

DISTRICT OF COLUMBIA
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 ALCOHOLIC BEVERAGE CONTROL BOARD
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 MEETING

IN THE MATTER OF: :
 :
 Prospect Dining, LLC :
 t/a Chinese Disco :
 3251 Prospect Street NW : Show Cause
 Retailer CR - ANC 2E : Hearing
 License No. 78058 :
 Case #17-CMP-00033 :
 :
 (Substantial Change in :
 Operation Without Board :
 Approval, Violation of :
 Settlement Agreement) :

Wednesday
 January 10, 2018

The Alcoholic Beverage Control Board
 met in the Alcoholic Beverage Control Hearing
 Room, Reeves Building, 2000 14th Street, N.W.,
 Suite 400S, Washington, D.C. 20009, Chairperson
 Donovan W. Anderson, presiding.

PRESENT:

DONOVAN W. ANDERSON, Chairperson
 NICK ALBERTI, Member
 DONALD ISAAC, SR., Member
 MIKE SILVERSTEIN, Member
 JAMES SHORT, Member

ALSO PRESENT:

WALTER ADAMS, OAG
 KIJUN SUNG, Licensee
 KEVIN PUENTE, ABRA Investigator

T-A-B-L-E O-F C-O-N-T-E-N-T-S

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WITNESS	DIRECT	CROSS	REDIRECT	RECROSS	BOARD
Kevin Puente	9	50	51		38
Kijun Sung	56	58			

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

2 11:08 a.m.

3 CHAIRPERSON ANDERSON: All right.

4 We're back on the record. The next case is Case
5 No. 17-CMP-00033, Chinese Disco, License No.
6 78058.

7 Will the parties, please, approach and
8 identify themselves for the record, please?

9 MR. ADAMS: Good morning, Mr. Chairman
10 and Members of the Board. I'm Walter Adams from
11 the Office of the Attorney General representing
12 the District of Columbia.

13 CHAIRPERSON ANDERSON: Good morning,
14 Mr. Adams.

15 MR. ADAMS: Good morning.

16 MR. SUNG: Good morning. My name is
17 Kijun Sung. I'm one of the owners of Prospect
18 Dining, LLC doing business as Chinese Disco.

19 CHAIRPERSON ANDERSON: Sung?

20 MR. SUNG: Sung, S-U-N-G.

21 CHAIRPERSON ANDERSON: Sun?

22 MR. SUNG: S-U-N-G, Sung.

1 CHAIRPERSON ANDERSON: Sung. Good
2 morning, Mr. Sung.

3 MR. SUNG: Good morning.

4 CHAIRPERSON ANDERSON: Okay. We have
5 a Show Cause Hearing in this matter.

6 Are there any preliminary matters?

7 MR. ADAMS: There are no preliminary
8 matters, Mr. Chairman.

9 CHAIRPERSON ANDERSON: All right. Is
10 the Government ready to move forward?

11 MR. ADAMS: Yes, the Government is
12 ready to proceed. The only preliminary matter is
13 just that we will have, the District will have,
14 one witness. We would like to reserve the
15 ability to have -- call one rebuttal witness, if
16 necessary, but right now we anticipate only
17 having one witness.

18 But other than that, we are able to
19 proceed.

20 CHAIRPERSON ANDERSON: All right. So,
21 Mr. Sung, are -- does -- do you wish to call any
22 witnesses?

1 MR. SUNG: I may have up to two
2 witnesses. I will make that determination after
3 Mr. Adams puts forth his case.

4 CHAIRPERSON ANDERSON: Did the -- all
5 right. Does the Government wish to make an
6 opening statement?

7 MR. ADAMS: Yes, Mr. Chairman. Very
8 briefly, there are two -- for this case against
9 Chinese Disco, there are two charges and, thus,
10 two issues.

11 The first issue is whether the
12 establishment made a substantial change without
13 the Board's approval.

14 And the other issue is whether the
15 establishment has violated its settlement
16 agreement on March -- or excuse me, January 22,
17 2017.

18 The facts are fairly brief and simple.
19 Essentially, on January 22, 2017, Investigators
20 went to the -- the evidence will show that
21 Investigators went to the establishment and, at
22 the time, they found that the establishment had

1 more than 99 patrons. According to both the
2 license before this Board and the settlement
3 agreement, the establishment is only entitled to
4 have 99 patrons.

