

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

2 1:54 p.m.

3 CHAIRPERSON ANDERSON: All right, I'm
4 going to move on in our calendar. The next case
5 on our calendar is case number 19-CC-00129, Lost
6 Society, license number 83420. Ms. Andrews, can
7 you please elevate the rights of the parties in
8 this case?

9 MS. ANDREWS: Sure, I need to remove
10 the parties from the previous case, one second.

11 CHAIRPERSON ANDERSON: Okay, that's
12 fine, thanks.

13 MS. ANDREWS: Mr. Vasey, your rights
14 have been elevated. Mr. Ortiz, your rights have
15 been elevated. That's all, Mr. Chair.

16 CHAIRPERSON ANDERSON: Thank you. Mr.
17 Vasey, if you have a camera, can you please turn
18 your camera on, please, sir?

19 MR. VASEY: Sure, sure. Are you able
20 to see me?

21 CHAIRPERSON ANDERSON: Not as yet,
22 sir.

23 MR. VASEY: Wonderful, thank you.
24 Appreciate your time.

25 CHAIRPERSON ANDERSON: No, I said, no.

1 (Simultaneous speaking.)

2 CHAIRPERSON ANDERSON: I can hear you,
3 but I can't see you.

4 MR. VASEY: Are you able to see me
5 now?

6 CHAIRPERSON ANDERSON: Yes, yes, I can
7 see you.

8 MR. VASEY: All right.

9 CHAIRPERSON ANDERSON: Okay, thank
10 you.

11 MR. VASEY: Thank you.

12 CHAIRPERSON ANDERSON: Mr. Ortiz, can
13 you please identify yourself for the record,
14 please?

15 MR. ORTIZ: Stephen Ortiz on behalf of
16 the District of Columbia.

17 CHAIRPERSON ANDERSON: Mr. Vasey, can
18 you spell and state your name for the record,
19 please?

20 MR. VASEY: Richard last name is V-A-S-
21 E-Y.

22 CHAIRPERSON ANDERSON: And what's the
23 relationship to this establishment, sir?

24 MR. VASEY: The managing member.

25 CHAIRPERSON ANDERSON: All right.

1 Thank you. All right, good afternoon, everyone.
2 This is another show cause hearing. Are there
3 are any preliminary matters in this case, please?

4 MR. ORTIZ: Yes, the parties have an
5 Offer in Compromise that they would like to
6 present to the Board at this time.

7 CHAIRPERSON ANDERSON: And what is the
8 Offer in Compromise, please?

9 MR. ORTIZ: Well the Offer in
10 Compromise is going to be regarding two cases.
11 It would cover case number 19-CC-00129 which you
12 just called on the record. It would also be with
13 a case number 20-CC-00023.

14 CHAIRPERSON ANDERSON: Okay.

15 MR. ORTIZ: And so the Offer in
16 Compromise would be as a case number 19-CC-00129:

17 1) Charge one, sale of an alcoholic
18 beverage to a person under 21 years of age. The
19 fine would be a \$2,000 fine to be paid within 120
20 days or its license will be suspended until the
21 fine is paid.

22 2) There is also a suspension, number
23 two. The establishment serve a five-day
24 suspension of its ABC license. The date of the
25 five-days suspension shall be March 23, 2020

1 through March 27, 2020, which includes time
2 served while the establishment has been closed.
3 As a charge two, failure to take reasonable steps
4 necessary to ascertain legal drinking age. This
5 charge will be dismissed. That's the Offer in
6 Compromise for case number 19-CC-00129.

7 Now, moving to case number 20-CC-0023,
8 charge one, sale of an alcoholic beverage to a
9 person under 21 years of age. The OIC is:

10 1) A fine of \$2,000 to be paid within
11 120 days or its license will be suspended until
12 the fine is paid.

13 2) Suspension. The establishment
14 shall serve a five-day suspension of its ABC
15 license. The date of the five-day suspension
16 shall be April 2, 2021 through April 6, 2021,
17 which includes time served while the
18 establishment has been closed. As for charge
19 two, failure to take reasonable steps necessary
20 to ascertain legal drinking age, this charge is
21 dismissed as part of the Offer in Compromise and
22 those are the terms for case number 20-CC-00023.

23 CHAIRPERSON ANDERSON: All right, Mr.
24 Ortiz, today is April 7, and case number 19-CC-
25 00129 is, I just did it, it's a sale to minor and

1 apparently with that sale to minor that there's a
2 mandatory suspension, they've got a five-day
3 suspension. From what you've told me that the
4 establishment would be suspended and the
5 suspension dates were March 23, 2020 through
6 March 27, 2020, which is a year ago. Okay, this
7 case has been prosecuted today and you're telling
8 me that they served their suspension March 23,
9 2020, a year ago and also in case number 20-CC-
10 00023, and again this is another case of there is
11 a sale to minor and based on the nature of the
12 case, it appears that there is a mandatory five-
13 day suspension. The five-day suspension would be
14 effective April 2, 2021 through April 6, 2021.
15 Again, today is April 7, 2021. So, can you
16 explain to me how is that if the case is being
17 prosecuted, I mean you're providing an offer to
18 the Board today, how are you telling the Board
19 that the establishment served it's mandatory
20 suspension. One was a year ago and one
21 suspension started this week and ended yesterday.
22 Can you please provide some clarification?

