.

24 MR. HINES: Good afternoon.

25 CROSS EXAMINATION

1 BY MR. BROWN:

2 Q You stated the sign that was outside
3 of the door that your attorney entered into the
4 record was placed there somewhere in 2021,
5 correct?

6 A I believe so, yes.

7 Q And you received complaints from
8 myself thereafter?

9 A Yes.

10 Q Thank you. Okay. And you put in a
11 new system in November or December of 2022, so
12 just about five months ago or so?

13 A Yes.

14 Q Correct. I moved in May of 2020.

15 A Okay.

16 Q So to be correct, almost two years of
17 complaints and then you installed a new sound
18 system, correct?

19 A Yes.

20 Q Thank you. And then you referenced a
21 board meeting in February, which did occur.
22 However, discussion in regards to your Sonos,
23 that actually occurred during mediation, correct,
24 with the ABRA, Ms. Laverne -- can't remember her
25 last name -- but that was actually during

1 mediation with myself and Jackie, correct?

2 A Yes. That actually -- yes, that
3 happened first and then we had the board meeting
4 and talked about it at that time.

5 Q Okay. So the system had been up for
6 four -- the system that took two years after I
7 had moved in, complained for two years, then got
8 installed and then wasn't until mediation that
9 then action was taken to abate the sound,
10 correct?

11 MR. BIANCO: I'm going to object.

12 MR. HINES: I disagree with that.

13 MR. BIANCO: Melvin -- Melvin, hold
14 on. I'm objecting. Hold on, just wait. I'm
15 going to object as argumentative. He's giving
16 testimony as well as assuming facts not in
17 evidence and mischaracterizing prior testimony.
18 If there is a question, he should ask it. If he
19 wants to testify, he'll get the chance.

20 CHAIR ANDERSON: All right. I'll just
21 ask you, Mr. Brown, just please ask direct
22 questions of the witness so we can move this
23 along. All right.

24 MR. BROWN: But to clarify, is this --
25 this is all cross-examination since I'm opposing,

1 correct? So --

2 CHAIR ANDERSON: Yes. It's cross-
3 examination but you ask direct questions.
4 Normally, in cross-examination, you would ask yes
5 or no answer because you don't try to give your
6 witness an opportunity to explain their answer.
7 So you try to ask questions that are short and
8 concise to get - to make your point, sir.

9 MR. BROWN: Thank you. You had in
10 your testimony that you did not add ceiling -- or
11 additional ceiling tiles in until late 2022,
12 correct?

13 MR. HINES: No.

14 BY MR. BROWN:

15 Q When was that in?

16 A We don't have tiles in our building.
17 It's drywall as a ceiling.

18 Q So you added additional drywall in
19 late 2022 to the ceiling?

20 A Wherever there was a need for a
21 repair, we would then add additional layers or
22 additional insulation.

23 Q Thank you. And again, I moved in in
24 2021 and complained about noise since then,
25 correct?

1 A What was the date, 2021 or --

2 Q Or May 2020. Sorry, even a year more
3 than that.

4 A I recall 2021. I don't necessarily
5 recall 2020.

6 Q Sounds good. Okay. So you said you
7 put four layers of sheetrock when the unit was
8 built, correct?

9 A Yes.

10 Q Did you hire a sound engineer?

11 A No.

12 Q At any point since then, with all
13 these complaints, all these years later, did you
14 hire a sound engineer at any point?

15 A We -- we got estimates from
16 soundproofers.

17 Q Estimates but you didn't hire them or
18 act on their recommendations?

19 A No.

20 Q Thank you. Conference call in August
21 -- approximately August 2021 with the ANC
22 Commissioner, you admit that I approached the ANC
23 Commissioner and the community later to abate the
24 issues at hand, correct?

25 A Yes.

1 Q Including the condo board on all the
2 email chains?

3 A I don't know exactly who you
4 contacted.

5 Q Okay. All right. So everyone came
6 out, as you stated, every different agency. You
7 rattled through a few there, the DCRA, everyone
8 else. However, you didn't change the sound
9 system until the end of November or December of
10 2022, correct?

11 A No. That's not correct.

12 Q When did you change the sound system?

13 A We went through a number of changes.
14 Again, instead of using the ceiling, we installed
15 -- we started using some bluetooth. We started
16 just -- what is the term -- we started
17 broadcasting the music from a laptop instead of
18 the computer in the back to go to the ceiling,
19 you know, just -- just tried to do different
20 things to try to address -- to mitigate this
21 issue in any way we could.

22 Q And with all the steps that didn't
23 include soundproofing, did still receive
24 complaints from me?

25 A Yes.

1 Q Thank you. You referenced a sound
2 test and that you passed. Do you have record of
3 that?

4 A I do.

5 Q Was that submitted in -- by your
6 attorney for the CR.

7 A I just received it maybe two days ago,
8 so I don't know that it was actually submitted.

9 MR. BROWN: So not in the record. All
10 right. Those are all the questions I have.
11 Thank you.

12 CHAIR ANDERSON: Thank you. Any
13 questions by any other Board Member -- any Board
14 -- go ahead, Mr. Short.

15 MEMBER SHORT: Oh, it's good evening
16 now, isn't it? No. Good afternoon.

17 MR. HINES: It feels like it, yes.

18 MEMBER SHORT: Mr. Hines, how long
19 have you been in business in the District of
20 Columbia?

21 MR. HINES: Since 2011, April 2011.

22 MEMBER SHORT: What was the first
23 place?

24 MR. HINES: It was called actually
25 Teri Janine, mentioned it earlier. We opened at

1 8 Florida Avenue under the banner of Revive
2 Events and Catering.

3 MEMBER SHORT: That's at the corner of
4 North Capitol and --

5 MR. HINES: And Florida Avenue.

6 MEMBER SHORT: -- Florida.

7 MR. HINES: Yes, sir.

8 MEMBER SHORT: How long did you stay
9 there?

10 MR. HINES: I stayed there from 2011
11 til approximately -- well, until about 2016.

12 MEMBER SHORT: Okay. From there, what
13 did you do in 2016?

14 MR. HINES: I actually opened another
15 business right around the corner, a local bar,
16 Wicked Bloom Social Club. We operated Wicked
17 Bloom and DCity in that space during the time
18 that I was building out the space at 203 Florida
19 Avenue.

20 MEMBER SHORT: The address of that
21 business you just mentioned?

22 MR. HINES: 1540 North Capitol Street
23 NW.

24 MEMBER SHORT: Okay. Is that the 2016
25 location?

1 MR. HINES: That's where we were
2 during -- til 2016, yes.

3 MEMBER SHORT: Okay. And so now
4 you've been in your current location since 2017?

5 MR. HINES: Correct.

6 MEMBER SHORT: How many condos are in
7 the building where your business is located?

8 MR. HINES: Someone was calling in at
9 the same time. Could you repeat the question?

10 MEMBER SHORT: How many units are in
11 the condominium? Having trouble hearing him, Mr.
12 Chair.

13 MR. HINES: My son does not know how
14 to not call when I don't answer. Could you ask
15 that one more time. I'm sorry.

16 MEMBER SHORT: Okay. I was asking
17 what is the number of condominiums in your
18 current location?

19 MR. HINES: It's eight other units in
20 that location.

21 MEMBER SHORT: And if you can, how
22 many complaints have you got form the other -- so
23 you are one of the eight?

24 MR. HINES: I'm one of nine.

25 MEMBER SHORT: One of nine?

1 MR. HINES: Yes.

2 MEMBER SHORT: So the other eight, how
3 many complaints have you got other than Mr.
4 Brown?

5 MR. HINES: Zero.

6 MEMBER SHORT: You're all under the
7 same -- in the same board?

8 MR. HINES: Yes.

9 MEMBER SHORT: Okay. I'll move on
10 from there. And you are going to now expand to
11 Good Hop Road SE?

12 MR. HINES: 1301 Good Hope Road,
13 bringing the best barbecue over to the south
14 side.

15 MEMBER SHORT: Okay. Now the
16 percentage of alcohol, it was testified by you, I
17 think, was 20 percent of all of your business, is
18 20 percent of alcohol?

19 MR. HINES: It runs about 15 to 20
20 depending upon the season.

21 MEMBER SHORT: And how long have you
22 had your ABC license in the District of Columbia?

23 MR. HINES: I had it at the beginning
24 of 2017. Actually, I've had -- I had it with
25 Wicked Bloom prior. We opened that location, I

1 believe, in 2015, so I had a liquor license
2 there. And then upon opening in 2017, we had the
3 liquor license day one.

4 MEMBER SHORT: If you can answer this,
5 I would appreciate it. Since you've had your ABC
6 license, how many complaints have been lodged
7 against your businesses concerning your ABC
8 license?

9 MR. HINES: Is that related to noise
10 or, you know?

11 MEMBER SHORT: No. Any complaints
12 dealing with your ABC license?

13 MR. HINES: We've had a couple in
14 terms of managers being on site.

15 MEMBER SHORT: Just a couple?

16 MR. HINES: Yes.

17 MEMBER SHORT: So would you say you
18 have a pretty good record with ABRA, with --

19 MR. HINES: I believe we do.

20 MEMBER SHORT: -- ABCA Board now?

21 MR. HINES: That's -- that's all
22 relative, I think, but I believe we do.

23 MEMBER SHORT: Okay. Now Mr. Hines,
24 you -- it sounds like and from the pictures we're
25 seen that were pictures by your attorney, it

1 seems to be a thriving business and you're
2 expanding now. And I would just simply say as
3 being a Board Member, this is my third term on
4 the Board, I've never seen you come before us
5 before I don't believe. Have you been before
6 this Board before?

7 MR. HINES: Yes, relative to the
8 Mayor's Order during COVID, I had to deal with
9 that issue.

10 MEMBER SHORT: Other than COVID, have
11 you been before this Board?

12 MR. HINES: Not that I can remember,
13 no.

14 MEMBER SHORT: Thank you for your
15 candid answers. Mr. Chairman, that's all I have
16 at this time.

17 CHAIR ANDERSON: Thank you, Mr. Short.
18 Any other questions by any other Board Members?
19 Yes, Mr. Grandis.

20 MEMBER GRANDIS: Thank you. Mr. Hines
21 --

22 MR. HINES: Yes.

23 MEMBER GRANDIS: -- welcome this
24 afternoon and thank you for your presentation.
25 Are you able to pull up the pictures, the

1 Exhibits that your attorney went through?

2 MR. BIANCO: He can.

3 CHAIR ANDERSON: What do you want him
4 to pull up, Mr. Grandis?

5 MEMBER GRANDIS: The series of photos
6 that have been entered into the record.

7 CHAIR ANDERSON: I need to -- all
8 right. Which one do you want, Mr. Bianco to --
9 which one.

10 MEMBER GRANDIS: If he could -- if Mr.
11 Bianco could slowly scroll through the photos,
12 I'd appreciate it. It's very small on my screen.

13 CHAIR ANDERSON: So do you know which
14 photos you want him to go through?

15 MEMBER GRANDIS: Yes. Once he gets to
16 them, yes. Okay. Slow down, slow down. Okay.

17 MR. BIANCO: Those are the
18 investigative report photos.

19 MEMBER GRANDIS: Yes. Oh.

20 MR. BIANCO: Okay. Are those the ones
21 you want to see or you want to see the ones I put
22 in?

23 MEMBER GRANDIS: The ones you put in.

24 MR. BIANCO: Okay -- okay -- okay.

25 MEMBER GRANDIS: Thank you.

1 MR. BIANCO: That's a little bit
2 further down. Here we go. Okay. So here are
3 the photos --

4 MEMBER GRANDIS: So yes.

5 MR. BIANCO: -- we put in as evidence
6 --

7 MEMBER GRANDIS: Okay.

8 MR. BIANCO: -- starting here with the
9 exterior.

10 MEMBER GRANDIS: Go to the next one?

11 MR. BIANCO: Okay.

12 MEMBER GRANDIS: The next one down?
13 Thank you -- Thank you, Mr. -- no, no -- no, no.
14 Go to your second photo, please.

15 MR. BIANCO: Let me fix the
16 orientation for you. There you go.

17 CHAIR ANDERSON: What Exhibit are we
18 looking at, sir?

19 MR. HINES: This is the front of DCity
20 Smokehouse, of --

21 CHAIR ANDERSON: No. Hold on. I'm
22 sorry. Mr. Bianco, what Exhibit is this, do you
23 know?

24 MR. BIANCO: Yes. That one is Exhibit
25 Number 2. That's Exhibit 2.

1 CHAIR ANDERSON: Exhibit Number 2?

2 MR. BIANCO: Yes, page 62 of the
3 packet.

4 CHAIR ANDERSON: All right. So Mr.
5 Grandis, you're asking about Exhibit Number 2.
6 All right. Okay. Go ahead.

7 MEMBER GRANDIS: Thank you. And like
8 I said, I -- all I can see is small photos so
9 thank you for your indulgence. So what are we
10 looking at here, sir?

11 MR. HINES: This is the front of DCity
12 Smokehouse facing Florida Avenue.

13 MEMBER GRANDIS: And what area will --
14 would -- are people sitting in, under the awning
15 or --

16 MR. HINES: Wait is there --

17 (Simultaneous speaking.)

18 MEMBER GRANDIS: -- is that an awning?

19 MR. HINES: Yes. That's a awing with
20 plastic covers. They may sit under there. They
21 may sit within the building.

22 MEMBER GRANDIS: Okay. But the area
23 to the right, is that an alley?

24 MR. HINES: The area to the right is
25 a public park.

1 MEMBER GRANDIS: A public park. And
2 do you have any tables and chairs on that area?

3 MR. HINES: We do -- we do.

4 MEMBER GRANDIS: And would that --
5 would that be a -- when you have it on that area,
6 which is the public park, is that a streetery?

7 MR. HINES: It's not a streetery. You
8 know, considered sort of a outdoor cafe eating
9 area.

10 MEMBER GRANDIS: And the area that's
11 under the awning, is that like a summer garden,
12 or is that like a enclosed sidewalk cafe?

13 MR. HINES: Enclosed sidewalk cafe I
14 believe is what the permit calls it.

15 MEMBER GRANDIS: Okay. And how often
16 do you use that area, the sidewalk cafe?

17 MR. HINES: Weather permitting. You
18 know, it's really based on the customer. They --
19 they can sit wherever they want so, you know,
20 they'll come in and, you know, I will go back to
21 my earlier reference of, you know, that 35
22 percent dine in.

23 MEMBER GRANDIS: Yes, sir.

24 MR. HINES: And within that 35
25 percent, you know, they may choose that area to

1 sit.

2 MEMBER GRANDIS: And the protestants,
3 are any of their windows visible in this
4 photograph?

5 MR. HINES: Yes.

6 MEMBER GRANDIS: Can you point them
7 out, sir?

8 MR. HINES: So if you Sergeant
9 Edgerton e sort of the mural that's on the side
10 right in front of the --

11 MEMBER GRANDIS: Yes, sir.

12 MR. HINES: -- pig, I believe that's
13 Jackie's units. The next window to the right,
14 I'm not sure whose unit that is. That may be
15 Cory. And then that corner smallish window to
16 the right of that, I believe that's Cory's
17 bathroom.

18 MEMBER GRANDIS: So two protestants
19 that are part of this hearing, their units are on
20 that floor with those windows that you pointed
21 out?

22 MR. HINES: Yes.

23 MEMBER GRANDIS: Okay. And when did
24 you actually start using this enclosed sidewalk
25 cafe?

1 MR. HINES: Well, during COVID, we
2 were permitted the use of a temporary structure.
3 I believe that was -- we didn't get that til
4 sometime in 2021. From 2021 through, I guess,
5 the end of 2022, we went through the permit
6 process to get a more permanent structure and
7 which case, that's -- this is the result of that.

8 MEMBER GRANDIS: Can we go to the next
9 photo down? That one. We can keep -- go to the
10 next one? The next one down, sir? Okay. This
11 one here, I see there's signage.

12 CHAIR ANDERSON: Wait a minute, Mr.
13 Grandis. Mr. Bianco, for the record, can you
14 identify this Exhibit that we're looking at, sir?

15 MR. BIANCO: This is Applicant's 4.

16 CHAIR ANDERSON: Go ahead, Mr. --

17 MEMBER GRANDIS: Mr. Bianco, thank you
18 for your technical help on those pictures. The
19 signage here, when did you put that up?

20 MR. HINES: Sometime around 2021.
21 Again -- well, the reference has been, you know,
22 20 -- during 2020, March 2020 --

23 MEMBER GRANDIS: Yes, sir.

24 MR. HINES: -- then returning in 2021,
25 we were dealing specifically with COVID. As a

1 result, we were, you know, all businesses just
2 like myself were trying to figure out how to
3 operate. The city made some changes basically to
4 be able to spread out but because we did maintain
5 full hours and a full menu throughout COVID, we
6 will -- we were a more popular restaurant. I
7 would say our -- that energy has definitely
8 subsided since then, but we were more popular.
9 And to try to address that, I had these signs put
10 in, and I believe it was sometime during 2021.

11 MEMBER GRANDIS: Just for a reference,
12 how many of your employees are D.C. residents?

13 MR. HINES: Oh, man, 90 percent.

14 MEMBER GRANDIS: Which would be
15 roughly what number, just roughly?

16 MR. HINES: We maintain about anywhere
17 from 17 to 22 people, so I would say probably
18 about 15 to 20 are D.C. residents.

19 MEMBER GRANDIS: Well, I'm sure during
20 COVID, the city was very appreciative of you
21 being able to be creative and keep city residents
22 employed so --

23 MR. HINES: And I was -- I definitely
24 appreciated the city's support in trying to
25 address these issues.

1 MEMBER GRANDIS: The stairs, you
2 mentioned them. Does that go into that condo
3 building where the protestants live?

4 MR. HINES: Yes -- yes, it does.

5 MEMBER GRANDIS: Would that take you
6 to the second floor, the floor they're on --

7 MR. HINES: Yes.

8 MEMBER GRANDIS: -- those steps?

9 MR. HINES: Yes.

10 MEMBER GRANDIS: Okay. And that --
11 who, for your staff or customers, use those
12 stairs, if anyone?

13 MR. HINES: No one. None --

14 (Simultaneous speaking.)

15 MR. HINES: -- no one affiliated with
16 myself, with DCity Smokehouse.

17 MEMBER GRANDIS: So there's really no
18 reason for the business to go in and out of there
19 for --

20 MR. HINES: Not at all.

21 MEMBER GRANDIS: -- supplies or
22 anything? Okay.

23 MR. HINES: Not at all.

24 MEMBER GRANDIS: Mr. Bianco, can we go
25 down to the next one? Okay. What number is this

1 one for the record?

2 MR. BIANCO: This is Applicant's 5.

3 MEMBER GRANDIS: Thank you. Mr.
4 Hines, what are we look -- I know what we're
5 looking at but in -- once again, regarding the
6 two protestants, are we able to see any of their
7 windows in this photo?

8 MR. HINES: I believe -- the window
9 immediately to the right, I believe that -- that
10 is Cory's. I believe both of those, actually,
11 are Cory's windows that I can see.

12 MEMBER GRANDIS: We can go to the next
13 one, Mr. Bianco. Okay, stop. Okay. This is --
14 I'm assuming we're looking inside of the enclosed
15 sidewalk cafe?

16 MR. HINES: Yes.

17 MEMBER GRANDIS: Are there any
18 speakers here?

19 MR. HINES: Yes.

20 MEMBER GRANDIS: Perhaps your attorney
21 could advise you on outside speakers at some
22 point. Mr. Bianco, can we go down to the next
23 picture?

24 MR. BIANCO: That was not an Exhibit.
25 That wasn't an Exhibit.

1 MEMBER GRANDIS: Okay.

2 MR. BIANCO: This was the next
3 Exhibit.

4 MEMBER GRANDIS: Yes. Thank you very
5 much. What number is this one, sir?

6 MR. BIANCO: I believe that is 7.

7 MEMBER GRANDIS: What are we looking
8 at here, Mr. Hines?

9 MR. HINES: This would be considered
10 the dining area of DCity Smokehouse.

11 MEMBER GRANDIS: And I think you were
12 very thorough about how initially you had
13 speakers in the ceiling but that those no longer
14 function, there's no ceiling speakers at this
15 time?

16 MR. HINES: Those speakers still
17 exist. They are there. We just don't utilize
18 them. And I've closed --

19 MEMBER GRANDIS: They're not part --

20 MR. HINES: -- the program. I'm
21 sorry?

22 MEMBER GRANDIS: Right. They're not
23 part of that Sonos system?

24 MR. HINES: No.

25 MEMBER GRANDIS: Okay. And when was

1 the -- when were these speakers discontinued?

2 MR. HINES: They were actually
3 discontinued sometime in 2021, I would say during
4 2021, early (audio interference).

5 MEMBER GRANDIS: And in this area
6 here, if you have an idea how the building is
7 constructed, we're inside the building so I'm
8 assuming the ceiling here, the -- yes, the
9 ceiling here is the floor of the second floor?

10 MR. HINES: Yes.

11 MEMBER GRANDIS: And looking towards
12 the TV monitor, do you know if either one of the
13 protestants' floor is right above in that area
14 somewhat?

15 MR. HINES: I believe it's Cory. Cory
16 has the pleasure of being directly above us. The
17 majority of his unit, I believe, is directly
18 above us.

19 MEMBER GRANDIS: An I think you said
20 there was one inside Sonos speaker?

21 MR. HINES: Yes.

22 MEMBER GRANDIS: And that is not on
23 the ceiling, correct?

24 MR. HINES: No. It's on the wall. If
25 this -- if this camera would have shift to the

1 right toward -- back towards the front door, it's
2 closer to the front door.

3 MEMBER GRANDIS: Okay. Mr. Bianco, we
4 can go to the next picture Exhibit. We can go to
5 the next one. Excuse me, can you back up one,
6 the one right before this one, sir. What -- yes,
7 stop. Thank you. You may have explained this
8 before, but is this the Sonos system?

9 MR. HINES: That is the Sonos
10 operating system as well as individual speaker
11 volume.

12 CHAIR ANDERSON: Can we identify the
13 Exhibit for the record, please?

14 MR. BIANCO: Yes. This is not an
15 Exhibit. We did not offer this as an Exhibit.

16 MEMBER GRANDIS: Oh.

17 MR. BIANCO: We did disclose it as
18 part of our package, but it is -- we did not
19 offer it into evidence.

20 MEMBER GRANDIS: Is it part of your
21 submission package?

22 MR. BIANCO: Yes, sir, it is.

23 MEMBER GRANDIS: Okay. Mr. Chairman,
24 because it's part of the submission package, are
25 we able to ask questions about it?

1 CHAIR ANDERSON: I'm just saying it's
2 not in the record, so if there are questions you
3 want to ask, you can ask questions. I'm just --
4 this is not a document that's in the record, but
5 you are --

6 MEMBER GRANDIS: We can go -- right.
7 Thank you. We can go on, Mr. Bianco.

8 MR. BIANCO: This is the next Exhibit.

9 MEMBER GRANDIS: Okay.

10 MR. BIANCO: This would be 9.

11 MEMBER GRANDIS: And what -- which
12 unit is this? Is this the inside unit or one of
13 the outside units?

14 MR. HINES: That if up under the cafe,
15 the tent if you will.

16 MEMBER GRANDIS: Off the unenclosed --
17 I mean the enclosed sidewalk cafe?

18 MR. HINES: Enclosed, yes, sir.

19 MEMBER GRANDIS: Mr. Bianco, we can go
20 to the next one. I think you just passed the one
21 that was inside.

22 MR. BIANCO: I don't think we -- this
23 one is not --

24 MEMBER GRANDIS: No, this. Oh, you
25 didn't enter that?

1 MR. BIANCO: No. That's not -- that's
2 another angle of the outdoor.

3 MEMBER GRANDIS: Okay. We can -- you
4 can close the photos now. Mr. Hines?

5 MR. HINES: yes.

6 MEMBER GRANDIS: I understand that you
7 believe you've tried very hard to mitigate sound,
8 correct?

9 MR. HINES: yes.

10 MEMBER GRANDIS: Are you there -- I
11 won't say 24/7. Are you there during -- are you
12 there -- you probably feel like you live there.

13 MR. HINES: Absolutely.

14 MEMBER GRANDIS: And your family
15 probably asks can we come visit you --

16 MR. HINES: Absolutely.

17 MEMBER GRANDIS: But seriously, you
18 said -- I think I heard in your testimony that
19 you've tried to adjust the volumes on your Sonos
20 system?

21 MR. HINES: We've adjusted the volumes
22 on the Sonos. I've adjusted the volume on our --
23 the previous system we've had. I've implemented
24 different speakers. I've instructed my staff to
25 turn the music down. I -- you know, anything

1 that I can think of. If I get any alert that --
2 that Cory felt that the music was too loud or
3 Karla Lewis contacted me to say that Cory thought
4 that the music was too loud, I would tell
5 everybody, you know, just turn the music off,
6 turn it down, turn it off, whatever that, you
7 know --

8 MEMBER GRANDIS: What do you -- yes,
9 thank you. What do you do about the bass?

10 MR. HINES: There is no bass. Now in
11 the previous speakers, those Bose system, the --
12 the bluetooth speakers, I think they had some
13 level of bass, but on this Sonos system, I have
14 not -- I didn't get the bass option so it's --

15 (Simultaneous speaking.)

16 MEMBER GRANDIS: Knowing my study of
17 sound waves, I think you probably don't need the
18 bass in --

19 MR. HINES: Yes.

20 (Simultaneous speaking.)

21 MEMBER GRANDIS: -- vibrations.

22 MR. HINES: Sure. I mean and that is
23 in a effort to try to, you know, alleviate --

24 MEMBER GRANDIS: Yes.

25 MR. HINES: -- this whole situation,

1 you know, trying -- trying what we can.

2 MEMBER GRANDIS: Yes. Not having bass
3 mitigates, that's definitely true. But here's a
4 question. Yes, we know that you have worked hard
5 to maintain the right level of sound that is
6 enough for your customers but not to really
7 vibrate or go outside of your unit. But when
8 you're not there, who is responsible? In other
9 words, there are situations where licensees have
10 put a lock on a certain number, let's say, 7, 6,
11 whatever, because they've tested it and that's
12 the loudest it needs and also, they don't get
13 complaints. Have you looked at possibly putting
14 a lock on some number that would -- when you're
15 not there, particularly someone not being
16 knowledgeable may not raise it hire?

17 MR. HINES: So, you know, because this
18 has been an ongoing issue, because this -- you
19 know, anytime a agency head comes in to
20 investigate us, you know, my staff is on pins and
21 needles. So, you know, I have instructed them.
22 I've, you know, brought, you know, fire and doom
23 upon the fact that I -- you know, I don't want
24 any other investigators come in so, you know, do
25 not turn that music up. And again, the system,

1 although those individual speakers have a volume
2 control that we looked at, the system operates on
3 a telephone, an iPhone, that only I and my
4 manager have access to. So we are the only ones
5 that basically can adjust that sound. However, I
6 placed alarms on the system, or triggers --

7 MEMBER GRANDIS: Okay --

8 MR. HINES: It starts at a certain
9 time at a certain volume and it shuts down at
10 10:00 p.m. and -- and after that, it doesn't
11 really matter. Everything --

12 MEMBER GRANDIS: When did you stop --
13 when did you implement stopping at 10:00?

14 MR. HINES: So early on, we had
15 conversations with the MPD that, you know, kept
16 coming on and they just said, you know, hey, man,
17 you know, at least at 10:00, can you turn it
18 down. So from that, we just turned it down at --
19 or turned it off at 10:00 p.m. I will -- you
20 know, it goes back and forth on whether
21 specifically it was at 10:00 or 10:05, 10:15, but
22 it got turned off. Now with this new Sonos
23 system, I set it so it just shuts off at 10:00.
24 That system started in November. Now, you know,
25 one of my major points has been throughout all of

1 this is neither Jackie nor Cory live in the
2 building. So I don't know that they've
3 experienced what it sounds like today versus, you
4 know, what he may have experienced back in May of
5 2020, but it is not the same scenario. As with
6 everyone else in the building -- I haven't met --
7 I don't know that I've met either one of their
8 tenants but, you know, I -- I try to speak to
9 everybody. I try to let them know if they have
10 any issues, they could speak to me.

11 But alluding to what you mentioned
12 earlier, who else is at control, and I think I
13 later -- one of -- someone that will be
14 testifying for me is my manager, Chris. Chris is
15 -- you talk about being there 24/7. Chris is
16 pretty much there 24/7, so he -- he is -- we call
17 him "The Mayor of DCity." He knows everybody
18 around the building, in the building, up and down
19 and, you know, again, if there are any issues,
20 you know, folks know to speak to him, you know,
21 for any kind of resolution as well. But I do put
22 myself out there as the owner as well as the one
23 with final say to say if there is any issues,
24 please come to me.

25 MEMBER GRANDIS: What I understand is

1 that only two individuals, you and this other
2 person, that have any control, access to this
3 Sonos system?

4 MR. HINES: Yes. Well, I do have a
5 general manager in my company. He has access but
6 he rarely is in the -- really in that location
7 let alone in the front house for the building.

8 MEMBER GRANDIS: And what -- so your
9 testimony today says you are not playing any
10 recorded music or any music off the iPhone or the
11 system after 10:00 p.m. or let's say 10:00 p.m. -
12 -

13 MR. HINES: Yes.

14 MEMBER GRANDIS: You're on record for
15 that?

16 MR. HINES: Yes, sir.

17 MEMBER GRANDIS: And I -- it looks
18 like you're very -- you're a very good business
19 person and looking at ways to improve your
20 business. So if there were recommendations to
21 confirm the noise level outside of that unit but
22 in the unit above, you would be willing to work
23 with that to try to be conscious of exactly what
24 is upstairs and what isn't?

25 MR. HINES: Well, I've offered that in

1 the past; you know, let me know what you're
2 experience is. That was never accepted. We've
3 been back and forth on this in many different
4 ways. I mean I definitely want to bring a
5 resolution, but I'm cautious on accepting rules
6 and regulations outside of D.C. laws and
7 regulations. I follow everything that is
8 suggested. I don't believe that I should be
9 subjected to additional restrictions that a
10 business down the street or across the street
11 does not have to, you know, follow as well. So,
12 you know, I -- even though we shut it down at
13 10:00, it still has a negative effect on my
14 business from 10:00 to 11:00. I'm sorry?

15 MEMBER GRANDIS: No, no. I said I
16 understand that. And I really want to thank you
17 for all your time you've taken to answer my
18 questions. Mr. Chairman, I've completed my
19 questions. Thank you.

20 CHAIR ANDERSON: Thank you Mr. Grandis.
21 All right, any other questions by other board
22 members? All right, I'm going to take a break,
23 but I need us to move through this because we've
24 been going on for over three hours. All right, so
25 Mr. Brown, do you - I'm sorry, any other

1 questions by any other Board members?

2 All right, Mr. Brown, do you have any
3 questions for Mr. Hines? These are based on the
4 questions that were asked by the Board, sir.

5 Thank you Mr. Brown.

6 Mr. Bianco, do you have any redirect?

7 MR. BIANCO: No I do not.

8 CHAIR ANDERSON: All right, thank you.
9 You said you have one more witness, Mr. Bianco?

10 MR. BIANCO: That's correct, and he
11 will be a pretty fast witness. It is --

12 CHAIR ANDERSON: What do you call
13 pretty fast, sir? About how --

14 (Simultaneous speaking.)

15 CHAIR ANDERSON: I'm trying to figure
16 out whether I should take a break before or after
17 his testimony, that's what I'm trying to find
18 out.

19 MR. BIANCO: I have about ten questions
20 for him, I don't know how long the cross is going
21 to be.

22 CHAIR ANDERSON: All right, we're going
23 to take - all right, it's 4:38. We're going to
24 take a 12-minute break, we'll come back online at
25 4:50. So all I'm asking you to do is just do not

1 log off, but you can turn your camera off and
2 mute your telephone. So we'll be back on the
3 record at 4:50.

4 (Whereupon, the above-entitled matter
5 went off the record at 4:37 p.m. and resumed at
6 4:50 p.m.)

7 CHAIR ANDERSON: All right, we're back
8 on the record. We have a quorum of Board
9 members.

10 Mr. Bianco, you said you have one more
11 witness. You still have a little bit more time,
12 not a whole lot of time.

13 So, I'm just reminding everyone,
14 questions that need to be asked relevant to the
15 issue at hand. If it's not relevant, please
16 don't ask the question. Okay?

17 All right, your next witness,
18 Mr. Bianco?

19 MR. BIANCO: We call Chris Pennachio.

20 CHAIR ANDERSON: What's the name? I'm
21 sorry?

22 MR. PENNACHIO: I'll spell it for you.
23 It's Christopher --

24 CHAIR ANDERSON: No, are you
25 Mr. Pennachio?

1 MR. PENNACHIO: Yes, sir.

2 CHAIR ANDERSON: Can you raise your
3 right hand, please?

4 WHEREUPON,

5 CHRISTOPHER PENNACHIO

6 Was called for examination by Counsel for the
7 Applicant, and after having first been duly
8 sworn, was examined and testified as follows:

9 CHAIR ANDERSON: Mr. Bianco, can you
10 have the witness state his name for the record,
11 please.

12 MR. BIANCO: Mr. Pennachio, can you
13 please state your name for the record and spell
14 it.

15 MR. PENNACHIO: Sure. It's
16 Christopher Pennachio. Christopher is
17 C-H-R-I-S-T-O-P-H-E-R, Pennachio, last name, P as
18 in Paul, E-N-N-A-C-H-I-O as in Oscar.

19 DIRECT EXAMINATION

20 BY MR. BIANCO:

21 Q And, Mr. Pennachio, where do you work?

22 A DCity Smokehouse.

23 Q And how long have you worked there?

24 A For the company, four years, the
25 smokehouse, three.

1 Q And by the smokehouse, you mean the
2 location on Florida Avenue?

3 A That is correct, 203 Florida Avenue.

4 Q Okay. And what is your job for DCity
5 Smokehouse?

6 A General manager.

7 Q Okay. And are there certain times of
8 the week or day that you work?

9 A Primarily, in the afternoon, all the
10 way to close.

11 Q Okay, and how many days a week are you
12 there?

13 A Five minimum, six or seven sometimes.

14 Q Okay. There's been some testimony,
15 that I'm not going to go into, but it's about the
16 sound system.

17 A Okay.

18 Q Okay? Do you have any responsibility
19 for control of the volume level?

20 A I am in control of it every night.

21 Q Okay. Are there any other people who
22 work at establishment that have control of the
23 sound system?

24 A No.

25 Q Okay. How about the owner? Does he

1 have control?

2 A Yes.

3 Q Okay. Are you familiar with
4 Mr. Brown?

5 A Very much so.

6 Q Okay. How are you familiar with him?

7 A He was a next-door neighbor upstairs.

8 Q Okay, and have you dealt with any
9 complaints from Mr. Brown?

10 A A lot.

11 Q Okay, over what period of time?

12 A The course of probably the time that
13 he lived there, until when he moved out.

14 Q Okay. And what years was the time?

15 A '21, '22, '23, maybe?

16 Q And did you have direct interactions
17 with Mr. Brown, or did you become aware of his
18 complaints in some other way?

19 A I became aware of his complaints a
20 different way.

21 Q Okay. And how did you become aware of
22 Mr. Brown's complaints?

23 A I would get police showing up at about
24 10:01, 10:02, and saying there was a noise
25 complaint.

1 Q Okay. And how frequently would this
2 occur?

3 A Primarily every other night, or if not
4 every night.

5 Q Okay. And could you describe what the
6 interactions with police was like?

7 A They would come in, look around, make
8 sure nothing was going on, say okay, no report,
9 see you later.

10 Q In the time that you have been working
11 there and have had these dealings with police,
12 are you aware of any time when there actually was
13 a report?

14 A No.

15 Q Are you aware of any time when there
16 was a violation of the noise law?

17 A No.

18 Q Okay. In addition to MPD, did you
19 have any direct dealings with any other agencies
20 of the DC Government about noise?

21 A Yes, several. We've had ABRA come in
22 several times on a noise complaint that was
23 filed. Also, we've had DCRA come in and do a
24 noise test with ABRA one time. To answer your
25 question.

1 Q Okay. And to your knowledge, has
2 DCRA, which is now Department of Licensing and
3 Consumer Protection, to your knowledge, have they
4 ever written a noise violation for your
5 establishment?

6 A No. They came out, they did a noise
7 test. It was a little, like, a megaphone.
8 Silver box and a megaphone that stood out.

9 There was an ABRA inspector with them.
10 They walked the perimeter, checked everything,
11 and checked the noise levels inside. And there
12 was nothing. They said, okay, you're good.

13 Q Okay. So, I want to just talk about
14 that for a moment. When did this noise test take
15 place?

16 A I think it was sometime in April, but
17 I'm not positive.

18 Q Okay. And it's now April. So --

19 A Oh, I mean April 2022. I'm sorry.

20 Q Okay.

21 A I'm sorry. I apologize.

22 Q That's fine. And were you personally
23 present there for it?

24 A Yes.

25 Q Okay. And you testified that they

1 walked the perimeter. What perimeter did they
2 walk?

3 A They walked outside, to make sure the
4 outside noise level was good, and then they came
5 inside the building.

6 Q Okay. And by the perimeter, is there
7 an area of the property they walked around?

8 A Oh, it was basically outside, like the
9 little area, basically all by where the sidewalk
10 is, all around it, everything else, plus also
11 inside the tent.

12 Q Okay.

13 A And inside the building.

14 Q And who was present, other than you,
15 for that test?

16 A I was basically the primarily.

17 Q Okay.

18 A Because I was responsible for the
19 building. I was responsible for the restaurant.

20 Q Was Mr. Brown present?

21 A I don't believe so.

22 Q Okay. Were there any other residents
23 in the building present for this test?

24 A Yes.

25 Q Who else was there?

1 A Just regular building. One unit was
2 on the right, that was one gentleman. And then
3 the two ladies that were on the top, they were
4 there for that.

5 Q Okay. And did you get any violation
6 as a result of that test?

7 A No, sir.

8 MR. BIANCO: Okay. That's all. I
9 don't have any more questions for you,
10 Mr. Pennachio.

11 MR. PENNACHIO: Okay.

12 MR. BIANCO: What's going to happen
13 now is Mr. Brown may have some questions.

14 MR. PENNACHIO: Okay.

15 MR. BIANCO: And then the members of
16 the Board may have some questions.

17 MR. PENNACHIO: Okay.

18 MR. BIANCO: And since we're both
19 sitting here in the same room, I'm going to make
20 sure I instruct you on the record, don't look to
21 me for any answers when they ask a question.

22 MR. PENNACHIO: Okay.

23 MR. BIANCO: Just look into the camera
24 and answer the questions that you're asked. All
25 right?

1 MR. PENNACHIO: Sure.

2 MR. BIANCO: All right. Thank you,
3 Mr. Anderson.

4 CHAIR ANDERSON: All right, thank you,
5 Mr. Pennachio. Mr. Brown, any questions?

6 MR. BROWN: Just a few. Good
7 afternoon, Chris. Good to see you.

8 MR. PENNACHIO: Good to see you,
9 Mr. Brown.

10 CROSS EXAMINATION

11 BY MR. BROWN:

12 Q When I moved into the building in May
13 2021, you introduced yourself to me. Correct?

14 A Correct.

15 Q And you said, if you have any
16 problems, stop in, grab some food, contact you.
17 Correct?

18 A Correct.

19 Q And shortly thereafter, when I took
20 issue with noise, I did reach out to you.
21 Correct?

22 A Correct.

23 Q Thank you. And also, your staff
24 members. I've called down there?

25 A Correct.

1 Q Thank you. And again, you said, if I
2 wasn't present for the DCRA reading that was
3 conducted -- when you say, inside the building,
4 you mean within the confines of DCity Smokehouse,
5 and not the apartments upstairs. Correct?

6 A Correct.

7 MR. BROWN: That's all. Thank you,
8 Chris.

9 MR. PENNACHIO: You're welcome.

10 CHAIR ANDERSON: Thank you, Mr. Brown.
11 Any questions by any Board members?

12 All right, hearing none, all right.
13 Where is Pennachio? Mr. Pennachio, thank you for
14 your testimony today. And you don't have any
15 redirect, Mr. Bianco?

16 MR. BIANCO: No, I don't. And if it's
17 okay with you, Mr. Chair, I'm going to release
18 Mr. Pennachio, who's here on his day off.

19 CHAIR ANDERSON: Mr. Pennachio, thank
20 you for your testimony today. You are free to
21 go.

22 All right, Mr. Bianco, do you rest?

23 MR. BIANCO: Yes, the applicant rests
24 at this time.

25 CHAIR ANDERSON: All right, thank you.

1 Mr. Brown, how many witnesses do you have, sir?

2 MR. BROWN: I have three witnesses,
3 including myself.

4 CHAIR ANDERSON: All right. All
5 right, so time is of the essence. I'm not going
6 to rush you along, but I need to make sure that
7 we just have testimonies that are relevant to the
8 matter.