5 And you will see that -- the evidence
6 will show that they far-exceeded that. In fact,
7 doubled, more than doubled the amount on January
8 22nd. So as a result, the District will be able
9 to provide by a preponderance of the evidence
10 that the establishment violated both of those --
11 both statutes.

12 And any questions?

13 CHAIRPERSON ANDERSON: So the issue is
14 -- you said two issues, so --

15 MR. ADAMS: One is substantial change
16 in which the establishment exceeded its
17 occupancy.

18 CHAIRPERSON ANDERSON: Okay.

19 MR. ADAMS: And the other one is for
20 violation of the settlement agreement.

21 CHAIRPERSON ANDERSON: The settlement
22 agreement, okay.

1 MR. ADAMS: The settlement agreement
2 also states that they are limited to 99 patrons.

3 CHAIRPERSON ANDERSON: Isn't that the
4 same issue? I'm asking just for my own
5 clarification. Isn't that the same issue or is
6 it two separate issues?

7 MR. ADAMS: From a legal standpoint,
8 they are two separate issues. From a factual
9 standpoint, they -- really for factual
10 standpoint, there really is one issue, that there
11 were more patrons than they were allowed to have.

12 From a legal standpoint, one is
13 regarding occupancy that is provided by both DCRA
14 and approved by the Board. But the second issue
15 really is the agreement that was made with the
16 neighborhood association and/or any other
17 neighbors who filed protests at the time.

18 So from a standpoint that they are --
19 from a legal standpoint, they violated two
20 separate, one being a Board Order, the other one
21 being an agreement with those in the
22 neighborhood. We believe that they are separate

1 from a legal standpoint.

2 CHAIRPERSON ANDERSON: Okay. All
3 right. And, Mr. Sung, do you wish to make an
4 opening statement or you reserve?

5 MR. SUNG: Yes, just briefly. I would
6 just ask the Board to focus on the specific
7 charges. I do not --

8 MEMBER SILVERSTEIN: Please, speak
9 into the mike, Mr. Sung.

10 MR. SUNG: Sure. I apologize. I
11 don't know what the testimony of Mr. Adams'
12 witnesses are going to be. I did review the
13 report. It is very lengthy with a lot of
14 exhibits and a lot of factual allegations.

15 So simply, I would ask the Board to
16 just consider the charges and not any extraneous
17 facts that do not have bearing on the two charges
18 at hand. Thank you.

19 CHAIRPERSON ANDERSON: All right.
20 Thank you.

21 Does the Government wish to call its
22 first witness?

1 MR. ADAMS: Yes. We would like to
2 call Investigator Kevin Puente to the stand.

3 Whereupon,

4 INVESTIGATOR KEVIN PUENTE
5 was called as a witness by Counsel for the
6 Government, and having been first duly sworn,
7 assumed the witness stand and was examined and
8 testified as follows:

9 THE WITNESS: I do.

10 CHAIRPERSON ANDERSON: All right.

11 Thank you. Your witness.

12 MR. ADAMS: Yes.

13 DIRECT EXAMINATION

14 BY MR. ADAMS:

15 Q Mr. Puente, can you, please, state
16 your name and spell it for the record?

17 A Kevin Puente. K-E-V-I-N Puente, P-U-
18 E-N-T-E.

19 Q And, Mr. Puente, are you employed by
20 the District of Columbia Government?

21 A Yes.

22 Q And specifically, are you employed by

1 the Alcoholic Beverage Regulation Administration?

2 A Yes.

3 Q And what is your position?

4 A I'm an Investigator.

5 Q And how long have you had that
6 position?

7 A Two years.

8 Q And in the course of the two years
9 that you have been with the Agency, have you
10 received training in terms of being able to
11 determine violations or essentially training in
12 terms of being able to check establishment's
13 compliance with the Board's Rules and
14 Regulations?

15 A Yes.

16 Q All right. And throughout the two
17 years that you have been working with the Agency,
18 approximately, how many cases have you worked on?

19 A Quite a bit. I don't know the exact
20 number.

21 Q Over 100?

22 A I would say so.

1 Q All right. Now, within the time that
2 you worked with this -- with the Agency, have you
3 had occasion to come to Chinese Disco?

4 A Yes.

5 Q An establishment known as Chinese
6 Disco. All right. So turning to the date of
7 January 22, 2017, were you on duty that day?