23 MR. ORTIZ: Yeah, thank you, Mr.
24 Chairperson. It is my understanding that the
25 establishment, Lost Society, has been closed

1 since roughly about the start of the pandemic.
2 It has remained closed throughout this time
3 period and, I believe, and Mr. Vasey, I think it
4 was, he could explain further or provide more
5 details that the establishment is still closed at
6 this time. So that is why we provided that
7 agreement of five-day suspension being served
8 since the establishment has remained closed
9 throughout or at least for almost a year now or
10 at least a little bit over a year.

11 CHAIRPERSON ANDERSON: Are you saying,
12 part of the problem is that because of the
13 violation it's a mandatory suspension. I don't
14 know why the establishment was closed and at
15 least it's not my view that you commit a
16 violation, there's a mandatory suspension and the
17 business is closed as a convenience to you and
18 then for whatever reason then you're stating that
19 because, oh yeah, I'm closed anyway so that was
20 my suspension. I don't understand why that's
21 part of the analysis that was accepted. Why is
22 that appropriate? How does the Board know that
23 this establishment was closed March 23, 2020
24 through March 27, 2020? How do we know that this
25 establishment was closed April 2, 2021 through

1 April 6, 2021? What type of monitoring, I mean,
2 how is that the Board or the Agency is assured
3 that the establishment did not operate during
4 this period of time?

5 MR. ORTIZ: Well, we do have the
6 licensee here now and so if you would like for
7 the licensee to go under oath and to state that,
8 to put that on the record that it has remained
9 closed. My understanding is and I assure you in
10 my conversation with the licensee that the
11 establishment had remained closed and had not
12 opened throughout the entire time period. So my
13 assurance is that through multiple conversations
14 with the licensee that the establishment has
15 remained closed throughout, since the beginning
16 of the pandemic.

17 CHAIRPERSON ANDERSON: And the reason
18 why I'm asking, the reason I've not gone to the
19 licensee, Mr. Ortiz, because you're the
20 Government and you negotiated the terms with this
21 licensee and so that's why I'm asking you, is
22 that you are aware that based on the charge
23 there, it's a mandatory -- and those mandatory
24 periods have been so served as a suspension
25 because of the charge and so you're saying to me

1 that as part of the Government's negotiation with
2 the licensee, that the Government is saying to
3 the Board that they have served and so therefore
4 we should accept this OIC. I mean there's a
5 difference, if this was a summer suspension
6 hearing then it's much easier to accept it
7 because we know that based on the infraction the
8 agency suspended the license and the agency
9 ensured that the establishment was closed during
10 the period of the suspension, but this closure
11 was not initiated by the agency and I'm aware
12 that there's a pandemic and some businesses are
13 open, others are closed based on the nature of
14 their business. I'm also aware that agency has
15 had some flexibility that establishments are able
16 to be, although some establishments have changed
17 their business model but the agency, we have
18 changed the law based on COVID to allow some
19 businesses, such as this one, to be open during
20 the period of time and so I'm just trying to make
21 sure, the agency needs to be assured that these
22 specific times that the Government has agreed to,
23 that the business was closed for sure. That's
24 where I am because I'm not in a position to
25 independently verify that the businesses were

1 closed for these dates, especially going back to
2 March 23, 2020, of last year. Maybe this week
3 it's the one the suspension, April 2, 2021
4 through April 6, 2021, maybe you can that one
5 because it's currently now, so we could say walk
6 across the street or go to this establishment and
7 see that the establishment at least is closed
8 today, but how is the agency assured that on
9 March 23, 2020 that this establishment was
10 closed?

11 MR. ORTIZ: I understand the Board's
12 concern at this time and all I can say is if you
13 give us a brief indulgence then maybe I could
14 renegotiate something

15 CHAIRPERSON ANDERSON: I'm not--I'm
16 not asking. I'm not trying to get in the
17 negotiation of parties, I'm not. That's not the
18 purpose and I'm not saying that the Board will or
19 will not accept this OIC. What I'm saying is
20 that I have some questions just because it's
21 presented, I have some questions about how is it
22 that we know that the business was closed for
23 this period of time. These are two serious
24 violations, sale to minor, and because these are
25 not the first infractions for this establishment,

1 it appears that because it's not the first
2 because it's my understanding for first
3 infraction you get a warning, you get a mandatory
4 warning. But in these cases, there are no
5 warnings because they're actually serving
6 suspensions so this is the same to me that either
7 the parties agreed that it was egregious or
8 because this was not necessarily the first
9 incident so there has to be a fine and a
10 suspension and so that's what the parties agreed
11 to. I'm just not clear how is that we are being
12 presented dates from March of last year and now
13 dates of yesterday. So, I'm not saying well go
14 back and negotiate because the Board does not do
15 that, but if you want an opportunity to get up
16 off the record and speak to the licensee, you
17 can, but I'm just saying that's not my purpose.
18 These are just questions that the Board has and
19 that I expect the Government to provide the Board
20 a response so therefore once we go into our
21 deliberation to make a determination, then we
22 have enough information to make a decision. So
23 what do you want to do?