9 All right, who's your first witness,
10 sir?

11 MR. BROWN: First witness is
12 Jacqueline Schumacher Cutten.

13 CHAIR ANDERSON: All right,
14 Ms. Schumacher, can you raise your right hand,
15 please?

16 WHEREUPON,

17 JACQUELINE SCHUMACHER CUTTEN

18 Was called for examination by Counsel for the
19 Protestant, and after having first been duly
20 sworn, was examined and testified as follows:

21 MR. BROWN: Jackie, could you state
22 your name for the record, please?

23 MS. SCHUMACHER CUTTEN: Sure. It's
24 Jacqueline Schumacher Cutten. That's spelled
25 J-A-C-Q-U-E-L-I-N-E, second name

1 S-C-H-U-M-A-C-H-E-R, my last name is Cutten,
2 C-U-T-T-E-N.

3 DIRECT EXAMINATION

4 BY MR. BROWN:

5 Q Thank you, Jackie. And if you could,
6 please describe your relationship with the condo
7 building at 1700 2nd Street, NW?

8 A Sure. I'm currently the board
9 president. I took over, I believe, in -- was it
10 January? Or maybe it was December, when the
11 previous president sold his unit.

12 Q Thank you. And how long have you
13 lived there, or owned that unit?

14 A Yeah, so I bought my unit in December
15 of 2016, and as my testimony reflects, I only
16 lived there for four months.

17 I'm a foreign service officer with the
18 United States Agency for International
19 Development, which is part of the State
20 Department, so I'm a public servant, just like
21 many of us here on this call.

22 And I've been serving overseas since
23 2017, consecutively. First served in Pakistan,
24 followed by South Sudan, Afghanistan, and now I'm
25 in South Africa.

1 Q Excellent. Thank you for your
2 service. While you've been overseas, have you
3 rented out your unit?

4 A Yes, I have. So, my unit has been
5 occupied consistently since I moved out in early
6 2017. My tenants have usually only stayed for
7 one or two years. Primarily, I believe, as a
8 result of the consistent problems with noise and
9 smell, which is not part of this complaint here
10 today, but it is also an issue that has been
11 noted by my tenants.

12 And then, unfortunately, in 2022, my
13 units got vacant for almost nine months because I
14 was unable to sell it. And then I was unable to
15 find a tenant, mainly because of the noise and
16 the smell issues.

17 I'm also happy to talk about the
18 decrease in property value. As I mentioned, it
19 was on the market for nine months, and I last had
20 it listed well below what I paid for it in 2016.

21 MR. BIANCO: I'm sorry, I'm going to
22 object at this point.

23 CHAIR ANDERSON: What is your
24 objection, sir?

25 MR. BIANCO: Yes, I'm objecting. The

1 scope of these proceedings is limited to noise.
2 Our motion was granted preventing admission of
3 any evidence as to effect on property values.

4 MS. SCHUMACHER CUTTEN: It's related
5 to the noise, though.

6 CHAIR ANDERSON: Hold on, Ms. Cutten.
7 When there's an objection, Mr. Brown is the
8 one -- there was no question presented. So, I
9 mean, I think the witness was speaking, but there
10 was no question presented, Mr. Bianco.

11 So, I thought you were going to object
12 to the fact that she went on and there's no
13 question. So, let's move on. Ms. Cutten --
14 Schumacher Cutten, what I'll ask you to do,
15 ma'am, please answer that questions that have
16 been asked.

17 And so, answer the questions directly
18 that are being asked by Mr. Brown. If Mr. Bianco
19 raises an objection, then you do not respond to
20 Mr. Bianco.

21 Mr. Bianco will raise an objection
22 with me. I will ask Mr. Brown to respond, and
23 then I will make a ruling. Okay?

24 MS. SCHUMACHER CUTTEN: Okay.

25 CHAIR ANDERSON: All right, Mr. Brown,

1 another question, sir.

2 BY MR. BROWN:

3 Q Yes. You reference issues with the
4 noise as it relates to tenants and otherwise.
5 What, if any, impacts have you experienced on
6 your ownership of the unit, related to noise?

7 A Thank you. Yeah, exactly. So, as I
8 was saying, my unit sat vacant. I was unable to
9 sell it. I had to decrease the price
10 significantly, as a result of the feedback I was
11 getting from prospective buyers.

12 MR. BIANCO: I'm going to object
13 again. We're going over the exact same
14 testimony. It's not responsive to the question,
15 and it goes into the area that was expressly
16 limited by the Board's ruling.

17 If we could focus on the noise, I
18 think that's the appropriate scope of the inquiry
19 here.

20 MR. BROWN: Ms. Cutten is specifically
21 focusing on the adverse impacts of the noise on
22 her ownership of the unit, and we did not cut off
23 what the adverse impacts of noise that could be
24 discussed in this hearing.

25 CHAIR ANDERSON: I'm going to overrule

1 the objection. You can answer the question,
2 ma'am.

3 BY MR. BROWN:

4 Q Thank you. Please continue, Jackie.

5 A Okay. So, just for the record, I
6 bought my unit in 2016 for \$410,000. I then, as
7 I said, rented it out consistently, until 2022,
8 when I decided to sell.

9 That's because I got married, I am
10 pregnant, and planning on establishing a new life
11 here overseas. So, it was time to sell my unit
12 and to move on.

13 Initially, based on my market
14 research, I was hoping that my unit would sell
15 for \$450,000, which would have been an increase
16 in \$40,000 over the time that I had owned the
17 unit. And unfortunately, that did not work. I
18 did get an offer for \$430,000, which was well
19 below the asking price.

20 But as soon as they -- they came twice
21 to see the unit. Once was sort of early in the
22 morning, and then the second time when they came
23 was when the business was open.

24 And they heard the music. And that's
25 when they decided to cancel their offer.

1 So, then I dropped the price at the
2 urging of my agent, my real estate agent, down to
3 \$440,000.

4 Again, about month later, dropped it
5 again by \$10,000, to \$430,000. And then,
6 finally, to \$400,000. That's a \$50,000 drop that
7 I had to -- it was very hard to stomach.

8 Even then, it didn't sell. Every
9 single person that came in and saw the unit said,
10 it's too noisy, it smells like smoke, I'm not
11 interested. They wouldn't even make an offer.

12 Then, finally, I got desperate and I
13 dropped it another \$10,000, to \$390,000, which,
14 as I said, is less than I bought it for in 2016,
15 which is very uncommon for the D.C. real estate
16 market.

17 And I wasn't able to sell it at
18 \$390,000, I finally said, fine, I'll find another
19 renter.

20 I did have to work with the board to
21 get special dispensation, a hardship waiver, to
22 be able to do that and it took some time. But
23 the amount of money that I lost in that time
24 period where it was sitting on the market, was
25 considerable.

1 And now, I'm not really sure if I'm
2 even going to be able to sell it at all.

3 I eventually contacted my bank and
4 pursued a hardship application with my bank to
5 try to get a deed in lieu of foreclosure.

6 I was that desperate, but I was ready
7 to give my unit back to the bank because nobody
8 wants to buy it.

9 And that's where I'm at. I don't know
10 how long my tenant is going to want to stay, and
11 it makes me very nervous.

12 MR. BROWN: Have you received any
13 feedback from your current tenant?

14 MR. BIANCO: Object. Calls for
15 hearsay?

16 CHAIR ANDERSON: I'm sorry, what's the
17 objection, Mr. Bianco?

18 MR. BIANCO: The objection is that the
19 question asks for her to testify about things
20 that her tenant has told her, which is hearsay,
21 and there is no indication that it would be of
22 the type that would be admissible in these
23 proceedings?

24 CHAIR ANDERSON: Mr. Brown?

25 MR. BROWN: Jackie's the landlord, and

1 also a condo board president, which I think
2 uniquely situates her to convey complaints that
3 are received in either capacity here.

4 I don't see how this is any less
5 relevant than bringing in a former ANC member
6 that is not an abutting property owner --

7 CHAIR ANDERSON: Mr. Brown, please.
8 All right, I'm going to overrule the objection.
9 She's the landlord. Of course, a tenant cannot
10 bring this matter. So, she can testify about a
11 conversation that she's had with her tenant
12 regarding her property. Go ahead, ma'am.

13 MS. SCHUMACHER CUTTEN: Okay, thank
14 you. So, to be clear, my tenant has only been in
15 the unit since January, so it's been a limited
16 time.

17 And I was very clear in my lease with
18 her, as I have been with every tenant before her,
19 making her aware that this unit is above a
20 restaurant, and that she knows what she's signing
21 up for, that there is going to be noise.

22 But I have heard from her consistently
23 that the noise is much louder than what she would
24 have expected -- what she would think is
25 reasonable -- and that she can literally, like,

1 take out the Shazam App and it will be able to
2 tell her what song is playing, which is the same
3 experience that I had when I lived there.

4 She says it starts around 11:00 and
5 ends around 11:00, and it's just very disruptive.
6 She goes away almost every weekend as a result,
7 to get some peace and quiet. She stays with her
8 sister.

9 And it's interesting because she's
10 also a real estate agent herself. And so, I
11 think that she has a good insight into the
12 conditions under which we're subjected. Yeah,
13 thank you.

14 BY MR. BROWN:

15 Q Thank you. And what are the sources
16 of the noises that you've referenced?

17 A Yeah, so it's primarily the music from
18 the sound system that comes straight through the
19 floor, and then also, as I stated in my written
20 testimony, it comes through the windows.

21 The folks that are sitting in that
22 enclosed sidewalk caf, area, there's no
23 soundproofing, and so the music, the two speakers
24 that are out there, it comes up through the
25 canvass, through the windows, and then also the

1 voices of the people who are talking, who are
2 laughing, who are drinking, comes through the
3 windows and is also disruptive.

4 Q Have you ever reached out to the
5 business owners in regards to this noise?

6 A Yes, I have. And I actually take
7 issue with Melvin's comments that I've never
8 complained. That's not true. I have complained
9 to previous managers. It wasn't Christopher, but
10 like I said, I've owned my unit since 2016, and
11 so that was probably several managers ago.

12 I have personally, myself, never
13 called the police. I think more because I only
14 lived there for four months and I felt very
15 defeated.

16 I've felt like my efforts weren't
17 amounting to any real change, and so I took a
18 sort of grin-and-bear-it, kind of run-away-from-
19 the-problem approach, which obviously has done no
20 good over the years, in hopes that I could ride
21 it out and then just sell. And I haven't even
22 been able to do that.

23 So, now, I think I'm at a breaking
24 point where I have to do something, because I
25 can't even give it back to the bank.

1 Q And what were your interactions like?
2 How would you characterize your interactions with
3 the owner and managers of DCity Smokehouse?

4 A So, when I would call them to the
5 restaurant and I would ask them to turn the music
6 down, they were always cordial. They were nice
7 enough, and they did. They did turn the music
8 down. The problem is, it would go right back up
9 the next day.

10 And so, I just felt like I was beating
11 my head against a wall and kind of gave up.

12 Over the years, interacting with
13 Mr. Hines on the condo board, I would
14 characterize it as kind of contentious. I don't
15 feel like it's been the friendliest of
16 interactions. But I've been trying to remove
17 myself from the conflict, because it's been so
18 uncomfortable for me.

19 MR. BROWN: Thank you. No further
20 questions.

21 CHAIR ANDERSON: Mr. Bianco?

22 CROSS EXAMINATION

23 Q Yes. So, Ms. Schumacher, if I
24 understand your testimony, you only lived there
25 for four months. Correct?

1 A Correct.

2 Q And if I also understand your
3 testimony, you purchased your unit in 2016.
4 Correct?

5 A Mm-hmm. Yes.

6 Q So, the four months that you lived
7 there, was DCity Smokehouse even open?

8 A Yes. Melvin stated that they opened
9 in January of 2017. So, literally thirty days
10 after I bought my unit and moved in, they opened.

11 Q Okay. And so, you lived there for
12 three months while DCity Smokehouse was open.
13 Correct?

14 A No, I moved in probably towards the
15 end of December. So, I was there for four months
16 with them operating.

17 Q Okay. And you testified that you --
18 well, let's stay with your purchase of the unit
19 for a second.

20 So, when you purchased your unit, were
21 you aware that there was a commercial unit on the
22 first floor?

23 A Yes, I was. I didn't know the nature
24 of the restaurant, however. I was in the hopes
25 that it would be like a quiet coffee shop.

1 Q Well, did they tell you it was going
2 to be a quiet coffee shop?

3 A No. I knew that it was going to be
4 some kind of commercial unit. I didn't know what
5 kind. But that was my hope.

6 Q Okay. And did you receive any
7 disclosures at the time you purchased your unit?

8 A What kind of disclosures?

9 Q So, specifically, what I'm referencing
10 is a condominium public offering statement. Did
11 you receive that document?

12 A Is that the same as the bylaws?

13 MR. BIANCO: So, hang on. You're not
14 allowed to ask me questions. I just want to make
15 sure the record is clear.

16 (Simultaneous speaking.)

17 CHAIR ANDERSON: Hold on a minute.
18 Hold on a minute. Asking the witness a question,
19 she doesn't understand the question. So, can you
20 specifically redirect the question what you're
21 asking her? She doesn't know what you're asking
22 her, sir.

23 MR. BIANCO: No, no, I understand.
24 That's absolutely what I'm going to do. I just
25 wanted to make sure the record was clear on the

1 back-and-forth.

2 Okay, so I'm going to share with you
3 a document that we have entered as Exhibit 11 for
4 the applicant. So, if you can bear with me for a
5 moment, I'm going to bring that document up.

6 CHAIR ANDERSON: Do you have the
7 ability, Mr. Bianco, or do I need to ask for you
8 to have the ability?

9 MR. BIANCO: No, no, no, I have the
10 ability. I'm just cuing up the appropriate page
11 so it doesn't open up my notes.

12 CHAIR ANDERSON: All right.

13 MR. BROWN: I'd like to object for the
14 relevance. The tenant knows what's going on
15 here. We're saying that everything has gone --
16 and in her testimony, above and beyond the laws.
17 I don't see the relevance of bringing this
18 document in front of her from 2016.

19 CHAIR ANDERSON: Mr. Brown, this is
20 cross-examination. Your witness is asking for
21 clarification. She does not know what document.

22 So, therefore, just to ensure that a
23 witness answers the question, that's the only
24 reason why he's bringing the document up, so the
25 witness will know exactly what document he is

1 referencing. So, I'm going to overrule the
2 objection.

3 BY MR. BIANCO:

4 Q Okay, Ms. Schumacher, I'm showing you
5 a document here that is labeled, Public Offering
6 Statement, and directing your attention to the
7 first narrative paragraph here. It says,
8 District of Columbia law requires that the
9 original seller of the condominium units disclose
10 fully and accurately the characteristics of the
11 condominium units being offered for sale. This
12 public offering statement is the means by which
13 such disclosure is to be made. Do you see where
14 it says that?

15 A So, it's kind of small, but I trust
16 you.

17 Q Well, here, I can make it a little bit
18 bigger for you, and I'm hoping that -- is that
19 better?

20 A Yes, I can see it.

21 Q Okay. So, having had the opportunity
22 to see this document, is this what you received
23 prior to your purchase?

24 A It's actually not. I just pulled up
25 my email, and the document that I have, it

1 doesn't include this public offering statement.

2 Q Okay. So, it's your testimony that
3 you did not receive this.

4 A Correct.

5 Q Okay. And were you aware that you had
6 fifteen days to rescind your contract once you
7 received whatever disclosure it is that they sent
8 you?

9 A Yes, I think so.

10 Q Okay. And obviously you did not
11 rescind your contract. Correct?

12 A I did not, but I was under the
13 impression, like I said, that everything was up
14 to code, whatnot, with the building. So, that
15 was my main concern.

16 Q Okay. And did you hire a professional
17 to confirm that?

18 A I did the standard inspection that
19 most people do before you purchase a home.

20 Q Okay. And did you do any kind of
21 inspection or testing for sound infiltration?

22 A No, because the restaurant wasn't
23 open.

24 Q And was that important to you?

25 A Well, perhaps I was naive at the time,

1 being a first-time home buyer. But I assumed
2 that there would be adequate soundproofing. So,
3 I didn't think it necessary to go to that length
4 to do any kind of inspection with the sound
5 engineer.

6 Q Okay. Did you hire a professional to
7 advise you on the disclosure documents?

8 A Just my real estate agent.

9 Q Okay. And did you review the
10 disclosure documents with your real estate agent?

11 A Yes, I did.

12 Q Okay. And among the disclosure
13 documents, was there a limited warranty for your
14 purchase?

15 A I don't recall seeing something like
16 that.

17 Q So, I am going to flip to page 161,
18 which is part of the same exhibit. Actually, I'm
19 sorry, I'm going to flip to page 158 of
20 Exhibit 11.

21 And it says at the top, Certificate of
22 Limited Warranty (Condominium Unit): The Flats at
23 Florida Avenue. You see where it says that?

24 A I do see that.

25 Q Okay. And now having had the

1 opportunity to see this -- and I can scroll down,
2 if it helps -- do you now recall receiving this
3 as part of your disclosure package that you
4 received prior to purchase?

5 A No, I did not receive this document.

6 Q Okay. Now, I want to talk about your
7 position as condominium board president.
8 Actually, before we get to that, there was one
9 more question I wanted to ask you about your
10 purchase.

11 At the time you purchased, you were
12 aware that a restaurant could go into that
13 commercial space. Correct?

14 A Well, I knew it was a commercial
15 space. I didn't know what type of business would
16 go in there.

17 Q Yeah. No, I understand that. I'm
18 asking you a slightly different question.
19 Actually, let me ask it a different way. Did you
20 have any reason to believe that a restaurant
21 would be prohibited from going into that space?

22 A No. I mean, I understand that a
23 commercial could be a bookstore, it could be a
24 restaurant.

25 Q And now I want to talk about your

1 position as board president. You were here with
2 respect to Mr. Hines' testimony about the
3 condominium adopting rules for the commercial
4 unit.

5 And his testimony was that there is no
6 special rules adopted by the condominium for the
7 commercial unit. Is that correct?

8 A To my knowledge at this time, that is
9 correct. I've only been the board president
10 since January. So, January, February, March, a
11 little bit of April, less than four months.
12 We've only had one condo board meeting.

13 But yes, to my knowledge there's been
14 nothing like that. No restrictions.

15 Q Okay. And also, you heard Mr. Hines'
16 testimony that the condominium has taken no
17 action against the establishment for violating
18 any of the noise provisions of the bylaws or
19 rules. Is that correct?

20 A Correct to my knowledge, yes.

21 MR. BIANCO: Okay. If this is the
22 nuisance that you describe, isn't there a reason
23 why the condominium association as a whole -- not
24 just the two of you, the condo association as a
25 whole -- has taken no action?

1 MR. BROWN: Objection. That's
2 speculate. I don't see the relevance of the
3 actions of the condo board here. In the short
4 tenure that she's been there, we're here talking
5 about the liquor license, and not the condo board
6 rules.

7 MR. BIANCO: That's not an evidentiary
8 objection. It's argument about the weight of the
9 evidence. The relevance of it is that the issue
10 being claimed is being claimed by two of nine
11 people.

12 And it goes directly to the
13 credibility and the existence of the very
14 allegations that they're making. These are
15 evidently the only two people in this building
16 that have this problem.

17 It goes to the heart of their case and
18 we think that it is, in fact, relevant that the
19 condo association, a democratic body, has done
20 absolutely nothing with respect to the
21 allegations that are here in this case.

22 CHAIR ANDERSON: All right, I'm going
23 to overrule the objection. The witness can
24 answer the question if they're able to.

25 MR. BIANCO: Okay, so I'll restate the

1 question.

2 CHAIR ANDERSON: Can you close your
3 screen please, Mr. Bianco, if you're not going to
4 utilize it. I don't like looking at shared
5 screen. I like for to look at people. Thank
6 you.

7 BY MR. BIANCO:

8 Q There you go. Okay, so is there a
9 reason, that you are aware of, why the
10 condominium has taken no action against this
11 particular unit owner for violation of the
12 bylaws?

13 A So, I can only speak to my time before
14 I was the board president when I wasn't on the
15 board. Every time I would mention something that
16 I was experiencing -- that I was adversely
17 impacted by the restaurant -- to the condo board,
18 the folks on the condo board were not
19 particularly sympathetic, should we say.

20 Melvin himself has been on the condo
21 board for, I believe, over a year now.
22 Previously, other unit owners who have been,
23 shall we say, very friendly with Mr. Hines, have
24 also been on the condo board.

25 And the general attitude of the condo

1 board over the years that I have owned my unit,
2 have been very sort of, your problem, not my
3 problem. Individualistic.

4 Our building has had quite a number of
5 structural issues, maintenance issues. I believe
6 Ms. Quinn made reference to some of that during
7 her testimony, about there being a settlement,
8 etc.

9 And so, our building's finances have
10 been tight, and generally, people have been
11 fatigued and don't want to get involved in the
12 business of one or two units who are being
13 significantly adversely impacted by our
14 relationship, or our proximity to the restaurant.

15 And so, I don't think it's really fair
16 to say that just because the board hasn't done
17 anything, doesn't mean it's credible. I feel
18 like fatigue and general bias in the condo board.
19 Previous members, from my experience.

20 Q Okay. And you're not aware of
21 anything that would prohibit the association from
22 taking that action under your presidency.

23 Correct?

24 A No. I mean, like I said, I assumed
25 the presidency in January, and this process had

1 already kicked off by then. And so, to be fair,
2 I wanted to see how the mediation was going to
3 go. I wanted to see how the hearing was going to
4 go.

5 So, I mean, we could go down this
6 route in the future, if it comes to that. But
7 I'm really putting a lot of faith in this process
8 and hoping that we can come to a mutually
9 agreeable resolution as a part of this.

10 Q So, you gave significant testimony
11 about your efforts to sell your unit, or your
12 failed efforts to sell your unit. Correct?

13 A Well, I don't know about significant.
14 Five, six minutes, yeah.

15 Q All right, I'll accept that. So, you
16 just testified about structural problems and
17 other problems within the condominium itself.
18 Correct?

19 A Those were in the past and they've
20 been addressed.

21 Q Okay. Well, wouldn't disclosure of
22 the structural issues impact pricing as well?

23 A No, because they've been addressed.
24 They've been remediated and they're no longer
25 applicable.

1 MR. BIANCO: So, you didn't disclose
2 those in your efforts to sell.

3 MR. BROWN: Objection. Asked and
4 answered. He keeps asking the same question.

5 CHAIR ANDERSON: Let's move on,
6 Mr. Bianco.

7 BY MR. BIANCO:

8 Q What has the association done in terms
9 of improvement of the common space between the
10 floor of your unit and the ceiling of the
11 commercial unit?

12 A Can you restate the question, please?

13 Q Sure. What, if anything, has the
14 association done to improve the common element
15 which lies between the floor of your unit and the
16 ceiling of the commercial unit?

17 A The association hasn't done anything,
18 to my knowledge. There was, as Melvin
19 referenced, some water damage, some leaking, that
20 occurred. But it wasn't an improvement, it was a
21 remediation of a plumbing issue.

22 Q Is there any reason, that you're aware
23 of, why the condominium couldn't soundproof that
24 common element space as a common expense?

25 A Well, as I mentioned before, the

1 general attitude of the condo association has
2 been very individualistic.

3 If there's a problem between two
4 units, you have to pay for it yourself. And so,
5 the association has not been interested in
6 providing resources to soundproof between our
7 units.

8 And frankly, I don't think the
9 association has the budget. I mean, they're
10 operating on very limited funds.

11 Q Okay. Last question. Can you tell me
12 what the issues that you've cited in this
13 complaint have to do with the service of alcohol
14 at the establishment?

15 A Sure. I mean, it's my personal
16 opinion, of course, but I've noticed that on
17 Fridays and Saturdays, in particular, the noise
18 really ratchets up when folks are out drinking
19 more. It's the weekend.

20 There's certainly much more of a party
21 atmosphere. I'm not saying that it is year-
22 round.

23 It's certainly seasonal. When the
24 weather is nice people come out, They meet with
25 friends, they drink until the early hours, and

1 that really affects much more than, say, in the
2 middle of wintertime, your ability to enjoy a
3 good night's rest when there's people essentially
4 partying right outside your bedroom window.

5 And so, I feel like the liquor
6 license, it really adds a lot to the noise as a
7 result of people drinking.

8 And then, naturally, when you drink
9 more, your voice kind of tends to go up,
10 particularly if you're in a big group.

11 And so, even if Melvin is, as he
12 mentioned, turning the music down, people are
13 still talking quite loudly, because they're
14 intoxicated.

15 And so, I think that there's a direct
16 correlation there between the noise level and the
17 amount of alcohol people are drinking.

18 Q Right. Okay, so I just want to make
19 sure -- that was a long answer. I want to make
20 sure I understand your testimony.

21 The through line that you're drawing
22 is, more alcohol, louder voices. Is that the
23 testimony?

24 A Yes, and I think that the music is
25 part of that. That Melvin is promoting a jovial

1 atmosphere in his restaurant. That's why people
2 come.

3 As Mr. Prout said in his testimony,
4 people come to listen to the music, people come
5 to socialize, and people come to drink, and when
6 you have thumping music that encourages that.

7 Q And just so I'm clear on the layout,
8 there are the commercial units on the ground
9 floor, your unit and Mr. Brown's unit are on the
10 first floor. Correct? But there are two others
11 that's on the first floor as well, right?

12 A Yeah, but they're on the opposite
13 side, so they're not abutting, if you will.

14 Q No, no, I understand that. But
15 there's four units on -- one unit, ground floor,
16 four units, first floor, four units, second
17 floor. Right?

18 A I think so. There might be only three
19 on the top floor. Something like that.

20 Q Great. Thank you -- oh, I'm sorry.
21 And I apologize to the Board. I'm just looking
22 at notes from my client as we're giving testimony
23 here.

24 So, the testimony you gave about your
25 personal observations of the jovial atmosphere

1 and what happens in the warmer months, that's
2 limited to the time you've lived there in 2016
3 and 2017. Correct?

4 A Well, so I am a foreign service
5 officer. So, that means that I do come back to
6 D.C. in between tours.

7 I come back probably one to two times
8 a year. And then when I'm in between
9 assignments, I'm back for anywhere between a
10 month to eight or nine months.

11 And so, I do go by the condo quite
12 frequently. It's not every month, but I do go by
13 and check on the unit. I do go by and manage
14 repairs.

15 I was there, just last October was my
16 last visit. And I do take notice. I go inside
17 the restaurant, I look around, I have friends
18 that live in the neighborhood, I go and visit
19 them, I walk by the restaurant.

20 So, just because I haven't lived
21 there, doesn't mean that I'm completely absent.
22 I still frequent the neighborhood several times a
23 year, at the very minimum.

24 But I was there for almost a year when
25 I was in language training, before I came here to

1 South Africa.

2 Q Okay. And so, the testimony is you've
3 lived there for four months, but you visited over
4 the last several years. Is that the testimony?

5 A Yes, frequently.

6 MR. BIANCO: Okay. Great, nothing
7 further.

8 MS. SCHUMACHER CUTTEN: Thank you.

9 CHAIR ANDERSON: Any questions by any
10 Board members? Go ahead, Mr. Short.

11 MEMBER SHORT: Ms. Schumacher?

12 MS. SCHUMACHER CUTTEN: Schumacher.

13 MEMBER SHORT: Schumacher? Okay,
14 well, forgive me.

15 Before moving to the 200 block of
16 Florida Avenue NW, you sound like a world
17 traveler. You're aware when you travel overseas
18 and you go to different countries, you do a
19 little bit of research before you go there.
20 Correct?

21 MS. SCHUMACHER CUTTEN: Yes, of
22 course.

23 MEMBER SHORT: I love Africa. I've
24 been there several times myself. But I'll simply
25 say this. Before I go to any country, I always

1 check to see what's going on.

2 But at any rate, before you moved to
3 Florida Avenue, the 200 block, and bought your
4 condo, what did you know about the community?

5 MS. SCHUMACHER CUTTEN: So, a good
6 friend of mine maybe a ten-minute walk from my
7 unit. She was the real draw for me to the
8 neighborhood, that I had a friend close by. And
9 so, I was familiar with some of the
10 restaurants -- Big Bear Caf,, for example -- and
11 just the sort of welcoming, family friendly, kind
12 of quaint atmosphere in Bloomingdale. That was
13 really my impression of the neighborhood.

14 MEMBER SHORT: So, your research told
15 you that the 200 block of Florida Avenue NW was
16 quiet and family friendly? I'm just trying to
17 get where your mindset was when you purchased the
18 property.

19 MS. SCHUMACHER CUTTEN: Yeah. I mean,
20 I wouldn't say that it was specific to that
21 block, but I think Bloomingdale in general.
22 That's how I thought of the neighborhood.

23 MEMBER SHORT: Okay. Well, I just say
24 that because I worked for the fire department for
25 33 years in Washington, D.C. I've gotten to know

1 a lot of the neighborhoods quite well. Florida
2 Avenue is quite busy, isn't it?

3 MS. SCHUMACHER CUTTEN: Yes, that's
4 true.

5 MEMBER SHORT: Most of the time. A
6 lot of emergency vehicles, and sometimes crashes,
7 especially around the Florida Avenue and North
8 Capital Street area. So, it could be a little
9 busy from time to time. Correct?

10 MS. SCHUMACHER CUTTEN: Yeah. I mean,
11 that tracks with my experience living there,
12 certainly.

13 MEMBER SHORT: Other than the ABC
14 establishment beneath your property there on
15 Florida Avenue, were you aware of any of the
16 other alcohol or clubs, or restaurants and bars,
17 in the area?

18 MS. SCHUMACHER CUTTEN: I was aware of
19 a few of them. Like I said, Big Bear Caf,, I
20 knew the Red Hen, for example. Those are the
21 ones that I was most familiar with.

22 MEMBER SHORT: So, if one of them were
23 beneath your unit, you wouldn't have a problem
24 with that. If one of those restaurants, the Red
25 Hen or one of those others, if they were beneath

1 your unit that we're talking about now regarding
2 the condo, would you have a problem with them?

3 MS. SCHUMACHER CUTTEN: I think that
4 it would have been very -- I mean, I will say
5 this. When I bought the unit, I didn't know what
6 type of establishment it was going to be in. All
7 I knew was that it was going to be commercial.

8 And so, in my mind, like, the
9 possibility of a Big Bar Caf, type of restaurant
10 was plausible. I could have foreseen that. And
11 yes, I think that that would have been okay for
12 me.

13 But also, the Big Bear Caf, is not the
14 kind of place that's pumping loud music until
15 eleven, twelve, one o'clock at night.

16 MEMBER SHORT: Okay. Did you know
17 what the zoning issues, or how your property was
18 zoned when you purchased it?

19 MS. SCHUMACHER CUTTEN: Well, I knew
20 that it was a commercial space down below. So,
21 mixed-use made sense to me.

22 MEMBER SHORT: Okay, thank you very
23 much for your answers. That's all I have,
24 Mr. Chair.

25 CHAIR ANDERSON: All right. Go ahead,

1 Ms. Crockett.

2 MEMBER CROCKETT: Ms. Schumacher, I
3 just have a few questions. During the time that
4 your condo was on the market and it was being
5 shown, were you here, or were you overseas?

6 MS. SCHUMACHER CUTTEN: I was overseas
7 for the majority of it. Yeah.

8 MEMBER CROCKETT: You testified about
9 comments that were made by potential buyers.
10 However, you did not personally hear those
11 comments because you were not present. Is that
12 correct?

13 MS. SCHUMACHER CUTTEN: Correct, yeah.
14 No, I have written statements --

15 MEMBER CROCKETT: Thank you.

16 MS. SCHUMACHER CUTTEN: -- from the
17 real estate agents.

18 MEMBER CROCKETT: Thank you. Thank
19 you. You also stated that patrons tend to get
20 loud and rambunctious when they are intoxicated.
21 Have you personally witnessed intoxicated patrons
22 at DCity Smokehouse?

23 MS. SCHUMACHER CUTTEN: Yes.

24 MEMBER CROCKETT: When was that?

25 MS. SCHUMACHER CUTTEN: Well,

1 certainly when I was living there, between the
2 months of January and, like, March, April of
3 2017.

4 And then, as I said, over the years I
5 have come back to the neighborhood, sometimes to
6 go to dinner at the Red Hen, visit my friend who
7 lives in the neighborhood, and I've definitely
8 walked by on a Saturday night and seen
9 intoxicated people out front.

10 MEMBER CROCKETT: I don't have any
11 further questions.

12 MS. SCHUMACHER CUTTEN: Thanks.

13 CHAIR ANDERSON: Any other Board
14 members?

15 Ms. Schumacher, how many members are
16 there on the condo board?

17 MS. SCHUMACHER CUTTEN: So, it's
18 myself, a vice-president, secretary, and a
19 treasurer. So, there's four of us.

20 CHAIR ANDERSON: Four. So, how
21 many -- and it's currently a nine-unit building
22 that includes a commercial space. Is that
23 correct?

24 MS. SCHUMACHER CUTTEN: Yes.

25 CHAIR ANDERSON: So, how many owners

1 that live in the building have complained to the
2 condo board regarding noise from this
3 establishment?

4 MS. SCHUMACHER CUTTEN: Just the two
5 of us, Cory and myself.

6 CHAIR ANDERSON: Now, I think I've
7 heard earlier that there was some type of -- in
8 the lease or in the agreement -- that there was
9 some quiet hours I think between 11:00 p.m. and
10 8:00 p.m. I'm sorry, is there any established
11 quiet hours within the condo?

12 MS. SCHUMACHER CUTTEN: I believe
13 that's in the bylaws, yes. And that's between
14 11:00 and 8:00.

15 CHAIR ANDERSON: I'm sorry. What are
16 the hours?

17 MS. SCHUMACHER CUTTEN: I think it's
18 11:00 p.m. to 8:00 a.m., I think.

19 CHAIR ANDERSON: So, do you know
20 whether or not any owners have complained to the
21 condo association, that the commercial space has
22 not complied with the bylaws, as far as human
23 noise is concerned.

24 MS. SCHUMACHER CUTTEN: So, definitely
25 not to my knowledge, since I've been the

1 president. But I've only been the president
2 since January. I've only been on the board since
3 January. So, I would defer to someone else.

4 CHAIR ANDERSON: But at least since
5 January, to the best of your knowledge, there's
6 been no complaints to the condo board regarding
7 that aspect of the bylaws.

8 MS. SCHUMACHER CUTTEN: Yeah, no.

9 CHAIR ANDERSON: Has the condo board
10 ever addressed how can the sounds of the noise,
11 or the scent from the restaurant, how that can be
12 addressed in the units? Has that been addressed?
13 Has that topic ever been approached?

14 MS. SCHUMACHER CUTTEN: No. I mean,
15 to be honest, I've raised my concerns with
16 previous condo boards, and was told I needed to
17 sort it out directly with the restaurant. I was
18 on my own.

19 CHAIR ANDERSON: I think part of the
20 concerns that I have is that even if the Board
21 orders today that we'll take away their
22 license -- their liquor license -- there's still
23 going to be a restaurant, you're still going to
24 have the smoke, or the smell, and you're still
25 going to have people making noise.

1 And so, that's a concern that I have,
2 that whatever decision that the Board makes
3 today, it is not going to impact the smoke or the
4 smell, and it's not going to impact people -- you
5 talked about people being jovial. So, that's
6 just food for thought anyway.

7 All right, any other questions by any
8 other Board members?

9 Mr. Bianco, any questions, based on
10 the questions that were asked by the Board?

11 MR. BIANCO: No, sir.

12 CHAIR ANDERSON: Mr. Brown, any
13 redirect?

14 MR. BROWN: No.

15 CHAIR ANDERSON: All right, you have
16 been here, Ms. Schumacher Cutten, the entire
17 time. But yes, you're an abutting property
18 owner, so you are free to go, or you're free to
19 stay for the rest of the hearing. Thank you for
20 your testimony today.

21 All right, you have another witness,
22 Mr. Brown.

23 MR. BROWN: Yes, John McCue, and he
24 would have to be promoted back in.

25 CHAIR ANDERSON: Is he trying to log

1 in? All right, Mr. Orellana, can you please look
2 for Mr. McCue and elevate his rights, please.

3 MR. ORELLANA: He has been elevated.

4 CHAIR ANDERSON: Mr. McCue, can you
5 raise your right hand? It's good to see you
6 again, sir. We're still here.

7 MR. MCCUE: Good evening.

8 WHEREUPON,

9 JOHN MCCUE

10 Was called for examination by Counsel for the
11 Protestant, and after having first been duly
12 sworn, was examined and testified as follows:

13 CHAIR ANDERSON: All right. Thank
14 you. Your witness, Mr. Brown.

15 MR. BROWN: Thank you.

16 DIRECT EXAMINATION

17 BY MR. BROWN:

18 Q If you would please state and spell
19 your name for the record?

20 A My name is John McCue, J-O-H-N M-C-C-
21 U-E. My preferred name is Jack, J-A-C-K.

22 Q Thank you, Jack. If you could tell us
23 what your relationship is to 1700 2nd Street
24 Northwest, Apartment 3.

25 A Absolutely. I lived in 1700 2nd

1 Street Northwest, Apartment 3, with Cory Brown.
2 I am his fianc,. I moved in with him on Friday,
3 May 28, 2021. And I believe we moved out
4 September 26, 2022.

5 Q And what was your experience while you
6 lived there?

7 A Well, as I'm sure you all are aware,
8 it's been a few hours now. We dealt with noise
9 consistently while living in the apartment. We
10 also dealt with a lot of bass. At times, it was
11 a contentious relationship between ourselves and
12 the restaurant below us.

13 MR. BROWN: I'm going to share with
14 you my screen.

15 CHAIR ANDERSON: Mr. Orellana, if you
16 have not done it, please allow Mr. Brown to share
17 his screen.

18 BY MR. BROWN:

19 Q All right. Can you identify the
20 document that's in front of me?

21 A I can. It is a printed Excel
22 spreadsheet of noise log that we started to
23 compile. We as in Cory and myself.

24 MR. BROWN: I'd like to enter this
25 into the record at Protestant's Exhibit 1.

1 (Whereupon, the above-referred to
2 document was marked as Protestant's Exhibit 1 for
3 identification.)

4 MR. BIANCO: I'm going to object on
5 authentication and foundation. We don't know at
6 this point what this is, who wrote it, when it
7 was written, whether it was prepared for this
8 hearing or contemporaneously. There is no
9 information in the record that would support
10 admission of this document at this time.

11 CHAIR ANDERSON: All right. Mr.
12 Brown, I'm going to sustain the objection. When
13 you can do, sir, why don't you have Mr. McCue go
14 through the entries and explain to us what it is
15 and then you can try to -- you can -- let's go
16 back again. So have him identify the entries and
17 explain what they are, sir.

18 BY MR. BROWN:

19 Q Okay. So you've already stated for us
20 that you recognize the document. Can you please
21 walk us through each of the instances listed here
22 and tell us what you know about them?

23 A Absolutely. So --

24 CHAIR ANDERSON: I'm sorry. Hold on
25 one minute. Mr. Brown, can you just magnify this

1 some more so once he is going through it I can
2 see what he's --

3 (Simultaneous speaking.)

4 MR. BROWN: It's a little small.

5 Thank you. Is that good now?

6 CHAIR ANDERSON: Yeah. I think that
7 works for all of us. It's not just me. Thank
8 you.

9 BY MR. BROWN:

10 Q All right.

11 A So as you can see, there are two
12 columns with the dates in the notes. I created
13 this tracker just to kind of keep track of the
14 ongoing noise issues that we were having.

15 These were recorded the day of. There
16 was no backtracking. And as you can see at the
17 top of this spreadsheet or the top of this
18 document, I put when it was last updated.

19 We only kind of did it for a finite
20 amount of time because as you likely imagine, it
21 kind of wore on me after a while just logging in
22 every day and compiling this information.

23 And so you will see the dates on the
24 left. Most of them, you know, just refer to the
25 loud music. Some of them will also refer to

1 specific events where people were extra loud.
2 There was, you know, urination outside, other
3 kind of abnormal events that I witnessed
4 firsthand.

5 Q Thank you. I'm just going to go ahead
6 and scroll down here. So as soon as the document
7 starts we see -- if you could identify the first
8 date of entry on there?

9 A Yes. The first date is September 3,
10 2021.

11 Q Okay. I'm going to scroll down here.
12 And if you could walk us through some of the
13 additional notes that you see here on the side.
14 I see loud music is one that appears next to
15 almost all of them. But if you could walk us
16 through and explain what the other ones are about
17 and how you came to those conclusions?

18 A Definitely. So subjectively the loud
19 music to me was any time that I could audibly
20 hear every word within our apartment. There
21 likely was bass that was rattling our apartment,
22 causing the primary and only bedroom to be
23 unusable for sleep or kind of daily activities.
24 And then you will also see that there are also
25 some witnessed events.

1 So, for example, on the 4th, there was
2 a woman that was witnessed vomiting outside of
3 the establishment. That was to the right of the
4 stairs or the entrance to our apartment. And
5 then you will also see that there were some DJ
6 events that were outside. As we were told in
7 order to have DJs and speakers and mics outdoors,
8 they need to have a license. And so that is why
9 specifically I called that out in this record
10 log.

11 Some of this information as well you
12 will see when we kind of escalated to calling 911
13 or to calling ABRA potentially in this log. If
14 not, that was happening at a previous time or
15 after.