8 A Yes.

9 Q And on that date, did you have an
10 occasion to be upon the premises of Chinese
11 Disco?

12 A Yes.

13 Q Can you explain to the Board how you
14 came to be at Chinese Disco?

15 A I was telephoned by my supervisor,
16 John Suero, that he received a noise complaint
17 for Chinese Disco and asked that I go investigate
18 to see if the noise was still loud. If so, talk
19 to the establishment.

20 Q And after you received the complaint--
21 and where were you at the time that you received
22 that complaint?

1 A I don't recall. Somewhere in the
2 District.

3 Q All right, somewhere in the District.
4 And were you by yourself that day or were you --

5 A No, I was with another Investigator.

6 Q Who was the other Investigator?

7 A Mark Brashears.

8 Q So what did you do at the time that
9 you received the call?

10 A I advised Supervisor Suero that we
11 will be in route to Chinese Disco.

12 CHAIRPERSON ANDERSON: Mr. Puente, can
13 you speak up, please?

14 THE WITNESS: Um-hum.

15 BY MR. ADAMS:

16 Q Can you repeat your answer just a
17 little bit more slowly?

18 A Yes. After Supervisor Suero informed
19 us of the noise complaint, I advised him we will
20 head over to Chinese Disco to investigate.

21 Q Okay. And so when did you arrive at
22 Chinese Disco?

1 A Approximately, around 12:15 a.m.

2 Q Okay. And so once you arrived at
3 Chinese Disco, what did you observe?

4 A A line outside of patrons entering the
5 establishment. I asked to speak to the ABC
6 manager/owner.

7 Q And once you -- now, you were asked to
8 go there to investigate a noise complaint. What
9 -- can you describe what happened in terms of the
10 investigation on that noise complaint?

11 A Yes. So if I recall, they said there
12 is a lot of noise in the courtyard. Chinese
13 Disco has a lengthy front entrance. The patrons
14 start to form near Prospect Street. There is
15 like a little tunnel corridor area. Then there
16 is a large courtyard that is blocked off for the
17 patrons. I didn't find no patrons out there
18 talking or making loud -- being loud. I didn't
19 hear no loud music emanating from inside the
20 establishment.

21 Q And so being stated that there was
22 many patrons in front of the establishment,

1 approximately, how many people were in front of
2 the establishment?

3 A I can't recall.

4 Q Okay. It was just a line?

5 A Yeah, just a line.

6 Q All right. So once you observed the
7 line, what did you do, at that point?

8 A We went and made notification to the
9 manager on duty.

10 MEMBER SILVERSTEIN: Can you speak up,
11 please?

12 THE WITNESS: We went and made
13 notification to the manager on duty that there
14 was a noise complaint.

15 BY MR. ADAMS:

16 Q Okay. And what -- and who -- and when
17 you made notification to the manager, who did you
18 speak to?

19 A I spoke with two people, the ABC
20 Manager, Devin Davies, as well as another
21 manager, Greg Bartholomew.

22 Q All right. And why did you speak with

1 two people? Do you happen to recall?

2 A Ms. Davies, she was bartending, so she
3 was rather busy, so Mr. Bartholomew, who is the
4 general manager, so I talked to him more about
5 the issue.

6 Q All right. And so once you spoke with
7 the general manager, can you explain what you
8 observed at that point, once you were speaking
9 with him? And by the way, let me step back.

10 When you spoke with the general
11 manager and Ms. -- is it Ms. Davies?

12 A Yes.

13 Q It's Ms. Davies. Okay. When you
14 spoke with the general manager and Ms. Davies,
15 where were you, at that point?

16 A Inside the establishment.

17 Q Okay. What did you observe once you
18 were inside the establishment?

19 A We observed a lot of people inside,
20 music playing, DJ, people dancing, a lot of
21 people mostly.

22 Q And when you say a lot of people, how

1 would you describe the conditions inside the
2 place?

3 A It's a very large establishment
4 inside, so I noticed when I turned the corner
5 from coming in the front entrance, I observed
6 people right there and down the hallway. There
7 is like a back bar area, I observed people in
8 that area. Then when I come in and I made a
9 right to go towards the front, then there was
10 some people over there as well as once I got to
11 the -- by the bar, main bar area, there was a lot
12 of people over there dancing. I could see people
13 all the way to the other end of the
14 establishment.