24 MR. ORTIZ: Sir, I would like at least
25 a 15-minute indulgence at this time.

1 CHAIRPERSON ANDERSON: All right. So,
2 this is what I'm going to do. It's 2:09, the
3 Board will be off the record until 2:30. For
4 this case, we will be off the record until 2:30.
5 So, I'll recall this case at 2:30. We're going
6 to be off the record until 2:30. I know I told
7 the other party 2:15 for the previous case that
8 we were having some issues, but we'll be off the
9 record until 2:30 and we'll deal with both cases
10 when I come back. So, we're off the record until
11 2:30 and then I'll ask the Board members to
12 return to executive session. All right? Thank
13 you.

14 (Whereupon, the above-entitled matter
15 went off the record at 2:09 p.m. and resumed at
16 2:32 p.m.)

17 CHAIRPERSON ANDERSON: Okay. We're
18 back on the record. And we're back on the record
19 for Case #19-CC-00126, Lost society, License
20 #83420.

21 Mr. Ortiz, can you come back on and
22 Mr. Vasey, please. We're back on the record.

23 MR. VASEY: I am here.

24 CHAIRPERSON ANDERSON: All right, Mr.
25 Vasey.

1 Mr. Ortiz, I just want the record to
2 be clear. I was not trying to interfere in the
3 negotiations between the parties. All I was
4 doing is the Government has provided us an Offer
5 in Compromise. And all I was doing asking the
6 Government why is it that they based on the term
7 that were being proposed why those terms were
8 appropriate to address the issue. I just wanted
9 the record to be clear. That was the purpose of
10 my questioning, not that I did not agree or
11 disagree with it, it's I wanted the Government to
12 justify for the Board why the Government believed
13 that the terms that were being provided were
14 appropriate.

15 All right. So, where are we? Where
16 are we now, Mr. Ortiz?

17 MR. ORTIZ: Understood, Mr.
18 Chairperson.

19 So, the parties have consulted and
20 proposed that the 10 days of the suspension to be
21 served consecutively this week and next week and
22 so I'll defer to the Licensee to provide
23 additional information about the Licensee's
24 intent to be closed. And I think that will --
25 that will --

1 CHAIRPERSON ANDERSON: Yeah, so -- so,
2 what -- all right. So, it's a \$2,000 fine, in
3 both cases a \$2,000 fine to be paid within 120
4 days and what are the dates to be served? What
5 are the specific dates -- do you know or do I
6 need to ask Mr. Vasey what are the specific dates
7 to be served?

8 MR. ORTIZ: Well, we indicated that it
9 would be this week and next and so if you do the
10 10th day of starting tomorrow, Thursday, April 8th
11 it would be until, I believe, April 17th.

12 CHAIRPERSON ANDERSON: Remember, Mr.
13 Ortiz, the record has to reflect the proper dates
14 so you need to look at the calendar and tell me
15 the specific dates. So, I apologize, but
16 remember this is being recorded and so I have to
17 have the specific dates that are being addressed
18 so the agency will know what dates -- what dates
19 that they need to -- we need to insure that the
20 Licensee is closed.

21 MR. ORTIZ: It will be April 8th through
22 April 17th. The suspension shall be lifted on
23 Sunday, April 18th at 8:00 a.m.

24 CHAIRPERSON ANDERSON: All right. Mr.
25 Vasey, will you state your name for the record,

1 please.

2 MR. VASEY: Yeah, Rick Vasey.

3 CHAIRPERSON ANDERSON: Vasey, I
4 apologize, sir.

5 It's my understanding, sir that
6 there's an Offer in Compromise and I didn't ask
7 any questions before -- any questions before
8 because the Offer in Compromise was provided by
9 the Government and I need the Government to
10 explain to me what the terms are prior to coming
11 to you and speaking to you.

12 So, it's my understanding now that the
13 suspension will be served from April -- well,
14 it's my understanding that the Offer in
15 Compromise is that there's a fine in Case #19-CC-
16 00129 that there is a fine of \$2,000 to be paid
17 within 120 days. If it's not paid within 120
18 days the fine will be suspended, I'm sorry. The
19 license will be suspended and there is a five-day
20 suspension for that case. That Charge 2 will be
21 dismissed to ascertain -- necessary to ascertain
22 legal drinking age. And for Case 20-CC-00023,
23 again, sale to minor that there's a fine of
24 \$2,000 to be paid within 120 days that there is a
25 five-day suspension.

1 And then on -- that failure to take
2 necessary reasonable steps necessary to
3 ascertain legal drinking age that that charge
4 will be dismissed.

5 I'm sorry, and I'm hoping, Mr. Ortiz,
6 that I'm not crossing the line so I apologize for
7 that. I'm going to come back to you, sir.

8 It's my understanding that normally in
9 these Sale to Minor that as one of the terms that
10 -- that all persons who sell or serve alcohol has
11 to go through training within 90 days. I thought
12 that by statute that was part of the terms. And
13 I have noticed that that was not. I could be
14 wrong but I noticed that was not mentioned in
15 this. Is it part of the negotiation with the
16 parties or was it overlooked?