16 Q All right. Thank you. I'm going to
17 keep scrolling down here so you can keep giving
18 us the details on the information as we travel
19 through the days and the months. I would call
20 your attention to the entry 12/7/21, if you could
21 walk us through that.

22 A Can you see restate the date?

23 Q I see 12/7/231, right there in the
24 middle of the page.

25 A Thank you. Yes. So the loud music

1 primarily pertained to the day. That would start
2 anywhere as early as a little bit before they
3 opened around 10:30 and predominantly, if I was
4 writing that down, it was happening in the
5 evening time. But, again, it occasionally did
6 happen during the daytime as well.

7 And then this kitchen noise
8 predominantly would happen in the morning. It
9 would happen as early as 6:30 so oftentimes we
10 would have noise until 11:00, 11:30 at night on
11 weekends up to 12:30, 1:00. And then we would
12 awake to kitchen noise at 6:30 in the morning.

13 Q And then specifically after that, you
14 cite phone ringing throughout the day, if you can
15 elaborate more on that.

16 A I do. Let me go over that kind of
17 next lines as well. The phone ringing throughout
18 the day was related to the phone that they had in
19 their kitchen of back area. It was at an audible
20 tone to our apartment, oftentimes so that it
21 could be overheard over the volume of the music
22 that was below or so that people in the front of
23 the restaurant could hear it in the back.

24 And then you'll see I have these
25 specific times cited. That was how loud the

1 phone had to be in order for them to be able to
2 hear the phone.

3 Q Thank you. And then it continues down
4 and there seems to be some additional notes at
5 that next line at 12/9/2021.

6 A Yes. Some of the other notes that we
7 have here is that the kitchen music starts at
8 6:30. We also have that we emailed the board and
9 Roost. At the time we had a point of contact at
10 Roost who we were emailing about the noise.

11 There were attempted mitigation
12 processes for the noise because we had gone to
13 both the board and to Roost. This was done first
14 by Cory and then I was looped in as well because
15 I spent a little bit more time at the apartment
16 since I worked from home.

17 Q And could you elaborate who Roost is?

18 A Yes. Roost was the management company
19 that managed the condos.

20 Q So as we continue on after we
21 documented the contact with the board and the
22 property management company, we see that
23 continue. If I could pull your attention to
24 December 15 of 2021, there are some additional
25 entries if you could walk us through those.

1 A Sure. So loud music, you know, it's
2 pretty on point with the description that I gave
3 earlier as well as the loud kitchen music that
4 began at 6:30.

5 The loud yelling pertained to patrons
6 within the restaurant area. This was during the
7 wintertime so they were within yelling,
8 oftentimes over the music or in addition to the
9 music being loud. I emailed the board to alert
10 them about the loud music as well as the Roost
11 management company. And then I logged the
12 specific times that I heard the phone ringing.

13 Q And then if you could continue on to
14 the following day.

15 A Absolutely. So, again, loud music.
16 We heard some loud yelling starting at 9:20,
17 2120. We then called 911 at 10:02. We called
18 again at 10:37 likely because they did not arrive
19 the first time. But the officer stated that they
20 could cite them for the noise violation, but felt
21 it wouldn't change their behavior.

22 Q I'm just going to continue scrolling
23 here. More of the same. I'll turn your
24 attention to the entry on January 7, 2022. If
25 you could walk us through those lines.

1 A Absolutely. So loud music heard again
2 from DCity below us. We heard the phone ringing
3 at 6:12 and 6:14. There was loud music starting
4 at 3:17 in the afternoon. And at 11:15, 11:45,
5 we called 911 because there was music and yelling
6 still loud after the first officer visit. It was
7 heard in our living room because I was unable to
8 sleep in the bedroom. And then we heard their
9 phone ringing again at 11:45.

10 Q Thank you. And we'll continue down to
11 January 11, 2022.

12 A January 11, the loud music started at
13 2:00 p.m. 911 was called at 10:30 p.m. There
14 was loud music starting at 12:52. And then ABRA
15 was called at 7:02 and 8:09. 911 called at 10:13
16 as well.

17 The officer that arrived refused to
18 give their name, badge number or CCN. The
19 officer went into DCity for 20 minutes and stated
20 they were allowed to make noise until 11:00. The
21 phone was heard ringing at both 5:59 p.m., 6:41
22 p.m.

23 Q And it continues on throughout the
24 rest of the document. And then in here, too,
25 let's see. I think we get to another interesting

1 one here on February 24, 2022, if you want to
2 start there and just take us through the rest of
3 the document line by line, please.

4 A Absolutely. So for the rest of the
5 document starting on the 24th of February, 2022,
6 there was loud music. We emailed the board and
7 notified Roost management. And then I believe
8 this is just a printer error, the misalignment,
9 but on the 25th there was loud music. The board
10 was emailed. Roost Management was notified. And
11 the general manager at that time, John,
12 threatened Cory to beat his ass. And at that
13 time, I believe it was Cory that called 911.

14 Q And then if you could just continue
15 through the rest of the document, please?

16 A Yes. The 26th, there was loud music.
17 911 was called at 10:05. Again, loud music. 911
18 was called. The officers arrived. One officer
19 got takeout while arriving. And the other
20 officer stated we have to remain neutral. And
21 then on the 28th, there was loud music starting
22 at 2:09 p.m.

23 MR. BROWN: Thank you for your
24 extensive recounting. I would again move to
25 enter this into the record. The authenticity of

1 it is clear that it was testified by the witness
2 that he did create these notes, and he clearly
3 recollects what is going on in these notes that
4 are submitted.

5 MR. BIANCO: No objection.

6 CHAIR ANDERSON: What did you say,
7 sir?

8 MR. BIANCO: No objection.

9 CHAIR ANDERSON: Without objection, so
10 this is Protestant's Exhibit 1.

11 (Whereupon, the above-referred to
12 document was received into evidence as
13 Protestant's Exhibit 1.)

14 MR. BROWN: Thank you.

15 BY MR. BROWN:

16 Q All right, Jack. We're going to move
17 on to another document. I will ask you to
18 identify this document and the contents therein
19 in the same way that you've just done in the last
20 one.

21 A Absolutely. So this DCity noise log
22 is another noise log that was captured on my
23 phone. To make it easier to capture it in real-
24 time, this information is related noise that was
25 heard or events that were seen from our

1 apartment.

2 Q And if you would, please, as
3 requested, take it line by line.

4 A Absolutely. So on the 25th of August,
5 2022, they did have an outdoor wine tasting
6 event, which included some speakers and a vendor,
7 I believe, that was doing the wine tasting
8 promotion.

9 On December 7, 2021, there was kitchen
10 noise from 7:00 to 9:30 p.m. Chris, the manager,
11 was working at that time. Barbara had come
12 previously in the evening. And the noise was
13 still elevated after visits from ABRA.

14 The noise kind of started as pans in
15 the morning in the kitchen followed by music that
16 the kitchen workers were listening to and then
17 loud music in the restaurant.

18 On the 8th of December, 2021, there
19 was again some kitchen noise from 7:00 to 11:45.
20 There was loud music from 4:00 p.m. until 9:30
21 p.m. And the loud music resumed at 10 o'clock.
22 911 called. We requested a discussion with the
23 officer.

24 And then additionally, you'll see the
25 logs of the individual times we heard the phone

1 ringing from our apartment, 12:12, 1:11, 1:22,
2 3:56, 4:09, 4:50, 7:13, 7:52, 8:30, 9:07, 9:34,
3 10:13.

4 And then, again, similar, the
5 following day the 9th of December, loud kitchen
6 music from 9:15 to 10:30. Loud music at 5:23.
7 The loud yelling at 8:55 and then the individual
8 instances we heard the phone ringing, 12:07,
9 2112, 2120, 2139, 2200, 2217, 2227, 2300. We
10 called 911, 2200, let me clarify, we called 911
11 as well. And then at 11:15 we still heard
12 yelling, sounded intoxicated, likely referring to
13 slurred speech.

14 The 10th of December, loud kitchen
15 music from 7:00 to 10:30, loud music starting at
16 2:30. The phone ringing 5:35, 7:14 the phone
17 ringing, 8:03 the phone ringing, 8:51 the phone
18 ringing, 9:09 the phone ringing, 9:53 the phone
19 ringing. We called 911 at 10:01 and 11:23.

20 The 11th of December, 2021, loud
21 kitchen music starting at 8:00.

22 MR. BIANCO: Hang on. I guess, I'm
23 going to object although I don't know if it's
24 properly couched as an objection. I would say
25 that if this document is going into evidence,

1 reading through it line by line is repetitive and
2 unnecessary. The document speaks for itself.

3 I mean, I'm not going to tell the
4 Protestant how to spend their time running their
5 case. But I know earlier in the matter, Mr.
6 Anderson, you stopped the investigator from just
7 simply reading a report that's in the record.
8 And I think we should just be smart about how we
9 spend our time here.

10 CHAIR ANDERSON: All right. So, Mr.
11 Brown, so basically you want to move this
12 document into evidence just basically to document
13 the noise during this period of time. Is that
14 correct, sir?

15 MR. BROWN: Yes. So working notes of
16 both of the residents as kept, referencing each
17 and every time they reported it and the various
18 complaints that we had.

19 CHAIR ANDERSON: All right. So this
20 exhibit is what, sir?

21 MR. BROWN: This is Protestant Exhibit
22 2.

23 (Whereupon, the above-referred to
24 document was marked as Protestant's Exhibit 2 for
25 identification.)

1 CHAIR ANDERSON: So do you want to
2 move it into evidence?

3 MR. BROWN: Correct.

4 CHAIR ANDERSON: Any objection, Mr.
5 Bianco?

6 MR. BIANCO: No objections.

7 CHAIR ANDERSON: So moved. Let's move
8 on, I guess.

9 (Whereupon, the above-referred to
10 document was received into evidence as
11 Protestant's Exhibit 2.)

12 MR. BROWN: Thank you.

13 BY MR. BROWN:

14 Q So you've walked us through the
15 issues. What was the response that you got when
16 contacting DCity Smokehouse?

17 A So we tried a couple of different
18 approaches to reaching out to DCity Smokehouse.
19 Cory, of course, did a few more approaches than
20 me as the owner of the apartment.

21 Initially, I attempted to call the
22 restaurant. When I attempted to call the
23 restaurant, sometimes they would not hear me
24 because the music was so loud. I could hear all
25 the words in my apartment. I also could hear the

1 words through the phone.

2 And I've also attempted to go
3 downstairs a few times, I believe it was twice,
4 to ask them to lower the volume, at which point
5 they would but then they would often turn the
6 volume back within 10 to 15 minutes. Another --

7 Q Continue.

8 A -- so those were our direct
9 interactions with the restaurant. Other than
10 those direct interactions with the restaurant, we
11 did escalate it to the board and to the
12 management company. For a while, we were told
13 that there would be fines that would be given to
14 the restaurant for each instance of a noise
15 violation.

16 And we were told that by both Roost,
17 the management company, and Mike Gold, the
18 previous board owner. And so that was the
19 reasoning behind keeping such a descriptive log
20 of the times that we were having noise
21 violations.

22 Q And what happened after those
23 instances? Was there any change?

24 A No change in behavior. Additionally,
25 we did try to incorporate -- ABRA, I think,

1 briefly interacted with DCRA, recognized that
2 wasn't the appropriate avenue and then also
3 attempted to interact with 311 with little to no
4 response and then escalated to the highest, I
5 think, we did, which was 911.

6 Q And can you describe your interactions
7 with ABRA?

8 A Sure. My interactions with ABRA were
9 primarily on the phone. Most of the time, I
10 would call, let them know that their noise was
11 loud. It typically was not until after 6:00 p.m.
12 that we would call ABRA. There were limitations
13 or we were told, rather, that there were
14 limitations in noise response during the day.
15 And the responses were mixed. Sometimes they
16 would tell us that they were going to do an audit
17 and have someone go in and evaluate the noise or
18 recommend that they turn the volume down.

19 The representatives that we spoke to
20 told us that they could only suggest the volume
21 be taken down, not that they could actually give
22 an order or enforce any volume being lowered.

23 Occasionally, they also did
24 measurement from the sidewalk. However, they
25 stated that the noise from the traffic interfered

1 with the volume measurements. So the findings
2 were inconclusive.

3 Q Okay. So you stated you lived there.
4 Were you employed at the time you moved into 1700
5 2nd Street Northwest?

6 A I was. I was employed as a
7 contractor, but I primarily worked from home,
8 especially since we were still in the COVID
9 emergency response.

10 Q And how is your experience working
11 from home given all the testimony that you've
12 just given us?

13 A It was very difficult. I had work
14 limitations. I could only work during specific
15 times. If it was after 3:00 p.m. generally, I
16 could not work in the bedroom, which was
17 primarily where I worked. I would have to go
18 into the living room, and even then there were
19 limitations in the only time that I could work
20 because after 5:00, it generally got too loud.

21 I worked with noise cancelling
22 headphones on at all times. I wore noise
23 cancelling head phones for the majority of the
24 time that I was in the apartment. And, you know,
25 I couldn't really go into the office because

1 there was no office open for me to go into.

2 Q Did the noise cancelling headphones
3 remediate the noise?

4 A They did not. In addition to the
5 noise, there was the bass, which would shake the
6 chair that I was sitting in and the desk I was
7 sitting at, making it a little bit more difficult
8 to concentrate.

9 Q During your non-working hours, were
10 there any impacts to your life?

11 A There were. As you saw in the log, I
12 permanently kept it up until the end of February.
13 At that time, March 7, I went to my doctor, who
14 had prescribed Clonazepam for anxiety and
15 Trazodone to help me sleep. I'm a nurse by
16 background. I have every coping mechanism
17 imaginable in my arsenal. But when it's in your
18 house and there is no escaping it, I have to
19 address it through medical means.

20 Q And please describe for us what it
21 took you to address those means or those issues,
22 taking it to that medical level to seek out those
23 prescriptions.

24 MR. BIANCO: I'm going to object to
25 this point, at this point, as to the witness's

1 medical information. I mean, this isn't relevant
2 to noise infiltration. It is relevant to his
3 personal feelings. And, I mean, if there are
4 measurements or something objective, I think it's
5 fair game. But, you know, the effect noise has
6 on an individual, this isn't a tort case. We're
7 dealing with legal responsibility and volume.
8 We're not dealing with feelings.

9 MR. BROWN: And we just specifically
10 said that this case at hand was about noise, and
11 the witness has testified to the fact that the
12 noise is what motivated to seek out these
13 medications. So I think it is directly relevant
14 to go and have further explanation in this area.

15 CHAIR ANDERSON: We're going too
16 afield. I mean, none of us are medical
17 professionals to testify to that. But, I mean,
18 I'm going to overrule the objection. But I just
19 think we need to move on and make sure that we
20 have relevant testimony. Testimony that you
21 believe the board needs to make a decision. So
22 I'm going -- so I'm overruling the objection.
23 But I need us to move on to relevant testimony
24 that will help the board in making a
25 determination.

1 MR. BROWN: Thank you.

2 BY MR. BROWN:

3 Q Please go ahead.

4 A I went to my doctor to get anxiety and
5 sleeping medications due to the prolonged
6 exposure to the bass and the music. And two
7 weeks after I moved out, I stopped those
8 medications.

9 Q Thank you. You testified to the
10 outreach to the business. During your tenure
11 living at this unit, were there any steps taken
12 by DCity to remediate the noise issue that you've
13 identified?

14 A At times they stated that they had
15 contractors give estimates for putting in
16 soundproofing. This was done at the promotion of
17 the board and Roost Management. There were
18 times, as I previously stated, when they would
19 decrease the volume, but most of the time it went
20 back up. And the next day was a clean slate so
21 we would start all over again.

22 MR. BROWN: Thank you. No further
23 questions.

24 CHAIR ANDERSON: Thank you. Mr.
25 Bianco?

1 CROSS EXAMINATION

2 BY MR. BIANCO:

3 Q Yes, sir. Okay. So you moved in in
4 2021. You gave the exact date. What was that?

5 A May 28. It was a Friday.

6 Q May 28 of 2021. And DCity Smokehouse
7 was operating at that time, right?

8 A Yes, they were.

9 Q Okay. And you -- well, do you have an
10 ownership interest in the unit?

11 A I do not. We are getting married. So
12 I may have an ownership interest at a future
13 time.

14 Q Understood. We don't need to get into
15 too much detail on the legalities. I just didn't
16 know if you were a co-owner right now. So what
17 due diligence did you do about the noise before
18 you moved in?

19 A Well, we were in a very interesting
20 scenario. Cory and I had been dating for a
21 little over a month before he moved into this
22 condo. At the time, he was living about five,
23 six blocks north of the condo. I am very
24 familiar with the area. I've lived in
25 surrounding areas, but never directly in

1 Bloomingdale. And so when he told me that he was
2 moving because he bought a condo, I was just
3 really excited that he bought his first place. I
4 didn't really do any background investigation
5 into what was surrounding the condo until I
6 showed up the day to help them move.

7 Q Okay. So moving in did you even --
8 well, when you made the decision to move in, did
9 you even know that DCity Smokehouse was there?

10 A I knew DCity Smokehouse was at that
11 location. I didn't know where his apartment was
12 directly located at.

13 Q Okay. So until you moved in you
14 didn't check it out for noise or anything else,
15 correct?

16 A No. Because as previously stated, he
17 didn't give me a direct address of where he was
18 moving. He just told me that he was moving in
19 Bloomingdale.

20 Q Okay. And you testified that you
21 worked from home and you have limitations as to
22 certain hours that you can work.

23 A Mm-hmm.

24 Q And you need quiet during that time in
25 order to do your work, correct?

1 A For the most part. I've worked in
2 very diverse situations. So I don't always need
3 quiet.

4 Q So if you're working from home and
5 it's important that there is not loud noises in
6 the background, why wouldn't you have inquired as
7 to that before you moved in?

8 A I wouldn't have predicted noises from
9 external places would have affected my work.

10 Q Okay. So have you lived over a
11 restaurant before?

12 A I have not.

13 Q Now turning to your noise logs, and
14 I'm definitely not going to go through it line by
15 line, but there seems to be dozens to entries
16 about a telephone ringing, right?

17 A Yes.

18 Q Okay. And to your knowledge, DCity
19 Smokehouse operates a takeout, right?

20 A Yes.

21 Q And wouldn't it stand to reason that
22 they would have the telephone ringing for
23 operation of a takeout?

24 A It would, but I shouldn't be able to
25 hear it from my apartment.

1 Q So what does the telephone ringing --
2 draw the through line for me. What does the
3 telephone ringing have to do with service of
4 alcohol?

5 A It doesn't.

6 Q Again, in the logs, dozens of entries
7 about calling 911, ABRA and the condominium,
8 right?

9 A Mm-hmm.

10 Q Did any of them ever cite DCity
11 Smokehouse for a violation?

12 A ABRA did previously before we had
13 moved in.

14 Q Okay. So then, no. Your dozens of
15 phone calls resulted in no violations, correct?

16 A My logs did not result in a violation.
17 That was documented.

18 Q Okay. What did you use to measure the
19 noise infiltration in your unit?

20 A Various things. I had a decibel meter
21 on my phone. I would Shazam songs like Jackie's
22 tenants would. I predominantly did those two
23 things. And we did try and have ABRA do
24 recordings, which the previous tenant, Nadira,
25 had done in the apartment.

1 Q Okay. But that didn't happen?

2 A No. The times that we asked for it,
3 they declined.

4 Q And you complained to DCRA as well?

5 A We did, yes.

6 Q And if I understand your testimony
7 correctly, they did come out and do measurements,
8 right?

9 A They did, from the sidewalk.

10 Q Okay. And found no violations,
11 correct?

12 A I don't know if I can completely
13 answer that because they told us that their
14 recordings were mixed from the noise of the
15 street.

16 Q Okay. So the street noise, then, I
17 take it is loud, right?

18 A Street noise is kind of like white
19 noise. You know, you get used to it, but it is
20 there.

21 Q Okay. And loud enough to interfere
22 with the sound test by DCRA, correct?

23 A Yes.

24 Q Now you testified that when you -- on
25 the occasions that you called the establishment,

1 you couldn't hear people talking through the
2 phone, right?

3 A I could hear them talking. They
4 couldn't hear me.

5 Q Okay. So they couldn't hear you.
6 Okay. So given that testimony, do you have any
7 idea how they would have taken orders for this
8 incessant phone ringing that you're complaining
9 about if they can't even hear you?

10 A I don't. You know, generally, I would
11 imagine they would be getting them online if they
12 weren't heard or they would be getting them
13 through another medium.

14 Q Now you gave some testimony about you
15 being told by the condo or the management company
16 that they would be fined for each noise
17 violation, correct?

18 A Correct.

19 Q And you submitted your noise logs to
20 the condominium for that purpose?

21 A I would defer to Cory on that answer.
22 I believe they were submitted.

23 Q Okay. And there were no fines that
24 you were aware of, correct?

25 A Correct.

1 Q So it stands to reason that they found
2 no violations, right?

3 A No.

4 Q No. You think they found a violation
5 and just didn't cite them. Is that the
6 testimony?

7 MR. BROWN: Objection. He's asking
8 him to speculate about a body that he was not a
9 part of and wouldn't be witness necessarily to
10 any of the information that they had on him nor
11 did the client testify that at any point that he
12 was told that he would receive notification or
13 verification of any fines issued.

14 MR. BIANCO: Again, that's argument.
15 It's his testimony about what they did and why.
16 And I'm just asking him to explain it. He dug
17 the hole. He should have to answer the question.

18 CHAIR ANDERSON: I'm overruling. I'm
19 overruling the objection. The witness can answer
20 the question if he can. If he can't answer the
21 question, let's move on.

22 MR. MCCUE: In my ability, no.
23 However, I was not the direct communication most
24 of the time to the board and to the management
25 company because I was not the owner or the

1 primary person that was communicating with the
2 management company and board.

3 BY MR. BIANCO:

4 Q Okay. So, and you may not have been
5 here for this testimony from Ms. Quinn, but there
6 was at some point an illegal strip club operating
7 next door to your building. Were you aware of
8 that?

9 A I was towards the end of our living
10 there. There was another person that I met on
11 the street. And he told me about it because it
12 was below his -- or rather, I think, two floors
13 below where he lived.

14 Q Okay. And that illegal strip club was
15 the neighbor on the Florida Avenue side, correct?

16 A Not the direct neighbor. I think they
17 were three doors down. It may have been two.

18 Q Okay. And do you think that that
19 illegal strip club operating there on the street
20 contributed to the issues that you are
21 complaining about here today?

22 A I do not. The bass that I thought was
23 a direct correlation to the music that I heard.

24 Q Well, but other than the bass. You
25 talked about a lot of things. You talked about

1 people on the street. You talked about noise
2 coming from outside. People yelling. People
3 throwing up. You can't attribute all of that to
4 DCity Smokehouse, can you?

5 A I can actually. The yelling, as in
6 the log, was coming from below our floor. So the
7 times that I heard it in December, it was coming
8 from within the building.

9 MR. BIANCO: Okay. And that is all I
10 have for this witness.

11 CHAIR ANDERSON: Any questions by the
12 board members? All right. Thank you all. All
13 right, Mr. McCue, thank you very much for your
14 testimony.

15 MR. MCCUE: Okay.

16 CHAIR ANDERSON: All right. Do you
17 have another witness, sir?

18 MR. BROWN: I'm my own only final
19 witness.

20 CHAIR ANDERSON: All right. So I have
21 to swear you in and then Mr. Bianco will cross-
22 exam you.

23 MR. BROWN: I won't be able to --

24 CHAIR ANDERSON: I'm sorry?

25 MR. BROWN: -- give direct testimony

1 into the record?

2 CHAIR ANDERSON: I'm sorry. You what,
3 sir?

4 MR. BROWN: Won't I have the
5 opportunity to speak as a witness on direct prior
6 to cross-examination of opposing counsel?

7 CHAIR ANDERSON: No, I said that Mr.
8 -- I said that after you testify that Mr. Bianco
9 --

10 MR. BROWN: Okay.

11 CHAIR ANDERSON: -- would have an
12 opportunity to cross-examine you. So, I mean, I
13 would have preferred if you had another person
14 who asked you the questions and you respond. But
15 I will give you some leeway that you can testify,
16 and Mr. Bianco will ask questions of you based on
17 what you testify to and then the board might have
18 questions for you. All right. Go ahead, sir.

19 MR. BROWN: Are you swearing me in?

20 CHAIR ANDERSON: I thought I did.
21 Okay.

22 WHEREUPON,

23 CORY BROWN

24 Was called for examination by Counsel for the
25 Protestant, and after having first been duly

1 sworn, was examined and testified as follows.

2 CHAIR ANDERSON: Go ahead, sir.

3 MR. BROWN: As previously stated, my
4 name is Cory Brown. I own the Unit 1700 2nd
5 Street Northwest, Apartment Number 3. I moved in
6 there in May of 2021. As a long-time resident of
7 the Bloomingdale neighborhood before that, I
8 moved there in September of 2011 with my late
9 brother at 127 D Street and a friend.

10 I loved living there. I was there for
11 years. I frequent a lot of the restaurants and
12 bars in the neighborhood. I find most of them to
13 be upstanding, the restaurants and businesses.
14 And I've loved to see that neighborhood how it
15 has flourished over the years.

16 When I went to buy my first condo, I
17 was moving back from another side of DC where I
18 lived for three years and wanted to go directly
19 into this neighborhood.

20 I was fully aware of who DCity
21 Smokehouse was. I was a customer of them. And I
22 had never seen them or witnessed them to behave
23 in the reprehensible manner that I then witnessed
24 them to behave as I moved into the building.

25 Immediately upon moving in, I was

1 greeted by Melvin and Chris, who have both
2 testified here today. They introduced
3 themselves. They were very personable and said
4 to come to them if there were ever any issues and
5 to swing through the restaurant and have a drink
6 or something to eat.

7 Shortly thereafter moving in, I
8 started hearing the music. Jokingly, we referred
9 to it as their top 25 play list because we knew
10 every single song that was on there and could
11 hear every single word. I talked to Chris about
12 it. I talked to Melvin about it. I texted them
13 regularly. They promised that they would help
14 take care of it. That they would adjust it.

15 And they did it sometimes, but then it
16 would come right back up. Specifically, Chris
17 would be off and not the manager on Tuesdays and
18 Wednesdays, and the music was markedly worse
19 then.

20 Melvin has since recognized that issue
21 and stated it was no longer there, the managers
22 that were working at that time. And that was
23 just one of the many things of raising issues.
24 There was always an excuse but never a solution
25 that involved DCity Smokehouse having to put in

1 soundproofing, which is all that anybody has ever
2 wanted throughout this entire process to give a
3 little peace and quiet into our houses.

4 I tried everything. When contacting
5 Melvin and calling the restaurant directly, the
6 reason why they can't hear you when you call is
7 either one, they're pretending or two, it's
8 because the music is so loud that they can't hear
9 it. That's also why the phone volume is high.
10 The phone volume only has to be that high so they
11 can hear it over the blaring music and the
12 thumping bass.

13 It has happened well into the night
14 beyond the City's quiet hours, beyond the
15 building's quiet hours. I am fully aware of what
16 a mixed use zone is. I think it was quite clear
17 throughout the day. We made every contact with
18 ABRA to try to get them in there to do sound
19 readings. We tried to do that as part of these
20 proceedings, and they declined to participate in
21 that. ABRA was willing, but Mr. Hines, and
22 through his counsel, they were not willing to
23 participate in that process.

24 I appealed to the board. I appealed
25 to the ANC member. I appealed to the property

1 management company, Roost. I went to the
2 constituent director for Ward 5, Kenyan McDuffie,
3 Kelly Cislo and appealed to them. I spoke to
4 Karla, the ANC commissioner regularly. She
5 sincerely helped engage and start the
6 conversation. That's when I started texting
7 Melvin directly to say, hey, Melvin, the sound is
8 up again and to no avail generally.

9 Throughout that point, all we asked
10 for is soundproofing. And it never came. I
11 found the management outside of Chris to be
12 extremely combative. John, the other general
13 manager for Southeast Restaurant Group, at one
14 point ran up my front steps, pounded on my front
15 window and threatened to attack me.

16 I called the police on multiple
17 occasions. They would give us the caller
18 numbers. There wasn't much they could do because
19 they would have to have a lieutenant come out or
20 another supervisory police officer to come in and
21 fine them or to arrest somebody, which wasn't
22 anything that we were looking for.

23 I wanted to be able to go to sleep at
24 night in my apartment, to not have the stress.
25 And it wasn't like I was trying to go at 8:00

1 p.m. I was trying to go to bed at 10:00 or 11:00
2 so that I could get up and go to work in the
3 morning.

4 Luckily for me, I'm a federal
5 employee. I like to state clearly for the record
6 I am not now, nor have I ever been an attorney.
7 I do not hold a law degree. I've never
8 represented myself to be an attorney despite how
9 many times Mr. Hines has said that in every
10 different hearing.

11 I think it is quite clear that I am
12 representing myself pro se here. I don't know
13 every rule. I can figure out where these things
14 go. And I can read. I know what the DC Noise
15 Control Act says and that I'm supposed to be
16 entitled to live within the space that I have
17 purchased and that, if someone is producing noise
18 regardless of that zoning, that doesn't mean that
19 I, as a resident, have to endure that. I'm still
20 entitled to those rights to live within my unit.

21 I haven't wanted anybody's business to
22 be hurt. At no point during this hearing has
23 anybody said anything like we have to have music.
24 If you're a carryout business and people are
25 walking in and out, why do you need to have music

1 blaring?

2 Bloomingdale is a calm neighborhood
3 generally. I would live over the Red Hen,
4 Boundary Stone, any of those other restaurants in
5 a heartbeat, any of them. I found them all to be
6 pleasant. I've not seen any of them have outdoor
7 speakers, like Mr. Hines has had through the
8 multiple iterations that have always just been
9 loud. Flashing lights are on speaker stands.
10 They look like a DJ should have them for what has
11 been described by ABRA as a small space.

12 In addition to that, we've continued
13 to just reach out to them. It's been combative.
14 It's been an excuse. They're going to do that.
15 They don't bring in a sound engineer. They won't
16 put in a simple soundproofing in the roof above
17 them. And the sheer ridiculousness of saying
18 that soundproofing should be where the pipes are,
19 it's one business that's emanating a nuisance to
20 the rest of the building.

21 As a member of the condo board coming
22 on recently, I've then found out that what Roost
23 and the condo board was previously just telling
24 us that they were issuing fines was not true. I
25 serve as the treasurer. They never built

1 anything into the bylaws as regards to a fining
2 structure. They never issued anything. As far
3 as I know, it was a lie. I have access to all of
4 those records, and they never did anything other
5 than receive our repeated emails and appeals just
6 to get Melvin to put in some soundproofing.

7 I'm very happy that after a year and
8 a half of complaints, he finally put in what
9 could be an appropriate sound system. It still
10 has bass. All Sonos speakers do. You don't have
11 to be a sound engineer to know that. What they
12 don't have is a subwoofer. So bass is another
13 control that is on there.

14 And just as I was willing to offer to
15 stand there with him and show him how to adjust
16 the controls, allow him to come into my unit, as
17 Jackie has also offered on multiple occasions,
18 our doors are open. That's all we want is the
19 music to be adjusted and for it to go off at a
20 reasonable hour. And if they want the music
21 louder, then put appropriate soundproofing in
22 your unit to provide for that and take down the
23 outdoor speakers.

24 All we want is a simple agreement and
25 somebody to help us. And that's all we're really

1 doing is screaming for help in this situation.

2 It's very clear that the raucous environment
3 that's going on there is because of the loud
4 music and the alcohol that's being served.

5 Our building bylaws are very specific.
6 You are only allowed to serve liquor if you are a
7 restaurant. The main intention is that it has to
8 be a restaurant because it is not supposed to be
9 loud or raucous. There is a turn in this
10 neighborhood. Where our ANC has put in an formal
11 protest is on Uncaged mimosas that is over across
12 the street in Truxton Circle. They are trying to
13 turn Bloomingdale into Bourbon Street.

14 It's a quiet residential neighborhood.
15 Unlike the applicants, I've lived there for years
16 and years and years. I love that neighborhood.
17 And I have a history with it. And I still have
18 my unit there. And if it wasn't for them, I
19 wouldn't have had to gone on sleeping pills. It
20 wouldn't have impacted my work. I would probably
21 still be in that home. But I have been driven
22 out of it because they simply just won't put in
23 some soundproofing.

24 And it took all of this just to
25 finally get them to the point that they will put

1 in an appropriate speaker system that can be
2 controlled. And yet even still at that, they
3 don't want anybody looking at it. There is no
4 sincere resolve that has ever been displayed by
5 DCity Smokehouse to honestly engage with the
6 neighbors of the building and to resolve this
7 issue. Thank you.

8 CHAIR ANDERSON: Mr. Bianco.

9 CROSS EXAMINATION

10 BY MR. BIANCO:

11 Q Okay. So you moved into the -- you
12 purchased this unit in 2021, correct?

13 A Correct.

14 Q What due diligence did you do prior to
15 your purchase to determine any issues that may
16 exist with respect to sound?

17 A I reviewed the condo docs, and I was
18 aware of the zoning. And I had frequented the
19 restaurant before.

20 Q Okay. Did you visit the unit before
21 you purchased it?

22 A Yes, I did.

23 Q Okay. And did you visit it in the
24 evening or just during the day.

25 A The viewings were only during the

1 daylight hours.

2 Q Did you engage any professionals to do
3 any testing prior to your purchase?

4 A There was nothing that would
5 demonstrate beyond a home inspector that any
6 additional professionals were needed in the
7 purchasing of a private residence.

8 Q So, no, is the answer to that
9 question, right?

10 A I stated that I engaged a home
11 inspector.

12 Q Okay. So you hired a home inspector.

13 A It spoke to the integrity of the
14 unit.

15 Q And did the home inspector cite any
16 issues that may give you pause with respect to
17 sound infiltration?

18 A They said that my condo and what is
19 connected to it was sound and passed home
20 inspection.

21 Q DCity Smokehouse was operating for
22 several years before you moved in, right?

23 A Correct.

24 Q Okay. And you mentioned a number of
25 other places that you would be happy to live

1 over, namely Red Hen and Boundary Stone and Big
2 Bear. Is that accurate?

3 A Correct.

4 Q Have you lived over those
5 establishments?

6 A No. I've just frequented them as a
7 client --

8 Q Well, how about going into --

9 A -- customer.

10 Q -- how about going into units above
11 then? Have you done that?

12 A No. I'm not aware that they even all
13 have units above them other than the coffee shop
14 at the corner has an event space. They don't
15 actually have anybody that lives above it. But I
16 have been above that unit, and I haven't heard
17 anything there because they keep their music at a
18 low conversational level, unlike DCity
19 Smokehouse.

20 Q Well, well, right. But what we're
21 talking about here is that your specific
22 testimony, right? You've never visited any units
23 directly above those places, so you have no idea
24 what noise infiltrations might be like. Fair to
25 say?

1 A Even better. I've been inside the
2 units where the music is being played, and I find
3 it is at a conversational level as it should be
4 and as it's not at DCity Smokehouse.

5 Q Well, I'm glad you said that. That
6 actually is helpful. You testified that before
7 you purchased, you went into DCity Smokehouse
8 several times and found no issue, right?

9 A I went into DCity Smokehouse prior to
10 buying the place, not directly before. I had
11 frequented it as a customer. Prior to that was
12 the pandemic. I didn't go into too many places
13 during that time. There was good reason not to
14 do that. But I had frequented the restaurant
15 prior to that. And I didn't observe it to be as
16 raucous as it had become during the pandemic and
17 has continued to thereafter.

18 Q Okay. So you detailed for us that you
19 called MPD. You called DCRA. You called ABRA.
20 You called the condo. You called the ANC. And
21 nobody ever did anything about the noise you are
22 complaining about, correct?

23 A I would amend that. The ANC
24 commissioner, Karla Lewis, she did actually
25 recommend this process to me. And she said that

1 this was the best resolution in these situations
2 was to contest their liquor license. She told me
3 when it was coming up. And she said that I could
4 go through her or I could go as an abutting
5 property owner.

6 Q Okay. And the ANC didn't protest,
7 right?

8 A I did not ask them to.

9 Q And getting back to the actual
10 question I asked, other than your ANC
11 commissioner advising you about the protest
12 process, none of those other entities did
13 anything about the noise you are complaining
14 about, right?

15 A Nothing that mitigated it.

16 Q Okay. And none of the other
17 condominium unit owners on the first floor of the
18 condominium have done anything about the noise
19 that you are complaining about, correct?

20 A No, that's not correct. We have our
21 annual board meeting in February. That was
22 Jackie's first one as president. And the woman
23 that bought the unit across the hall from me,
24 that is, let's see, Unit Number 4, Caitlyn, she
25 told a long detailed story about how she really

1 wanted to buy Jackie's unit, but she was so
2 disturbed by what she observed from DCity
3 Smokehouse that she moved over there.

4 She also contacted me as the condo
5 board treasurer to ask what could be done about
6 the really loud noises that she hears from DCity
7 Smokehouse. When she started talking about that
8 at the condo board meeting, then Heidi, who lives
9 in Unit Number 5, that is across from Jackie's
10 and is also above, she then started saying, hey,
11 I can hear you guys, too. And Melvin then said,
12 well, that's because we haven't closed up the
13 ceiling after your bathroom leaked through
14 several months before.

15 But those are what I can recollect of
16 what other folks have said to me in addition to
17 what the previous unit owner then eventually
18 disclosed to me.

19 Q Right. Okay. So, again, thank you.
20 So the first thing that you said before going on,
21 or the first thing I heard at least, was one of
22 the other unit owners said they were going to buy
23 Jackie's unit on the first floor immediately
24 above DCity Smokehouse but after observing the
25 operations of the establishment, she decided not

1 to, correct?

2 A Correct. That's what she stated to
3 us.

4 Q Do you think that would have been
5 something reasonably prudent for you to do before
6 you purchased that unit?

7 A If I would have had the same
8 experience as her, I probably wouldn't have
9 bought it either. But that wasn't my experience.
10 My experience was that it was that it quiet in
11 the daylight hours that I observed and --

12 (Simultaneous speaking.)

13 Q There is no question pending. There
14 is no question pending. You gave your testimony.
15 You can answer any question I ask fully. Okay?
16 Now you testified that you tried to set up a
17 visit by ABRA to your unit for some type of noise
18 measurement, correct?

19 A I tried to do that for the greater
20 part of a year and a half and then the final one
21 was preceding this trial. The date was set.
22 They were supposed to come out on a Saturday,
23 both Jackie and I had gotten clearance from our
24 tenants. The investigator, that was Investigator
25 Kevin Puente, it was not the investigator that

1 was assigned to this case. He reached out. He
2 confirmed everything. He was going to do it. He
3 said he was in contact with Melvin.

4 That is when you made your appearance
5 like 10 or 11 days ago and then that's when I
6 received the notice from Investigator Puente that
7 DCity Smokehouse, through their counsel, had
8 communicated to him that they were not interested
9 in participating in this. And then that is where
10 you asked me the questions about the legal
11 standards related to ABRA, and I turned you back
12 to them.

13 Q Now didn't I specifically email you
14 and said we did agree provided it's treated as a
15 settlement discussion?

16 A You emailed that to Investigator
17 Puente and I was cc'd on it and then he emailed
18 you back and was a very long answer as to why
19 ABRA wouldn't participate in that because
20 something to do with like the mediation was no
21 longer going on and again, that was like two days
22 before we were coming here to the protest
23 hearing. So I think logistics would have been a
24 tough thing there as well.

25 Q Sure. So let me ask you this. Why do

1 you need our permission for ABRA to come to your
2 unit?

3 A We were looking for some cooperation
4 with the unit so that you could adjust the volume
5 levels since no one has control on his phone and
6 that was the original discussion in there. We
7 were trying to meet with a sincere resolve to
8 find an agreement of how we can live and have
9 people live in these units and how his business
10 can still operate successfully and having
11 somebody in there that can verify that, he
12 doesn't have to take my word, there's an employee
13 of ABRA, he's there controlling the sound either
14 from down in DCity or he was also welcomed to
15 come into my unit and to Jackie's unit and then
16 everyone agreed not to.

17 Q Okay. So what measurement was the
18 ABRA investigator going to take?

19 A I've never conducted one myself, so
20 I'm not familiar with how they do that. But they
21 were discussing that earlier today. They cited
22 when it was done in the past and there was a
23 fine, so if I had to throw a guess out there, I
24 would say it was the ones that they've done in
25 the past and found it to be an issue.

1 Q Okay, and by the ones in the past, you
2 mean the 2020 pandemic restrictions there was
3 testimony about earlier, right?

4 A No, it was the stuff before that where
5 they talked about the prior fines and when they
6 had gone into the unit from the prior unit and
7 they had done the sound assessment. That was
8 also in all of the reports.

9 Q So what you're talking about is from
10 the investigator's report?

11 A Yes, the investigator's report, all
12 the prior history from ABRA and all the prior
13 infractions related to all the other things that
14 had been at issue with DCity Smokehouse that were
15 cited on there. And I believe he testified to
16 the fact that they had been in that unit prior to
17 perform a sound measurement before I owned the
18 unit.