15 Q All right. And as you were speaking
16 with the establishment's employee or --

17 MR. ADAMS: Sorry, let me take that
18 question back.

19 BY MR. ADAMS:

20 Q To get to meet the managers, was it
21 easy to -- can you tell us whether or not it was
22 easy to maneuver through the establishment?

1 A We spoke near the office, so when I
2 came in, we went into the little office area,
3 because it was a little quieter. So I advised
4 him of the noise complaint.

5 Q Okay.

6 A Then that's where we kind of spoke
7 mostly.

8 Q Okay. And did there come a time that
9 you spoke with anyone outside the office?

10 A Yeah, myself and Mr. Bartholomew
11 walked around.

12 Q Okay. Did there come a time that you
13 had any discussion regarding the amount of
14 patrons in the establishment?

15 A Yes. I asked to see the ABC License
16 and he provided it to me.

17 Q And what did you find once you saw the
18 ABC License?

19 A That it had an occupant load of 99 on
20 it.

21 Q Okay. And what did you do at that
22 point, once you saw that the occupancy load was

1 99?

2 A Then I also saw that the -- on the ABC
3 License it had a voluntary agreement listed on
4 it, so I asked to see the settlement agreement.

5 Q Okay.

6 A And he provided a copy of that to me.

7 Q Okay. And what did you see from the
8 settlement agreement?

9 A I reviewed the settlement agreement.
10 I believe either the first or second section
11 stated that the occupancy load could be no more
12 than 99.

13 Q And from that point, did you have any
14 other questions?

15 A I advised Mr. Bartholomew, I asked him
16 how many patrons were inside of the
17 establishment? He got on his radio and radioed
18 the front security at the front door and he told
19 me 150.

20 Q All right. And once you heard that it
21 was 150 patrons within the establishment, what
22 did you do at that point?

1 A I asked him how was he keeping track
2 of the patrons coming in? He said there was
3 clickers at the front door.

4 Q And what did you do then?

5 A I believe Investigator Brashears went
6 outside and took a look at the clickers and took
7 photographs of the clickers.

8 Q Okay. And once -- did you speak with
9 Investigator Brashears?

10 A Yes. He came back and showed me the
11 clickers. One clicker said 291. The other
12 clicker said 51.

13 Q So based upon those -- and was there
14 any discussion -- can you tell us, what
15 discussion, if any, did you have regarding the
16 clickers and how -- and what those two numbers
17 indicated?

18 A I believe Mr. Bartholomew said one was
19 for people coming in, one was for people exiting.

20 Q And so what did you -- did you make
21 any analysis based upon the two numbers?

22 A Yes. So I subtracted the 51 from the

1 291 and got a total of 240.

2 Q And while you were inside the
3 establishment, did you do anything else to record
4 the conditions that were inside the
5 establishment?

6 A I attempted to walk around, but it was
7 kind of hard by the main bar area, because there
8 was a lot of people, so I stood near the ends of
9 both bar areas and took photographs.

10 Q Okay. And so after you determined
11 there was 240 patrons within the establishment,
12 what did you do at that point?

13 A I advised Mr. Bartholomew that the
14 establishment was in violation for being over 99.

15 Q And what happened?

16 A He stated he didn't -- he told me he
17 didn't realize the occupancy was 99 on the
18 settlement agreement. I advised him that the
19 ownership would need to go back to the ANC or the
20 community to rework that settlement agreement to
21 allow more people to come inside.

22 Q Now, in terms of this issue of the

1 establishment's occupancy, can you tell us
2 whether or not you did anything else in that --
3 on that evening?

4 A No. I took the word from the ABC
5 Manager who stated 150 as well as the clickers.

6 Q All right. So now as part of your
7 standard operating procedure for investigating
8 this -- these types -- once you determine a
9 violation, what do you do afterwards?

10 A We advise the ownership and then we
11 come back and write a case report.

12 Q Did you write a case report in this
13 case?

14 A Yes.

15 Q All right.

16 MR. ADAMS: I would like the Board to
17 -- I would like to approach the witness with this
18 -- with what is identified as the District's
19 Exhibit No. 1, which is Mr. Puente's case report.