17 MR. ORTIZ: No. No, Mr. Chairperson.
18 It was definitely not overlooked under DC Code
19 25-7, Section 25781 which is called Sale to Minor
20 specifically (f)(1). It will indicate that there
21 is a five-day suspension that needs to be served.

22 Now, parties which does have the
23 possibility of staying those five-day suspension
24 pending the Alcohol Awareness Training.
25 Therefore, the establish can serve the five-day

1 suspension and not do the training or not serve
2 the five-day suspension, stay -- have those five
3 days suspension stayed for one year pending or
4 conditioned on, I should rather say. Conditioned
5 on the fact that those who serve -- all employees
6 who serve alcoholic beverages receive that
7 training. And that is why because the
8 establishment is going to serve the suspension
9 that is why we do not include that training
10 requirement in the Offer in Compromise. But it
11 was not overlooked.

12 CHAIRPERSON ANDERSON: Thank you for
13 that clarification, Mr. Ortiz. I think -- I
14 think I might have -- I'm glad that you have --
15 that you have the rule book in front of which I
16 have mine myself to trust. And so you are able
17 to quote. And I just want to make sure and I
18 appreciate -- I appreciate the clarifications
19 that you have made for me and I appreciate that.

20 MR. ORTIZ: Mr. Chairperson, I expected
21 that question to be asked and so I knew I had to
22 have an answer ready for you.

23 CHAIRPERSON ANDERSON: Well, thank you.
24 I think you have been appearing in front of me
25 too often so now you know my tendencies. Thank

1 you very much, sir. All right. And I apologize,
2 Mr. Vasey.

3 All right. So, it's my understanding
4 that there is an Offer in Compromise for Case
5 #19-CC-00129 that there is a fine of \$2,000 to be
6 paid within 120 days. If it's not paid by 120
7 days the license would be suspended. That as
8 part of that charge, there's a five-day
9 suspension. That Charge 2 will be dismissed in
10 Case #20-CC-00023 that, again, a sales to minor
11 that there is a \$2,000 fine to be paid within 120
12 days. If it's not paid within 120 days that the
13 license will be suspended until the fine has been
14 paid and that there is a five-day suspension and
15 that Charge 2 will be dismissed.

16 And so for both cases, there's a
17 \$4,000 fine payable within 120 days. If the fine
18 is not paid within 120 days the license will be
19 suspended and that there is a 10-day suspension
20 and 10 days for suspension are April 8th -- April
21 8th, 2021, through April 17th, 2021, and that the
22 suspension will be lifted at 8:00 a.m. on April
23 18th, 2021.

24 Is this your understanding, sir, of
25 the Offer in Compromise?

1 MR. VASEY: That is correct, yes. Mr.
2 Ortiz and I spoke earlier. Given the fact that
3 there is some questions or concerns in regards to
4 ascertaining the validity behind whether or not
5 the establishment has been closed we thought it
6 might just be an easier solution for the board
7 just to accept the ten days moving forward
8 because we have been closed and we,
9 unfortunately, cannot open and will remain
10 closed. So, at this particular point I'm in
11 agreement with this OIC in the hope that the
12 board will accept this edited version for your
13 review and approval.

14 CHAIRPERSON ANDERSON: Well, thank you
15 for bringing that clarification to the board, Mr.
16 Vasey. I appreciate you bringing that
17 clarification to the board.

18 All right. So, are you aware then
19 that by accepting an Offer in Compromise that you
20 give us your right to a hearing.

21 MR. VASEY: That is correct.

22 CHAIRPERSON ANDERSON: Are you also
23 aware that by accepting an Offer in Compromise
24 that you give us your right to appeal this
25 matter?

1 MR. VASEY: That is correct.

2 CHAIRPERSON ANDERSON: Any questions by
3 any board members regarding the Offer in
4 Compromise?

5 All right. Seeing no questions, I am
6 going to make a motion that the Offer in
7 Compromise be accepted. Is there a second?

8 MEMBER CROCKETT: Ms. Crockett seconds.

9 CHAIRPERSON ANDERSON: Ms. Crockett has
10 seconded the motion. We'll now take a Roll Call
11 vote to the motion that's been properly seconded
12 by Ms. Crockett.

13 Mr. Cato?

14 MR. CATO: Bobby Cato, I agree.

15 CHAIRPERSON ANDERSON: Ms. Crockett?

16 MEMBER CROCKETT: Rafi Crockett, I
17 agree.

18 CHAIRPERSON ANDERSON: Ms. Hansen?

19 MEMBER HANSEN: Jeni Hansen, I agree.

20 CHAIRPERSON ANDERSON: Mr. Grandis?

21 MEMBER GRANDIS: Edward Grandis, I
22 agree.

23 CHAIRPERSON ANDERSON: And I, Mr.

24 Anderson, I agree. The matter passes 6-0-0.

25 Thank you, Mr. Vasey. Thank you, Mr. Ortiz. I

1 hope I did not make life more difficult for you
2 today but that was not my intent. It's just to
3 clarify the record.

4 I understand that because of COVID-19
5 that business models for many establishments have
6 been substantially impacted. But at the same
7 time and I emphasize with you that your
8 establishment have been closed as I believe the
9 representation that you have made is that the
10 establishment has been closed since last year.