19 Q Okay, so I'm looking at this
20 investigative history and I see -- I see a
21 warning for masks. I see a citation for Mayor's
22 order violation, and I see a warning for a
23 Mayor's order violation. I don't see sound
24 issues before that. Can you specify what you're
25 referring to specifically?

1 A I don't think anything other than you
2 have it in front of us and that was about five
3 hours ago. I have a good memory, but I don't
4 know if that's good.

5 Q Oh, no, no. I understand it. It's in
6 the record. We can look at -- obviously, the
7 Board can just look at it and get an
8 understanding of the accuracy of the testimony.

9 Okay, so there was testimony today
10 about a sound test on April 21st of 2022. You
11 were here for that testimony, right?

12 A Yes, I was here.

13 Q And were you present for that sound
14 test?

15 A No, I was not.

16 Q Was Mr. McCue present for that sound
17 test?

18 A He was not and I believe the prior
19 testimony said that it was just Chris from DC.

20 Q So did you set up that sound test with
21 the ANC and DCity Smokehouse?

22 A I've asked for so many over the course
23 of a year and a half that you could probably put
24 my hands on any one of them, but I was not asked
25 to participate. I was not asked to let anyone

1 into my house. And as was previously testified,
2 it was just Chris. They walked the perimeter.
3 They did not come into the condo building, the
4 abutting property. He just testified that they
5 went into DCity. And I was not party to that.
6 But I'm sorry, but I can't give you answers for
7 something where I wasn't a part of it.

8 Q Okay, so you're not sure if you were
9 part of setting it up, but you definitely were
10 not there, that's the testimony?

11 A I was active in requesting them, but
12 was never asked to participate or notified that
13 they were occurring.

14 Q Bear with me for one second. let me
15 see if I have anything else here.

16 Okay, so do you recall receiving an
17 email from Ferdinand Gamboa on Tuesday, April 19,
18 2022 stating DCRA with the Noise Task Force will
19 visit DCity this Thursday night. Do you remember
20 that email?

21 A I do not recollect that or any email
22 from that day. I receive a lot. I work in
23 Federal HR and this has been an ongoing issue so
24 without it in front of me I wouldn't know.

25 Q It's not a memory test, so to refresh

1 your recollection, I'm going to bring up an email
2 on the screen, not as an exhibit, but to refresh
3 the witness's memory since he testified that he
4 does not remember.

5 So specifically what I have up here is
6 an email from Ferdinand Gamboa sent on April 19th
7 and it has the recipients here and among the
8 recipients is John McCue, Cory Brown, "Good
9 morning, DCAR with the Noise Task Force will
10 visit the Music DCity this Thursday night."

11 Having had the opportunity to review
12 that, do you now recall receiving that email with
13 respect to the noise test on 4/22 of 2022?

14 A I don't know if I specifically
15 received that. That's certainly my email.
16 That's our -- some of the board members. That's
17 Kelly, all folks that had been contacted before.

18 I don't even know that I was in town
19 during that time period. Jackie's parents live in
20 Knoxville and we would often go stay at their
21 house for two, three weeks at a time, whenever I
22 was allowed to telework just to get some nice
23 rest because of the noise.

24 Yes, and I don't think that's a part
25 of anything you submitted to me prior, so I

1 didn't have the opportunity to dig through my
2 email to see if I have actually received that.

3 Q So yes, that wasn't my question. I
4 asked you if you remembered. You said you didn't
5 and now you remember, correct?

6 A I never said I remembered. I said I
7 recognized my email and again, I haven't had the
8 opportunity to review any of that to verify. I
9 do not recollect receiving that email at this
10 moment.

11 CHAIR ANDERSON: Let's move on, asked
12 and answered, gentlemen. Do you have another
13 question?

14 BY MR. BIANCO:

15 Q I do. Do you recall the same day
16 getting an email saying they need to access your
17 unit for the test?

18 A I do not. Is there something in the
19 record that says that or it's just going to come
20 out of magic email land, if it's not in the
21 record.

22 Q Well --

23 A I don't understand why these are
24 actually coming up when I had to fight to get
25 stuff in here that I had previously submitted and

1 none of this has come across before and now --

2 (Simultaneous speaking.)

3 CHAIR ANDERSON: Mr. Brown, hold on a
4 minute. These are not documents that are in
5 evidence. He can ask you about anything that you
6 -- he can ask you any questions. He is not
7 trying to move these into evidence. Now if he
8 tries to move it in evidence and it has not been
9 disclosed, then you can object. But all he's
10 just asking you and you answered so far
11 appropriately. So -- and hold on one minute. I
12 need to get off camera for half a second. Hold
13 on. I'm sorry, go ahead.

14 BY MR. BIANCO:

15 Q That's okay. I can wrap this part up
16 just with the last question. We're not going to
17 go through the exercise of showing the document
18 again, but so the question is do you remember
19 later the same day on April the 19th of 2022
20 receiving an email stating that the DCRA Noise
21 Task Force needed to access your unit for
22 measurements?

23 A No, but as I look at my work calendar,
24 I was, in fact, in Knoxville at the time.

25 Q Okay, I mean that's not the question.

1 The question is do you remember getting that
2 email notifying you of the need for access?

3 A I said no, I do not. Maybe that
4 didn't come through.

5 MR. BIANCO: Thank you very much and
6 I appreciate you answering the question and
7 again, it got garbled.

8 MR. BROWN: Of course.

9 CHAIR ANDERSON: Do you have any
10 questions?

11 MR. BIANCO: I'm checking my notes to
12 make sure I don't have anything else. That's it.
13 I don't have any more questions. Thank you very
14 much.

15 CHAIR ANDERSON: Thank you. Any
16 questions by any board member?

17 Hearing none, thank you for your
18 testimony, sir.

19 Now we are ready for closing. You
20 want us to break for five minutes or are you
21 ready to do closing?

22 MR. BROWN: I'm fine with us just
23 going right now and wrapping it up. It's 7:00
24 p.m. I'm sure everybody is tired.

25 CHAIR ANDERSON: All right, Mr.

1 Bianco, five minutes to close.

2 For closing, what I would like, what
3 I would like is for the parties to be specific,
4 what it is that you're asking the Board to do and
5 so -- all right?

6 MR. BIANCO: Yes. Thank you very
7 much, Mr. Chair. Thank you, members of the Board
8 for your patience. I can see from your questions
9 how engaged you were in this issue and how much I
10 think you understand the arguments on both sides.
11 So I will be brief.

12 Our case is simple. We want this
13 license renewed and we would like it renewed
14 without any conditions placed on it. Our burden
15 here is to show that the establishment that has
16 been operating there since 2017 does not have an
17 adverse impact on the peace and quiet of the
18 relevant area. The relevant area is a 1200-foot
19 radius around the establishment.

20 What we have here is two complaining
21 witnesses who moved directly above the
22 establishment, one of whom moved in after the
23 establishment was operating for a number of years
24 doing no due diligence prior to moving in.

25 Again, it's the situation that we see

1 and that the Board sees over and over again where
2 you have a legal use being undertaken by a
3 business party and somebody moving in proximity
4 to that use and then complaining about things
5 that are inherent to the legal use of the
6 property. That's exactly what we have going on
7 here. And we don't have to look very far to
8 identify that.

9 The protestants have thankfully kept
10 very, very detailed records that they complained
11 to every single person that they could think of
12 in the D.C. Government for a period of years and
13 they're not saying that there was no response.
14 They're saying when they complained, MPD came out
15 and didn't do anything. When they complained,
16 DCRA came out and didn't do anything. When they
17 complained, the condominium considered the issue
18 and didn't do anything.

19 The ANC went through the exercise of
20 working with the parties to set up an actual
21 sound test. Protestants didn't participate.
22 they have a lot of excuses as to why not, but the
23 fact is that you have two protestants here that
24 don't actually live in the property, that are
25 raising complaints about the manner of this

1 operation and nobody else who lives in the
2 building or who lives in the 1200-foot area cares
3 about this. And all we have to do is demonstrate
4 that and say nobody else is here. How much does
5 this adversely impact the neighborhood?

6 This is a good business. This is a
7 business that people like. This is a credit to
8 and an amenity to the neighborhood.

9 We heard the testimony of Ms. Quinn,
10 the ANC Commissioner and long-time president of
11 the local civic association, again, a party that
12 did not protest, and talked about the engagement
13 with the community, the responsiveness, how much
14 they are willing to help when the community is in
15 need of exactly that.

16 We heard questions from Mr. Short
17 about the nature of this particular neighborhood
18 and the type of activity that would typically go
19 on in this neighborhood exclusive of DCity
20 Smokehouse.

21 This is a counter-service restaurant.
22 It is a very unusual protest. These places are
23 not very controversial. We do not see a lot of
24 protests on counter service. And the testimony
25 that you heard here today is that it's a true

1 restaurant, you're dealing with a place that does
2 almost all of its business based on the sale of
3 food. And of that, almost all of it is -- or a
4 majority of that is carryout.

5 Do they sell the occasional drink?
6 Absolutely. Absolutely. Fifteen to 20 percent
7 of their revenue comes from that. And I think
8 the import of that is based on the percentages
9 we're dealing with. None of the protestants nor
10 their witness could draw a straight line between
11 any of the things they're complaining about and
12 the actual service of alcohol.

13 I think Mr. Anderson and his
14 questioning raised a very, very important point
15 that the service of alcohol at this particular
16 establishment, whether it's allowed or not, does
17 not do away with the business. No problems are
18 solved here by a non-renewal of the license if
19 any problems even exist in the first place.
20 There is really no reason to be here.

21 Aside from the percentages and the
22 manner in which this establishment operates,
23 there's no authority for ABRA to do any
24 enforcement within this particular building both
25 because of its zoning and because of the fact

1 that it is the same structure that the
2 establishment is in. So 25-725 which is the
3 aspect of the -- the aspect of noise that ABRA is
4 charged with enforcing does not apply to this
5 particular building. So enforcement is off the
6 table.

7 Does that mean that the Board can't
8 consider noise for purposes of renewal? No. It
9 doesn't mean that. The Board absolutely can
10 consider it. There's just no enforcement
11 authority.

12 So testimony about how the
13 establishment wouldn't cooperate with ABRA to
14 take noise measurements, it's an absurdity. One,
15 ABRA doesn't take noise measurements. It's not
16 what they do. Do they come to units and listen
17 for noise to see if it's audible because that's
18 what 25-725 says? Yes, of course, they do.
19 That's very different than taking noise
20 measurements.

21 The second reason why that simply is
22 an absurdity is because my client's permission
23 isn't necessary for ABRA or any other agency of
24 the D.C. Government to enter their unit. If they
25 wanted ABRA or DCRA or the ANC to enter their

1 units, they could have scheduled that at any
2 time. They could have had private noise
3 consultations done. They did none of that. They
4 tried to slough it off on my client.

5 Finally, the condominium. The
6 condominium documents which are in the record and
7 which Mr. Brown acknowledged receiving very
8 specifically set forth that he is buying a unit
9 that is in a city and that will experience noise
10 from restaurants and other businesses adjacent or
11 in proximity to his particular unit.

12 Additionally, the condominium has very
13 specific provisions with respect to regulation of
14 the commercial unit, none of which have been
15 taken advantage of. They have very specific
16 provisions about violation, none of which have
17 been taken advantage of.

18 And finally, there is nothing in the
19 world stopping the condominium from soundproofing
20 the space between the first floor units and the
21 commercial unit because it's within their purview
22 to repair and maintain those areas of the
23 property. That would require a vote of the
24 condominium association. It would be a shared
25 expense, but per the testimony we heard today

1 from Ms. Schumacher, nobody else in the building
2 really has any issue with what's going on now.
3 So they are looking to the ABC Board to do what
4 their condominium will not do and that's not the
5 role of this Board. It's an abuse of this
6 problem. It's not what it's here for.

7 We would ask that the Board after
8 consideration of the evidence, renew this license
9 without further restriction and allow this
10 business to continue to peaceably operate into
11 the future. Thank you very much.

12 CHAIR ANDERSON: Thank you, Mr.
13 Bianco. Mr. Brown?

14 MR. BROWN: Thank you for all of your
15 time today. I was driven out of my condo unit by
16 the persistent nuisance, countless tenants and
17 Jackie's units, folks before me. It's a
18 persistent issue and the persistent response has
19 been not my problem, someone else do it. You
20 operate within your unit at the condo board's
21 unit. Have so and so do it. No responsibility
22 as a business owner within a condo building. No
23 respect for the neighbors and no witnesses to
24 controvert that live within that unit.

25 Jackie and I are part of that building

1 as unit owners and we have just as many rights as
2 unit owners within the District of Columbia and
3 any of the other residents that are not as
4 adversely impacted as we are. We have standing
5 and we deserve some consideration and some
6 mitigation of the issue at hand.

7 We agree with the applicant that it
8 has been a persistent issue, that it's been going
9 on and that we've had to go to great length to
10 try to reach a resolve and that's all we want.

11 If it operated as a counter-serve
12 restaurant, I don't think we'd be here. The
13 issue which they seem to not be able to thread is
14 that they don't operate that way and that that's
15 why we're here before this Board who issue these
16 licenses because they operate beyond the bounds
17 and the reasonableness of their license and
18 that's why it's necessary for ABRA to put
19 restrictions should they choose to renew this
20 license to ensure that business operates in a
21 fair and reasonable manner and enforcing those
22 instructions as we go forward so that we can
23 pursue everyday life.

24 We can rent out these units and not
25 find ourselves here again where we don't want to

1 be, where we've done everything and reached out
2 to everyone as the applicant's counsel said. We
3 took every single means that we could before we
4 got here and then at the advice of our actual
5 ANC, who currently sits in that role was to come
6 here and to utilize this process to seek
7 restrictions on their license. Thank you. And
8 if it wasn't clear that's what we're seeking
9 here, are those restrictions to keep the music at
10 a lower level and to place those onto the license
11 within the authority of ABRA.

12 CHAIR ANDERSON: Thank you for that.
13 All right, so the record is now closed.

14 Do the parties wish to file proposed
15 findings of fact and conclusions of law or waive
16 their right to do so? Basically, this is do you
17 want to listen to the transcript to say this is
18 what the facts -- this is the facts and this is
19 what the law and this is what the Board should
20 rule? It's necessary or mandatory. This is
21 something that we normally do this in show cause
22 hearing status, but it's something that's
23 available to the parties.

24 If you were to do that, what that does
25 is you would -- the transcript would be submitted

1 to you in three weeks. You would have 30 days
2 after the three weeks to write us a legal brief
3 and then the Board would issue a decision 90 days
4 after the legal briefs are presented or if you
5 waive your right to do that, the Board will make
6 its decision 90 days as of today.

7 MR. BROWN: I'm comfortable with --
8 sorry, go ahead.

9 MR. BIANCO: I was just going to say
10 we don't want to file briefs, the applicants
11 won't.

12 CHAIR ANDERSON: All right, fine. So
13 both parties have agreed not to do that. All
14 right, so this is where we are so let me close
15 this hearing officially.

16 As Chairperson of the Alcoholic
17 Beverage Control Board will issue a decision in
18 90 days. As Chairperson of the Alcoholic
19 Beverage Control Board for the District of
20 Columbia and in accordance with D.C. Code -- I'm
21 sorry, what did I say? Let me start back over
22 because I think I just read it incorrectly.

23 As Chairperson of the Alcoholic
24 Beverage Cannabis Board for the District of
25 Columbia and in accordance with D.C. Code Section

1 2575 of the Open Meetings Act, I move that ABC
2 Board hold a closed meeting for the purpose of
3 seeking legal advice from our counsel on Case No.
4 23-PRO-00001, DCity Smokehouse pursuant to D.C.
5 Official Code Section 2575(b)(4)(A) of the Open
6 Meetings Act and deliberate upon Case No. 23-PRO-
7 00001, DCity Smokehouse for the reasons cited in
8 D.C. Official Code Section 2575(b)(13) of the
9 Open Meetings Act. Is there a second?

10 Mr. Short has seconded the motion. We
11 will now have a roll call vote on the hearing.
12 On the motion, Mr. Short?

13 MEMBER SHORT: Mr. Short, I agree.

14 CHAIR ANDERSON: Mr. Cato.

15 MEMBER CATO: Ron Cato, I agree.

16 CHAIR ANDERSON: Ms. Crockett.

17 MEMBER CROCKETT: Rafi Crockett, I
18 agree.

19 CHAIR ANDERSON: Mr. Grandis.

20 MEMBER GRANDIS: Ed Grandis, I agree.

21 CHAIR ANDERSON: And Mr. Anderson, I
22 agree. As it appears that the motion has passed,
23 I hereby give notice that the ABC Board -- I'm
24 sorry, I'm just doing too many things at the same
25 time. I apologize.

1 As it appears that the motion has
2 passed, I hereby give notice that the ABC Board
3 will recess this proceeding to hold a closed
4 meeting pursuant to Section 2575 of the Open
5 Meetings Act.

6 Thank you very much for your
7 participation and attendance today and you are
8 free to go and if you will hold on one more
9 minute, I need to officially close our hearing
10 for today and to end our public session for the
11 day.

12 All right, so as chairperson of the
13 Alcoholic Beverage and Cannabis Board for the
14 District of Columbia and in accordance with Title
15 3 Chapter 45 Office of Open Governance, I move
16 that ABC Board hold a closed meeting on April
17 12th, 2023 for the purpose of discussing and
18 hearing reports concerning ongoing or planned
19 investigations of alleged criminal or civil
20 misconduct or violations of law or regulations
21 and seeking legal advice from our legal counsel
22 on the Board's investigative agenda, legal
23 agenda, license agenda for April 12th, 2023 as
24 published in the D.C. Register on April 7th,
25 2023.

1 Is there a second?

2 MEMBER CROCKETT: Crockett seconds.

3 CHAIR ANDERSON: Ms. Crockett has
4 seconded the motion. I will now take a roll call
5 vote on the motion that's before us now that it's
6 been seconded.

7 Mr. Short?

8 MEMBER SHORT: Mr. Short, I agree.

9 CHAIR ANDERSON: Mr. Cato.

10 MEMBER CATO: Ron Cato, I agree.

11 CHAIR ANDERSON: Ms. Crockett.

12 MEMBER CROCKETT: Rafi Crockett, I
13 agree.

14 CHAIR ANDERSON: Mr. Grandis. Mr.
15 Anderson, I agree.

16 As it appears that the motion has
17 passed 5-0-0, I hereby give notice that ABC Board
18 will hold a closed meeting pursuant to the Open
19 Meetings Act notice will also be posted on the
20 ABC Board's hearing room bulletin board, placed
21 on the electronic calendar on ABRA's website and
22 published in the D.C. Register in as timely a
23 manner as practical. We are now adjourned for
24 the day.

25 I would like to thank the parties who

1 participated in this protest hearing this
2 afternoon and also for the parties who
3 participated in all our hearings today.

4 Thank you very much for your
5 participation, we are now adjourned for the day.
6 I now direct all board members to return to
7 executive session for further action. Have a
8 good night. Thank you very much.

9 (Whereupon, the above-entitled matter
10 went off the record at 7:17 p.m.)
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23
24
25

A

a.m. 44:14,14 50:5,6,6,8
64:20 70:13 97:8
118:7 202:18
abate 126:9 128:23
abatement 14:16
ABC 28:8 92:4 93:15
133:22 134:5,7,12
198:13 267:3 271:1
271:23 272:2,16
273:17,20
ABCA 37:5,7 54:7,11
54:16,19 55:11 61:25
63:6 134:20
abiding 35:17
ability 36:8 81:16 181:7
181:8,10 193:2
233:22
able 14:14 32:22 36:4
38:6 44:17 49:5,21,22
49:22 54:12 60:23
61:13 63:11 64:1 65:9
70:11 79:9 81:18,23
135:25 142:4,21
144:6 147:25 173:17
173:22 174:2 176:1
177:22 187:24 212:1
229:24 235:23 240:23
268:13
abnormal 209:3
above-entitled 29:14
157:4 274:9
above-referred 82:4
83:12 99:19 100:20
101:6,24 102:12
103:8,19 104:7,14
105:2,12 106:6
107:13 110:17 113:12
114:23 118:23 207:1
216:11 219:23 220:9
ABRA 1:22,23 3:9 5:16
11:2,3,10,24 12:3
13:3 14:8,23 22:4,11
31:1 34:15 36:5 37:2
50:9,21 52:8 54:6
60:11 61:1,12 63:3
72:3 89:12 97:5,6
121:7,22 122:2
125:24 134:18 161:21
161:24 162:9 210:13
214:14 217:13 221:25
222:7,8,12 230:7,12
230:23 239:18,21
242:11 248:19 251:17
252:11,19 253:1,13
253:18 254:12 264:23
265:3,13,15,23,25
268:18 269:11

ABRA's 11:22 30:17
72:14 273:21
absent 195:21
absolutely 6:22 88:15
93:18 149:13,16
180:24 187:20 205:25
207:23 213:15 214:1
215:4 216:21 217:4
264:6,6 265:9
absurdity 265:14,22
abuse 267:5
abutting 4:23 5:4 6:2
41:24 44:5 45:22
46:13 47:5,9 71:8
84:22 175:6 194:13
204:17 249:4 256:4
accept 21:9 190:15
acceptable 44:18
accepted 155:2
accepting 155:5
access 3:11,14,15,17
3:19,21 11:4 22:5
54:12 63:16 73:21
78:24 79:11 152:4
154:2,5 243:3 258:16
259:21 260:2
accessing 79:14
accompanied 122:3
accompanying 30:17
accuracy 255:8
accurate 57:1 61:22
247:2
accurately 115:8
182:10
acknowledged 266:7
act 28:7,12 65:24
128:18 241:15 271:1
271:6,9 272:5 273:19
action 14:8 30:23
117:17,23 126:9
186:17,25 188:10
189:22 274:7
actions 15:6 187:3
active 88:20 256:11
actively 34:22 35:4,13
36:4
activities 34:19 46:12
70:8 80:6 209:23
activity 111:3 118:8
263:18
actual 54:13 114:1
115:14 249:9 262:20
264:12 269:4
add 22:8 112:10 127:10
127:21
added 71:23 127:18
adding 42:13 112:10
addition 20:15 161:18

213:8 224:4 242:12
250:16
additional 10:3 32:18
35:12 41:17 68:16
100:6,8 104:13
109:23 112:10 113:18
127:11,18,21,22
155:9 209:13 212:4
212:24 246:6
additionally 217:24
221:24 266:12
address 6:7 7:17 17:5
27:2,10 28:3 30:7
32:22 33:1 47:19
64:18 80:21 109:15
111:14 118:4 129:20
131:20 142:9,25
224:19,21 228:17
addressed 8:10 31:7,18
190:20,23 203:10,12
203:12
addresses 7:3 38:23
addressing 32:21
adds 193:6
adequate 184:2
adequately 86:6
adhere 118:9
adjacent 71:8 80:21
84:25 87:5 266:10
adjourned 273:23
274:5
adjust 149:19 152:5
238:14 243:15 253:4
adjusted 149:21,22
243:19
adjustments 71:19
admissible 174:22
admission 83:8 100:15
101:19 103:2 104:2
104:22 105:23 118:16
170:2 207:10
admit 106:4 128:22
admitted 106:17,19
107:5
adopted 186:6
adopting 186:3
adorable 84:7
advantage 266:15,17
adverse 71:1 171:21,23
261:17
adversely 46:11 69:24
73:9 188:16 189:13
263:5 268:4
advice 28:9 115:24
269:4 271:3 272:21
advise 144:21 184:7
advisement 27:1
advising 249:11

affiliated 143:15
affirm 33:4 53:14
affirmatively 65:24
affirmed 31:22,23 32:5
32:7
Afghanistan 168:24
afield 225:16
Africa 168:25 196:1,23
afternoon 3:4,7,25 4:3
4:17,22,25 5:8,22,23
10:12 52:18 56:13
83:22 90:18,19
124:23,24 130:16
135:24 159:9 165:7
214:4 274:2
agencies 161:19
agency 41:7,8 43:3
53:21 54:1 62:7 123:3
123:4 129:6 151:19
168:18 265:23
agenda 272:22,23,23
agent 173:2,2 176:10
184:8,10
agents 200:17
ago 10:2 77:25 112:19
125:12 130:7 177:11
252:5 255:3
agree 10:17 15:10,11
18:13 19:10 28:19,21
28:24 29:1,4,6 33:15
33:17,19 34:12 89:5
92:20 93:5,6,11 106:4
106:18 252:14 268:7
271:13,15,18,20,22
273:8,10,13,15
agreeable 16:2 190:9
agreed 41:13 253:16
270:13
agreement 7:8 11:7
19:1 202:8 243:24
253:8
ahead 15:7 34:14 49:4
52:16,17 69:20
119:10,19 130:14
138:6 141:16 175:12
196:10 199:25 209:5
226:3 236:18 237:2
259:13 270:8
alarm 111:5,9,19
alarms 152:6
alcohol 70:6 107:18,23
133:16,18 192:13
193:17,22 198:16
230:4 244:4 264:12
264:15
alcoholic 1:2,12 28:4
58:10 270:16,18,23
272:13

alert 150:1 213:9
ALIYA 1:18
allegation 55:23
allegations 187:14,21
alleged 272:19
alleviate 109:25 150:23
alley 74:24 78:23,24
 83:1 84:15,17,20
 138:23
allow 6:18 7:5 14:12
 46:18 47:8 206:16
 243:16 267:9
allowed 61:20 180:14
 214:20 244:6 257:22
 264:16
allows 97:6
alluding 153:11
alternative 6:9
amend 248:23
amenity 73:11 263:8
amount 12:25 51:11,11
 51:14 173:23 193:17
 208:20
amounting 177:17
Anacostia 96:11
ANC 23:10 71:9 72:1
 76:7,10,11,12 80:8
 86:11,12,16 87:4 88:3
 89:6,9 90:5,6 91:11
 92:3 120:2 121:13
 128:21,22 175:5
 239:25 240:4 244:10
 248:20,23 249:6,10
 255:21 262:19 263:10
 265:25 269:5
and/or 61:7 63:9
Anderson 1:13,15 3:3
 3:24 4:10,17,25 5:8
 5:14,18,22 6:23 10:7
 10:10 13:13 15:4,8
 16:13 18:24 20:7,11
 20:19 21:12,18 22:2
 22:10 23:14 24:10
 25:7 26:21,25 27:24
 28:15,20,22,25 29:2,5
 29:5,17 32:14,19,24
 33:3,11,16,18,20,22
 34:7,10,14 36:13,24
 37:4,8,15,20,23 38:2
 38:7,10,13,17 39:2,7
 39:13,22 40:17,24
 42:18 43:14,17 47:16
 48:6,16,20 49:1,7,25
 50:12,18 51:24 52:4
 52:10 56:8 62:16
 68:11,15,18 69:1,4,18
 69:20 73:13,18,23
 74:6 83:9,19 86:21,25

90:13,16 93:23 94:2,5
 94:9,14,21 95:1,6,14
 100:16,19 101:20,23
 103:4,7 104:4,6,24
 105:1,25 106:9,23
 107:2 118:19,22
 119:15,18 124:20
 126:20 127:2 130:12
 135:17 136:3,7,13
 137:17,21 138:1,4
 141:12,16 147:12
 148:1 155:20 156:8
 156:12,15,22 157:7
 157:20,24 158:2,9
 165:3,4 166:10,19,25
 167:4,13 169:23
 170:6,25 171:25
 174:16,24 175:7
 178:21 180:17 181:6
 181:12,19 187:22
 188:2 191:5 196:9
 199:25 201:13,20,25
 202:6,15,19 203:4,9
 203:19 204:12,15,25
 205:4,13 206:15
 207:11,24 208:6
 216:6,9 219:6,10,19
 220:1,4,7 225:15
 226:24 233:18 235:11
 235:16,20,24 236:2,7
 236:11,20 237:2
 245:8 258:11 259:3
 260:9,15,25 264:13
 267:12 269:12 270:12
 271:14,16,19,21,21
 273:3,9,11,14,15
angle 149:2
annoys 118:8
annual 249:21
answer 9:8 10:4 12:1
 42:22 49:20 56:18
 86:4,22,23 88:24
 92:19 119:10,23
 127:5,6 132:14 134:4
 155:17 161:24 164:24
 170:15,17 172:1
 187:24 193:19 231:13
 232:21 233:17,19,20
 246:8 251:15 252:18
answered 191:4 258:12
 259:10
answering 260:6
answers 135:15 164:21
 181:23 199:23 256:6
anxiety 224:14 226:4
anybody 35:20 239:1
 241:23 245:3 247:15
anybody's 241:21

anymore 38:8
anytime 151:19
anyway 204:6
apartment 5:13 44:13
 205:24 206:1,9
 209:20,21 210:4
 211:20 212:15 217:1
 218:1 220:20,25
 223:24 228:11 229:25
 230:25 237:5 240:24
apartments 166:5
apologize 95:5 162:21
 194:21 271:25
app 46:5 60:15,18,19
 61:7 176:1
appealed 46:25 239:24
 239:24,25 240:3
appeals 243:5
appear 24:4
appearance 10:19,24
 11:15 24:14 40:12
 252:4
appears 82:21 103:13
 209:14 271:22 272:1
 273:16
applicable 116:12
 190:25
applicant 1:20,21 4:7
 6:8,19 22:23 24:19
 25:21 29:23 38:20
 39:14,24,25 40:13,15
 40:19 41:1,13,19 42:1
 42:11 43:22 69:21
 74:4 81:21 95:12
 99:15 101:1 102:4
 103:12 104:10 105:7
 113:9 158:7 166:23
 181:4 268:7
applicant's 6:12 23:1
 24:9 31:22 81:25 82:5
 83:8,13 99:20 100:15
 100:21 101:7,19,25
 102:13 103:3,9,20
 104:3,8,15,23 105:3
 105:13,24 106:7
 107:5,14 110:18
 113:13 114:24 118:17
 118:24 141:15 144:2
 269:2
applicants 244:15
 270:10
application 1:9 6:3
 174:4
applied 113:1
apply 41:5 43:5 265:4
appreciate 134:5
 136:12 260:6
appreciated 142:24

appreciative 142:20
approach 177:19
approached 128:22
 203:13
approaches 220:18,19
approaching 103:18
appropriate 8:21 14:17
 18:10 47:7 171:18
 181:10 222:2 243:9
 243:21 245:1
appropriately 14:25
 259:11
approximately 57:8,13
 66:16 97:16 104:20
 105:19 128:21 131:11
April 1:11 51:1 123:14
 123:17 130:21 162:16
 162:18,19 186:11
 201:2 255:10 256:17
 257:6 259:19 272:16
 272:23,24
area 44:12 45:3 47:21
 49:20,23 60:16,22,24
 61:3 66:18 67:6,18
 71:2 81:1 85:16 89:6
 98:23 99:1 100:6,8
 101:4,13 102:8
 105:11,17 107:11
 109:3 110:2 113:18
 113:23,24 138:13,22
 138:24 139:2,5,9,10
 139:16,25 145:10
 146:5,13 163:7,9
 171:15 176:22 198:8
 198:17 211:19 213:6
 225:14 227:24 261:18
 261:18 263:2
areas 60:17 112:12
 115:23 227:25 266:22
arguing 7:12
argument 10:6 12:15
 187:8 233:14
argumentative 126:15
arguments 6:18 13:18
 13:20 261:10
arms 13:3
arranged 23:19
arrest 240:21
arrive 213:18
arrived 24:6 214:17
 215:18
arriving 215:19
arsenal 224:17
articulated 32:1,9
artificial 67:5
ascertain 43:3
aside 76:6 89:8 264:21
asked 9:4 11:21 41:8

59:10 63:20 65:5 79:3
 80:9 86:15 156:4
 157:14 164:24 170:16
 170:18 191:3 204:10
 231:2 236:14 240:9
 249:10 252:10 255:22
 255:24,25 256:12
 258:4,11
asking 11:20 12:4
 13:14 16:16,20,22
 17:7 19:18,21 21:18
 24:12 33:7 42:24
 68:20 132:16 138:5
 156:25 172:19 180:18
 180:21,21 181:20
 185:18 191:4 233:7
 233:16 259:10 261:4
asks 149:15 174:19
aspect 58:1 203:7
 265:3,3
aspects 58:3
ass 215:12
asserts 41:5
assess 35:9
assessment 254:7
assessment's 18:20
assigned 37:18 53:11
 54:22 55:22 59:20
 64:5 65:17 252:1
assignments 195:9
association 12:20 73:1
 77:21 80:8 88:7 89:8
 89:11 90:8 91:5 92:1
 116:21 117:1 186:23
 186:24 187:19 189:21
 191:8,14,17 192:1,5,9
 202:21 263:11 266:24
assume 66:17 78:3
assumed 184:1 189:24
assuming 126:16
 144:14 146:8
atmosphere 192:21
 194:1,25 197:12
attach 18:6
attached 9:7 19:25 97:4
attachment 9:14
attack 240:15
attempted 212:11
 220:21,22 221:2
 222:3
attendance 272:7
attending 76:24
attention 6:5 120:3
 121:18 182:6 210:20
 212:23 213:24
attitude 188:25 192:1
attorney 11:25 125:3
 130:6 134:25 136:1

144:20 241:6,8
attribute 235:3
audible 72:17 211:19
 265:17
audibly 209:19
audio 48:4,5 49:14
 50:14 51:25 52:11,15
 65:12 68:24 82:11
 84:9 89:15 98:8 146:4
audit 222:16
August 51:17 122:17
 128:20,21 217:4
authentication 207:5
authenticity 215:25
authority 121:17
 264:23 265:11 269:11
automatic 47:13
automatically 111:6
avail 64:12 240:8
available 64:19 73:20
 269:23
Ave 1:6
avenue 6:4 46:15 75:2
 75:9,24 84:13 85:4
 86:5,18,20 96:16,17
 96:23 97:14 99:23
 100:1 101:9 117:12
 131:1,5,19 138:12
 159:2,3 184:23
 196:16 197:3,15
 198:2,7,15 222:2
 234:15
avoids 13:10
awake 211:12
aware 7:2 9:18 11:19
 12:6 160:17,19,21
 161:12,15 175:19
 179:21 183:5 185:12
 188:9 189:20 191:22
 196:17 198:15,18
 206:7 232:24 234:7
 237:20 239:15 245:18
 247:12
awing 138:19
awning 82:17 85:13
 138:14,18 139:11

B

B-I-A-N-C- 4:5
back 16:7 25:2,3 29:9
 29:11 45:10,13 48:24
 76:19 112:10 121:12
 122:9 123:10 124:11
 129:18 139:20 147:1
 147:5 152:20 153:4
 155:3 156:24 157:2,7
 174:7 177:25 178:8
 195:5,7,9 201:5

204:24 207:16 211:19
 211:23 221:6 226:20
 237:17 238:16 249:9
 252:11,18 270:21
back-and-forth 181:1
background 58:14
 224:16 228:4 229:6
backtracking 208:16
backwards 41:19
badge 214:18
bank 174:3,4,7 177:25
banner 131:1
bar 70:3 85:16 105:22
 109:3 131:15 199:9
Barbara 217:11
barbecue 133:13
bare 7:4,6,19 31:9
bark 84:1
barking 84:6
bars 198:16 237:12
based 8:11 9:24 13:21
 13:24 15:22,25 17:19
 19:6,19 27:11 68:16
 111:4,8,10 121:10
 139:18 156:3 172:13
 204:9 236:16 264:2,8
basically 20:2 29:25
 32:2 100:8 142:3
 152:5 163:8,9,16
 219:11,12 269:16
basis 73:5 120:23
bass 45:24 46:2 150:9
 150:10,13,14,18
 151:2 206:10 209:21
 224:5 226:6 234:22
 234:24 239:12 243:10
 243:12
Bate 81:22
Bates 99:13
bathroom 140:17
 250:13
bear 99:8 116:7 181:4
 197:10 198:19 199:13
 247:2 256:14
beat 119:21 215:12
beating 178:10
bed 241:1
bedroom 193:4 209:22
 214:8 223:16
began 45:6 77:12 213:4
beginning 7:21,22
 35:20 133:23
behalf 40:10
behave 237:22,24
behavior 21:25 213:21
 221:24
believe 8:11 27:4,11
 52:21 98:4,5,15

102:18 118:17 122:2
 122:17,20 123:1,7,11
 125:6 134:1,19,22
 135:5 139:14 140:12
 140:16 141:3 142:10
 144:8,9,10 145:6
 146:15,17 149:7
 155:8 163:21 168:9
 169:7 185:20 188:21
 189:5 202:12 206:3
 215:7,13 217:7 221:3
 225:21 232:22 254:15
 255:18
belonging 84:14
benches 104:19
beneath 198:14,23,25
benefit 81:21
bent 41:19
best 23:15 93:1,9
 122:16 123:5 133:13
 203:5 249:1
better 48:20 182:19
 248:1
Beverage 1:2,12 28:5
 270:17,19,24 272:13
beverages 58:10
beyond 13:7 35:16 46:6
 58:4 181:16 239:14
 239:14 246:5 268:16
Bianco 1:20 3:19 4:2,3
 4:5 6:20,22 10:13,16
 15:16 20:11,20 21:8
 21:15,23 22:8 23:4,5
 23:6,18 24:11 26:21
 27:8,19,20,25 29:17
 29:18,18 32:12,13,17
 34:3,7 39:18 40:9,11
 41:4 42:19 56:10,11
 56:20 59:9 62:11,15
 68:15,19,23 69:1,2,3
 69:4,18,21 73:15 74:7
 74:9,15 83:7,15 93:25
 94:1,6,7,10,19 95:15
 95:16,22 99:22
 100:14,23 101:18
 102:2 103:2,11,22
 104:2,10,17,22 105:5
 105:15,23 106:24
 107:3 113:15 115:1
 118:15 119:1,7,17,20
 122:8 124:15 126:11
 126:13 136:2,8,11,17
 136:20,24 137:1,5,8
 137:11,15,22,24
 138:2 141:13,15,17
 143:24 144:2,13,22
 144:24 145:2,6 147:3
 147:14,17,22 148:7,8

148:10,19,22 149:1
 156:6,7,9,10,19
 157:10,18,19 158:9
 158:12,20 164:8,12
 164:15,18,23 165:2
 166:15,16,22,23
 169:21,25 170:10,18
 170:20,21 171:12
 174:14,17,18 178:21
 180:13,23 181:7,9
 182:3 186:21 187:7
 187:25 188:3,7 191:1
 191:6,7 196:6 204:9
 204:11 207:4 216:5,8
 218:22 220:5,6
 224:24 226:25 227:2
 233:14 234:3 235:9
 235:21 236:8,16
 245:8,10 258:14
 259:14 260:5,11
 261:1,6 267:13 270:9
Bianco's 10:23 11:8,14
 33:5 42:15
bias 189:18
big 193:10 197:10
 198:19 199:9,13
 247:1
bigger 182:18
biggest 10:18 12:10
bit 16:3 61:17 83:2
 85:20 94:13 111:8
 137:1 157:11 182:17
 186:11 196:19 211:2
 212:15 224:7
black 82:15,17
blaring 239:11 242:1
block 78:7,23,24 80:14
 80:21 88:11,18,18
 90:2,7 196:15 197:3
 197:15,21
blocks 80:21 227:23
Bloom 131:16,17
 133:25
Bloomingdale 77:21
 88:12 90:24 91:4 92:2
 197:12,21 228:1,19
 237:7 242:2 244:13
bluetooth 109:24
 110:25 129:15 150:12
board 1:2,12 4:4 6:16
 6:17 7:16 8:11 9:13
 9:18 10:3 12:19 13:15
 13:21 14:2,18 15:11
 15:23 16:5,9,17,20,23
 17:2,22 18:8,13,24,25
 19:1,4,8,19,23 22:1
 24:17 25:23 26:2,3,4
 26:16,25 27:5,6,13,15