11 This is a serious violation. Sale to
12 Minor, it is a serious violation and it is
13 important to the board that there is some
14 semblance that an establishment recognizes the
15 fact that the board will take the privilege from
16 you of serving alcohol.

17 In this particular case, based on the
18 COVID, it's not apparent that although some
19 businesses have been able to be open during this
20 period of time that your -- your business model
21 you have not been open. So, at least I believe
22 that because of the fact that your business based
23 on the representations that you have made today
24 and that your business cannot take advantage of
25 some of the flexibility that agency provides for

1 some similar businesses to be open that I don't
2 believe that imposes additional penalties,
3 burdens. I think that would be overkill. That's
4 just my personal opinion and so, therefore, I
5 will accept the representation that the place
6 will remain -- that you're not going to take
7 advantage of some of the flexibility that the
8 agency has provided other similar facilities for
9 them to be in business at some point.

10 So, I want to let you know that I
11 empathize with you, but it is a Sale to Minor.
12 It's something that is very serious to the board
13 and we need to make sure that the licensee
14 recognize the fact that this is something that is
15 very important to the board in the sense that
16 there's some type of responsibility should be
17 taken by the licensee. Okay.

18 MR. VASEY: We do. We completely
19 understand and appreciate your attention to this
20 and believe us, when the time is right and we're
21 able to open again there will be different
22 protocols in place. We have gone through a
23 number of years without any issues. But,
24 unfortunately, there is a bit of change in a
25 cross period of time for about three or four

1 months and it caused a little bit of difficulty.
2 But we'll be starting anew and with much
3 different protocols in place.

4 But we understand it and we appreciate
5 your time and as you guys know, it's been a
6 difficult time frame for all of us. So, we just
7 hope the city can get back to normal in the near
8 future.

9 CHAIRPERSON ANDERSON: Thank you, Mr.
10 Vasey, and I do hope so. And thank you, again,
11 for the representation that you made today.

12 All right. And thank you, Mr. Ortiz,
13 and thank you very much. Have a great day.

14 MR. ORTIZ: Thank you, Chairperson and
15 all board members.

16 CHAIRPERSON ANDERSON: Okay, bye, bye.

17 (Whereupon, the above-entitled matter
18 went off the record at 2:46 p.m.)
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A			
a.m 14:23 18:22	approval 19:13	camera 2:17,18	correct 19:1,21 20:1
ABC 4:24 5:14	April 1:13 5:16,16,24	case 1:8 2:4,5,8,10 4:3	cover 4:11
able 2:19 3:4 9:15 17:16	6:14,14,15 7:25 8:1	4:11,13,16 5:6,7,22	COVID 9:18 21:18
21:19 22:21	10:3,4 14:10,11,21,22	5:24 6:7,9,10,12,16	COVID-19 21:4
above-entitled 12:14	14:23 15:13 18:20,20	12:4,5,7,19 15:15,20	Crockett 1:19 20:8,8,9
23:17	18:21,22	15:22 18:4,10 21:17	20:12,15,16,16
ABRA 1:22	ascertain 1:10 5:4,20	cases 4:10 11:4 12:9	cross 22:25
accept 9:4,6 10:19 19:7	15:21,21 16:3	14:3 18:16	crossing 16:6
19:12 22:5	ascertaining 19:4	Cato 1:18 20:13,14,14	CT 1:8
accepted 7:21 20:7	asked 17:21	cause 1:8 4:2	currently 10:5
accepting 19:19,23	asking 8:18,21 10:16	caused 23:1	
additional 13:23 22:2	13:5	Chair 2:15	D
address 13:8	assurance 8:13	Chairperson 1:15,18	date 4:24 5:15
addressed 14:17	assure 8:9	2:3,11,16,21,25 3:2,6	dates 6:5 10:1 11:12,13
advantage 21:24 22:7	assured 8:2 9:21 10:8	3:9,12,17,22,25 4:7	14:4,5,6,13,15,17,18
afternoon 4:1	attention 22:19	4:14 5:23 6:24 7:11	14:18
age 1:11 4:18 5:4,9,20	aware 8:22 9:11,14	8:17 10:15 12:1,17,24	day 6:13 14:10 23:13
15:22 16:3	19:18,23	13:18 14:1,12,24 15:3	days 4:20 5:11 13:20
agency 8:2 9:8,8,11,14	Awareness 16:24	16:17 17:12,20,23	14:4 15:17,18,24
9:17,21 10:8 14:18		19:14,22 20:2,9,15,18	16:11 17:3 18:6,7,12
21:25 22:8	B	20:20,23 23:9,14,16	18:12,17,18,20 19:7
ago 6:6,9,20	back 10:1 11:14 12:10	change 22:24	DC 1:22,22 16:18
agree 13:10 20:14,17	12:18,18,21,22 16:7	changed 9:16,18	deal 12:9
20:19,22,24	23:7	charge 4:17 5:3,5,8,18	decision 11:22
agreed 9:22 11:7,10	based 6:11 8:22 9:7,13	5:20 8:22,25 15:20	defer 13:22
agreement 7:7 19:11	9:18 13:6 21:17,22	16:3 18:8,9,15	definitely 16:18
alcohol 16:10,24 21:16	beginning 8:15	city 23:7	deliberation 11:21
alcoholic 1:2,14 4:17	behalf 3:15	clarification 6:22 17:13	details 7:5
5:8 17:6	believe 7:3 14:11 21:8	19:15,17	determination 11:21
ALIYA 1:19	21:21 22:2,20	clarifications 17:18	difference 9:5
allow 9:18	believed 13:12	clarify 21:3	different 22:21 23:3
analysis 7:21	beverage 1:2,14 4:18	clear 11:11 13:2,9	difficult 21:1 23:6
ANC 1:8	5:8	closed 5:2,18 6:25 7:2	difficulty 23:1
Anderson 1:15,18 2:3	beverages 17:6	7:5,8,14,17,19,23,25	disagree 13:11
2:11,16,21,25 3:2,6,9	bit 7:10 22:24 23:1	8:9,11,15 9:9,13,23	dismissed 5:5,21 15:21
3:12,17,22,25 4:7,14	board 1:2,14 4:6 6:18	10:1,7,10,22 13:24	16:4 18:9,15
5:23 7:11 8:17 10:15	6:18 7:22 8:2 9:3	14:20 19:5,8,10 21:8	District 1:1 3:16
12:1,17,24 14:1,12,24	10:18 11:14,18,19	21:10	doing 13:4,5
15:3 17:12,23 19:14	12:3,11 13:12 19:6,12	closure 9:10	Donovan 1:15,18
19:22 20:2,9,15,18,20	19:15,17 20:3 21:13	Code 16:18	drinking 1:11 5:4,20
20:23,24 23:9,16	21:15 22:12,15 23:15	Columbia 1:1 3:16	15:22 16:3
Andrews 1:22 2:6,9,13	Board's 10:11	come 12:10,21 16:7	
anew 23:2	Bobby 1:18 20:14	coming 15:10	E
answer 17:22	book 17:15	commit 7:15	E-Y 3:21
anyway 7:19	brief 10:13	completely 22:18	earlier 19:2
apologize 14:15 15:4	bringing 19:15,16	Compromise 4:5,8,10	easier 9:6 19:6
16:6 18:1	burdens 22:3	4:16 5:6,21 13:5 15:6	edited 19:12
apparent 21:18	business 7:17 9:14,17	15:8,15 17:10 18:4,25	Edward 1:19 20:21
apparently 6:1	9:23 10:22 21:5,20,22	19:19,23 20:4,7	effective 6:14
appeal 19:24	21:24 22:9	concern 10:12	egregious 11:7
appearing 17:24	businesses 9:12,19,25	concerns 19:3	either 11:6
appears 6:12 11:1	21:19 22:1	conditioned 17:4,4	elevate 2:7
appreciate 2:24 17:18	bye 23:16,16	consecutively 13:21	elevated 2:14,15
17:18,19 19:16 22:19		consulted 13:19	empathize 22:11
23:4	C	Control 1:2,14	emphasize 21:7
appropriate 7:22 13:8	calendar 2:4,5 14:14	convenience 7:17	employees 17:5
13:14	Call 20:10	conversation 8:10	ended 6:21
	called 4:12 16:19	conversations 8:13	ensured 9:9

entire 8:12
especially 10:1
establish 16:25
establishment 3:23
 4:23 5:2,13,18 6:4,19
 6:25 7:5,8,14,23,25
 8:3,11,14 9:9 10:6,7,9
 10:25 17:8 19:5 21:8
 21:10,14
establishments 9:15,16
 21:5
executive 12:12
expect 11:19
expected 17:20
explain 6:16 7:4 15:10

F

f 16:20
facilities 22:8
fact 17:5 19:2 21:15,22
 22:14
Failed 1:10
failure 5:3,19 16:1
fine 2:12 4:19,19,21
 5:10,12 11:9 14:2,3
 15:15,16,18,23 18:5
 18:11,13,17,17
first 10:25 11:1,2,8
five 17:2
five- 6:12
five-day 4:23 5:14,15
 6:2,13 7:7 15:19,25
 16:21,23,25 17:2 18:8
 18:14
five-days 4:25
flexibility 9:15 21:25
 22:7
forward 19:7
four 22:25
frame 23:6
front 17:15,24
further 7:4
future 23:8

G

give 10:13 19:20,24
Given 19:2
glad 17:14
Government 8:20 9:2
 9:22 11:19 13:4,6,11
 13:12 15:9,9
Government's 9:1
Grandis 1:19 20:20,21
 20:21
Green 1:6

H

Hansen 1:20 20:18,19

20:19
hear 3:2
hearing 1:8 4:2 9:6
 19:20
hope 19:11 21:1 23:7
 23:10
hoping 16:5

I

identify 3:13
impacted 21:6
important 21:13 22:15
imposes 22:2
incident 11:9
include 17:9
includes 5:1,17
independently 9:25
indicate 16:20
indicated 14:8
indulgence 10:13 11:25
information 11:22
 13:23
infraction 9:7 11:3
infractions 10:25
initiated 9:11
insure 14:19
intent 13:24 21:2
interfere 13:2
issue 13:8
issues 12:8 22:23