27:18 28:5,8 31:21
 32:5,12 35:5 36:15,21
 38:6 52:14 53:13 56:9
 56:10 59:23 68:20
 69:5,6,7 70:22 81:12
 83:18 90:14 91:24
 93:24 97:9 98:10
 111:12,12,24 116:11
 116:16 124:18 125:21
 126:3 129:1 130:13
 130:13 133:7 134:20
 135:3,4,6,11,18
 155:21 156:1,4 157:8
 164:16 166:11 168:8
 173:20 175:1 178:13
 185:7 186:1,9,12
 187:3,5 188:14,15,17
 188:18,21,24 189:1
 189:16,18 194:21
 196:10 201:13,16
 202:2 203:2,6,9,20
 204:2,8,10 212:8,13
 212:21 213:9 215:6,9
 221:11,18 225:21,24
 226:17 233:24 234:2
 235:12 236:17 239:24
 242:21,23 249:21
 250:5,8 255:7 257:16
 260:16 261:4,7 262:1
 265:7,9 267:3,5,7
 268:15 269:19 270:3
 270:5,17,19,24 271:2
 271:23 272:2,13,16
 273:17,20 274:6
board's 6:5,11,25 7:2
 8:4 23:22 24:18 26:6
 26:9,10 40:2,15,22
 51:3,4,8,19 69:5,10
 69:12 81:21 171:16
 267:20 272:22 273:20
boards 98:23 203:16
Bobby 1:16 28:21 33:17
body 187:19 233:8
boilerplate 30:4
bones 7:4,6,19 31:9
bookstore 185:23
Bose 150:11
bottom 64:17 81:20
 82:24
bought 168:14 172:6
 173:14 179:10 197:3
 199:5 228:2,3 249:23
 251:9
Boundary 242:4 247:1
bounds 268:16
Bourbon 244:13
box 10:1 162:8
Brashears 65:9

break 155:22 156:16,24
 260:20
breakdown 108:3
breaking 177:23
brick 67:10,12
brief 10:5 261:11 270:2
briefly 98:20 222:1
briefs 270:4,10
bring 20:17 88:17,21
 89:4 121:18 155:4
 175:10 181:5 242:15
 257:1
bringing 89:3 133:13
 175:5 181:17,24
broad 47:25 49:12
broadcasting 129:17
broke 61:16
brother 237:9
brought 34:16 35:12
 120:3,7 151:22
Brown 1:20 2:6 3:11
 4:22,23 5:1 9:4,8 10:7
 10:9,15 14:6 15:6
 16:3 18:12 20:3 22:2
 22:4 24:25 25:6 31:13
 32:19,20 33:2 34:10
 34:13,15 38:24 39:9
 53:3 62:16,17,18 68:9
 76:15 83:10,16,19,21
 87:23 90:11 100:16
 100:18 101:21,22
 103:4,6 104:4,5,24,25
 105:25 106:1,2,20
 109:19 116:25 118:20
 118:21 122:14 124:17
 124:20,22 125:1
 126:21,24 127:9,14
 130:9 133:4 155:25
 156:2,5 160:4,9,17
 163:20 164:13 165:5
 165:6,9,11 166:7,10
 167:1,2,11,21 168:4
 170:7,18,22,25 171:2
 171:20 172:3 174:12
 174:24,25 175:7
 176:14 178:19 181:13
 181:19 187:1 191:3
 204:12,14,22,23
 205:14,15,17 206:1
 206:13,16,18,24
 207:12,18,25 208:4,9
 215:23 216:14,15
 219:11,15,21 220:3
 220:12,13 225:9
 226:1,2,22 233:7
 235:18,23,25 236:4
 236:10,19,23 237:3,4
 257:8 259:3 260:8,22

266:7 267:13,14
 270:7
Brown's 45:17 110:23
 160:22 194:9
budget 192:9
build-out 112:23 113:6
building 12:20 41:6
 43:6 46:7 60:1 71:7,8
 72:13 73:1 74:22,23
 75:15,17,18,21 76:20
 76:25 77:9,13 78:2
 79:12 82:2,3,12,15,16
 82:16,19,21,21,23,25
 84:14,21,23,25 85:2,5
 87:5,10 88:4 89:22
 90:1,9 97:14,15,25
 100:2,12 102:8,10
 111:12 112:12 120:1
 127:16 131:18 132:7
 138:21 143:3 146:6,7
 153:2,6,18,18 154:7
 163:5,13,19,23 164:1
 165:12 166:3 168:7
 183:14 187:15 189:4
 201:21 202:1 234:7
 235:8 237:24 242:20
 244:5 245:6 256:3
 263:2 264:24 265:5
 267:1,22,25
building's 189:9 239:15
built 80:12 108:24
 113:4 124:13 128:8
 242:25
built-in 109:5,13 110:10
 110:14,21
bulletin 273:20
burden 261:14
business 9:1 14:18
 35:23 41:18 42:10
 49:17 70:16 74:25
 75:7,13 77:19 80:1
 81:1 92:25 93:2 98:11
 108:8,9 110:4 123:25
 124:1 130:19 131:15
 131:21 132:7 133:17
 135:1 143:18 154:18
 154:20 155:10,14
 172:23 177:5 185:15
 189:12 226:10 241:21
 241:24 242:19 253:9
 262:3 263:6,7 264:2
 264:17 267:10,22
 268:20
businesses 81:9 92:8
 92:10,22 93:7,13
 134:7 142:1 237:13
 266:10
busy 91:16 198:2,9

buy 174:8 237:16 250:1
250:22
buyer 184:1
buyers 171:11 200:9
buying 248:10 266:8
bylaws 114:17,17 115:3
116:10 180:12 186:18
188:12 202:13,22
203:7 243:1 244:5

C

C 2:4
C-H-R-I-S-T-O-P-H-E-R
158:17
C-U-T-T-E-N 168:2
caf 30:25 46:1 176:22
197:10 198:19 199:9
199:13
cafe 100:6 104:13
113:18,18,23,24
139:8,12,13,16
140:25 144:15 148:14
148:17
Caitlyn 249:24
calendar 3:4 259:23
273:21
call 23:7,8,9 24:17 25:3
26:2,13 28:16 32:15
32:16 33:12 36:15
38:22,25 39:11 69:10
98:10,10 101:3
107:11 108:6 114:15
120:8,9,17 122:14
128:20 132:14 153:16
156:12 157:19 168:21
178:4 210:19 220:21
220:22 222:10,12
239:6 271:11 273:4
called 21:21 22:21 24:2
36:21 69:5 72:2,3,3
74:3 75:6,8 95:11
120:5 130:24 158:6
165:24 167:18 177:13
205:10 210:9 213:17
213:17 214:5,13,15
214:15 215:13,17,18
217:22 218:10,10,19
231:25 236:24 240:16
248:19,19,19,20,20
caller 240:17
calling 23:5 68:2
121:10 132:8 210:12
210:13 230:7 239:5
calls 68:1 139:14
174:14 230:15
calm 242:2
camera 73:24 94:22,23
95:2 146:25 157:1

164:23 259:12
cancel 115:18 172:25
cancelled 11:9
cancelling 14:3 223:21
223:23 224:2
candid 135:15
Cannabis 28:5 270:24
272:13
canvass 176:25
capacity 175:3
Capital 198:8
Capitol 75:3,9,25 96:24
131:4,22
captains 80:25
capture 216:23
captured 216:22
car 79:17
care 238:14
cares 263:2
carryout 57:17,17
70:17 241:24 264:4
case 1:8 3:3,5,9 7:2,13
7:14 8:6,15,19,25 9:1
9:5 10:19,22,24,25
11:9,15,16 12:5,8
13:2 18:16 24:9,19,23
25:3,4,15,23 26:13,18
28:10 37:21 40:12
44:6 59:17 63:16 64:7
69:22 71:17 72:13
73:7 97:22 109:20
141:7 187:17,21
219:5 225:6,10 252:1
261:12 271:3,6
case-in-chief 34:9
cash 99:2 107:9
Catering 131:2
Cato 1:16 28:20,21,21
33:16,17,17 271:14
271:15,15 273:9,10
273:10
cause 35:17,23 117:17
121:24 124:8 269:21
causing 209:22
cautious 155:5
cc'd 252:17
CCN 214:18
ceased 109:23 110:2
ceiling 108:25 109:21
110:2,15 112:9
123:25 124:1 127:10
127:11,17,19 129:14
129:18 145:13,14
146:8,9,23 191:10,16
250:13
ceilings 42:12 47:12
124:14
cell 64:17

center 82:1,8
central 49:19
certain 13:10 87:15
151:10 152:8,9 159:7
228:22
certainly 13:11 18:17
24:6 75:23 76:22
77:15 80:5,20 87:4,11
192:20,23 198:12
201:1 257:15
Certificate 184:21
chains 129:2
chair 3:3,24 4:10,17,25
5:8,14,18,22 10:7,10
13:13 15:4,8 16:13
18:24 20:7,19 21:12
21:18 22:2,10 23:14
24:10 25:7 26:25
27:24 28:15,20,22,25
29:2,5,17 32:14,19,24
33:3,11,16,18,20
34:10,14 36:13,24
37:4,8,15,20,23 38:2
38:7,10,13,17 39:2,7
39:13,22 40:17,24
42:18 43:14,17 47:16
48:6,16,20 49:1,7,25
50:12,18 51:24 52:3,4
52:10 56:8 62:16
68:11,18 69:1,4,20
73:13,18,23 74:6
76:11 83:9,19 86:21
86:25 90:13,15,16
91:15 93:22,23 94:2,5
94:9,14,21 95:1,6,14
100:16,19 101:20,23
103:4,7 104:4,6,24
105:1,25 106:9,23
107:2 118:19,22
119:15,18 124:20
126:20 127:2 130:12
132:12 135:17 136:3
136:7,13 137:17,21
138:1,4 141:12,16
147:12 148:1 155:20
156:8,12,15,22 157:7
157:20,24 158:2,9
165:4 166:10,17,19
166:25 167:4,13
169:23 170:6,25
171:25 174:16,24
175:7 178:21 180:17
181:6,12,19 187:22
188:2 191:5 196:9
199:24,25 201:13,20
201:25 202:6,15,19
203:4,9,19 204:12,15
204:25 205:4,13

206:15 207:11,24
208:6 216:6,9 219:10
219:19 220:1,4,7
224:6 225:15 226:24
233:18 235:11,16,20
235:24 236:2,7,11,20
237:2 245:8 258:11
259:3 260:9,15,25
261:7 267:12 269:12
270:12 271:14,16,19
271:21 273:3,9,11,14
Chair's 27:23
chairman 3:23 56:7
92:3 135:15 147:23
155:18
chairperson 1:13,15
28:4 39:12 42:17
48:19 49:6,24 50:11
50:17 270:16,18,23
272:12
chairs 139:2
chance 37:21 68:19
126:19
change 42:5 109:5,13
129:8,12 177:17
213:21 221:23,24
changed 35:12 71:22
108:18,22
changes 110:22 129:13
142:3
changing 110:20
Chapter 272:15
character 115:9
characteristics 182:10
characterization 57:22
57:25
characterize 178:2,14
charged 265:4
check 9:25 195:13
197:1 228:14
checked 162:10,11
checking 260:11
chief 24:9
choose 89:10 139:25
268:19
chose 71:4
Chris 23:13 153:14,14
153:15 157:19 165:7
166:8 217:10 238:1
238:11,16 240:11
255:19 256:2
Christopher 157:23
158:5,16,16 177:9
Circle 244:12
circumstance 92:8
circumstances 13:12
Cislo 240:3
citation 13:8 51:10,21

51:21 254:21
citations 50:25
cite 63:14 211:14
 213:20 230:10 233:5
 246:15
cited 9:25 13:8 123:12
 123:20 192:12 211:25
 253:21 254:15 271:7
citizen 77:1
citizens 92:24
city 46:6 48:4 93:3
 100:7 142:3,20,21
 266:9
city's 142:24 239:14
civic 77:21 80:7 88:7
 89:7,11 90:8 91:4
 92:1 263:11
civil 272:19
claimed 187:10,10
claims 9:24 47:2
clarification 32:20
 181:21
clarify 126:24 218:10
clean 226:20
clear 175:14,17 180:15
 180:25 194:7 216:1
 239:16 241:11 244:2
 269:8
clearance 251:23
cleared 11:5
clearly 12:21 31:3 32:1
 32:9 216:2 241:5
client 12:5 71:14,19,21
 72:7 194:22 233:11
 247:7 266:4
client's 265:22
clienteles 35:14
Clonazepam 224:14
close 26:18 52:17 78:1
 119:15,18 149:4
 159:10 188:2 197:8
 261:1 270:14 272:9
closed 28:8 119:21
 145:18 250:12 269:13
 271:2 272:3,16
 273:18
closely 12:22
closer 85:20 147:2
closing 260:19,21
 261:2
cloth 100:12
club 70:3,8 80:15,24
 131:16 234:6,14,19
club-like 70:8
clubs 198:16
co-exist 36:1
co-owner 227:16
code 28:7,11 35:17

41:5,23 42:20 43:5,9
 72:15 183:14 270:20
 270:25 271:5,8
coexist 93:1,17
coffee 179:25 180:2
 247:13
color 82:23
Columbia 1:1 28:6
 34:20 49:18 89:14
 130:20 133:22 182:8
 268:2 270:20,25
 272:14
columns 208:12
combative 240:12
 242:13
combination 18:10
come 6:5 17:9 24:2
 29:9,11 35:9 36:7
 54:20 58:6,8 59:16
 63:8,11,23 64:1 65:2
 80:19 105:10 120:14
 121:19,21 135:4
 139:20 149:15 151:24
 153:24 156:24 161:7
 161:21,23 190:8
 192:24 194:2,4,4,5
 195:5,7 201:5 217:11
 231:7 238:4,16
 240:19,20 243:16
 251:22 253:1,15
 256:3 258:19 259:1
 260:4 265:16 269:5
comes 52:21 70:16
 88:12,13,14 91:24
 112:8,17 151:19
 176:18,20,24 177:2
 190:6 264:7
comfortable 17:23
 19:14,14 20:4 270:7
coming 9:1 45:2 53:24
 57:15 73:4 76:3 96:12
 122:7 152:16 235:2,6
 235:7 242:21 249:3
 252:22 258:24
commander 80:24
comment 87:7
comments 32:15 177:7
 200:9,11
commercial 47:25
 49:12 60:25 61:3 77:6
 77:11 78:15 116:13
 116:18 179:21 180:4
 185:13,14,23 186:3,7
 191:11,16 194:8
 199:7,20 201:22
 202:21 266:14,21
commission 76:10,12
 76:14,18 77:17 87:18

91:13 92:3
commissioner 23:10
 23:20 73:16 74:9,16
 76:8,9,11,21 77:1,16
 86:13,16 87:11,13,16
 87:20 88:3,13,25 89:6
 90:5,7,10 91:12
 122:15 128:22,23
 240:4 248:24 249:11
 263:10
commissionership
 86:11 87:25
common 46:8 115:23
 191:9,14,24,24
communicated 9:3
 252:8
communicating 234:1
communication 233:23
communications 9:6
 119:4
community 79:24 80:6
 81:4 91:17 92:15,25
 93:2,4,16 128:23
 197:4 263:13,14
company 4:15 96:4
 154:5 158:24 212:18
 212:22 213:11 221:12
 221:17 232:15 233:25
 234:2 240:1
compelling 93:20,21
compile 206:23
compiling 208:22
complainant 54:10,18
 63:5,9
complainants 63:3
complained 8:15 44:25
 72:1 126:7 127:24
 177:8,8 202:1,20
 231:4 262:10,14,15
 262:17
complaining 232:8
 234:21 248:22 249:13
 249:19 261:20 262:4
 264:11
complains 70:25
complaint 54:9,14 61:4
 63:5 65:7 160:25
 161:22 169:9 192:13
complaints 53:8,9,15
 54:5 55:2,3,5,6,7
 59:14,19 60:13 62:9
 64:3 65:15,20 66:4
 71:7,9,18,19 76:14
 77:15,16,22 88:8,9
 89:3 90:3 110:23
 125:7,17 128:13
 129:24 132:22 133:3
 134:6,11 151:13

160:9,18,19,22 175:2
 203:6 219:18 243:8
 262:25
complete 7:12 30:14
completed 155:18
completely 7:11 42:9
 43:11 195:21 231:12
complied 202:22
comply 51:8,18 117:16
Compromise 51:12
computer 108:25
 129:18
concentrate 224:8
concept 75:11
concern 18:2 183:15
 204:1
concerned 77:1,5
 202:23
concerning 134:7
 272:18
concerns 17:4,5,16
 40:6 63:22 78:18
 79:21,22 80:14 81:6
 203:15,20
concise 127:8
conclusions 209:17
 269:15
condition 19:5
conditions 16:24 17:19
 18:6 19:24 176:12
 261:14
condo 12:20 14:18 31:1
 74:22,23 76:25 77:9
 82:16,19,20 84:21
 85:5 87:10 88:4
 114:17 115:19 129:1
 143:2 168:6 175:1
 178:13 186:12,24
 187:3,5,19 188:17,18
 188:20,24,25 189:18
 192:1 195:11 197:4
 199:2 200:4 201:16
 202:2,11,21 203:6,9
 203:16 227:22,23
 228:2,5 232:15
 237:16 242:21,23
 245:17 246:18 248:20
 250:4,8 256:3 267:15
 267:20,22
condominium 60:1
 71:6 72:25 84:13
 114:4,6,16 115:8,9,23
 116:7,13,17,21 117:1
 117:12,22 132:11
 180:10 182:9,11
 184:22 185:7 186:3,6
 186:16,23 188:10
 190:17 191:23 230:7

232:20 249:17,18
 262:17 266:5,6,12,19
 266:24 267:4
condominiums 132:17
condominiums' 42:3
condos 132:6 212:19
conduct 37:12 94:16
conducted 56:15,20,25
 72:5 123:2 166:3
 253:19
conducting 14:16
cone 110:15
conference 20:16 120:8
 122:14 128:20
confident 73:8
confines 166:4
confirm 53:22,23
 154:21 183:17
confirmed 252:2
conflict 178:17
Congratulations 96:14
connected 246:19
connection 48:11
conscious 154:23
consecutive 91:7
consecutively 168:23
consider 13:11 32:14
 66:25 67:2,7 105:11
 265:8,10
considerable 173:25
consideration 17:25
 70:21 267:8 268:5
considered 8:6 60:22
 60:25 61:6 67:4 139:8
 145:9 262:17
consistent 48:5 169:8
consistently 169:5
 172:7 175:22 206:9
constituent 240:2
constructed 100:10
 146:7
construction 41:22
consultations 266:3
Consumer 62:5 72:22
 162:3
consuming 58:10
contact 25:1 63:3,18
 84:23 89:23 120:12
 165:16 212:9,21
 239:17 252:3
contacted 43:2 44:17
 121:3,16,19,21 129:4
 150:3 174:3 250:4
 257:17
contacting 121:13
 220:16 239:4
contained 9:14
containing 84:21

contemporaneously
 207:8
contentious 178:14
 206:11
contents 2:1 216:18
contest 249:2
context 8:18
continue 47:4 172:4
 212:20,23 213:13,22
 214:10 215:14 221:7
 267:10
continued 71:20 121:11
 242:12 248:17
continues 212:3 214:23
contract 183:6,11
contractor 112:25
 223:7
contractors 226:15
contributed 234:20
control 1:2,12 21:25
 22:5 47:3,13 79:8
 109:2 152:2 153:12
 154:2 159:19,20,22
 160:1 241:15 243:13
 253:5 270:17,19
controlled 108:17
 245:2
controlling 253:13
controls 109:1 243:16
controversial 263:23
controvert 267:24
conversation 175:11
 240:6
conversational 36:3
 51:20 247:18 248:3
conversations 43:21
 78:5 152:15
convey 175:2
cooperate 265:13
cooperation 253:3
cooperative 92:10
coordinated 122:1
coping 224:16
copy 10:1,8,9 97:5
cordial 178:6
core 49:19
corner 96:23 101:11
 110:9 131:3,15
 140:15 247:14
correct 10:8 23:18
 53:19 54:2,24 56:16
 56:22 58:14 59:1,4,7
 60:2 61:9,14 66:15
 76:8 83:5,6 84:3 86:9
 89:14 90:3 110:8
 115:20 118:1 122:23
 123:13 125:5,14,16
 125:18,23 126:1,10

127:1,12,25 128:8,24
 129:10,11 132:5
 146:23 149:8 156:10
 159:3 165:13,14,17
 165:18,21,22,25
 166:5,6 178:25 179:1
 179:4,13 183:4,11
 185:13 186:7,9,19,20
 189:23 190:12,18
 194:10 195:3 196:20
 198:9 200:12,13
 201:23 219:14 220:3
 228:15,25 230:15
 231:11,22 232:17,18
 232:24,25 234:15
 245:12,13 246:23
 247:3 248:22 249:19
 249:20 251:1,2,18
 258:5
corrections 79:3
correctly 61:20 62:3
 231:7
correlation 193:16
 234:23
correspondence 39:9
 39:16
corresponding 50:4,16
Cory 1:20 2:6 3:11 4:23
 38:23 39:9 45:17
 98:11 109:16 111:11
 119:6,25 120:10,17
 123:1 140:15 146:15
 146:15 150:2,3 153:1
 202:5 206:1,23
 212:14 215:12,13
 220:19 227:20 232:21
 236:23 237:4 257:8
Cory's 98:3,4 140:16
 144:10,11
couched 218:24
counsel 1:20 4:7 28:9
 31:11 39:18 40:12
 69:7 74:3 95:11 158:6
 167:18 205:10 236:6
 236:24 239:22 252:7
 269:2 271:3 272:21
counter 57:23 70:5 73:4
 105:22 263:24
counter-serve 268:11
counter-service 263:21
countless 267:16
countries 196:18
country 196:25
couple 58:24 59:11
 68:16 87:24 99:7
 102:25 122:10 134:13
 134:15 220:17
course 7:24,25 8:1 21:8

27:22 59:15 66:11
 71:18 72:6 108:19
 160:12 175:9 192:16
 196:22 220:19 255:22
 260:8 265:18
court 95:17
courteous 41:20
cover 24:8 85:19
covered 8:20
covers 138:20
COVID 45:6 52:2
 102:19 135:8,10
 141:1,25 142:5,20
 223:8
COVID-19 58:25
CR 130:6
crashes 198:6
cream 82:14
create 216:2
created 46:17 67:6
 208:12
creative 142:21
credibility 187:13
credible 189:17
credit 73:10 263:7
criminal 37:13 272:19
Crockett 1:18 28:22,23
 28:24 33:18,19,19
 200:1,2,8,15,18,24
 201:10 271:16,17,17
 273:2,2,3,11,12,12
cross 2:2 26:4 59:13
 83:20 124:17,25
 156:20 165:10 178:22
 227:1 245:9
cross- 24:19 127:2
 235:21
cross-examination
 126:25 127:4 181:20
 236:6
cross-examine 26:15
 236:12
CT-ANC 1:7
cuing 181:10
current 7:9 16:8 38:6
 38:25 39:1,10,11,20
 42:16 52:20 53:16
 92:1 132:4,18 174:13
currently 20:17 76:12
 86:14 96:9 168:8
 201:21 269:5
customary 63:8 64:10
customer 98:25,25
 139:18 237:21 247:9
 248:11
customers 78:22
 143:11 151:6
cut 9:21 48:9 124:9

171:22
cute 84:1
cutoff 111:22
cuts 118:12
Cutten 1:21 2:5 3:13
 5:2,3 167:12,17,23,24
 168:1 170:4,6,13,14
 170:24 171:20 175:13
 196:8,12,21 197:5,19
 198:3,10,18 199:3,19
 200:6,13,16,23,25
 201:12,17,24 202:4
 202:12,17,24 203:8
 203:14 204:16
cycle 44:21

D

D 237:9
D.C 28:6,11 41:5 42:19
 42:20 43:5,9 72:15
 115:7 142:12,18
 155:6 173:15 195:6
 197:25 262:12 265:24
 270:20,25 271:4,8
 272:24 273:22
daily 72:3,3,4 209:23
damage 191:19
damages 117:18
dampen 41:23 42:14
 67:11
dance 58:11
dancing 70:4
dark 82:22
date 128:1 209:8,9
 210:22 227:4 251:21
dates 50:4,17 208:12
 208:23
dating 227:20
day 44:14,21 56:24
 111:19 134:3 159:8
 166:18 178:9 208:15
 208:22 211:1,14,18
 213:14 218:5 222:14
 226:20 228:6 239:17
 245:24 256:22 258:15
 259:19 272:11 273:24
 274:5
daylight 246:1 251:11
days 10:25 30:12 65:19
 66:11 130:7 159:11
 179:9 183:6 210:19
 252:5,21 270:1,3,6,18
daytime 211:6
DBA 96:5
DC 1:22,23 161:20
 237:17 241:14 255:19
DCAR 257:9
DCity 1:6 3:5 4:15 6:3

28:10 34:23 35:3,7
 37:16 45:20,23 46:7
 46:17,23 47:2,22 49:9
 66:13,19 67:25 68:5
 74:17,21 75:6,15,18
 75:21 76:2,15 79:15
 80:16,22 81:2 82:16
 82:18 84:12,24 86:17
 88:4 95:24,25 96:4,5
 96:8,20,25 98:2 99:17
 101:5 131:17 137:19
 138:11 143:16 145:10
 153:17 158:22 159:4
 166:4 178:3 179:7,12
 200:22 214:2,19
 216:21 220:16,18
 226:12 227:6 228:9
 228:10 229:18 230:10
 235:4 237:20 238:25
 245:5 246:21 247:18
 248:4,7,9 250:2,6,24
 252:7 253:14 254:14
 255:21 256:5,19
 257:10 263:19 271:4
 271:7
DCRA 60:19 62:6 72:3
 72:8 121:16 123:12
 123:16,20 129:7
 161:23 162:2 166:2
 222:1 231:4,22
 248:19 256:18 259:20
 262:16 265:25
de- 12:17
deal 71:16 110:22 135:8
dealing 71:11,12 78:19
 80:23 98:10 134:12
 141:25 225:7,8 264:1
 264:9
dealings 161:11,19
deals 32:25 116:6
dealt 160:8 206:8,10
December 109:8,10
 125:11 129:9 168:10
 168:14 179:15 212:24
 217:9,18 218:5,14,20
 235:7
decibel 230:20
decided 9:13 45:15
 172:8,25 250:25
decides 16:23 19:23
decision 7:2,18 8:4
 15:24 20:6 27:10
 204:2 225:21 228:8
 270:3,6,17
declined 71:9,10 231:3
 239:20
decrease 169:18 171:9
 226:19

deed 174:5
deemed 60:17
defeated 177:15
defer 27:23 203:3
 232:21
definitely 142:7,23
 151:3 155:4 201:7
 202:24 209:18 229:14
 256:9
degree 241:7
degrees 87:24
delay 11:16
deliberate 271:6
deliver 79:12 107:12
 108:4
demand 72:9
democratic 187:19
demonstrate 246:5
 263:3
denied 31:23 32:6
densities 48:2
density 49:15
deny 13:16 27:5,17
 33:6
department 37:14 62:4
 72:22,24 162:2
 168:20 197:24
depending 133:20
describe 66:23 97:13
 98:20 108:14,21
 119:12 161:5 168:6
 186:22 222:6 224:20
described 86:6 242:11
description 213:2
descriptive 221:19
deserve 268:5
designated 9:4
desired 22:15
desk 224:6
desperate 173:12 174:6
despite 47:14 241:8
detail 227:15
detailed 248:18 249:25
 262:10
details 210:18
determination 14:3
 18:8 19:2,6,9,11
 225:25
determinations 13:22
determine 245:15
detrimental 46:23
developed 13:1,7 77:10
developer 114:14
development 10:22
 12:9 49:13,16 168:19
developments 47:24
different 13:3 75:11
 103:24,25 112:12,12

113:20 129:6,19
 149:24 155:3 160:20
 185:18,19 196:18
 220:17 241:10 265:19
difficult 223:13 224:7
dig 258:1
diligence 227:17
 245:14 261:24
dine 49:22 58:5 139:22
dine- 58:5
dine-in 108:1
dining 44:12 45:3
 145:10
dinner 70:9 201:6
direct 2:2 26:4 74:14
 95:21 126:21 127:3
 158:19 160:16 161:19
 168:3 193:15 205:16
 221:8,10 228:17
 233:23 234:16,23
 235:25 236:5 274:6
directing 182:6
directly 70:24 71:4 82:1
 82:7 88:14 89:12 98:3
 98:22 99:25 102:9
 105:10,22 107:9
 112:8 124:9 146:16
 146:17 170:17 187:12
 203:17 225:13 227:25
 228:12 237:18 239:5
 240:7 247:23 248:10
 261:21
director 240:2
directors 116:11,16
disagree 20:20 92:20
 93:5 126:12
disagreement 7:9
disclose 115:8 147:17
 182:9 191:1
disclosed 250:18 259:9
disclosure 115:11
 182:13 183:7 184:7
 184:10,12 185:3
 190:21
disclosures 180:7,8
discontinued 146:1,3
discretion 27:23
discussed 8:22 12:8
 171:24
discussing 78:18 85:7
 111:13 253:21 272:17
discussion 10:21
 125:22 217:22 252:15
 253:6
dismiss 6:8,23 12:11
 29:25 31:24 33:7
dismissal 7:12
dispensation 173:21

displayed 245:4
dispute 6:10
disruptive 176:5 177:3
District 1:1 28:5 34:19
 49:18 89:13 130:19
 133:22 182:8 268:2
 270:19,24 272:14
disturbed 52:20 250:2
disturbs 118:8
diverse 229:2
division 30:18
DJ 58:16 210:5 242:10
DJs 210:7
DLCP 60:19 61:7
docs 245:17
doctor 224:13 226:4
document 82:5 83:13
 99:20 100:21 101:7
 101:25 102:13 103:9
 103:20 104:8,15
 105:3,13 106:7,12
 107:14 110:18 114:19
 114:21,24 115:14
 118:24 148:4 180:11
 181:3,5,18,21,24,25
 182:5,22,25 185:5
 206:20 207:2,10,20
 208:18 209:6 214:24
 215:3,5,15 216:12,17
 216:18 218:25 219:2
 219:12,12,24 220:10
 259:17
documented 212:21
 230:17
documents 15:20 30:17
 30:18 106:11,16,19
 113:13 184:7,10,13
 259:4 266:6
dog 84:1
dogs 84:1,5
doing 38:19 120:16
 217:7 244:1 261:24
 271:24
Donovan 1:13,15
doom 151:22
door 74:21 75:1,20
 78:12 79:11 80:16
 85:3 98:21 107:7
 125:3 147:1,2 234:7
doors 86:7 234:17
 243:18
down- 92:3
downstairs 221:3
dozens 229:15 230:6
 230:14
draft 37:23
drafted 38:1,14,16 40:4
draw 197:7 230:2

264:10
drawing 193:21
drill 111:7
drink 192:25 193:8
 194:5 238:5 264:5
drinking 177:2 192:18
 193:7,17
driven 244:21 267:15
driveway 78:23
drop 173:6
dropped 173:1,4,13
drugs 80:18
drywall 41:22 113:2
 124:2 127:17,18
due 41:17 44:23 45:13
 61:2,2 67:1 117:18
 226:5 227:17 245:14
 261:24
dug 233:16
duly 36:22 74:4 95:12
 158:7 167:19 205:11
 236:25
duration 45:19
duties 37:9,10
duty 53:10 64:20 65:13
dwelling 48:1

E

e 140:9
E-L-V-I-N 4:14
E-N-N-A-C-H-I-O
 158:18
ear 46:16
earlier 87:3 109:18
 118:11 123:23 130:25
 139:21 153:12 202:7
 213:3 219:5 253:21
 254:3
early 119:24 146:4
 152:14 169:5 172:21
 192:25 211:2,9
easier 216:23
eat 45:7 238:6
eating 57:3 139:8
Ed 28:14 271:20
edge 120:15
Edgerton 140:9
Edward 1:16 29:3
effect 13:14 42:4 59:4,7
 59:8 155:13 170:3
 225:5
effort 102:23 113:2,5
 150:23
efforts 16:5 45:8 71:16
 177:16 190:11,12
 191:2
eight 88:2 105:21
 132:19,23 133:2

195:10
either 10:20 29:25
 34:11 55:14,18 63:17
 63:25 76:17 78:23
 80:7 90:22 108:17
 146:12 153:7 175:3
 239:7 251:9 253:13
elaborate 211:15
 212:17
electronic 273:21
electronics 46:15
element 191:14,24
elements 48:1 49:11
elevate 3:8 22:12,15
 73:19 205:2
elevated 3:12,14,16,18
 3:20,22 21:19 23:1,15
 73:17,22 205:3
 217:13
eleven 199:15
email 38:23 39:9,16
 40:4 43:1 44:4 55:17
 55:21 63:20 64:18
 129:2 182:25 252:13
 256:17,20,21 257:1,6
 257:12,15 258:2,7,9
 258:16,20 259:20
 260:2
emailed 212:8 213:9
 215:6,10 252:16,17
emailing 212:10
emails 121:15 243:5
emanating 8:16 9:20
 41:24 72:20 242:19
emergency 51:3,9,19
 59:1 198:6 223:9
employed 142:22 223:4
 223:6
employee 241:5 253:12
employees 142:12
enclose 47:11
enclosed 113:23
 139:12,13 140:24
 144:14 148:17,18
 176:22
enclosure 100:9
encouraged 61:25 63:3
encourages 194:6
ends 176:5
endure 241:19
energy 142:7
enforce 20:24 222:22
enforcement 264:24
 265:5,10
enforcing 265:4 268:21
engage 11:1 35:4 36:4
 240:5 245:5 246:2
engaged 13:2 34:22

35:8 246:10 261:9
engagement 263:12
engaging 35:20
engineer 128:10,14
 184:5 242:15 243:11
enjoy 193:2
enjoyment 46:19
ensure 14:24 36:5,8
 181:22 268:20
enter 55:9 60:12,23
 61:1,21 62:24 63:6
 64:7 78:20,21 148:25
 206:24 215:25 265:24
 265:25
entered 125:3 136:6
 181:3
entering 60:10 103:17
entire 44:13 77:8,18,18
 88:6 204:16 239:2
entirely 33:8
entities 73:2 249:12
entitled 241:16,20
entity 89:8,13 96:2
entrance 11:8 101:4
 103:16 210:4
entries 207:14,16
 212:25 229:15 230:6
entry 205:8 210:20
 213:24
environment 93:4
 244:2
equipped 12:1
error 215:8
escalate 221:11
escalated 210:12 222:4
escaping 224:18
especially 88:17,19
 198:7 223:8
essence 167:5
essentially 7:4 98:16
 193:3
established 82:17
 84:10 202:10
establishing 172:10
establishment 8:16
 9:20 23:9 47:18 50:1
 50:3 51:2,14,22 52:22
 53:6 54:13 57:4,7,14
 57:16,20,23 58:2,4,8
 59:25 61:14,24 62:10
 64:4 65:10,14,16
 66:22 69:23 70:2,14
 70:18 71:11 72:21
 73:9 76:4 77:7 78:14
 79:9 81:14 94:20
 96:15 98:19 100:5
 108:13 159:22 162:5
 186:17 192:14 198:14

199:6 202:3 210:3
 231:25 250:25 261:15
 261:19,22,23 264:16
 264:22 265:2,13
establishment's 44:8
establishments 53:25
 93:15 247:5
estate 12:12 173:2,15
 176:10 184:8,10
 200:17
estimates 128:15,17
 226:15
evaluate 222:17
evening 70:5 130:15
 205:7 211:5 217:12
 245:24
event 217:6 247:14
events 131:2 209:1,3
 209:25 210:6 216:25
eventually 121:5 122:1
 174:3 250:17
everybody 150:5 153:9
 153:17 260:24
everybody's 7:1
everyday 34:18 46:12
 268:23
evidence 13:21 15:14
 18:3 19:3,19 26:23
 62:3 70:10,18 71:15
 72:12 73:6 83:13
 100:21 101:25 103:9
 104:8 105:3 106:7
 107:15 110:19 113:14
 118:24 126:17 137:5
 147:19 170:3 187:9
 216:12 218:25 219:12
 220:2,10 259:5,7,8
 267:8
evidentiary 187:7
evidently 187:15
exact 8:19 43:8 71:6
 171:13 227:4
exactly 98:14 124:4
 129:3 154:23 171:7
 181:25 262:6 263:15
exam 26:4 235:22
examination 24:20
 36:21 74:3,14 83:20
 95:11,21 124:25
 127:3 158:6,19
 165:10 167:18 168:3
 178:22 205:10,16
 227:1 236:24 245:9
examined 36:22 74:5
 95:13 158:8 167:20
 205:12 237:1
example 197:10 198:20
 210:1

examples 92:13
Excel 206:21
Excellent 81:11 83:7
 89:17 90:11 169:1
excessive 45:24
exchange 7:24
excited 228:3
exclusive 263:19
excuse 15:19 26:9
 147:5 238:24 242:14
excuses 262:22
executive 19:4 27:12
 27:22 28:2 29:7 274:7
exempt 72:13
exercise 259:17 262:19
exhibit 30:15 81:11,22
 82:1,5 83:14 99:15,20
 100:22 101:2,7 102:1
 102:5,13 103:10,20
 104:9,11,15 105:4,7
 105:13 106:8,25
 107:14 110:9,12,18
 113:9,13 114:19,24
 115:5 116:3 118:25
 137:17,22,24,25
 138:1,5 141:14
 144:24,25 145:3
 147:4,13,15,15 148:8
 181:3 184:18,20
 206:25 207:2 216:10
 216:13 219:20,21,24
 220:11 257:2
exhibits 9:15 119:2
 136:1
exist 145:17 245:16
 264:19
existence 187:13
expand 133:10
expanding 135:2
expansion 67:1,15
expected 34:20 175:24
expense 191:24 266:25
experience 46:20 81:4
 81:10 155:2 176:3
 189:19 198:11 206:5
 223:10 251:8,9,10
 266:9
experienced 35:2 153:3
 153:4 171:5
experiences 92:7
experiencing 188:16
expert 100:12
explain 42:20 43:1
 123:25 127:6 207:14
 207:17 209:16 233:16
explained 43:19 147:7
explains 85:24
explanation 225:14

exposed 47:12 85:25
 123:24 124:3,13
exposure 226:6
expressed 35:22
 120:10
expressly 171:15
extended 67:3
extends 46:6
extension 67:21
extensive 98:11 215:24
extent 7:23
exterior 57:11 137:9
external 67:5,7,9 229:9
extra 92:11 209:1
extreme 46:17
extremely 240:12

F

faces 86:5
facilitate 41:12
facilities 49:16
facing 84:22 85:3 99:25
 138:12
fact 45:5 64:13 70:10
 70:20 102:19 112:18
 151:23 170:12 187:18
 225:11 254:16 259:24
 262:23 264:25 269:15
factors 7:7 8:18 9:21
facts 8:13 13:10 73:6
 126:16 269:18,18
failed 35:13 45:9
 190:12
failure 51:1,7,18 117:16
fair 57:21,24 71:17
 86:12 189:15 190:1
 225:5 247:24 268:21
fairly 87:15
faith 190:7
familiar 37:15,18 74:17
 74:19,25 75:5,13 77:4
 84:5 95:4 160:3,6
 197:9 198:21 227:24
 253:20
family 149:14 197:11
 197:16
far 35:16 38:18 41:22
 43:22 202:22 243:2
 259:10 262:7
fast 156:11,13
fatigue 189:18
fatigued 189:11
featured 82:9
February 111:23,24
 112:1 125:21 186:10
 215:1,5 224:12
 249:21
federal 241:4 256:23

feedback 171:10
 174:13
feel 57:24 63:19 121:24
 149:12 178:15 189:17
 193:5
feeling 51:24
feelings 225:3,8
feels 85:18 130:17
fellow 16:12
felt 46:2 121:8 150:2
 177:14,16 178:10
 213:20
Ferdinand 256:17
 257:6
fianc 206:2
fifteen 75:22 90:25 91:1
 183:6 264:6
fight 120:19 258:24
figure 9:1 27:13 80:2
 142:2 156:15 241:13
file 6:14 10:11 31:9
 269:14 270:10
filed 6:1,3,8,12 8:6,7
 9:11 10:17 29:20,22
 30:3 31:3 161:23
filing 8:2
fill 124:7,11
final 3:3 18:20 153:23
 235:18 251:20
finally 173:6,12,18
 243:8 244:25 266:5
 266:18
finances 34:18 189:9
find 11:6 13:14 14:4
 73:8 78:22 156:17
 169:15 173:18 237:12
 248:2 253:8 268:25
finding 121:9 122:5
findings 223:1 269:15
fine 20:8 51:11,14
 90:22 117:17 162:22
 173:18 240:21 253:23
 260:22 270:12
fined 232:16
fines 221:13 232:23
 233:13 242:24 254:5
fining 243:1
finish 119:10
finite 208:19
fire 151:22 197:24
first 8:25 19:5,6 23:22
 26:2 36:16,22 73:13
 73:15 74:4 75:4 85:4
 95:12 96:19 97:17,18
 115:6 122:13 126:3
 130:22 158:7 167:9
 167:11,19 168:23
 179:22 182:7 194:10

194:11,16 205:11
 209:7,9 212:13
 213:19 214:6 228:3
 236:25 237:16 249:17
 249:22 250:20,21,23
 264:19 266:20
first-time 184:1
firsthand 209:4
five 25:24 34:4,5 78:9
 125:12 159:13 190:14
 227:22 255:2 260:20
 261:1
fix 100:25 114:20
 137:15
Flash 7:2,14
Flashing 242:9
Flats 117:11 184:22
flip 184:17,19
floor 58:11 97:17,18
 110:1 111:1 140:20
 143:6,6 146:9,9,13
 176:19 179:22 191:10
 191:15 194:9,10,11
 194:15,16,17,19
 235:6 249:17 250:23
 266:20
floors 97:19 234:12
Florida 1:6 6:4 46:14
 75:2,9,24 84:13 85:4
 86:5,18,19 96:16,17
 96:23,23 97:14 99:23
 99:25 101:9,11
 117:12 131:1,5,6,18
 138:12 159:2,3
 184:23 196:16 197:3
 197:15 198:1,7,15
 234:15
flourished 237:15
focus 25:16 171:17
focusing 96:14 171:21
folks 15:1 17:13 23:16
 58:6 68:2 79:8 88:19
 102:23 120:14 153:20
 176:21 188:18 192:18
 250:16 257:17 267:17
follow 51:2 54:1 55:21
 69:9,12 155:7,11
follow-up 59:12 60:8
 68:21 83:16 122:10
followed 168:24 217:15
following 8:24 72:9
 118:7 213:14 218:5
follows 36:23 74:5
 95:13 158:8 167:20
 205:12 237:1
food 45:7 70:16 107:12
 107:17,23 165:16
 204:6 264:3

foot 66:21 71:2
footage 66:19
Force 256:18 257:9
 259:21
foreclosure 174:5
foreign 168:17 195:4
foreseen 199:10
forgetting 120:4
forgive 196:14
form 30:15,15 73:3
 132:22
formal 39:19 40:1,5
 44:3 54:19 55:8,17
 62:8 63:10,21,25 65:7
 244:10
formally 55:11
former 76:10,11 175:5
forms 30:16
forth 80:19 121:12
 152:20 155:3 266:8
forward 7:6 17:6 45:17
 68:22 69:25 120:22
 268:22
forwarded 11:17 40:13
 121:15
found 72:6 93:16
 123:18,19 231:10
 233:1,4 240:11 242:5
 242:22 248:8 253:25
foundation 207:5
four 37:7 41:21 44:22
 91:14 105:19,19,19
 105:20,21 108:16,24
 110:7 113:1 126:6
 128:7 158:24 168:16
 177:14 178:25 179:6
 179:15 186:11 194:15
 194:16,16 196:3
 201:19,20
frankly 192:8
free 68:13 69:15 94:3
 166:20 204:18,18
 272:8
freely 36:6
frequent 77:3 195:22
 237:11
frequented 245:18
 247:6 248:11,14
frequently 161:1
 195:12 196:5
Friday 206:2 227:5
Fridays 192:17
friend 197:6,8 201:6
 237:9
friendliest 178:15
friendly 188:23 197:11
 197:16
friends 192:25 195:17

front 82:1,7,8 84:14
 85:3 86:2 99:17 107:7
 107:9 137:19 138:11
 140:10 147:1,2 154:7
 181:18 201:9 206:20
 211:22 240:14,14
 255:2 256:24
full 14:11 16:25 17:12
 17:24 18:16 19:15
 96:12 142:5,5
fully 12:6 100:7 110:3
 115:8 182:10 237:20
 239:15 251:15
function 145:14
functionality 111:17
functioning 14:15
funds 192:10
further 13:6 44:10,16
 44:24 78:6 83:15
 90:12 124:16 137:2
 178:19 196:7 201:11
 225:14 226:22 267:9
 274:7
future 190:6 227:12
 267:11

G

Gamboa 256:17 257:6
game 225:5
garage 78:20,20,21,25
 79:13,14 82:25 83:3
garbled 260:7
garden 139:11
garden/sidewalk 67:6
general 23:8,12 49:23
 67:18 94:11,11 154:5
 159:6 188:25 189:18
 192:1 197:21 215:11
 240:12
generally 88:8,9 189:10
 223:15,20 232:10
 240:8 242:3
generate 72:17
gentleman 164:2
gentlemen 258:12
getting 8:19 18:18 62:6
 171:11 227:11 232:11
 232:12 249:9 258:16
 260:1
gist 29:24
give 23:25 25:14,24,24
 69:11 127:5 174:7
 177:25 214:18 222:21
 226:15 228:17 235:25
 236:15 239:2 240:17
 246:16 256:6 271:23
 272:2 273:17
given 26:1 43:4 46:23
 57:13 221:13 223:11
 223:12 232:6
gives 69:6,7
giving 17:21 30:11
 126:15 194:22 210:17
glad 248:5
go 7:5 8:13 15:6 16:7
 16:15,25 17:22 18:19
 19:4 22:16 27:12 28:2
 29:7 34:2,14 45:10
 49:3 52:16,17,23 53:4
 53:5,7 54:16 55:7,10
 58:4 65:9 68:13 69:15
 69:20 70:25 85:10
 92:10 94:3 98:24,25
 106:3,14 108:6
 111:20 116:1 119:10
 119:19 122:2,9
 123:10 124:11 129:18
 130:14 136:14 137:2
 137:10,14,16 138:6
 139:20 141:8,9,16
 143:2,18,24 144:12
 144:22 147:4,4 148:6
 148:7,19 151:7
 159:15 166:21 175:12
 178:8 184:3 185:12
 185:16 188:8 190:3,4
 190:5 193:9 195:11
 195:12,13,16,18
 196:10,18,19,25
 199:25 201:6 204:18
 207:13,15 209:5
 211:16 221:2 222:17
 223:17,25 224:1
 225:14 226:3 229:14
 236:18 237:2,18
 240:23,25 241:1,2,14
 243:19 248:12 249:4
 249:4 257:20 259:13
 259:17 263:18 268:9
 268:22 270:8 272:8
goes 42:4 43:12 55:12
 152:20 171:15 176:6
 187:12,17
going 17:19 18:21,24
 19:1 22:14 23:7,9
 24:1,4,13 25:11,12,14
 25:14 27:4,8,16,18,20
 27:25 29:7,8,10 31:20
 31:24 32:2,14 33:24
 43:12,12 48:10,24
 69:25 79:7 80:8 81:17
 82:13 87:14 89:12
 92:19 94:12 99:10,12
 99:14 100:25,25
 102:4 105:5,6 106:18
 112:15 113:8 114:18

114:20 123:10 124:11
 126:11,15 133:10
 155:22,24 156:20,22
 156:23 159:15 161:8
 164:12,19 166:17
 167:5 169:21 170:11
 171:12,13,25 174:2
 174:10 175:8,21
 180:1,3,24 181:2,5,14
 182:1 184:17,19
 185:21 187:22 188:3
 190:2,3 197:1 199:6,7
 203:23,23,25 204:3,4
 206:13 207:4,12
 208:1 209:5,11
 210:16 213:22 216:3
 216:16 218:23,25
 219:3 222:16 224:24
 225:15,18,22 229:14
 242:14 244:3 247:8
 247:10 250:20,22
 252:2,21 253:18
 257:1 258:19 259:16
 260:23 262:6 267:2
 268:8 270:9
Gold 221:17
good 3:7,25 4:3,17,22
 4:25 5:2,8,22,23
 52:18 56:12 70:5
 78:15 80:12 83:22
 90:17,19 92:13 96:10
 124:22,24 128:6
 130:15,16 133:11,12
 134:18 154:18 162:12
 163:4 165:6,7,8
 176:11 177:20 193:3
 197:5 205:5,7 208:5
 248:13 255:3,4 257:8
 263:6 274:8
gosh 75:5
gotten 45:5 197:25
 251:23
Governance 272:15
governing 118:1
government 89:13
 123:3,4 161:20
 262:12 265:24
governs 73:1
grab 165:16
Grandis 1:16 28:14,14
 28:15 29:2,3,3 33:21
 33:21,22 52:16,17,18
 53:13,14,21 54:22
 55:1,13,20 56:2,5
 59:10 135:19,20,23
 136:4,5,10,15,19,23
 136:25 137:4,7,10,12
 138:5,7,13,18,22

139:1,4,10,15,23
 140:2,6,11,18,23
 141:8,13,17,23
 142:11,14,19 143:1,5
 143:8,10,17,21,24
 144:3,12,17,20 145:1
 145:4,7,11,19,22,25
 146:5,11,19,22 147:3
 147:16,20,23 148:6,9
 148:11,16,19,24
 149:3,6,10,14,17
 150:8,16,21,24 151:2
 152:7,12 153:25
 154:8,14,17 155:15
 155:20 271:19,20,20
 273:14
Grandis' 60:8
grant 11:4
granted 170:2
great 62:11 96:14
 106:24 194:20 196:6
 268:9
greater 251:19
greet 99:2 107:8
greeted 238:1
grin-and-bear-it 177:18
ground 24:8 194:8,15
group 1:5 4:15 96:3
 98:10 193:10 240:13
guaranteed 34:20
guess 13:13 14:4 82:22
 85:3 91:23 102:21
 110:16 141:4 218:22
 220:8 253:23
guests 103:17
guys 29:8 250:11

H

H-I-N-E-S 4:14 95:20
half 243:8 251:20
 255:23 259:12
hall 249:23
hand 6:17 36:18 73:24
 95:7 128:24 157:15
 158:3 167:14 205:5
 225:10 268:6
hands 255:24
hang 180:13 218:22
Hansen 1:17 28:25 29:1
 29:1 33:20
happen 93:12 121:4
 164:12 211:6,8,9
 231:1
happened 10:23 38:8
 126:3 221:22 239:13
happening 210:14
 211:4
happens 54:15,21 63:2

120:20 195:1
happy 10:4 71:24
 169:17 243:7 246:25
harassment 121:8
hard 149:7 151:4 173:7
hardship 173:21 174:4
harm 22:6 35:23
he'll 120:19,20 126:19
head 151:19 178:11
 223:23
headphones 223:22
 224:2
health 46:18 59:1
hear 16:10 28:23 44:11
 46:4 48:13,17,18,20
 49:6,7 56:18 62:21
 68:6,7 70:19 85:10
 88:7 89:2 200:10
 209:20 211:23 212:2
 220:23,24,25 229:25
 232:1,3,4,5,9 238:11
 239:6,8,11 250:11
heard 10:10,11 51:10
 53:15 61:5 63:15 64:8
 76:3,17 77:15,23 78:8
 81:6 120:1 149:18
 172:24 175:22 186:15
 202:7 213:12,16
 214:1,2,7,8,21 216:25
 217:25 218:8,11
 232:12 234:23 235:7
 247:16 250:21 263:9
 263:16,25 266:25
hearing 1:7 3:5 5:24 6:1
 6:7,17 8:1 11:13
 15:13,17 16:1,4,15
 17:1,13,25 18:16 19:9
 19:12,15,18,25 20:5
 21:3,4,20 22:13,17
 23:17 24:16 25:12
 30:10,13 32:8 33:6
 38:22 40:17 53:11
 56:10 85:6 92:24
 93:14 94:16 132:11
 140:19 166:12 171:24
 190:3 204:19 207:8
 238:8 241:10,22
 252:23 260:17 269:22
 270:15 271:11 272:9
 272:18 273:20 274:1
hearing's 30:21
hearings 17:9 20:23,23
 274:3
hears 250:6
hearsay 174:15,20
heart 187:17
heartbeat 242:5
Heidi 250:8

held 40:6
hello 94:25 120:2
help 41:12 141:18
 224:15 225:24 228:6
 238:13 243:25 244:1
 263:14
helped 240:5
helpful 248:6
helps 185:2
Hen 198:20,25 201:6
 242:3 247:1
Henderson 4:4
hey 95:16 152:16 240:7
 250:10
Hi 3:25 5:2 83:24
high 239:9,10
higher 102:22
highest 222:4
Hines 1:21 2:4 3:17 4:8
 4:10,13,13 12:6 13:3
 20:15 23:2 39:16,16
 40:5,10 94:11,12,20
 94:22,23,25 95:2,3,8
 95:10,19,19,23
 103:15 104:12 105:9
 119:2,6,23 124:16,19
 124:24 126:12 127:13
 130:17,18,21,24
 131:5,7,10,14,22
 132:1,5,8,13,19,24
 133:1,5,8,12,19,23
 134:9,13,16,19,21,23
 135:7,12,20,22
 137:19 138:11,16,19
 138:24 139:3,7,13,17
 139:24 140:5,8,12,22
 141:1,20,24 142:13
 142:16,23 143:4,7,9
 143:13,15,20,23
 144:4,8,16,19 145:8,9
 145:16,20,24 146:2
 146:10,15,21,24
 147:9 148:14,18
 149:4,5,9,13,16,21
 150:10,19,22,25
 151:17 152:8,14
 154:4,13,16,25 156:3
 178:13 188:23 239:21
 241:9 242:7
Hines' 35:23 41:18
 42:16 186:2,15
hire 128:10,14,17
 151:16 183:16 184:6
hired 246:12
Historic 96:11
history 50:20,24 58:23
 65:10 93:21 244:17
 254:12,20

- hold** 27:25 28:8 29:11
 104:20 126:13,14
 137:21 170:6 180:17
 180:18 207:24 241:7
 259:3,11,12 271:2
 272:3,8,16 273:18
hole 233:17
home 53:4,5 54:20 55:8
 55:9,10,12 60:21,23
 60:23 61:1,2,5 63:7,9
 63:11,24 64:1 76:4
 183:19 184:1 212:16
 223:7,11 228:21
 229:4 244:21 246:5
 246:10,12,15,19
homes 34:21 41:25
 63:15 64:9
honest 71:17 203:15
honestly 245:5
honor 21:10
Hop 133:11
hope 96:10 133:12
 180:5
hopefully 10:5 16:7
hopes 177:20 179:24
hoping 172:14 182:18
 190:8
hotline 54:6 63:4 65:2,3
 65:5,24
hour 25:15 42:3 243:20
hours 14:21 27:21 42:3
 46:7 54:6 57:1 96:12
 97:9 118:7 142:5
 155:24 192:25 202:9
 202:11,16 206:8
 224:9 228:22 239:14
 239:15 246:1 251:11
 255:3
house 74:25 75:19 77:5
 77:10 83:1,4,6 85:4,4
 154:7 224:18 256:1
 257:21
houses 75:15,18,19,21
 239:3
housing 49:17
HR 256:23
huge 12:13
human 76:10 202:22
hurt 241:22
-
- I**
- idea** 27:17 146:6 232:7
 247:23
ideal 42:10
identification 82:6
 99:14,21 101:1,8
 102:14 103:21 104:16
 105:14 107:15 110:19
 113:14 114:25 207:3
 219:25
identified 9:11,12
 226:13
identify 4:1,11,19,20
 46:4 106:11,12
 141:14 147:12 206:19
 207:16 209:7 216:18
 262:8
identifying 21:16
ignores 13:10
illegal 80:17 234:6,14
 234:19
imaginable 224:17
imagine 208:20 232:11
immediately 11:9 79:19
 120:18 144:9 237:25
 250:23
impact 15:1 69:24
 70:22 71:1 73:9
 190:22 204:3,4
 261:17 263:5
impacted 32:23 34:17
 188:17 189:13 244:20
 268:4
impacts 12:12 46:12,23
 171:5,21,23 224:10
implement 111:21
 152:13
implemented 149:23
import 264:8
important 7:15 183:24
 229:5 264:14
impose 17:20
imposing 117:17
impression 183:13
 197:13
improve 154:19 191:14
improved 45:4
improvement 191:9,20
inappropriate 9:19
incessant 232:8
incidence 51:16
incident 51:6
inclined 9:8 55:21
include 129:23 183:1
included 217:6
includes 201:22
including 129:1 167:3
inconclusive 223:2
incorporate 221:25
incorrectly 270:22
increase 40:16 172:15
increased 48:23
indicate 73:2 106:25
indicated 41:11 44:10
 50:10 76:7
indicates 56:14
indication 121:6 174:21
indications 50:25
individual 89:25 90:1
 96:2 147:10 152:1
 217:25 218:7 225:6
individualistic 189:3
 192:2
individuals 76:18 77:23
 78:11 89:21,24 154:1
indulgence 40:2,15,23
 51:4 138:9
infiltration 42:7 183:21
 225:2 230:19 246:17
infiltrations 247:24
information 7:24 30:14
 39:3,23 43:23 63:18
 114:13 207:9 208:22
 210:11,18 216:24
 225:1 233:10
infractions 254:13
inherent 262:5
initial 67:2,4 112:22
initially 75:2,7,12
 145:12 172:13 220:21
injunctive 117:18
inquired 229:6
inquires 54:10
inquiry 171:18
insert 40:12
inside 51:10 64:8 67:14
 72:17 74:22 76:4
 85:10,14,18 87:10
 106:21 113:25 114:5
 144:14 146:7,20
 148:12,21 162:11
 163:5,11,13 166:3
 195:16 248:1
insight 176:11
inspect 115:23
inspection 56:16,22,25
 183:18,21 184:4
 246:20
inspections 37:11
inspector 162:9 246:5
 246:11,12,15
install 35:10 47:10
installed 35:8 41:21
 66:13 125:17 126:8
 129:14
installing 14:21
instance 14:9 72:4
 121:9 221:14
instances 52:7 207:21
 218:8 221:23
institutional 47:25
 49:13
instruct 164:20
instructed 21:24 111:1
 149:24 151:21
instruction 21:10
instructions 30:12
 268:22
instructive 84:11
instruments 118:5
insulate 112:5,24
insulation 42:13 71:23
 112:11 127:22
integrity 246:13
intend 23:7
intended 41:12
intention 244:7
intentions 45:13
interact 222:3
interacted 222:1
interacting 178:12
interaction 120:6
interactions 10:21 98:7
 98:12 119:3,13
 160:16 161:6 178:1,2
 178:16 221:9,10
 222:6,8
interest 227:10,12
interested 11:11 173:11
 192:5 252:8
interesting 89:4 176:9
 214:25 227:19
interface 109:1
interfere 231:21
interfered 222:25
interference 48:4,5
 49:14 50:14 51:25
 52:11,15 65:12 68:25
 82:12 84:9 89:15 98:8
 146:4
interferes 52:22
interior 57:6,9 67:15
 104:12
International 168:18
interpretation 11:22
intimacy 30:5
intoxicated 193:14
 200:20,21 201:9
 218:12
introduce 4:9
introduced 119:24,25
 120:1 165:13 238:2
invested 36:9
investigate 54:8 151:20
investigated 55:3
investigating 64:8
investigation 7:25
 38:19 52:24 55:15
 56:19 59:11,16 64:24
 65:22 66:12 228:4
investigations 37:12,13
 72:4 272:19

investigative 50:20,24
58:23 65:10 136:18
254:20 272:22
investigator 1:23 3:10
5:16,17,20 11:3,10
37:1,2,6,10,17,22,25
38:5,9,12,15,21 39:5
39:8,15,25 40:4,7,22
41:4,10 42:25 43:16
44:3 47:20 48:14,18
48:22 49:5,9 50:2,15
50:22 52:3,6,19,25
53:20 54:3,8,10,12,16
54:23,25 55:4,11,16
56:1,3,12 61:25 62:12
62:14,19 63:6 64:5
65:8 109:18 121:7
122:3 123:24 219:6
251:24,24,25 252:6
252:16 253:18
investigator's 97:5
254:10,11
investigators 54:7,19
60:12 121:22 151:24
invite 55:25
invoke 20:13,25
involved 76:22 80:5
120:14 189:11 238:25
iPad 108:17
iPhone 108:17 152:3
154:10
issue 7:3 8:10,21,22
9:13,17 12:23 27:3,14
28:3 30:1 31:15,18
32:1 48:10 63:14 73:3
79:10 89:10 109:25
112:17 120:8,13
122:5 124:4 129:21
135:9 151:18 157:15
165:20 169:10 177:7
187:9 191:21 226:12
238:20 245:7 248:8
253:25 254:14 256:23
261:9 262:17 267:2
267:18 268:6,8,13,15
270:3,17
issued 51:11,11 233:13
243:2
issues 6:10 7:16 9:25
12:21 13:7 17:13
19:16 23:21 25:16,17
30:4,7,19 31:5,6,14
32:9 35:5,6 36:5 44:9
54:4 63:13 69:25 78:3
78:17 79:1,2,14 80:22
81:3 88:10,16,22
109:15 111:15 112:7
115:19 128:24 142:25

153:10,19,23 169:16
171:3 189:5,5 190:22
192:12 199:17 208:14
220:15 224:21 234:20
238:4,23 245:15
246:16 254:24
issuing 242:24
iteration 77:19
iterations 242:8

J

J-A-C-K 205:21
J-A-C-Q-U-E-L-I-N-E
167:25
J-A-N-I-N-E 74:13
J-O-H-N 205:20
Jack 205:21,22 216:16
Jackie 10:21 12:14 13:6
18:18 34:16,24 38:24
39:10 84:15 98:5,9
119:11 126:1 153:1
167:21 168:5 172:4
243:17 251:23 267:25
Jackie's 140:13 174:25
230:21 249:22 250:1
250:9,23 253:15
257:19 267:17
Jacqueline 1:21 2:5
3:13 5:3 167:12,17,24
JAMES 1:17
Janine 1:23 23:11,20
73:16,19 74:2,12
130:25
January 96:18 168:10
175:15 179:9 186:10
186:10 189:25 201:2
203:2,3,5 213:24
214:11,12
Jeni 1:17 29:1
job 159:4
John 1:22 2:5 3:15 5:11
204:23 205:9,20
215:11 240:12 257:8
jointly 106:4
Jokingly 238:8
JOSE 1:22
jovial 193:25 194:25
204:5
JR 1:16,17
jump 105:6 117:10
junction 14:5
junction 27:5
jurisdiction 12:2

K

Kabir 89:24
Karla 86:13 87:22 120:2
120:7 121:13,13

122:1 150:3 240:4
248:24
keep 25:11,12 141:9
142:21 208:13 210:17
210:17 247:17 269:9
keeping 36:2 221:19
keeps 191:4
Kelly 240:3 257:17
Kenyan 240:2
kept 152:15 219:16
224:12 262:9
Kevin 251:25
kicked 96:17 97:2 190:1
kind 70:14 85:2,17,19
86:7 92:8 120:15
122:22 153:21 177:18
178:11,14 180:4,5,8
182:15 183:20 184:4
193:9 197:11 199:14
208:13,19,21 209:3
209:23 210:12 211:16
217:14 231:18
kinds 78:17 88:16,22
89:3
kitchen 44:12 211:7,12
211:19 212:7 213:3
217:9,15,16,19 218:5
218:14,21
knew 180:3 185:14
198:20 199:7,19
228:10 238:9
know 17:8,14 21:2,6
22:16 38:8 41:1 42:22
42:23 43:9 77:2,25
78:16,24 79:6,11,18
79:20,25 80:5,7,11,20
81:9 85:1,12,23 86:23
87:1,8 88:19,20,20,21
89:1 91:18 92:6 97:21
97:24 100:13 101:16
102:19,21,23 110:16
111:2 113:6,7 120:10
120:10,13,14,17,19
120:20,25 121:11,18
121:24 124:9 129:3
129:19 130:8 132:13
134:10 136:13 137:23
139:8,18,19,20,21,25
141:21 142:1 144:4
146:12 149:25 150:5
150:7,23 151:1,4,17
151:19,20,21,22,22
151:23,24 152:15,16
152:17,20,24 153:2,4
153:7,8,9,19,20,20,20
155:1,1,11,12 156:20
174:9 179:23 180:4
180:21 181:21,25

185:15 190:13 197:4
197:25 199:5,16
202:19 207:5,22
208:24 209:2 213:1
218:23 219:5 222:10
223:24 225:5 227:16
228:9,11 231:12,19
232:10 241:12,14
243:3,11 255:4
256:24 257:14,18
Knowing 150:16
knowledge 23:16 123:6
162:1,3 186:8,13,20
191:18 202:25 203:5
229:18
knowledgeable 151:16
knows 153:17 175:20
181:14
Knoxville 257:20
259:24

L

labeled 9:16 182:5
labor 120:18
lack 41:17
ladies 164:3
lady 91:16
land 258:20
landlord 174:25 175:9
language 7:20 195:25
laptop 129:17
large 49:17 66:23 67:3
67:8
late 10:18,24 18:18
98:15 102:18 111:23
112:16 127:11,19
237:8
late-into- 70:4
latest 122:11
laughing 177:2
Laverne 125:24
law 7:10 11:22 12:2
34:20 43:8 47:4 115:7
161:16 182:8 241:7
269:15,19 272:20
laws 155:6 181:16
lawyer 120:18
layers 41:21 112:11
113:1 127:21 128:7
layout 98:18 194:7
lead 102:10
leaked 250:13
leaking 112:7 124:4
191:19
leaks 124:10
lease 175:17 202:8
leave 6:13 79:8
leaving 108:9

led 13:12
leeway 236:15
left 10:20 53:25 77:17
 87:18 98:23 208:24
left-hand 110:9
legal 11:22 28:9 30:18
 39:18 41:18 225:7
 252:10 262:2,5 270:2
 270:4 271:3 272:21
 272:21,22
legalities 227:15
leisure 46:13
length 184:3 268:9
let's 4:2,18 52:4 68:22
 86:19 102:17 151:10
 154:11 170:13 179:18
 191:5 207:15 214:25
 220:7 233:21 249:24
 258:11
letter 7:5,19 8:17 9:22
 10:1 40:8
lettering 100:3
level 9:19 36:3 44:19
 45:1,11 47:8 51:21
 150:13 151:5 154:21
 159:19 163:4 193:16
 224:22 247:18 248:3
 269:10
levels 16:8 162:11
 253:5
Lewis 86:14 120:2
 121:14 122:15 123:1
 150:3 248:24
license 1:7,9 3:6 5:25
 13:16,17,24 14:1,3,7
 15:11,25 16:4,11,17
 16:21,21,24 17:3,3,6
 17:11,16,20,24 18:2,5
 18:7,14,22,22 19:7,22
 19:24 29:20 43:23
 92:5 97:6,6 133:22
 134:1,3,6,8,12 187:5
 193:6 203:22,22
 210:8 249:2 261:13
 264:18 267:8 268:17
 268:20 269:7,10
 272:23
licensee 3:8 14:24
 25:22 26:5,8,12 29:22
 40:4,8 92:4,23 93:14
licensee's 39:19
licensees 151:9
licenses 268:16
Licensing 62:5 72:22
 162:2
lie 243:3
lies 191:15
lieu 37:12 174:5

lieutenant 240:19
life 14:14 34:18 46:12
 46:18 172:10 224:10
 268:23
lights 242:9
limit 6:9 29:25 31:25
 32:8 79:5
limitations 15:24 21:9
 101:14,15 222:12,14
 223:14,19 228:21
limited 15:17,18 69:25
 170:1 171:16 175:15
 184:13,22 192:10
 195:2
limiting 26:23
limits 33:5,6
line 22:7 193:21 212:5
 215:3,3 217:3,3 219:1
 219:1 229:14,15
 230:2 264:10
lines 211:17 213:25
liquor 134:1,3 187:5
 193:5 203:22 244:6
 249:2
list 65:7 238:9
listed 169:20 207:21
listen 13:20 18:7 19:15
 21:4,20 22:17,20 32:3
 35:21 58:7,13 121:17
 194:4 265:16 269:17
listening 23:16 217:16
literally 85:21 175:25
 179:9
little 61:17 84:1 85:20
 94:13 98:9 102:20
 111:8 137:1 157:11
 162:7 163:9 182:17
 186:11 196:19 198:8
 208:4 211:2 212:15
 222:3 224:7 227:21
 239:3
livable 16:6
live 6:15 14:13 15:1,2
 34:18 36:6 47:9 71:4
 74:21,24 75:17,18
 84:10 89:22 92:14
 143:3 149:12 153:1
 195:18 202:1 241:16
 241:20 242:3 246:25
 253:8,9 257:19
 262:24 267:24
lived 78:2 160:13
 168:13,16 176:3
 177:14 178:24 179:6
 179:11 195:2,20
 196:3 205:25 206:6
 223:3 227:24 229:10
 234:13 237:18 244:15

247:4
livelihoods 36:9
lives 34:17 201:7
 247:15 250:8 263:1,2
living 75:15 76:2 90:24
 198:11 201:1 206:9
 214:7 223:18 226:11
 227:22 234:9 237:10
LLC 1:5
local 131:15 263:11
located 6:3 47:23 49:10
 49:23 60:1 74:22 75:2
 75:8 103:14 113:16
 132:7 228:12
location 86:18,20 96:6
 96:7,10,16,19 121:7
 122:7 131:25 132:4
 132:18,20 133:25
 154:6 159:2 228:11
lock 151:10,14
lodged 134:6
log 9:16 21:3 22:16
 24:15 25:2,3 157:1
 204:25 206:22 210:10
 210:13 216:21,22
 221:19 224:11 235:6
logged 21:7 213:11
logging 208:21
logistics 252:23
logs 217:25 229:13
 230:6,16 232:19
long 16:15 18:17 29:10
 32:24 34:23,24 37:4
 75:12,14 77:25 88:20
 90:23 96:15,25 98:16
 112:14,19 130:18
 131:8 133:21 156:20
 158:23 168:12 174:10
 193:19 249:25 252:18
long-time 237:6 263:10
longer 59:3,7,8 145:13
 190:24 238:21 252:21
look 7:14 70:22 77:6
 99:12 110:8,11 116:5
 117:14 144:4 161:7
 164:20,23 188:5
 195:17 205:1 242:10
 255:6,7 259:23 262:7
looked 8:9 56:24 58:23
 65:23 151:13 152:2
looking 12:10,11 14:12
 15:3 83:25 116:9
 121:14 137:18 138:10
 141:14 144:5,14
 145:7 146:11 154:19
 188:4 194:21 240:22
 245:3 253:3 254:19
 267:3

looks 57:19 82:24
 92:14 113:17 117:15
 154:17
looped 212:14
losing 49:3
lost 173:23
lot 12:8 15:2 80:5 87:17
 92:7 93:12 111:3
 157:12 160:10 190:7
 193:6 198:1,6 206:10
 234:25 237:11 256:22
 262:22 263:23
loud 45:10 46:3,8 86:3
 120:24 150:2,4
 199:14 200:20 208:25
 209:1,14,18 210:25
 211:25 213:1,3,5,9,10
 213:15,16 214:1,3,6
 214:12,14 215:6,9,16
 215:17,21 217:17,20
 217:21 218:5,6,7,14
 218:15,20 220:24
 222:11 223:20 229:5
 231:17,21 239:8
 242:9 244:3,9 250:6
louder 175:23 193:22
 243:21
loudly 151:12
loudly 44:12 193:13
love 196:23 244:16
loved 237:10,14
low 247:18
lower 42:2 61:25 221:4
 269:10
lowered 222:22
Luckily 241:4
lyric 46:4

M

M-4:13
M-C-C- 205:20
M-E-L-V-I- 95:19
ma'am 73:24 86:21,21
 86:22 170:15 172:2
 175:12
machine 107:10
magic 258:20
magnify 207:25
main 82:19 183:15
 244:7
maintain 142:4,16
 151:5 266:22
maintenance 189:5
major 18:2 152:25
majority 70:15 98:4
 108:8 146:17 200:7
 223:23 264:4
making 32:4 55:23

57:16 71:7,9 112:6
 175:19 187:14 203:25
 224:7 225:24
man 142:13 152:16
manage 35:13 195:13
managed 212:19
management 34:23
 35:4 45:9 212:18,22
 213:11 215:7,10
 221:12,17 226:17
 232:15 233:24 234:2
 240:1,11
manager 23:8 44:17
 94:11,12 152:4
 153:14 154:5 159:6
 215:11 217:10 238:17
 240:13
manager's 23:13
managers 134:14 177:9
 177:11 178:3 238:21
mandatory 269:20
manner 14:17 237:23
 262:25 264:22 268:21
 273:23
map 60:20 61:7
March 9:10 10:20 37:19
 37:19 40:3,7 44:4
 50:4,5,7 65:17,18
 141:22 186:10 201:2
 224:13
marijuana 80:17
mark 65:8 101:1 102:4
 105:7
marked 82:5 99:12,20
 101:7 102:13 103:12
 103:20 104:15 105:13
 107:14 110:18 113:13
 114:24 207:2 219:24
markedly 238:18
market 169:19 172:13
 173:16,24 200:4
marking 81:25 103:12
 114:19
married 172:9 227:11
mask 51:5
masks 254:21
materials 67:13
matter 1:4 8:20 27:1,23
 29:14 33:22 34:15
 152:11 157:4 167:8
 175:10 219:5 274:9
matters 6:6 20:10,10
mayor 72:1 153:17
mayor's 51:2,8,19
 58:25 121:16 135:8
 254:21,23
Mccue 1:22 2:5 3:15
 5:11,11 21:15 22:12

24:14 25:1,8 204:23
 205:2,4,7,9,20 207:13
 233:22 235:13,15
 255:16 257:8
McCue's 25:9
McDuffie 240:2
mean 7:6 15:10 16:14
 22:4 58:13 59:6 77:25
 79:5,14,16 80:23
 85:23 87:6,7,14
 148:17 150:22 155:4
 159:1 162:19 166:4
 170:9 185:22 189:17
 189:24 190:5 192:9
 192:15 195:21 197:19
 198:10 199:4 203:14
 219:3 225:1,3,16,17
 236:12 241:18 254:2
 259:25 265:7,9
means 109:24 115:11
 182:12 195:5 224:19
 224:21 269:3
meant 75:20
measuranc 30:25
measure 230:18
measurement 222:24
 251:18 253:17 254:17
measurements 223:1
 225:4 231:7 259:22
 265:14,15,20
measures 112:23
Meats 100:4
mechanism 224:16
mediation 7:25 8:20,24
 31:12 41:15 125:23
 126:1,8 190:2 252:20
medical 224:19,22
 225:1,16
medications 225:13
 226:5,8
medium 67:3,8,21
 232:13
medium- 66:25
meet 192:24 253:7
meeting 1:3 28:8 41:14
 80:24 87:9 111:12,13
 111:24 125:21 126:3
 186:12 249:21 250:8
 271:2 272:4,16
 273:18
meetings 28:7,12 76:24
 271:1,6,9 272:5
 273:19
megaphone 162:7,8
Melvin 1:21 2:4 3:17
 4:13 40:5,10 95:10,19
 124:23 126:13,13
 179:8 188:20 191:18

193:11,25 238:1,12
 238:20 239:5 240:7,7
 243:6 250:11 252:3
Melvin's 177:7
member 1:16,16,17,17
 1:18 28:14,19,21,24
 29:1,3 33:10,15,17,19
 52:18 53:14,21 54:22
 55:1,13,20 56:2,5
 90:15,17,20,23 91:1,3
 91:8,11,16,20,23,24
 92:18,22 93:7,12,19
 130:13,15,18,22
 131:3,6,8,12,20,24
 132:3,6,10,16,21,25
 133:2,6,9,15,21 134:4
 134:11,15,17,20,23
 135:3,10,14,20,23
 136:5,10,15,19,23,25
 137:4,7,10,12 138:7
 138:13,18,22 139:1,4
 139:10,15,23 140:2,6
 140:11,18,23 141:8
 141:17,23 142:11,14
 142:19 143:1,5,8,10
 143:17,21,24 144:3
 144:12,17,20 145:1,4
 145:7,11,19,22,25
 146:5,11,19,22 147:3
 147:16,20,23 148:6,9
 148:11,16,19,24
 149:3,6,10,14,17
 150:8,16,21,24 151:2
 152:7,12 153:25
 154:8,14,17 155:15
 175:5 196:11,13,23
 197:14,23 198:5,13
 198:22 199:16,22
 200:2,8,15,18,24
 201:10 239:25 242:21
 260:16 271:13,15,17
 271:20 273:2,8,10,12
members 4:4 12:19
 26:3 27:13,16,18
 52:14 56:9,10 83:17
 93:25 135:18 155:22
 156:1 157:9 164:15
 165:24 166:11 189:19
 196:10 201:14,15
 204:8 235:12 257:16
 261:7 274:6
memory 43:12 255:3
 256:25 257:3
menace 45:21
mention 43:18 188:15
mentioned 9:21 52:19
 65:1 89:19 96:22
 111:15,16 130:25

131:21 143:2 153:11
 169:18 191:25 193:12
 246:24
menu 98:23 142:5
merit 13:9
met 1:13 153:6,7
 234:10
metal 67:13,15
meter 230:20
methodology 41:9
Metropolitan 37:13
 72:23
mics 210:7
mid 102:18
middle 48:8 193:2
 210:24
midnight 70:12 97:7,12
Mike 221:17
mile 92:11
mimosas 244:11
mind 91:24 199:8
mindful 94:15
mindset 197:17
mine 95:3 197:6
minimum 159:13
 195:23
minute 24:1 141:12
 180:17,18 207:25
 259:4,11 272:9
minutes 25:24 27:22
 34:4,5 190:14 214:19
 221:6 260:20 261:1
misalignment 215:8
mischaracterizing
 126:17
misconduct 272:20
misstate 43:8
mitigate 18:11 35:5,13
 46:16 47:1 79:10
 113:5 129:20 149:7
mitigated 35:21 36:5
 249:15
mitigates 151:3
mitigation 18:4,6
 212:11 268:6
mix 107:22
mixed 47:21,22,23,24
 48:3,3 49:10,10,11,15
 49:17,21,24 60:17,24
 117:8 222:15 231:14
 239:16
mixed-use 60:13,24
 61:9 97:15 199:21
Mm-hmm 179:5 228:23
 230:9
moderate 49:15
modifications 71:21
 112:4

moment 21:14 108:10
114:4 162:14 181:5
258:10
Monday 6:13 40:7
97:10
money 15:2 173:23
monitor 50:14 146:12
monitored 57:14,20
62:10 64:4 65:14
monitoring 14:23 31:1
43:4 50:1,3,10,13,16
month 173:4 195:10,12
227:21
months 10:2 44:22
112:15 125:12 168:16
169:13,19 177:14
178:25 179:6,12,15
186:11 195:1,10
196:3 201:2 210:19
250:14
morning 5:3 172:22
211:8,12 217:15
241:3 257:9
morphs 70:8
mortar 67:10,12
motion 6:8,12,16,18,20
6:21,23 8:5,5,12 9:7
10:8,12,16 12:10 13:9
15:16 26:22,24 27:2,5
27:7,9,9,16 28:16
29:6,20,22,24 31:16
31:19,22 32:4,5,11,12
33:4,5,12 170:2
271:10,12,22 272:1
273:4,5,16
motions 6:15
motivated 225:12
move 12:11 17:6 25:17
26:18 28:8 43:20
68:22 77:12 79:19
99:10 100:14 101:18
103:2 104:2,22
105:23 106:4,13
118:16 126:22 133:9
155:23 170:13 172:12
191:5 215:24 216:16
219:11 220:2,7
225:19,23 228:6,8
233:21 258:11 259:7
259:8 271:1 272:15
moved 44:22 70:23
77:10 83:11 98:14,17
100:19 118:22 120:1
125:14 126:7 127:23
160:13 165:12 169:5
179:10,14 197:2
206:2,3 220:7 223:4
226:7 227:3,18,21

228:13 229:7 230:13
237:5,8,24 245:11
246:22 250:3 261:21
261:22
moving 45:13,17 68:22
75:23,24 83:7 100:24
102:3 104:10 115:21
196:15 228:2,7,18,18
237:17,25 238:7
261:24 262:3
MPD 62:4 72:2 89:12
121:23 123:11 152:15
161:18 248:19 262:14
multi-unit 60:1
multiple 45:25 48:1
240:16 242:8 243:17
mural 140:9
music 36:2 44:11,18
45:1,10,24 46:3,8,18
47:1,8,14 51:9,20
58:7,13,14 61:5 70:4
111:2,5,21 118:12
120:24 129:17 149:25
150:2,4,5 151:25
154:10,10 172:24
176:17,23 178:5,7
193:12,24 194:4,6
199:14 208:25 209:14
209:19 210:25 211:21
212:7 213:1,3,8,9,10
213:15 214:1,3,5,12
214:14 215:6,9,16,17
215:21 217:15,17,20
217:21 218:6,6,15,15
218:21 220:24 226:6
234:23 238:8,18
239:8,11 241:23,25
243:19,20 244:4
247:17 248:2 257:10
269:9
musical 118:5
mute 24:13 157:2
mutually 190:8

N

N 95:20
Nadira 89:24 230:24
naive 183:25
name 4:4,12,13,23 5:16
5:18,21 23:13 36:25
37:1,3 74:7,10,12
95:17 125:25 157:20
158:10,13,17 167:22
167:25 168:1 205:19
205:20,21 214:18
237:4
name's 5:11
named 23:10

names 4:21
narrative 182:7
narrows 30:19
naturally 193:8
nature 14:22 179:23
263:17
necessarily 20:20
40:25 90:6 128:4
233:9
necessary 120:12
184:3 265:23 268:18
269:20
need 6:6 13:17,23
16:15 17:5 24:7 25:16
30:17 40:24 52:14
54:18 55:3,8 86:22
94:22,23 95:1 123:13
127:20 136:7 150:17
155:23 157:14 167:6
181:7 210:8 225:19
225:23 227:14 228:24
229:2 241:25 253:1
258:16 259:12 260:2
263:15 272:9
needed 23:23 93:3
203:16 246:6 259:21
needles 151:21
needs 31:18 49:17
151:12 225:21
negative 12:12 155:13
negatively 14:25
negotiating 87:4
neighbor 23:10 36:1
45:14 76:3,7 78:15
87:6 90:7,9 160:7
234:15,16
neighborhood 71:12
73:10,11 75:10 80:9
84:11 86:8,14 88:4,10
91:9 93:4 195:18,22
197:8,13,22 201:5,7
237:7,12,14,19 242:2
244:10,14,16 263:5,8
263:17,19
neighborhoods 198:1
neighboring 46:3
neighbors 71:8 87:5,8
92:25 102:7,24 245:6
267:23
neither 153:1
nervous 174:11
neutral 215:20
never 35:2 45:13
109:21,22 121:9
123:11 135:4 155:2
177:7,12 227:25
237:22 238:24 240:10
241:7 242:25 243:2,4