J

Jeni 1:20 20:19
JR 1:18
justify 13:12

K

knew 17:21

L

law 9:18
legal 1:11 5:4,20 15:22
 16:3
license 1:7 2:6 4:20,24
 5:11,15 9:8 12:19
 15:19 18:7,13,18
licensee 1:23 8:6,7,10
 8:14,19,21 9:2 11:16
 13:22 14:20 22:13,17
Licensee's 13:23
life 21:1
lifted 14:22 18:22
line 16:6
little 7:10 23:1
LLC 1:6
look 14:14
Lost 1:6 2:5 6:25 12:19

M

managing 3:24
mandatory 6:2,12,19
 7:13,16 8:23,23 11:3
March 4:25 5:1 6:5,6,8
 7:23,24 10:2,9 11:12
matter 1:5 12:14 19:25
 20:24 23:17
matters 4:3
mean 6:17 8:1 9:4
MEETING 1:3
member 1:18,19,19,20
 3:24 20:8,16,19,21
members 12:11 20:3
 23:15
mentioned 16:14
met 1:15
mine 17:16
minor 1:9 5:25 6:1,11
 10:24 15:23 16:9,19
 18:10 21:12 22:11
model 9:17 21:20
models 21:5
monitoring 8:1
months 23:1
motion 20:6,10,11
move 2:4
moving 5:7 19:7
multiple 8:13

N

name 3:18,20 14:25
nature 6:11 9:13
near 23:7
necessarily 11:8
necessary 1:10 5:4,19
 15:21 16:2,2
need 2:9 14:6,14,19,19
 15:9 22:13
needs 9:21 16:21
negotiate 11:14
negotiated 8:20
negotiation 9:1 10:17
 16:15
negotiations 13:3
normal 23:7
normally 16:8
not--I'm 10:15
noticed 16:13,14
number 2:5,6 4:11,13
 4:16,22 5:6,7,22,24
 6:9 22:23
NW 1:7

O

OAG 1:22
oath 8:7
offer 4:5,8,9,15 5:5,21

6:17 13:4 15:6,8,14
 17:10 18:4,25 19:19
 19:23 20:3,6
OIC 5:9 9:4 10:19 19:11
once 11:20
open 9:13,19 19:9
 21:19,21 22:1,21
opened 8:12
operate 8:3
opinion 22:4
opportunity 11:15
Ortiz 1:22 2:14 3:12,15
 3:15 4:4,9,15 5:24
 6:23 8:5,19 10:11
 11:24 12:21 13:1,16
 13:17 14:8,13,21 16:5
 16:17 17:13,20 19:2
 20:25 23:12,14
overkill 22:3
overlooked 16:16,18
 17:11

P

P-R-O-C-E-E-D-I-N-G-S
 2:1
p.m 2:2 12:15,16 23:18
paid 4:19,21 5:10,12
 14:3 15:16,17,24 18:6
 18:6,11,12,14,18
pandemic 7:1 8:16 9:12
part 5:21 7:12,21 9:1
 16:12,15 18:8
particular 19:10 21:17
parties 2:7,10 4:4 10:17
 11:7,10 13:3,19 16:16
 16:22
party 12:7
passes 20:24
payable 18:17
penalties 22:2
pending 16:24 17:3
period 7:3 8:4,12 9:10
 9:20 10:23 21:20
 22:25
periods 8:24
person 4:18 5:9
personal 22:4
persons 16:10
place 22:5,22 23:3
please 2:7,17,18 3:13
 3:14,19 4:3,8 6:22
 12:22 15:1
point 19:10 22:9
position 9:24
possibility 16:23
preliminary 4:3
present 1:17,21 4:6
presented 10:21 11:12

presiding 1:15
previous 2:10 12:7
prior 15:10
privilege 21:15
problem 7:12
proper 14:13
properly 20:11
proposed 13:7,20
prosecuted 6:7,17
protocols 22:22 23:3
provide 6:22 7:4 11:19
 13:22
provided 7:6 13:4,13
 15:8 22:8
provides 21:25
providing 6:17
purpose 10:18 11:17
 13:9
put 8:8

Q

question 17:21
questioning 13:10
questions 10:20,21
 11:18 15:7,7 19:3
 20:2,5
quote 17:17

R

Rafi 1:19 20:16
ready 17:22
reason 7:18 8:17,18
reasonable 5:3,19 16:2
recall 12:5
receive 17:6
recognize 22:14
recognizes 21:14
record 3:13,18 4:12 8:8
 11:16 12:3,4,6,9,10
 12:15,18,18,22 13:1,9
 14:13,25 21:3 23:18
recorded 14:16
reflect 14:13
regarding 4:10 20:3
regards 19:3
relationship 3:23
remain 19:9 22:6
remained 7:2,8 8:8,11
 8:15
remember 14:12,16
remove 2:9
renegotiate 10:14
representation 21:9
 22:5 23:11
representations 21:23
representations 17:10
requirement 11:20
responsibility 22:16

resumed 12:15
Retailer 1:8
return 12:12
review 19:13
Richard 1:23 3:20
Rick 15:2
rights 2:7,13,14
Roll 20:10
roughly 7:1
rule 17:15