247:22 253:19 256:12
258:6
new 42:6 62:6 75:10
96:10 125:11,17
152:22 172:10
next-door 160:7
nice 178:6 192:24
257:22
night 8:9 46:23 159:20
161:3,4 199:15 201:8
211:10 239:13 240:24
256:19 257:10 274:8
night's 193:3
nine 97:16 132:24,25
169:13,19 187:10
195:10
nine-unit 201:21
noise 6:10 8:16,22 9:5
9:13,16,19,19,25
13:18 14:16 15:15,18
15:21 18:2,4,5,11
26:23 30:1,6,8,24,25
31:4,14,17 32:1,3,8
32:21,23,24,25 33:1,6
35:6,14,21 40:18,20
40:21 41:2,23 42:7,14
43:10 44:2 45:2,14
46:15 50:20 51:15,16
51:25 52:9,21 53:7,8
53:16,18,23,24 54:5,5
54:9,13 55:2 59:18
60:12 61:4 62:3 63:4
63:15 64:3,8 65:7,15
66:3 72:8,14,17,20
73:3 76:3 78:4 84:4,5
85:11 86:1 110:23
113:5,7 118:1 119:5
120:4 122:6 127:24
134:9 154:21 160:24
161:16,20,22,24
162:4,6,11,14 163:4
165:20 169:8,15
170:1,5 171:4,6,17,21
171:23 175:21,23
177:5 186:18 192:17
193:6,16 202:2,23
203:10,25 206:8,22
208:14 211:7,10,12
212:10,12 213:20
214:20 216:21,22,24
217:10,12,14,19
219:13 221:14,20
222:10,14,17,25
223:21,22 224:2,3,5
225:2,5,10,12 226:12
227:17 228:14 229:13
230:19 231:14,16,18
231:19 232:16,19

235:1 241:14,17
 247:24 248:21 249:13
 249:18 251:17 256:18
 257:9,13,23 259:20
 265:3,8,14,15,17,19
 266:2,9
noise-related 51:6 52:7
noises 176:16 229:5,8
 250:6
noisy 173:10
non-party 20:13
non-renewal 264:18
non-working 224:9
normal 14:14 66:21
 70:9
normally 53:6 54:5,15
 54:20 63:7 66:20
 127:4 269:21
north 75:3,9,24 96:24
 131:4,22 198:7
 227:23
Northwest 4:24 5:6,13
 6:4 35:1,18 46:15
 84:13 86:6 205:24
 206:1 223:5 237:5
note 68:24
noted 169:11
notes 181:11 194:22
 208:12 209:13 212:4
 212:6 216:2,3 219:15
 260:11
noteworthy 8:3,4
notice 71:3 195:16
 252:6 271:23 272:2
 273:17,19
noticed 192:16
notification 11:10
 233:12
notified 61:24 215:7,10
 256:12
notifying 260:2
notwithstanding 7:20
November 109:7,10
 125:11 129:9 152:24
nuisance 35:17 45:21
 46:17 47:1,5 186:22
 242:19 267:16
number 3:5,6 28:10
 64:17 99:15 100:15
 100:24 101:2,19
 102:5 104:11,23
 105:7 107:5 110:9
 113:9 114:19 118:17
 129:13 132:17 137:25
 138:1,5 142:15
 143:25 145:5 151:10
 151:14 189:4 214:18
 237:5 246:24 249:24

250:9 261:23
numbers 55:18 240:18
nurse 224:15
NW 1:6 131:23 168:7
 196:16 197:15

O

O 4:6
o'clock 24:22,24 199:15
 217:21
object 103:6 104:5
 106:15 126:11,15
 169:22 170:11 171:12
 174:14 181:13 207:4
 218:23 224:24 259:9
objecting 126:14
 169:25
objection 68:24 83:9,10
 100:17,18 101:20,22
 101:23 103:5,7 104:6
 104:25 105:1 106:1,2
 106:19 118:20,21
 169:24 170:7,19,21
 172:1 174:17,18
 175:8 182:2 187:1,8
 187:23 191:3 207:12
 216:5,8,9 218:24
 220:4 225:18,22
 233:7,19
objections 106:22
 220:6
objective 225:4
obligated 69:22
observation 78:14
observations 194:25
observe 66:12 248:15
observed 50:9 250:2
 251:11
observing 250:24
obtain 115:24
obviously 72:24 115:18
 177:19 183:10 255:6
occasional 264:5
occasionally 211:5
 222:23
occasions 35:11
 231:25 240:17 243:17
occupant 5:12
occupants 118:9
occupied 169:5
occupy 97:17
occur 24:20 122:15
 125:21 161:2
occurred 87:10 125:23
 191:20
occurring 256:13
October 51:7 97:2
 195:15

offer 51:12 58:4,5 63:8
 64:15,21 147:15,19
 172:18,25 173:11
 243:14
offered 42:5 58:7 63:23
 115:10 154:25 182:11
 243:17
offering 70:6 115:10
 116:2,4 118:16
 180:10 182:5,12
 183:1
offers 58:2 70:4
offhand 67:23
office 24:4 121:16
 223:25 224:1 272:15
officer 168:17 195:5
 213:19 214:6,17,19
 215:18,20 217:23
 240:20
officers 215:18
Official 28:6,11 271:5,8
officially 270:15 272:9
oftentimes 211:9,20
 213:8
oh 60:15 75:5 95:3
 109:7 123:5 130:15
 136:19 142:13 147:16
 148:24 162:19 163:8
 194:20 255:5
okay 7:19 25:5,6 26:19
 27:10 29:12 34:1 40:3
 43:16 50:18 55:22
 56:21 57:3,19 58:3,11
 58:20 59:22,24 61:8
 61:19 62:2,23 65:19
 66:7 67:24 73:23 74:9
 74:19 75:14 76:1,6,13
 78:13 83:4 86:10
 90:23 92:18 95:23
 96:1,6,19 97:4,13,21
 98:1,7,13,18 99:3,6
 100:2,9,14 101:13
 102:15 103:2,23
 104:2,18,22 105:5,6
 105:16,23 107:1,2,16
 107:25 108:3,10,18
 108:21 109:4,9,12,17
 110:4,20 111:7,10,18
 112:1,3,22 113:8,16
 113:19,22,25 114:3,9
 114:12,18 115:4,14
 115:21 116:1,16,20
 116:25 117:5,25
 118:15 119:1,8,19,22
 122:9,12,19 123:2,8
 123:15,18,20 124:15
 124:18 125:10,15
 126:5 128:6 129:5

131:12,24 132:3,16
 133:9,15 134:23
 136:16,16,20,24,24
 136:24 137:2,7,11
 138:6,22 139:15
 140:23 141:10 143:10
 143:22,25 144:13,13
 145:1,25 147:3,23
 148:9 149:3 152:7
 157:16 159:4,7,11,14
 159:17,18,21,25
 160:3,6,8,11,14,21
 161:1,5,8,18 162:1,12
 162:13,18,20,25
 163:6,12,17,22 164:5
 164:8,11,14,17,22
 166:17 170:23,24
 172:5 175:13 179:11
 179:17 180:6 181:2
 182:4,21 183:2,5,10
 183:16,20 184:6,9,12
 184:25 185:6 186:15
 186:21 187:25 188:8
 189:20 190:21 192:11
 193:18 196:2,6,13
 197:23 199:11,16,22
 207:19 209:11 223:3
 227:3,9 228:7,13,20
 229:10,18 230:14,18
 231:1,10,16,21 232:5
 232:6,23 234:4,14,18
 235:9,15 236:10,21
 245:11,20,23 246:12
 246:24 248:18 249:6
 249:16 250:19 251:15
 253:17 254:1,19
 255:9 256:8,16
 259:15,25
once 17:5,19 18:5 26:1
 26:5,8,12 51:18 79:8
 136:15 144:5 172:21
 183:6 208:1
ones 12:10 71:4 84:14
 136:20,21,23 152:4
 198:21 209:16 253:24
 254:1
ongoing 14:23 53:18
 69:22 112:14 151:18
 208:14 256:23 272:18
online 21:2,13 29:8
 156:24 232:11
onset 52:1
open 7:15 28:7,12
 70:12 85:15,19 86:6
 86:20 90:4 172:23
 179:7,12 181:11
 183:23 224:1 243:18
 271:1,5,9 272:4,15

273:18
opened 41:19 78:2
 87:12,14,19 96:21
 130:25 131:14 133:25
 179:8,10 211:3
opening 25:20,25 26:1
 34:4,5,8,11 44:8
 69:16,19 87:15 96:10
 134:2
operate 97:7,10 105:19
 142:3 253:10 267:10
 267:20 268:14,16
operated 108:25 131:16
 268:11
operates 108:16 152:2
 229:19 264:22 268:20
operating 14:25 47:5
 70:24 71:5 78:10
 113:7 147:10 179:16
 192:10 227:7 234:6
 234:19 246:21 261:16
 261:23
operation 46:10 57:25
 69:23 97:1,9 110:6
 229:23 263:1
operations 108:19
 250:25
opinion 57:22 92:4,9
 192:16
opportunity 6:14 7:17
 26:3,6,10,15,17,17
 38:22 53:1 64:16,22
 69:6,8,11 127:6
 182:21 185:1 236:5
 236:12 257:11 258:1
 258:8
opposed 89:11
opposing 126:25 236:6
opposite 194:12
option 18:13 150:14
options 17:21 89:16
oral 6:18 10:11
order 11:6 46:22 54:16
 55:7 58:25 91:25 99:1
 106:10 135:8 210:7
 212:1 222:22 228:25
 254:22,23
orderly 25:12
orders 8:25 14:20 51:2
 51:8,19 57:17,17 68:3
 203:21 232:7
Orellana 1:22 3:7,11
 25:8 73:18,21 205:1,3
 206:15
orientation 100:25
 114:20 137:16
original 10:1 115:7
 182:9 253:6

originally 13:8 96:21
 108:24
Oscar 158:18
outdoor 14:22 30:25
 85:8,11 139:8 149:2
 217:5 242:6 243:23
outdoors 210:7
outreach 226:10
outset 115:15
outside 21:25 45:3,7
 46:9 49:18 79:13,15
 85:11,15,18 101:4
 102:6,20,22 125:2
 144:21 148:13 151:7
 154:21 155:6 163:3,4
 163:8 193:4 209:2
 210:2,6 235:2 240:11
overall 46:24
overheard 211:21
overlap 87:17
overrule 171:25 175:8
 182:1 187:23 225:18
overruling 225:22
 233:18,19
overseas 168:22 169:2
 172:11 196:17 200:5
 200:6
overwhelming 70:15
owned 168:13 172:16
 177:10 189:1 254:17
owner 4:8,14,24 5:5
 34:25 40:10 44:5
 84:23 94:20 95:25
 153:22 159:25 175:6
 178:3 188:11 204:18
 220:20 221:18 233:25
 249:5 250:17 267:22
owners 6:2 12:16 34:22
 35:18 47:6,8 55:14
 177:5 188:22 201:25
 202:20 249:17 250:22
 268:1,2
owners' 41:25
ownership 35:4 45:20
 171:6,22 227:10,12

P

P 158:17
P-R-O-C-E-E-D-I-N-G-S
 3:1
P-R-O-U-T 5:21 37:3
p.m 3:2 29:15,16 42:2,9
 44:14 50:5,7 64:19
 111:2,6,20,22 118:7
 118:14 152:10,19
 154:11,11 157:5,6
 202:9,10,18 214:13
 214:13,21,22 215:22

217:10,20,21 222:11
 223:15 241:1 260:24
 274:10
package 81:22 116:2,3
 147:18,21,24 185:3
packet 115:5 117:11
 138:3
page 99:13 100:24
 102:3 105:6 115:4
 116:1,9 117:10 138:2
 181:10 184:17,19
 210:24
paid 15:2 51:14 169:20
Pakistan 168:23
pandemic 248:12,16
 254:2
pans 217:14
paragraph 115:6,22
 116:5,10 117:14
 182:7
parent 4:15 96:4
parents 257:19
park 78:23 101:4
 138:25 139:1,6
parking 12:23 78:19
part 6:24 15:16 31:22
 31:23 32:5,6 53:17
 56:14 57:21 80:11
 85:18 98:5 100:4
 115:5 116:4 140:19
 145:19,23 147:18,20
 147:24 168:19 169:9
 184:18 185:3 190:9
 193:25 203:19 229:1
 233:9 239:19 251:20
 256:7,9 257:24
 259:15 267:25
participate 21:20 31:12
 58:9 86:15 116:21,25
 239:20,23 252:19
 255:25 256:12 262:21
participated 72:8 80:14
 120:9 274:1,3
participating 11:11
 252:9
participation 272:7
 274:5
particular 52:23 54:23
 69:23 70:11 71:10
 96:15 98:19 105:17
 188:11 192:17 263:17
 264:15,24 265:5
 266:11
particularly 78:19
 151:15 188:19 193:10
parties 4:1 7:23 11:1,7
 15:10 17:14 19:1,10
 19:13 21:2 30:10,13

30:19,20 32:10 34:1,5
 37:21 261:3 262:20
 269:14,23 270:13
 273:25 274:2
partner 46:21 79:25
party 22:19 192:20
 256:5 262:3 263:11
partying 193:4
passed 130:2 148:20
 246:19 271:22 272:2
 273:17
passes 29:6 33:22
paste 9:22 10:1
patience 261:8
patio 86:1,2
patron 45:2
patrons 200:19,21
 213:5
Paul 158:18
pause 16:3 246:16
pay 192:4
peace 34:21 69:24
 91:25 176:7 239:3
 261:17
peaceably 267:10
pending 6:15 26:22
 37:12 251:13,14
Pennachio 2:4 23:13
 24:3 157:19,22,25
 158:1,5,12,15,16,17
 158:21 164:10,11,14
 164:17,22 165:1,5,8
 166:9,13,13,18,19
people 23:15 25:13
 36:7 45:6 49:21 57:3
 57:8,10,12,13,15 71:3
 71:6,13,21 72:5 77:12
 79:6,7 88:9,16,18
 104:21 107:11 108:6
 108:9 138:14 142:17
 159:21 177:1 183:19
 187:11,15 188:5
 189:10 192:24 193:3
 193:7,12,17 194:1,4,4
 194:5 201:9 203:25
 204:4,5 209:1 211:22
 232:1 235:1,2,2
 241:24 253:9 263:7
perceived 79:21
percent 107:23,23
 108:8 133:17,18
 139:22,25 142:13
 264:6
percentage 107:17,17
 133:16
percentages 107:21
 264:8,21
Perfect 33:2 38:9

perform 37:11 254:17
performed 50:15 51:13
 59:20
perimeter 162:10 163:1
 163:1,6 256:2
period 39:17 65:23,25
 89:7,21 98:13 160:11
 173:24 219:13 257:19
 262:12
periods 88:1
permanent 141:6
permanently 224:12
permeates 85:11
permission 253:1
 265:22
permit 47:24 49:12,15
 116:11 139:14 141:5
permitted 100:7 141:2
permitting 139:17
persisted 44:22
persistent 44:9 45:21
 47:1 267:16,18,18
 268:8
person 21:11 22:25
 70:23 73:19 78:5,6
 79:19 88:21 89:2
 154:2,19 173:9 234:1
 234:10 236:13 262:11
person's 54:17 55:8,10
 55:12
personable 238:3
personal 78:13 81:10
 192:15 194:25 225:3
personally 24:4 162:22
 177:12 200:10,21
persons 58:8
perspective 41:2
pertained 39:17 211:1
 213:5
pewter-colored 82:23
phone 55:18 64:16,17
 64:18 67:25 68:1,5
 98:9,10 211:14,17,18
 212:1,2 213:12 214:2
 214:9,21 216:23
 217:25 218:8,16,16
 218:17,17,18,18
 221:1 222:9 230:15
 230:21 232:2,8 239:9
 239:10 253:5
phones 223:23
photo 81:18 84:11 99:9
 137:14 141:9 144:7
photograph 81:25 82:2
 82:11 140:4
photos 99:7 106:3
 136:5,11,14,18 137:3
 138:8 149:4

physical 71:21 84:16
 84:17 112:4
physically 84:24
pick 108:6
picking 57:17 108:9
pickup 108:6
picnic 104:20
picture 85:24 144:23
 147:4
pictures 106:20,22
 134:24,25 135:25
 141:18
piece 80:13 82:25 112:6
 112:7,19
pieces 10:16
PIF 8:2,7,8 9:12,14
 21:16 30:7,22 31:3
 32:2,9
PIFs 9:11,11
pig 140:12
pills 46:22 244:19
pins 151:20
pipes 242:18
place 13:25 16:6 18:23
 70:3 82:17 99:1
 101:14 108:23 110:25
 123:6,14,16 124:10
 130:23 162:15 199:14
 228:3 248:10 264:1
 264:19 269:10
placed 15:25 68:3
 102:6,9,24,25 108:24
 110:1 111:19 125:4
 152:6 261:14 273:20
places 70:7 112:9 229:9
 246:25 247:23 248:12
 263:22
plan 35:10 96:11
planned 272:18
planning 172:10
plastic 100:12 138:20
platforms 22:6
plausible 199:10
play 47:14 238:9
played 44:11 45:1
 248:2
player 118:6
playing 118:4 154:9
 176:2
plays 45:23 46:8
pleasant 242:6
please 3:8,10 4:11,12
 5:19 25:1,8,9 36:18
 36:25 38:3 73:19,25
 74:8,11 95:6 97:8
 119:16,19 120:12
 124:22 126:21 137:14
 147:13 153:24 157:15

158:3,11,13 167:15
 167:22 168:6 170:15
 172:4 175:7 188:3
 191:12 205:1,2,18
 206:16 207:20 215:3
 215:15 217:2 224:20
 226:3
pleasure 146:16
plexiglass 67:13,15
plugs 46:16
plumbing 191:21
plus 163:10
point 8:8 14:11 30:9,20
 30:20 35:22 64:23
 71:25 72:7 77:8 79:12
 89:4 116:8 120:21
 121:7,20 122:4 127:8
 128:12,14 140:6
 144:22 169:22 177:24
 207:6 212:9 213:2
 221:4 224:25,25
 233:11 234:6 240:9
 240:14 241:22 244:25
 264:14
pointed 140:20
pointing 83:5
points 152:25
poles 100:13
police 37:14 72:24
 80:24 120:5,13 121:6
 160:23 161:6,11
 177:13 240:16,20
policy 60:14
pollution 44:9
popular 142:6,8
portion 33:4,7 57:6,9
 57:11 100:2 102:10
portions 42:12
POS 99:1
pose 45:21
position 16:11,16,19
 22:3 30:2 39:20 42:16
 185:7 186:1
positive 162:17
possibility 199:9
possible 25:18 106:3
possibly 151:13
posted 273:19
potential 200:9
potentially 113:6
 210:13
pounded 240:14
practical 273:23
pre-existed 110:16
preceding 251:21
predicted 229:8
predominantly 211:3,8
 230:22

prefer 16:12 120:13
preferred 205:21
 236:13
pregnant 172:10
preliminary 6:6 20:9,10
 23:21
premises 67:2 112:4
prepared 207:7
prescribe 116:11
prescribed 46:21,22
 116:17 224:14
prescriptions 224:23
presence 22:1
present 1:14,19 4:8
 15:14 17:13 18:3
 21:16 25:15,23 26:13
 162:23 163:14,20,23
 166:2 200:11 255:13
 255:16
presentation 24:8 34:8
 135:24
presented 13:21 15:23
 15:25 18:9 19:7 170:8
 170:10 270:4
presently 18:18 42:8
 108:14 110:4
presidency 189:22,25
president 77:20 88:7
 89:11 90:8,21 91:4,9
 92:1,2 168:9,11 175:1
 185:7 186:1,9 188:14
 203:1,1 249:22
 263:10
presiding 1:13
pretending 239:7
pretty 134:18 153:16
 156:11,13 213:2
preventing 170:2
previous 51:16 96:22
 149:23 150:11 168:11
 177:9 189:19 203:16
 210:14 221:18 230:24
 250:17
previously 63:2 188:22
 217:12 226:18 228:16
 230:12 237:3 242:23
 256:1 258:25
price 12:18 171:9
 172:19 173:1
priced 12:18
pricing 190:22
primarily 159:9 161:3
 163:16 169:7 176:17
 211:1 222:9 223:7,17
primary 209:22 234:1
principles 114:17
printed 206:21
printer 215:8

prior 10:23 16:4,10 52:6
75:1,22,23 120:5
126:17 133:25 182:23
185:4 236:5 245:14
246:3 248:9,11,15
254:5,6,12,12,16
255:18 257:25 261:24
private 123:3 246:7
266:2
pro 11:25 241:12
probably 75:4 78:5 85:9
85:25 87:6 111:23
142:17 149:12,15
150:17 160:12 177:11
179:14 195:7 244:20
251:8 255:23
problem 43:16 44:20
48:7 49:1,2 70:18
71:11,13 91:22 178:8
187:16 189:2,3 192:3
198:23 199:2 267:6
267:19
problems 53:16,18
165:16 169:8 190:16
190:17 264:17,19
proceed 6:7 9:24 16:10
32:22 73:5
proceeded 9:9,10
proceeding 272:3
proceedings 170:1
174:23 239:20
process 7:21,22 14:7
24:16 25:10,19 76:23
88:17 106:14 141:6
189:25 190:7 239:2
239:23 248:25 249:12
269:6
processes 212:12
producing 241:17
professional 115:24
183:16 184:6
professionals 35:9
225:17 246:2,6
profit 92:16
program 145:20
prohibit 189:21
prohibited 185:21
prolonged 226:5
promised 238:13
promoted 204:24
promoting 193:25
promotion 217:8
226:16
promptly 41:11
proper 35:8,10
properly 218:24
properties 36:10 46:3
46:13 47:9

property 4:24 5:4 6:2
35:17 41:25 44:5
45:21 46:9,19 47:5,8
59:24 61:12 65:4
71:22 72:19 84:22,23
109:20 163:7 169:18
170:3 175:6,12
197:18 198:14 199:17
204:17 212:22 239:25
249:5 256:4 262:6,24
266:23
proposed 43:3 269:14
proposing 41:7,8
prospective 171:11
prosperity 45:22
protect 36:9
protected 41:15
Protection 62:5 72:22
162:3
protest 1:6 3:4 5:24 6:1
6:9,24 7:4,5 8:17 9:22
10:1 11:13 25:17
29:25 30:1,3,4,10,14
31:6,7,10,24 32:8
33:6,7 37:18 38:16
39:17,20 45:15 53:11
53:12,17 54:23 55:2
55:22,23 56:15 57:21
59:21,21 62:25 66:21
70:1 71:10 244:11
249:6,11 252:22
263:12,22 274:1
protestant 1:20,21,22
4:23 5:4 16:12 30:23
31:3,15,25 43:24 44:1
53:2 54:18 63:22,25
68:17 69:8 167:19
205:11 219:4,21
236:25
Protestant's 206:25
207:2 216:10,13
219:24 220:11
protestants 3:9 6:13,19
8:14 9:3,12 17:9
24:20,23 26:9,14 31:8
38:25 39:11 46:25
55:19 59:17 64:12,15
64:21 71:16,24 72:1
86:16 97:21 119:4
140:2,18 143:3 144:6
262:9,21,23 264:9
protestants' 9:24 59:25
60:5 72:9 146:13
protestor 4:19
protestors 4:18,19
protests 263:24
Prout 1:23 2:3 3:21
5:14,15,16,17,20,21

13:5 33:25 34:2 36:16
36:17,20 37:1,2,3,6
37:10,17,22,25 38:5,9
38:12,15,21 39:5,8,15
39:25 40:4,8,22 41:4
42:25 43:16 44:3
47:20 48:6,11,14,18
48:22 49:5,9 50:2,15
50:22 52:3,6,25 53:20
54:3,25 55:4,16 56:1
56:3,12 62:12,14,19
68:12 69:4,14 109:18
123:24 194:3
provide 15:20 39:18
40:9 243:22
provided 38:23 40:2,14
41:14 49:11,21 51:20
55:17,18 62:4 65:8
66:6 72:18 252:14
provides 47:24 49:16
73:11
providing 30:11 51:9
51:22 192:6
provision 72:16 116:8
118:1
provisions 72:14
117:16 186:18 266:13
266:16
proximity 81:13 189:14
262:3 266:11
prudent 251:5
public 20:23 21:3 22:13
22:16 54:4 58:25
115:10 116:2,4
118:16 138:25 139:1
139:6 168:20 180:10
182:5,12 183:1
272:10
published 272:24
273:22
Puente 251:25 252:6,17
pull 65:3,24 66:2,18
135:25 136:4 212:23
pulled 66:21 182:24
pumping 199:14
purchase 114:9 115:15
179:18 182:23 183:19
184:14 185:4,10
245:15 246:3
purchased 42:6 114:11
114:12 179:3,20
180:7 185:11 197:17
199:18 241:17 245:12
245:21 248:7 251:6
purchaser 115:22
purchasing 246:7
purpose 28:9 43:3
232:20 271:2 272:17

purposes 41:16 99:15
265:8
pursuant 28:11 271:4
272:4 273:18
pursue 45:15 268:23
pursued 174:4
purview 72:14,21,23,25
266:21
put 8:12 13:23 16:5
24:19 42:23 73:6
102:15 103:23,24
113:11 125:10 128:7
136:21,23 137:5
141:19 142:9 151:10
153:21 208:18 238:25
242:16 243:6,8,21
244:10,22,25 255:23
268:18
puts 30:19,20 120:15
putting 24:23 79:4
151:13 190:7 226:15

Q

Q-U-I-N-N 74:13
quaint 197:12
quality 46:18
question 9:9 26:6,10
41:8 43:17 49:20 60:8
70:2 72:15 77:14 86:2
86:25 91:25 92:19
94:8 119:24 126:18
132:9 151:4 157:16
161:25 164:21 170:8
170:10,13 171:1,14
172:1 174:19 180:18
180:19,20 181:23
185:9,18 187:24
188:1 191:4,12
192:11 233:17,20,21
246:9 249:10 251:13
251:14,15 258:3,13
259:16,18,25 260:1,6
questioned 26:8
questioning 264:14
questions 10:3 11:21
12:2,8 24:21 25:13
26:19 52:12,13,14
56:8,9,13 59:11 60:9
62:13,17 68:9,16,17
68:20,21,24 69:7,9
83:15,17 86:22 90:12
90:14 93:24 109:19
119:3 122:10 124:17
124:18,21 126:22
127:3,7 130:10,13
135:18 147:25 148:2
148:3 155:18,19,21
156:1,3,4,19 157:14

164:9,13,16,24 165:5
166:11 170:15,17
178:20 180:14 196:9
200:3 201:11 204:7,9
204:10 226:23 235:11
236:14,16,18 252:10
259:6 260:10,13,16
261:8 263:16
quickly 8:14 25:18
114:21
quiet 42:3 46:7 69:24
91:25 176:7 179:25
180:2 197:16 202:9
202:11 228:24 229:3
239:3,14,15 244:14
251:10 261:17
Quinn 1:23 2:3 73:21
74:2,12,13,16 81:24
83:16,23 86:24 87:2
90:18,19,21,22,25
91:2,6,10,13,18,22
92:6,21 93:6,11,18
94:2,4 99:9 189:6
234:5 263:9
quite 79:22,23 85:24
93:20 189:4 193:13
195:11 198:1,2
239:16 241:11
quorum 157:8

R

R-I-C-H-A-R-D 4:5
radio 118:5
radius 71:2 261:19
Rafi 1:18 271:17 273:12
raise 36:17 73:24 89:10
95:6 151:16 158:2
167:14 170:21 205:5
raised 7:16 8:22 10:12
31:6,13,14 79:2 81:6
88:9 203:15 264:14
raises 170:19
raising 88:16 238:23
262:25
rambunctious 200:20
ran 240:14
range 47:25 49:12
ranges 80:6
rarely 154:6
ratchets 192:18
rate 197:2
rattled 129:7
rattling 209:21
raucous 70:4 244:2,9
248:16
reach 53:22 55:24 93:7
93:8 121:14 165:20
242:13 268:10

reached 11:2 177:4
252:1 269:1
reaching 220:18
read 7:1 40:1,25 55:1,4
55:5 241:14 270:22
reading 63:12 115:6
166:2 219:1,7
readings 239:19
ready 120:19 174:6
260:19,21
real 12:12 173:2,15
176:10 177:17 184:8
184:10 197:7 200:17
real- 216:23
really 6:23 20:22,24
21:25 55:10 77:18
78:1 91:23 139:18
143:17 151:6 152:11
154:6 155:16 174:1
189:15 190:7 192:18
193:1,6 197:13
223:25 228:3,4
243:25 249:25 250:6
264:20 267:2
reason 143:18 181:24
185:20 186:22 188:9
191:22 229:21 233:1
239:6 248:13 264:20
265:21
reasonable 21:11
175:25 243:20 268:21
reasonableness 268:17
reasonably 251:5
reasoning 221:19
reasons 271:7
recall 67:19 77:16
128:4,5 184:15 185:2
256:16 257:12 258:15
receive 53:1 114:13
129:23 180:6,11
183:3 185:5 233:12
243:5 256:22
received 8:8 10:8,9
11:9 40:8 44:4 59:15
71:18,20 76:14 83:13
100:21 101:25 103:9
104:8 105:3 106:7
107:15 110:19 113:14
115:15 118:24 125:7
130:7 174:12 175:3
182:22 183:7 185:4
216:12 220:10 252:6
257:15 258:2
receiving 55:24 185:2
256:16 257:12 258:9
259:20 266:7
recess 272:3
recipients 257:7,8

recitation 7:7 8:17 30:4
recognize 99:16 101:2
114:21 207:20
recognized 222:1
238:20 258:7
recollect 89:23 250:15
256:21 258:9
recollection 89:20
122:16 257:1
recollects 216:3
recommend 27:4
222:18 248:25
recommendation 27:6
31:20,21 111:4,9,10
recommendations
128:18 154:20
record 4:2,11,20 5:19
23:12 29:15 36:25
73:7 74:7,10 95:17
107:1 118:6 125:4
130:2,9 134:18 136:6
141:13 144:1 147:13
148:2,4 154:14 157:3
157:5,8 158:10,13
164:20 167:22 172:5
180:15,25 205:19
206:25 207:9 210:9
215:25 219:7 236:1
241:5 255:6 258:19
258:21 266:6 269:13
274:10
recorded 58:14 154:10
208:15
recorder 118:6
recordings 230:24
231:14
records 65:3,5,25 66:3
243:4 262:10
recounting 215:24
recover 117:18
RECROSS 2:2
Red 198:20,24 201:6
242:3 247:1
redirect 2:2 93:25 156:6
166:15 180:20 204:13
reduce 42:7
redundant 25:13
reelection 87:20
refer 208:24,25
reference 43:2,8,10
51:1,3,4,7,18 52:9
55:6 68:2 86:11
139:21 141:21 142:11
171:3 189:6
referenced 125:20
130:1 176:16 191:19
referencing 180:9
182:1 219:16

referred 11:24 238:8
referring 103:16 218:12
254:25
reflects 168:15
refresh 256:25 257:2
refused 47:7,10,11,13
214:17
regard 11:22 122:13
regarding 30:8 40:21
44:2 119:5 120:4
144:5 175:12 199:1
202:2 203:6
regardless 7:8 111:2
241:18
regards 12:5 125:22
177:5 243:1
register 99:2 107:9
272:24 273:22
regular 120:23 164:1
regularly 46:6 238:13
240:4
regulation 266:13
regulations 59:3
114:16 116:6,12
117:13 155:6,7
272:20
regulatory 37:11 56:15
relate 80:7 81:4
related 12:22 14:20
60:9 65:3 66:3 134:9
170:4 171:6 211:18
216:24 252:11 254:13
relates 171:4
relation 98:2
relationship 80:12
95:24 168:6 189:14
205:23 206:11
relative 134:22 135:7
release 166:17
relevance 64:6 181:14
181:17 187:2,9
relevant 9:6 63:18,19
70:21 71:2 89:7
157:14,15 167:7
175:5 187:18 225:1,2
225:13,20,23 261:18
261:18
relief 117:19
remain 215:20
remedial 14:8 16:5
remediate 224:3 226:12
remediated 190:24
remediation 30:24
191:21
remedied 47:3
remember 68:4 76:24
87:14 125:24 135:12
256:19 257:4 258:5

259:18 260:1
remembered 258:4,6
reminding 157:13
removal 14:11
remove 25:8 178:16
rendered 53:9
renew 1:9 13:16 16:21
 16:23 17:3,10,15,20
 18:2,5,22,22 19:22,23
 267:8 268:19
renewal 5:24 6:2 13:17
 17:15 20:1 31:19
 92:23 265:8
renewed 14:2 15:12
 17:6 18:14 19:7
 261:13,13
renewing 14:7 16:4,10
 17:24
rent 114:6 268:24
rented 169:3 172:7
renter 173:19
repair 127:21 266:22
repairs 112:20 124:6
 195:14
repeat 6:21 132:9
repeated 35:15 71:15
 243:5
repetitive 219:1
replaced 42:12
report 37:24,25 38:3,10
 38:13,16 42:19,24
 43:18,19 47:19 50:11
 52:19 53:12 56:14,15
 57:21 61:8 62:2 65:18
 97:5 136:18 161:8,13
 219:7 254:10,11
reported 59:21 219:17
reporter 95:18
reports 254:8 272:18
reprehensible 237:23
representative 9:4 40:9
representatives 222:19
represented 241:8
representing 11:25
 38:20 241:12
represents 86:14
request 9:23 10:24
 11:16 21:23 22:19,23
 22:24 24:15 40:5,13
 54:19 55:9 62:24 63:1
 63:6,10,16,20,25 64:7
 64:13 65:2 66:7
requested 24:11 30:24
 55:11 65:6 66:5 217:3
 217:22
requesting 21:22
 256:11
requests 35:15

require 266:23
required 30:13
requirements 41:18
requires 41:23 115:7
 182:8
rescind 183:6,11
research 172:14 196:19
 197:14
reserve 27:9,9 34:8
reside 49:23 53:5 88:5
residence 51:10 53:7
 54:17 72:18,18 246:7
resident 34:24,25 80:1
 88:14 89:9 237:6
 241:19
residential 48:1 49:13
 60:22 61:5,6 63:7,11
 72:19 97:20 102:10
 244:14
residents 34:19 41:20
 45:22 52:20 63:10
 76:25 80:20 93:8
 97:25 142:12,18,21
 163:22 219:16 268:3
residing 53:3 61:3
resolution 153:21
 155:5 190:9 249:1
resolve 11:6 18:15 35:3
 120:8 245:4,6 253:7
 268:10
resolved 8:23
resources 192:6
respect 24:3 122:10
 186:2 187:20 245:16
 246:16 257:13 266:13
 267:23
respectable 36:1
respectful 102:7,24
respective 45:19
respond 56:17 81:8
 120:25 121:5 170:19
 170:22 236:14
responded 13:5 41:11
response 6:14 10:11,14
 10:15 13:4 31:16,17
 41:3 58:25 109:18
 220:15 222:4,14
 223:9 262:13 267:18
responses 79:3 222:15
responsibilities 37:9
responsibility 159:18
 225:7 267:21
responsible 151:8
 163:18,19
responsive 79:23 81:6
 171:14
responsiveness 263:13
rest 15:12 166:22 193:3

204:19 214:24 215:2
 215:4,15 242:20
 257:23
restate 187:25 191:12
 210:22
restaurant 1:5 4:15
 57:24 70:6,11,24 71:5
 73:4 77:3 96:3 98:6
 99:4 103:18 105:10
 114:1 124:12 142:6
 163:19 175:20 178:5
 179:24 183:22 185:12
 185:20,24 188:17
 189:14 194:1 195:17
 195:19 199:9 203:11
 203:17,23 206:12
 211:23 213:6 217:17
 220:22,23 221:9,10
 221:14 229:11 238:5
 239:5 240:13 244:7,8
 245:19 248:14 263:21
 264:1 268:12
restaurant's 44:11 45:9
restaurants 71:1
 197:10 198:16,24
 237:11,13 242:4
 266:10
restriction 14:21 267:9
restrictions 13:23,24
 14:12 18:23 155:9
 186:14 254:2 268:19
 269:7,9
rests 166:23
result 72:10 141:7
 142:1 164:6 169:8
 171:10 176:6 193:7
 230:16
resulted 230:15
results 123:9
resumed 29:15 157:5
 217:21
Retailer 1:7
retain 16:8
return 274:6
returning 141:24
revenue 264:7
review 40:25 184:9
 257:11 258:8
reviewed 59:15 245:17
reviewing 30:22 50:19
Revive 75:8 131:1
Richard 1:20 3:19 4:5
ride 177:20
ridiculousness 242:17
right 5:14,23 20:7,9
 22:22 23:23 24:10
 25:9,10,19 27:24,25
 29:13,19,22 33:3,24

36:13,15,17 38:3,12
 38:17 39:2 40:2 43:21
 47:17 48:24 49:3,25
 50:19 52:4,10,12
 56:22 58:11,17 59:10
 60:5 68:12 69:9 73:24
 79:12 80:25 82:20
 83:2 84:19 85:21
 89:19 94:14,17,21
 95:7 98:24,25 99:2
 101:18 102:3 105:10
 105:18 106:23 109:3
 110:1 113:8 115:16
 115:19 126:20,23
 129:5 130:10 131:15
 136:8 138:4,6,23,24
 140:10,13,16 144:9
 145:22 146:13 147:1
 147:6 148:6 151:5
 155:21,22,24 156:2,8
 156:22,23 157:7,17
 158:3 164:2,25 165:2
 165:4 166:12,12,22
 166:25 167:4,5,9,13
 167:14 170:25 175:8
 178:8 181:12 187:22
 190:15 193:4,18
 194:11,17 199:25
 204:7,15,21 205:1,5
 205:13 206:19 207:11
 208:10 210:3,16,23
 216:16 219:10,19
 227:7,16 229:16,19
 230:8 231:8,17 232:2
 233:2 235:12,13,16
 235:20 236:18 238:16
 246:9,22 247:20,22
 248:8 249:7,14
 250:19 254:3 255:11
 260:23,25 261:5
 269:13,16 270:5,12
 270:14 272:12
rights 3:8 21:19 22:5,15
 25:9 76:10 205:2
 241:20 268:1
ring 67:25 68:8
ringing 68:5 211:14,17
 213:12 214:2,9,21
 218:1,8,16,17,17,18
 218:18,19 229:16,22
 230:1,3 232:8
ripe 8:6
road 96:11 113:7
 133:11,12
role 116:23 267:5 269:5
roles 117:8
roll 28:16 33:12 38:22
 271:11 273:4

Ron 271:15 273:10
roof 242:16
room 20:12 21:17 22:20
 44:12 73:17 164:19
 214:7 223:18 273:20
Roost 212:9,10,13,17
 212:18 213:10 215:7
 215:10 221:16 226:17
 240:1 242:22
roughly 44:13 142:15
 142:15
round 192:22
route 190:6
row 83:4
rule 20:13,21 21:1
 22:19 24:12 53:6 54:3
 116:6 117:3 241:13
 269:20
rulemaking 51:3,9,20
rules 114:16 116:12,17
 117:12 155:5 186:3,6
 186:19 187:6
ruling 26:24 69:3
 170:23 171:16
run 87:20 106:24
run-away-from- 177:18
running 86:17 219:4
runs 133:19
rush 167:6

S

S 1:16
S-C-H-U-M-A-C-H-E-R
 168:1
sale 70:16 115:10,19
 182:11 264:2
sales 80:17 107:17,18
 107:24
sanctioned 89:13
sat 171:8
Saturday 96:13 97:12
 201:8 251:22
Saturdays 192:17
save 27:21
saw 8:9 38:2 42:18
 121:2 173:9 224:11
saying 13:15 14:1
 16:14,14,18,20 17:2,8
 17:23 19:10 52:2 62:6
 120:24 148:1 160:24
 171:8 181:15 192:21
 242:17 250:10 258:16
 262:13,14
says 30:23 81:21 100:3
 115:6,22 116:10,14
 117:11,15,20 118:3
 154:9 176:4 182:7,14
 184:21,23 241:15

258:19 265:18
scenario 153:5 227:20
scent 203:11
scheduled 11:13
 112:20 124:6 266:1
Schumacher 1:21 3:13
 5:2,3 38:24 39:10
 44:5 45:16 53:4 76:16
 167:12,14,17,23,24
 170:4,14,24 175:13
 178:23 182:4 196:8
 196:11,12,12,13,21
 197:5,19 198:3,10,18
 199:3,19 200:2,6,13
 200:16,23,25 201:12
 201:15,17,24 202:4
 202:12,17,24 203:8
 203:14 204:16 267:1
scope 170:1 171:18
screeching 244:1
screen 38:6 52:17
 81:17,20 82:14 83:5
 99:6,9 110:13 119:16
 119:18 136:12 188:3
 188:5 206:14,17
 257:2
scroll 136:11 185:1
 209:6,11
scrolling 117:25 210:17
 213:22
se 11:25 133:11 241:12
season 133:20
seasonal 192:23
seating 45:2 85:16,20
 98:23 100:8 104:18
 105:11,16,20,20
seats 70:14
second 28:13 33:9,10
 67:7 115:21 117:14
 117:15 137:14 143:6
 146:9 167:25 172:22
 179:19 194:16 256:14
 259:12 265:21 271:9
 273:1
seconded 28:16 33:11
 271:10 273:4,6
seconds 28:14 273:2
secretary 117:8 201:18
Section 28:7,11 270:25
 271:5,8 272:4
see 11:12,15 22:6 24:22
 29:17,21 30:23 31:2
 38:6 42:23 52:5,13
 64:1,6 79:17 81:18
 82:14 83:2 86:19
 98:20,22 99:8 102:17
 115:12 116:13 117:19
 136:21,21 138:8

141:11 144:6,11
 161:9 165:7,8 172:21
 175:4 181:17 182:13
 182:20,22 184:23,24
 185:1 187:2 190:2,3
 197:1 205:5 208:2,11
 208:16,23 209:7,13
 209:14,24 210:5,12
 210:22,23 211:24
 212:22 214:25 217:24
 237:14 249:24 254:20
 254:20,21,22,23
 256:15 258:2 261:8
 261:25 263:23 265:17
seeing 184:15
seek 224:22 225:12
 269:6
seeking 28:9 269:8
 271:3 272:21
seen 79:24 81:7,8
 106:20 134:25 135:4
 201:8 216:25 237:22
 242:6
sees 262:1
segments 49:18
sell 12:17 169:14 171:9
 172:8,11,14 173:8,17
 174:2 177:21 190:11
 190:12 191:2 264:5
seller 115:7 182:9
send 11:18 121:6,6
sense 31:23 32:7 48:8
 81:13 199:21
sent 39:8,8,15 54:7
 183:7 257:6
sentence 117:15
separate 89:8
separated 83:1 86:9
separately 13:6
separating 84:16 85:14
separation 87:25
September 51:13 123:7
 206:4 209:9 237:8
Sergeant 140:8
series 11:21 136:5
serious 71:16
seriously 79:22 81:4
 149:17
servant 168:20
serve 242:25 244:6
served 88:3 91:4
 168:23 244:4
service 41:12 70:5,9,17
 73:4 91:21 99:3 108:1
 168:17 169:2 192:13
 195:4 230:3 263:24
 264:12,15
service/takeout 57:23

services 58:6 108:5,5
serving 168:22
session 19:4 27:12,22
 28:2 29:8 272:10
 274:7
set 35:9,19 42:6,8 47:7
 47:13 105:17 122:25
 124:1 152:23 251:16
 251:21 255:20 262:20
 266:8
setting 256:9
settlement 41:12,15
 76:22 189:7 252:15
seven 30:12 159:13
severe 14:8
severely 12:17
shadow 83:2
shake 11:12 224:5
shape 73:3
share 38:3 40:20 44:1
 81:16 99:6 181:2
 206:13,16
shared 188:4 266:24
Shazam 46:5 176:1
 230:21
she'll 24:2
sheer 242:17
sheet 31:7
sheetrock 113:2 128:7
shift 146:25
shop 49:22 179:25
 180:2 247:13
shopping 49:16
short 1:17 28:18,18,19
 28:19 33:10,10,11,14
 33:15,15 75:12 90:4
 90:15,16,17,19,20,23
 91:1,3,8,11,16,20,23
 92:18,22 93:7,12,19
 93:23 94:12 127:7
 130:14,15,18,22
 131:3,6,8,12,20,24
 132:3,6,10,16,21,25
 133:2,6,9,15,21 134:4
 134:11,15,17,20,23
 135:10,14,17 187:3
 196:10,11,13,23
 197:14,23 198:5,13
 198:22 199:16,22
 263:16 271:10,12,13
 271:13 273:7,8,8
shortly 165:19 238:7
show 69:22 70:10 71:15
 72:12 81:12 102:5
 104:11 105:8 107:6
 110:10 114:18 243:15
 261:15 269:21
showed 81:1 87:7

228:6
showing 81:24 95:3
 103:11 107:4 121:15
 160:23 182:4 259:17
shown 105:18 200:5
shut 35:24 155:12
shuts 111:5 152:9,23
side 23:1 78:7 99:24
 101:4,9,10 103:15
 133:14 140:9 194:13
 209:13 234:15 237:17
sides 15:15,21 16:2
 261:10
sidewalk 30:25 46:1
 139:12,13,16 140:24
 144:15 148:17 163:9
 176:22 222:24 231:9
sign 29:9 102:6 103:13
 103:24 125:2
signage 79:4 141:11,19
significant 190:10,13
significantly 171:10
 189:13
signing 175:20
signs 103:1 142:9
Silver 162:8
similar 88:8 218:4
simple 7:6 242:16
 243:24 261:12
simply 135:2 196:24
 219:7 244:22 265:21
Simultaneous 15:5
 38:11 39:6 43:13
 48:15,25 138:17
 143:14 150:15,20
 156:14 180:16 208:3
 251:12 259:2
sincere 35:3 245:4
 253:7
sincerely 240:5
single 173:9 238:10,11
 262:11 269:3
sir 4:17 5:19,22 6:21
 10:14 15:7 20:24
 21:14,22 22:3 32:13
 32:17,25 33:1 34:4,12
 34:14 36:14,25 37:5
 37:16 38:1,5 39:1,24
 40:21,23 43:15 47:20
 48:17,21 49:4,7 50:2
 54:25 56:4,23 57:2
 58:12,15,19,21 59:2,5
 59:6 60:3 61:10 62:8
 62:22 68:11,14,22
 69:11,13,17,20 73:14
 90:13 94:1,9,15,22,24
 95:7 106:14 127:8
 131:7 137:18 138:10

139:23 140:7,11
 141:10,14,23 145:5
 147:6,22 148:18
 154:16 156:4,13
 158:1 164:7 167:1,10
 169:24 171:1 180:22
 204:11 205:6 207:13
 207:17 216:7 219:14
 219:20 227:3 235:17
 236:3,18 237:2
 260:18
sister 176:8
sit 9:17 101:17,17
 138:20,21 139:19
 140:1
site 134:14
sits 269:5
sitting 12:19 24:5 45:6
 57:10 85:17,21
 102:20 138:14 164:19
 173:24 176:21 224:6
 224:7
situated 98:2 114:5
situates 175:2
situation 93:9,10
 150:25 244:1 261:25
situations 151:9 229:2
 249:1
six 88:2,25 104:20
 159:13 190:14 227:23
size 67:1 113:19,21
sized 67:1
slate 226:20
sleep 46:22 52:22
 209:23 214:8 224:15
 240:23
sleeping 46:13,22
 226:5 244:19
slightly 75:11 185:18
slough 266:4
slow 136:16,16
slowly 136:11
slurred 218:13
small 66:25 67:4,20
 136:12 138:8 182:15
 208:4 242:11
smaller 97:17
smallish 140:15
smart 219:8
smell 169:9,16 203:24
 204:4
smells 173:10
smoke 100:4 173:10
 203:24 204:3
smokehouse 1:6 3:6
 4:16 6:3 28:10 34:23
 35:3,7 37:16 45:20,23
 46:8,17,24 47:2,22

49:9 66:13,19 67:25
 68:5 74:17,22 75:6,16
 75:18,21 76:2,15
 84:12,24 86:17 88:5
 95:24,25 96:4,5,8,20
 97:1 98:2 99:18 101:5
 137:20 138:12 143:16
 145:10 158:22,25
 159:1,5 166:4 178:3
 179:7,12 200:22
 220:16,18 227:6
 228:9,10 229:19
 230:11 235:4 237:21
 238:25 245:5 246:21
 247:19 248:4,7,9
 250:3,7,24 252:7
 254:14 255:21 263:20
 271:4,7
snap 79:15
Social 131:16
socialize 58:9 194:5
soda 107:10
soft 87:14 96:10
sold 168:11
solution 238:24
solutions 121:15
solve 112:17
solved 264:18
somebody 119:21
 240:21 243:25 253:11
 262:3
somebody's 63:8 72:18
somewhat 7:3 146:14
son 132:13
song 46:5 176:2 238:10
songs 230:21
Sonos 108:15 109:6,13
 110:3,21 111:5,9,16
 113:10 125:22 145:23
 146:20 147:8,9
 149:19,22 150:13
 152:22 154:3 243:10
soon 172:20 209:6
sorry 9:15 15:8 25:21
 31:19 34:2 39:3 43:23
 43:24 53:4 56:17 59:6
 59:23 61:16 62:20
 68:22 94:7 95:4 99:13
 109:10 116:3 117:7,8
 119:17 120:23 128:2
 132:15 137:22 145:21
 155:14,25 157:21
 162:19,21 169:21
 174:16 184:19 194:20
 202:10,15 207:24
 235:24 236:2 256:6
 259:13 270:8,21
 271:24

sort 98:23 107:10 112:6
 120:6 121:11,20
 139:8 140:9 172:21
 177:18 189:2 197:11
 203:17
sought 14:10
sound 44:9 46:14 67:11
 108:11,14,18 109:15
 112:5,24 122:1,3,22
 125:17 126:9 128:10
 128:14 129:8,12
 130:1 149:7 150:17
 151:5 152:5 159:16
 159:23 176:18 183:21
 184:4 196:16 231:22
 239:18 240:7 242:15
 243:9,11 245:16
 246:17,19 253:13
 254:7,17,23 255:10
 255:13,16,20 262:21
sounded 218:12
soundproof 112:11
 113:3 191:23 192:6
soundproofers 128:16
soundproofing 14:21
 30:24 35:8,10 36:2
 47:11 129:23 176:23
 184:2 226:16 239:1
 240:10 242:16,18
 243:6,21 244:23
 266:19
sounds 128:6 134:24
 153:3 203:10
sources 176:15
south 133:13 168:24,25
 196:1
Southeast 1:5 4:14
 96:3,11 240:13
space 66:18,24 67:1,4,9
 67:20,21 75:24 76:21
 77:7,11 80:16 85:1,8
 85:17 97:18 102:22
 104:13 107:10 113:3
 113:18 114:6,7,10
 124:8 131:17,18
 185:13,15,21 191:9
 191:24 199:20 201:22
 202:21 241:16 242:11
 247:14 266:20
spaces 16:6,7 36:6
speak 6:19 12:21 37:21
 38:18,18,20 39:13
 40:20 43:22,25 64:16
 64:22 153:8,10,20
 188:13 236:5
speaker 42:6 109:2,5
 146:20 147:10 242:9
 245:1

speakers 14:22 30:25
 35:12 42:8 45:25
 66:12,14,17 67:14,17
 67:20,22 108:16,24
 109:13,19,22,24,25
 110:5,10,21,25
 113:10 144:18,21
 145:13,14,16 146:1
 149:24 150:11,12
 152:1 176:23 210:7
 217:6 242:7 243:10
 243:23
speaking 12:24 15:5
 38:11 39:6 43:13 48:8
 48:15,25 93:13
 138:17 143:14 150:15
 150:20 156:14 170:9
 180:16 208:3 251:12
 259:2
speaks 45:18 219:2
special 113:5 116:17
 173:21 186:6
specialist 24:13
specific 12:1 46:20
 116:8 197:20 209:1
 211:25 213:12 223:14
 244:5 247:21 261:3
 266:13,15
specifically 11:21
 45:23 63:14 112:25
 116:5 117:13 141:25
 152:21 171:20 180:9
 180:20 210:9 211:13
 225:9 238:16 252:13
 254:25 257:5,14
 266:8
specifics 12:5
specify 254:24
speculate 187:2 233:8
speech 218:13
spell 5:18 74:7,10 95:17
 157:22 158:13 205:18
spelled 4:5 167:24
spelling 4:12,20
spend 15:12 27:21
 219:4,9
spent 212:15
spills 86:7
spoke 39:3,15 222:19
 240:3 246:13
spread 142:4
spreadsheet 206:22
 208:17
square 66:19,21 71:2
 124:8
staff 1:22 35:14 111:1
 120:15 121:3 143:11
 149:24 151:20 165:23

staging 107:11
stairs 143:1,12 210:4
stairway 82:18
stamped 81:22 99:13
stand 229:21 243:15
standard 183:18
standards 11:23 252:11
standing 268:4
stands 88:24 233:1
 242:9
start 4:2 26:20 33:25
 34:1 140:24 211:1
 215:2 226:21 240:5
 270:21
started 11:20 96:22
 119:14 129:15,15,16
 152:24 206:22 214:12
 217:14 238:8 240:6
 250:7,10
starting 75:10 96:12,18
 137:8 213:16 214:3
 214:14 215:5,21
 218:15,21
starts 120:11 152:8
 176:4 209:7 212:7
state 7:9 36:24 41:2
 74:10 95:16 158:10
 158:13 167:21 168:19
 205:18 241:5
stated 22:10 30:12
 31:11 40:11 41:10
 42:1 43:2 44:7,16,24
 45:12 62:19,24 63:1
 113:1 125:2 129:6
 176:19 179:8 200:19
 207:19 213:19 214:19
 215:20 222:25 223:3
 226:14,18 228:16
 237:3 238:21 246:10
 251:2
statement 25:25 26:2
 34:4,11 39:19 40:1,5
 40:9,14 45:18,18
 63:13,21 64:23 69:17
 69:19 115:10 116:2,4
 118:17 180:10 182:6
 182:12 183:1
statements 25:20 34:6
 53:2 54:1 55:17
 200:14
States 168:18
stating 4:12,21 18:1
 256:18 259:20
status 30:11 269:22
statutory 7:7,20 8:18
 13:7
stay 10:25 29:8 131:8
 174:10 179:18 204:19

257:20
stayed 131:10 169:6
staying 22:7
stays 176:7
steel 100:13
steps 82:19 102:9
 120:5 129:22 143:8
 226:11 240:14
stomach 173:7
Stone 242:4 247:1
stood 162:8
stools 105:22
stop 144:13 147:7
 152:12 165:16
stopped 121:12 219:6
 226:7
stopping 152:13 266:19
stops 120:11
storage 97:18
story 75:12 249:25
straight 98:24 176:18
 264:10
street 4:24 5:5,12 34:25
 35:18 74:23 75:3 78:7
 78:21,21 80:25 84:2
 85:5 96:24 101:10
 102:11 131:22 155:10
 155:10 168:7 198:8
 205:23 206:1 223:5
 231:15,16,18 234:11
 234:19 235:1 237:5,9
 244:12,13
streeter 139:6,7
stress 240:24
stretch 81:7
stretched 102:21
strip 80:15,24 234:6,14
 234:19
structural 189:5 190:16
 190:22
structure 46:1 67:22
 84:16,17 85:12 114:1
 141:2,6 243:2 265:1
study 150:16
stuff 254:4 258:25
subject 8:19
subjected 155:9 176:12
subjectively 209:18
submission 147:21,24
submit 30:14,17
submitted 8:12 32:10
 53:12 59:23 65:18
 130:5,8 216:4 232:19
 232:22 257:25 258:25
 269:25
submitting 64:23
subsided 142:8
substantive 12:15

subwoofer 243:12
successfully 253:10
Sudan 168:24
sufficient 7:5,19
sufficiently 46:16
suggest 222:20
suggested 155:8
summary 67:8
summer 67:5 139:11
sums 117:18
Sunday 97:11,12
supervisory 54:8,9
 65:8 240:20
supplies 143:21
support 27:17 142:24
 207:9
supposed 65:6 241:15
 244:8 251:22
sure 7:1 11:19 13:24
 22:25 23:3 27:15
 29:10,21 48:7 75:22
 81:15 86:24 89:1
 92:21 95:8 98:14
 102:23 108:12 114:15
 114:22 120:19 124:5
 124:19 140:14 142:19
 150:22 158:15 161:8
 163:3 164:20 165:1
 167:6,23 168:8 174:1
 180:15,25 191:13
 192:15 193:19,20
 206:7 213:1 222:8
 225:19 252:25 256:8
 260:12,24
surface 12:23
surrounding 41:24
 227:25 228:5
sustain 207:12
swear 235:21
swearing 236:19
swift 79:3
swing 238:5
sworn 36:22 74:5 95:13
 158:8 167:20 205:12
 237:1
sympathetic 188:19
synthetic 80:18
system 21:11 42:6
 71:22 108:11,14,15
 108:19 109:5,6,14
 110:3,21 111:5,9,16
 125:11,18 126:5,6
 129:9,12 145:23
 147:8,10 149:20,23
 150:11,13 151:25
 152:2,6,23,24 154:3
 154:11 159:16,23
 176:18 243:9 245:1

T

T-A-V-R-I-L 5:20 37:2**T-E-R-I** 74:13**t/a** 1:6**table** 80:22 99:3 265:6**tables** 104:20 139:2**take** 6:18 14:9 17:25

26:25 29:11 79:20,22

94:12 112:23 123:6

124:10 143:5 155:22

156:16,23,24 162:14

176:1 177:6 195:16

203:21 215:2 217:3

231:17 238:14 243:22

253:12,18 265:14,15

273:4

taken 117:22 126:9

155:17 186:16,25

188:10 222:21 226:11

232:7 266:15,17

takeout 70:17 107:25

215:19 229:19,23

talk 40:18 55:13 98:18

108:10 114:3 153:15

162:13 169:17 185:6

185:25

talked 99:11 121:22,23

126:4 204:5 234:25

234:25 235:1 238:11

238:12 254:5 263:12

talking 88:1 96:6 124:8

177:1 187:4 193:13

199:1 232:1,3 247:21

250:7 254:9

talks 31:4**tan** 82:2,22**tape** 118:6**Task** 256:18 257:9

259:21

tasting 217:5,7**Tavril** 1:23 2:3 3:21

5:17 36:20 37:2

team 45:9**tear** 112:9,18**technical** 141:18**technology** 47:15 95:5**telephone** 152:3 157:2

229:16,22 230:1,3

television 118:5**telework** 257:22**tell** 17:21 19:17 47:17

82:13 97:8 150:4

176:2 180:1 192:11

205:22 207:22 219:3

222:16

telling 242:23**temporary** 46:1 67:21

141:2

ten 66:17 118:14

156:19

ten-minute 197:6**tenant** 14:24 169:15

174:10,13,20 175:9

175:11,14,18 181:14

230:24

tenants 11:5 14:13,19

36:7 44:25 47:9 63:17

64:9 153:8 169:6,11

171:4 230:22 251:24

267:16

tend 200:19**tends** 193:9**tent** 148:15 163:11**tenure** 90:4 187:4

226:10

Teri 1:23 2:3 23:10,20

73:16,19 74:2,12

130:25

term 129:16 135:3**terminate** 16:17,21 17:3**terms** 41:9 77:22 79:4

81:3,5 91:14 122:6

134:14 191:8

test 72:8 122:2,3,22

123:2,6,9,14,16 130:2

161:24 162:7,14

163:15,23 164:6

231:22 255:10,14,17

255:20 256:25 257:13

258:17 262:21

tested 151:11**testified** 19:20 36:23

74:5 95:13 99:10

122:21 123:9,11

133:16 158:8 162:25

167:20 179:17 190:16

200:8 205:12 216:1

225:11 226:9 228:20

231:24 237:1 238:2

248:6 251:16 254:15

256:1,4 257:3

testifies 23:22**testify** 24:18 71:14

126:19 174:19 175:10

225:17 233:11 236:8

236:15,17

testifying 48:12 153:14**testimonies** 167:7**testimony** 20:18 22:21

32:3,21 58:22 60:9

61:20 68:13 69:15

93:20 94:3 109:17

114:5 118:12 122:11

123:23 126:16,17

127:10 149:18 154:9

156:17 159:14 166:14

166:20 168:15 171:14

176:20 178:24 179:3

181:16 183:2 186:2,5

186:16 189:7 190:10

193:20,23 194:3,22

194:24 196:2,4

204:20 223:11 225:20

225:20,23 231:6

232:6,14 233:6,15

234:5 235:14,25

247:22 251:14 254:3

255:8,9,11,19 256:10

260:18 263:9,24

265:12 266:25

testing 183:21 246:3**text** 120:22,23 121:1,2**texted** 238:12**texting** 240:6**thank** 3:24 25:9 32:18

33:2 36:12,13 56:5,5

56:7 62:11 63:12 65:1

66:2,10 67:24 68:11

68:12,13 69:14 73:11

83:18,19,22 89:17

90:11,13,17 91:20,22

93:19,23 94:2,3,4

124:15 125:10,20

127:9,23 128:20

130:1,11,12 135:14

135:17,20,24 136:25

137:13,13 138:7,9

141:17 144:3 145:4

147:7 148:7 150:9

155:16,19,20 156:5,8

165:2,4,23 166:1,7,10

166:13,19,25 168:5

168:12 169:1 171:7

172:4 175:13 176:13

176:15 178:19 188:5

194:20 196:8 199:22

200:15,18,18 204:19

205:13,15,22 208:5,7

209:5 210:16,25

212:3 214:10 215:23

216:14 220:12 226:1

226:9,22,24 235:12

235:13 245:7 250:19

260:5,13,15,17 261:6

261:7 267:11,12,14

269:7,12 272:6

273:25 274:4,8

thankfully 262:9**thanks** 5:7 29:13 50:18

201:12

the-problem 177:19**thing** 22:11 77:2,4 80:4

92:11 250:20,21

252:24

things 11:12 14:22 30:9

70:25 79:12 80:6,19

89:16 102:20 106:5

111:13 129:20 174:19

230:20,23 234:25

238:23 241:13 254:13

262:4 264:11 271:24

think 7:15 8:3,21 13:9

15:15 20:3 22:4,25

24:1 33:21 63:15 72:2

75:4,7 76:19,19 77:14

77:17,23,24 78:14

79:9,23 80:4,11 81:16

83:25 85:5,25 86:4

87:3,13,16 88:23

92:13,17 98:5 99:11

106:9 111:24 112:17

114:4 118:11 119:20

119:25 123:8 133:17

134:22 145:11 146:19

148:20,22 149:18

150:1,12,17 153:12

162:16 170:9 171:18

175:1,24 176:11

177:13,23 183:9

184:3 187:18 189:15

192:8 193:15,24

194:18 197:21 199:3

199:11 202:6,9,17,18

203:19 208:6 214:25

219:8 221:25 222:5

225:4,13,19 233:4

234:12,16,18 239:16

241:11 251:4 252:23

255:1 257:24 261:10

262:11 264:7,13

268:12 270:22

thinking 87:9**third** 116:10 135:3**thirty** 179:9**thorough** 145:12**thought** 15:9 53:15

117:5 150:3 170:11

197:22 204:6 234:22

236:20

thread 268:13**threatened** 120:17

215:12 240:15

three 29:21 50:16 62:20

62:23 104:19 105:21

108:4 155:24 158:25

167:2 179:12 194:18

234:17 237:18 257:21

270:1,2

threshold 122:6**thriving** 135:1**throw** 253:23**throwing** 235:3

thumb 53:6 54:4
thumping 194:6 239:12
Thursday 50:5,6 97:11
 256:19 257:10
tied 12:23
tight 29:12 189:10
tiles 127:11,16
time 7:1 10:20 11:1
 20:17 25:1 35:7 36:11
 38:6 39:1,11,20 42:16
 43:9 45:15 53:9,10
 57:4,13 59:9,20 62:9
 64:3 65:16,17,23,25
 70:5 71:18 75:11 76:1
 76:13 77:8,18,18 78:2
 78:12 80:9,19 84:2
 87:11,16,17,18 88:6
 88:20 89:7,21 92:7
 94:13,15,15 98:13
 103:24,25 104:1
 112:16 114:12 118:15
 121:4,5 126:4 131:17
 132:9,15 135:16
 145:15 152:9 155:17
 157:11,12 160:11,12
 160:14 161:10,12,15
 161:24 166:24 167:5
 172:11,16,22 173:22
 173:23 175:16 180:7
 183:25 185:11 186:8
 188:13,15 195:2
 198:5,9,9 200:3
 204:17 207:10 208:20
 209:19 210:14 211:5
 212:9,15 213:19
 215:11,13 216:24
 217:11 219:4,9,13,17
 222:9 223:4,19,24
 224:13 226:19 227:7
 227:13,22 228:24
 233:24 238:22 248:13
 257:19,21 259:24
 266:2 267:15 271:25
time-to-time 120:22
timely 273:22
times 9:5 46:9,11 47:14
 50:10 57:20 58:17
 66:5,7 78:9 85:13
 105:20 159:7 161:22
 195:7,22 196:24
 206:10 211:25 213:12
 217:25 221:3,20
 223:15,22 226:14,18
 231:2 235:7 241:9
 248:8
timing 109:1
tired 260:24
Title 272:14

to-earth 92:4
today 8:11 9:17,24
 11:13 12:24 13:15
 15:3,23 16:1 23:7
 31:17 32:3 34:16 35:5
 70:19,22 71:14 93:14
 96:7 116:18 153:3
 154:9 166:14,20
 169:10 203:21 204:3
 204:20 234:21 238:2
 253:21 255:9 263:25
 266:25 267:15 270:6
 272:7,10 274:3
told 174:20 197:14
 203:16 210:6 221:12
 221:16 222:13,20
 228:1,18 231:13
 232:15 233:12 234:11
 249:2,25
tone 211:20
top 97:19 98:4,6 164:3
 184:21 194:19 208:17
 208:17 238:9
topic 203:13
tort 225:6
total 57:12 62:20,23
 65:19 66:10,16,18,19
 67:20 94:5
totality 65:22
tough 252:24
tours 195:6
town 257:18
track 107:16,25 208:13
tracker 208:13
tracks 198:11
traffic 11:16 12:25
 46:14 222:25
training 195:25
transcript 269:17,25
transparent 43:11
travel 196:17 210:18
traveler 196:17
Trazodone 224:15
treasurer 116:24 117:4
 117:6,7 201:19
 242:25 250:5
treated 41:14 252:14
trial 251:21
tried 12:16 109:24
 129:19 149:7,19
 220:17 239:4,19
 251:16,19 266:4
tries 259:8
triggers 152:6
trimmed 82:15
trouble 132:11
true 151:3 177:8 198:4
 242:24 263:25

truncate 19:11
trust 182:15
Truxton 244:12
try 11:6 25:11,12 27:12
 81:17 92:14 93:1
 102:23 112:11,23
 113:5 120:8,24 127:5
 127:7 129:20 142:9
 150:23 153:8,9
 154:23 174:5 207:15
 221:25 230:23 239:18
 268:10
trying 13:14 14:4 21:13
 21:13 76:19 92:15
 102:7 109:15 110:24
 111:14 142:2,24
 151:1,1 156:15,17
 178:16 197:16 204:25
 240:25 241:1 244:12
 253:7 259:7
Tuesday 256:17
Tuesdays 238:17
turn 18:20 36:11 42:9
 44:18 73:23 81:23
 111:1 149:25 150:5,6
 150:6 151:25 152:17
 157:1 178:5,7 213:23
 221:5 222:18 244:9
 244:13
turned 152:18,19,22
 252:11
turning 193:12 229:13
TV 146:12
twelve 199:15
twice 42:6 66:9 172:20
 221:3
two 6:1 9:15 20:15 22:9
 23:6 29:21 30:16
 71:13,21 78:9,11
 83:25 84:14,15 87:21
 89:21 90:3 91:14,15
 91:15 94:10 97:19
 105:20 109:23 113:24
 116:9 125:16 126:6,7
 130:7 140:18 144:6
 154:1 164:3 169:7
 176:23 186:24 187:10
 187:15 189:12 192:3
 194:10 195:7 202:4
 208:11 226:6 230:22
 234:12,17 239:7
 252:21 257:21 261:20
 262:23
type 8:5 47:16 61:11
 174:22 185:15 199:6
 199:9 202:7 251:17
 263:18
types 88:10

typically 47:22 222:11
 263:18

U

U-E 205:21
Uber-like 108:5
unable 169:14,14 171:8
 214:7
unacceptably 45:10
Uncaged 244:11
uncomfortable 178:18
uncommon 88:15
 173:15
underscore 70:19
understand 7:11,18
 8:14 21:8 26:22 61:19
 62:2 68:23 69:3 86:13
 149:6 153:25 155:16
 178:24 179:2 180:19
 180:23 185:17,22
 193:20 194:14 231:6
 255:5 258:23 261:10
understanding 6:11
 14:6 21:24 23:21
 31:13 60:11,14 255:8
Understood 227:14
undertaken 262:2
unenclosed 148:16
unfortunately 20:19
 106:10,14 169:12
 172:17
uniquely 175:2
unit 5:5 12:16 31:1
 45:13,25 46:9 47:12
 48:1 55:14,25 66:3
 67:16 97:17 98:3,4,6
 106:21,22 112:13,24
 113:3 114:5 115:8
 116:13,18 128:7
 140:14 146:17 148:12
 148:12 151:7 154:21
 154:22 164:1 168:11
 168:13,14 169:3,4
 171:6,8,22 172:6,11
 172:14,17,21 173:9
 174:7 175:15,19
 177:10 179:3,10,18
 179:20,21 180:4,7
 184:22 186:4,7
 188:11,22 189:1
 190:11,12 191:10,11
 191:15,16 194:9,9,15
 195:13 197:7 198:23
 199:1,5 226:11
 227:10 230:19 237:4
 241:20 243:16,22
 244:18 245:12,20
 246:14 247:16 249:17

249:23,24 250:1,9,17
 250:22,23 251:6,17
 253:2,4,15,15 254:6,6
 254:16,18 258:17
 259:21 265:24 266:8
 266:11,14,21 267:15
 267:20,21,24 268:1,2
United 168:18
units 11:5 12:17 14:13
 15:2 52:23 53:16,22
 59:25 60:4,5,10,12
 62:24 64:7 84:21
 97:16,20 98:1 110:15
 112:8 115:9 132:10
 132:19 140:13,19
 148:13 169:13 182:9
 182:11 189:12 192:4
 192:7 194:8,15,16,16
 203:12 247:10,13,22
 248:2 253:9 265:16
 266:1,20 267:17
 268:24
unlawful 72:16
unnecessary 219:2
unsanctioned 80:15
unusable 209:23
unusual 263:22
updated 208:18
upper 110:9
upset 120:3
upstairs 154:24 160:7
 166:5
upstanding 237:13
urging 173:2
urination 209:2
use 47:22,23,24 48:3,3
 49:10,10,11,15,17,21
 49:24 60:16,17,19,24
 101:13,16 111:9
 139:16 141:2 143:11
 230:18 239:16 262:2
 262:4,5
usually 169:6
utilization 102:22
utilize 108:4,5 110:24
 111:4,14 145:17
 188:4 269:6
utilizing 108:15

V

vacant 77:7,9,11
 169:13 171:8
value 12:12 16:7 169:18
values 170:3
various 47:2 219:17
 230:20
varying 48:2 49:14
vehicles 198:6

vendor 217:6
verification 233:13
verified 89:21 90:3
verify 54:13 253:11
 258:8
verifying 90:12
version 10:5
versus 107:17 108:1
 153:3
viable 61:4 64:3
vibrant 93:3
vibrate 151:7
vibrations 150:21
vice-president 201:18
vicinity 77:20
videoconference 1:13
viewings 245:25
violating 186:17
violation 58:24 61:2,13
 61:21 72:10 121:25
 123:18,19 161:16
 162:4 164:5 188:11
 213:20 221:15 230:11
 230:16 232:17 233:4
 254:22,23 266:16
violations 50:9,21
 51:25 52:8 56:21 62:4
 72:5 221:21 230:15
 231:10 233:2 272:20
virtual 20:23 56:19
visible 140:3
visit 149:15 195:16,18
 201:6 214:6 245:20
 245:23 251:17 256:19
 257:10
visited 196:3 247:22
visits 62:20,23 65:19
 66:10 217:13
voice 193:9
voices 177:1 193:22
volume 42:2 45:24
 47:14 48:23 49:2 62:1
 68:4 109:2 147:11
 149:22 152:1,9
 159:19 211:21 221:4
 221:6 222:18,20,22
 223:1 225:7 226:19
 239:9,10 253:4
volumes 149:19,21
voluntarily 42:13 70:23
volunteered 42:2
vomiting 210:2
vote 27:18 28:17 32:12
 32:15,16 33:13
 266:23 271:11 273:5

W

W 1:13,15

wait 24:7 126:14 138:16
 141:12
waiting 29:18
waive 269:15 270:5
waiver 173:21
walk 84:2 98:22 99:7
 107:7 163:2 195:19
 197:6 207:21 209:12
 209:15 210:21 212:25
 213:25
walked 162:10 163:1,3
 163:7 201:8 220:14
 256:2
walking 98:20 241:25
walkway 85:15
wall 67:7 109:2 146:24
 178:11
want 6:25 16:25 17:10
 17:20,22 18:6 19:25
 25:13 30:9 32:16
 35:23,25 37:19 40:18
 43:7,14 60:7 81:12
 92:19 94:14 98:18
 99:6 101:17 108:10
 111:7 114:3 116:1,5
 117:10,13 118:3
 119:2 122:9 136:3,8
 136:14,21,21 139:19
 148:3 151:23 155:4
 155:16 162:13 174:10
 180:14 185:6,25
 189:11 193:18,19
 215:1 219:11 220:1
 243:18,20,24 245:3
 260:20 261:12 268:10
 268:25 269:17 270:10
wanted 180:25 185:9
 190:2,3 237:18 239:2
 240:23 241:21 250:1
 265:25
wants 101:16,16 120:21
 126:19 174:8
Ward 240:2
warmer 195:1
warning 24:1 51:23
 121:10 254:21,22
warnings 58:24
warranted 61:2 63:16
warranty 184:13,22
Washington 197:25
wasn't 126:8 144:25
 166:2 173:17 177:9
 183:22 188:14 191:20
 222:2 240:18,21,25
 244:18 251:9 256:7
 258:3 269:8
waste 6:25
water 112:17 191:19

waves 150:17
way 16:9 17:22 20:24
 24:16 25:10,19 71:17
 73:3 79:24 80:13
 92:16 93:16,16
 124:12 129:21 159:10
 160:18,20 185:19
 216:19 268:14
ways 81:8 154:19 155:4
we'll 15:22 17:12,24
 18:3 19:15 25:20
 26:18,18 27:1,2,8
 28:16 32:22 33:12
 34:1 156:24 157:2
 203:21 214:10
we're 6:1 12:24 14:11
 15:3 16:20,22 18:21
 19:21 22:14 25:11,11
 26:23 29:7,8 31:23
 32:2,21 33:24 53:25
 68:21 88:1 89:5 93:13
 96:6 99:10,12,14
 100:25 102:3,4
 103:12 105:5 112:6
 112:19 114:19 116:9
 124:5,11 134:24
 141:14 144:4,14
 146:7 156:22,23
 157:7 164:18 171:13
 176:12 181:15 187:4
 194:22 199:1 205:6
 216:16 225:6,8,15
 243:25 247:20 259:16
 264:9 268:15 269:8
we've 11:3 13:2 34:22
 35:22 36:9 80:2 84:10
 112:9 134:13 149:21
 149:23 155:2,23
 161:21,23 186:12
 242:12 268:9 269:1
wearing 51:5
weather 139:17 192:24
WebEx 1:13
website 61:7 273:21
Wednesday 1:11 8:9
 40:3 50:4
Wednesdays 238:18
week 8:1,9 70:12 97:7
 112:21 124:7 159:8
 159:11
weekend 176:6 192:19
weekends 44:15 70:13
 97:8 211:11
weeks 226:7 257:21
 270:1,2
weight 187:8
weird 82:22
welcome 62:14 135:23

166:9
welcomed 253:14
welcomes 103:17
welcoming 197:11
welfare 45:22
wellbeing 46:24
went 20:4 29:15 110:3
 129:13 136:1 141:5
 157:5 170:12 214:19
 224:13 226:4,19
 237:16 240:1 248:7,9
 256:5 262:19 274:10
weren't 55:21 177:16
 232:12
whatnot 183:14
whatsoever 72:11
white 46:15 82:25
 110:15 231:18
who've 88:19
Wicked 131:16,16
 133:25
willing 11:4 21:9 63:24
 92:10 154:22 239:21
 239:22 243:14 263:14
window 100:3 140:13
 140:15 144:8 193:4
 240:15
windows 82:15 86:7
 140:3,20 144:7,11
 176:20,25 177:3
wine 217:5,7
wintertime 193:2 213:7
wish 34:3 69:16,19
 269:14
witness 1:23 2:2 9:12
 20:12 21:16,21 22:7
 22:20,24 23:22 24:12
 24:18 26:2,4,7,9,11
 26:14,15 36:16 68:18
 68:21 69:5,6,10,11,12
 73:13,15 74:6 90:14
 94:18,19 95:14 96:22
 106:12 126:22 127:6
 156:9,11 157:11,17
 158:10 167:9,11
 170:9 180:18 181:20
 181:23,25 187:23
 204:21 205:14 216:1
 225:11 233:9,19
 235:10,17,19 236:5
 264:10
witness's 224:25 257:3
witnessed 200:21
 209:3,25 210:2
 237:22,23
witnesses 5:10 12:15
 15:20 19:3,19 20:5,14
 20:16,21 21:1 22:9,19

23:3,4,7 24:17 94:6,8
 167:1,2 261:21
 267:23
wits 121:24
woman 210:2 249:22
word 48:12 49:3 209:20
 238:11 253:12
words 151:9 220:25
 221:1
wore 208:21 223:22
work 44:23 45:8 80:2
 80:20 91:18 154:22
 158:21 159:8,22
 172:17 173:20 223:13
 223:14,16,19 228:22
 228:25 229:9 241:2
 244:20 256:22 259:23
worked 151:4 158:23
 197:24 212:16 223:7
 223:17,21 228:21
 229:1
workers 217:16
working 14:18 37:5,6
 161:10 217:11 219:15
 223:10 229:4 238:22
 262:20
works 25:20 208:7
world 196:16 266:19
worse 45:5 238:18
wouldn't 84:22 85:9
 89:2 173:11 190:21
 197:20 198:23 213:21
 229:6,8,21 233:9
 244:19,20 251:8
 252:19 256:24 265:13
wrap 259:15
wrapping 260:23
write 61:13,21 270:2
writing 211:4
written 6:14 50:25
 51:22 64:23 162:4
 176:19 200:14 207:7
wrong 120:16
wrote 207:6

X

Y

yard 85:22
yeah 168:14 171:7
 176:12,17 185:17
 190:14 194:12 197:19
 198:10 200:7,13
 203:8 208:6
year 50:23 91:7 101:14
 109:8 128:2 188:21
 195:8,23,24 243:7
 251:20 255:23

year- 192:21
years 37:7 45:4 72:6
 75:22 78:9 87:21 88:2
 88:25 90:25 91:1,3,8
 91:14,15 125:16
 126:6,7 128:13
 158:24 160:14 169:7
 177:20 178:12 189:1
 196:4 197:25 201:4
 237:11,15,18 244:15
 244:16,16 246:22
 261:23 262:12
yelling 213:5,7,16
 214:5 218:7,12 235:2
 235:5

Z

Zero 133:5
zone 47:18,23 48:3,3
 49:10,11,24 61:9,12
 72:19 239:16
zoned 199:18
zones 60:13
zoning 47:17,21 60:20
 61:7 199:17 241:18
 245:18 264:25

0

00001 271:7
051 81:21

1

1 82:1,5 83:8,14 96:18
 206:25 207:2 216:10
 216:13
1,000 51:12,14
1,200 71:2
1:00 44:14 50:6 70:13
 97:7 211:11
1:11 218:1
1:22 218:1
1:30 23:24
1:34 3:2
10 23:25 66:16,16 67:19
 109:19 113:9,9,13
 217:21 221:6 252:5
10,000 173:5,13
10:00 42:2,9 111:2,6,20
 111:22 152:10,13,17
 152:19,21,23 154:11
 154:11 155:13,14
 241:1
10:01 160:24 218:19
10:02 160:24 213:17
10:05 152:21 215:17
10:13 214:15 218:3
10:15 152:21
10:30 211:3 214:13

218:6,15
10:37 213:18
10th 218:14
11 65:19 66:11 114:19
 114:24 115:5 118:7
 118:18,25 181:3
 184:20 214:11,12
 252:5
11:00 44:14,14 97:10,10
 97:12 155:14 176:4,5
 202:9,14,18 211:10
 214:20 241:1
11:15 214:4 218:11
11:23 218:19
11:30 50:5 211:10
11:45 214:4,9 217:19
11th 218:20
12 57:12 124:8
12-minute 156:24
12/7/21 210:20
12/7/231 210:23
12/9/2021 212:5
12:00 50:7 97:12
12:07 218:8
12:12 218:1
12:30 211:11
12:52 214:14
1200-foot 261:18 263:2
124 2:4
127 237:9
12th 272:17,23
13 91:9
1301 96:10 133:12
13th 91:6
15 51:7,13 57:8 91:8
 107:22 133:19 142:18
 212:24 221:6
1540 131:22
158 2:4 184:19
161 184:17
165 2:4
168 2:5
16th 97:3
17 142:17
1700 4:24 5:5,12 34:25
 35:18 102:11 168:7
 205:23,25 223:4
 237:4
176 117:11
178 2:5
18 37:19 104:21
18th 65:17
19 256:17
19th 257:6 259:19

2

2 99:15,20 100:15,22
 137:25,25 138:1,5

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This is to certify that the foregoing transcript

In the matter of: DCity Smokehouse

Before: DC ABRA

Date: 04-05-23

Place: teleconference

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Neal R Gross

Court Reporter

NEAL R. GROSS

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