S

S 1:19
sale 1:9 4:17 5:8,25 6:1
 6:11 10:24 15:23 16:9
 16:19 21:11 22:11
sales 18:10
saying 7:11 8:25 9:2
 10:18,19 11:13,17
second 2:10 20:7
seconded 20:10,11
seconds 20:8
Section 16:19
Seeing 20:5
sell 16:10
semblance 21:14
sense 22:15
serious 10:23 21:11,12
 22:12
serve 4:23 5:14 16:10
 16:25 17:1,5,6,8
served 5:2,17 6:8,19
 7:7 8:24 9:3 13:21
 14:4,7 15:13 16:21
serving 11:5 21:16
session 12:12
show 1:8 4:2
similar 22:1,8
SIMONE 1:22
Simultaneous 3:1
sir 2:18,22 3:23 11:24
 15:4,5 16:7 18:1,24
society 1:6 2:6 6:25
 12:19
solution 19:6
sorry 15:18 16:5
speak 11:16
speaking 3:1 15:11
specific 9:22 14:5,6,15
 14:17
specifically 16:20
spell 3:18
spoke 19:2
Staff 1:22
start 7:1
started 6:21
starting 14:10 23:2
state 3:18 8:7 14:25

stating 7:18
statute 16:12
stay 17:2
stayed 17:3
staying 16:23
Stephen 1:22 3:15
steps 1:10 5:3,19 16:2
street 1:7 10:6
substantially 21:6
summer 9:5
Sunday 14:23
suspended 4:20 5:11
 6:4 9:8 15:18,19 18:7
 18:13,19
suspension 4:22,24,25
 5:13,14,15 6:2,3,5,8
 6:13,13,20,21 7:7,13
 7:16,20 8:24 9:5,10
 10:3 11:10 13:20
 14:22 15:13,20,25
 16:21,23 17:1,2,3,8
 18:9,14,19,20,22
suspensions 11:6

T

t/a 1:6
taken 22:17
tell 14:14
telling 6:7,18
ten 19:7
tendencies 17:25
term 13:6
terms 5:22 8:20 13:7,13
 15:10 16:9,12
thank 2:16,23 3:9,11
 4:1 6:23 12:12 17:12
 17:23,25 19:14 20:25
 20:25 23:9,10,12,13
 23:14
thanks 2:12
thought 16:11 19:5
three 22:25
Thursday 14:10
times 9:22
today 5:24 6:7,15,18
 10:8 21:2,23 23:11
told 6:3 12:6
tomorrow 14:10
training 16:11,24 17:1,7
 17:9
trust 17:16
trying 9:20 10:16 13:2
turn 2:17
two 4:10,23 5:3,19
 10:23
type 8:1 22:16

U

understand 7:20 10:11
 21:4 22:19 23:4
understanding 6:24 8:9
 11:2 15:5,12,14 16:8
 18:3,24
Understood 13:17
unfortunately 19:9
 22:24

V

V-A-S- 3:20
validity 19:4
Vasey 1:23 2:13,17,19
 2:23 3:4,8,11,17,20
 3:24 7:3 12:22,23,25
 14:6,25 15:2,2,3 18:2
 19:1,16,21 20:1,25
 22:18 23:10
verify 9:25
version 19:12
videoconference 1:15
view 7:15
violation 1:9 7:13,16
 21:11,12
violations 10:24
vote 20:11

W

W 1:15,18
walk 10:5
wanted 13:8,11
warning 11:3,4
warnings 11:5
WebEx 1:15
Wednesday 1:12
week 6:21 10:2 13:21
 13:21 14:9
went 12:15 23:18
Wonderful 2:23
wrong 16:14

X

Y

year 6:6,9,20 7:9,10
 10:2 11:12 17:3 21:10
years 4:18 5:9 22:23
yesterday 6:21 11:13

Z

Zebra 1:6

0

00023 6:10
00129 5:25 15:16

1

1:54 2:2

10 13:20 18:20
10-day 18:19
10th 14:10
120 4:19 5:11 14:3
 15:17,17,24 18:6,6,11
 18:12,17,18
14th 1:7
15-minute 11:25
17th 14:11,22 18:21
18th 14:23 18:23
19-CC- 5:24 15:15
19-CC-00126 12:19
19-CC-00129 1:8 2:5
 4:11,16 5:6 18:5
1B 1:8

2

2 4:22 5:13,16 6:14 7:25
 10:3 15:20 18:9,15
2,000 4:19 5:10 14:2,3
 15:16,24 18:5,11
2:09 12:2,15
2:15 12:7
2:30 12:3,4,5,6,9,11
2:32 12:16
2:46 23:18
20-CC- 6:9
20-CC-00023 4:13 5:22
 15:22 18:10
20-CC-0023 5:7
2001 1:7
2020 4:25 5:1 6:5,6,9
 7:23,24 10:2,9
2021 1:13 5:16,16 6:14
 6:14,15 7:25 8:1 10:3
 10:4 18:21,21,23
21 4:18 5:9
23 4:25 6:5,8 7:23 10:2
 10:9
25-7 16:19
25781 16:19
27 5:1 6:6 7:24

3

4

4,000 18:17

5

6

6 5:16 6:14 8:1 10:4
6-0-0 20:24

7

7 1:13 5:24 6:15

8

8:00 14:23 18:22
83420 1:7 2:6 12:20
8th 14:10,21 18:20,21

9

90 16:11

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Before: DCABRA

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