20 (Whereupon, the above-
21 referred to document was
22 marked as Government Exhibit

1 No. 1 for identification.)

2 CHAIRPERSON ANDERSON: Do you have a
3 copy of it, Mr. Sung?

4 MR. SUNG: Yes, I do.

5 CHAIRPERSON ANDERSON: Go ahead.

6 BY MR. ADAMS:

7 Q And, Mr. Puente, do you have a copy of
8 this report?

9 A Yes.

10 Q Okay. Now, in terms of what has been
11 identified as Exhibit No. 1, do you recognize
12 that document?

13 A Yes.

14 Q Okay. How do you recognize it?

15 A It's my case report.

16 Q Now, looking at the -- it looks like
17 in the first four pages, there is a narrative.
18 Do you recognize this narrative?

19 A Yes, it's the narrative I typed up.

20 Q Is it a true and accurate
21 representation of the narrative that you wrote
22 up?

1 A Yes.

2 Q All right. And then turning to page
3 5 of the case report, do you see your name on
4 page 5?

5 A Yes.

6 Q And do you also see a signature?

7 A Yes.

8 Q And whose signature is that?

9 A Oh, that's mine.

10 Q And what date was it, did you sign it?

11 A February 21, 2017.

12 Q All right. And is it an accurate
13 representation of your signature?

14 A Yes.

15 Q All right. So along with your case
16 report, you included exhibits. Is that correct?
17 In this case, it looks like you included about 20
18 attachments to this?

19 A Yes.

20 Q All right. Now, just briefly looking
21 at all the exhibits that you have here, are they
22 a true and accurate representation of the

1 exhibits that you attached to this report?

2 A Yes.

3 Q All right.

4 MR. ADAMS: Mr. Chairman, I would like
5 to have what is marked as the District's Exhibit
6 1 into evidence.

7 CHAIRPERSON ANDERSON: Mr. Sung?

8 MR. SUNG: I don't have an objection
9 to the report so far as to corroborate Mr.
10 Puente's testimony.

11 On the other hand, it does contain a
12 lot of other factual allegations which could
13 cause concern to the Board. So I'm a little bit
14 concerned about that.

15 CHAIRPERSON ANDERSON: I mean, you do
16 have -- you said it is his report that you are --
17 you have provided a copy of it, so you have the
18 opportunity under cross-examination to cross-
19 examine him through the -- about the allegations
20 here. So I will accept the exhibit into the
21 evidence.

22 (Whereupon, the above-

1 referred to document was
2 received into evidence as
3 Government Exhibit No. 1.)

4 CHAIRPERSON ANDERSON: However, you do
5 have the opportunity to cross-examine him on
6 whatever issues that you believe that -- whatever
7 concerns that you have within the document.

8 MR. SUNG: Understood. I just didn't
9 want to waste the Board's time going through them
10 one-by-one. It's 17 exhibits in excess. There
11 is pictures of beer cans, just odd things that
12 could result in an inference.

13 I am willing to stipulate for the
14 purposes of efficiency that the establishment was
15 over capacity that night, just to get to the
16 heart of this matter. So if that assists you in
17 any way and we can keep this report out for the
18 sake of proceeding, I'm happy to do so.

19 MR. ADAMS: Mr. Chairman, very
20 briefly. We are -- of course, we are more happy
21 to have a stipulation in place in terms of
22 whether or not a violation happened. We can just

1 move to argument.

2 But however, since we are at hearing,
3 there is really no evidentiary basis to prohibit
4 the case report from coming into evidence.

5 We have -- the testimony has been very
6 focused and so more or less, it is what -- the
7 document speaks for itself. So since there is
8 really no contention in terms of the
9 admissibility, we believe that it should be
10 admitted. And then afterwards, we can address
11 the next statement that was made by Mr. --

12 CHAIRPERSON ANDERSON: I mean, I'll
13 admit the document and I mean for what -- I'll
14 admit the document. I have not had an
15 opportunity to go through all and if it's not
16 relevant for us to go through all the documents,
17 then we are not going to be there. But the
18 document -- so that's fine.

19 MR. ADAMS: All right.

20 CHAIRPERSON ANDERSON: I'll admit it.

21 MR. ADAMS: And we do have to
22 establish -- and for the most part, I am -- I do

1 -- would like to establish certain things in the
2 record, since we have proceeded to hearing, we
3 might as well establish a couple things.

4 CHAIRPERSON ANDERSON: But let me ask
5 a question and I know this is -- I'm hearing
6 there is some stipulation. So what are -- would
7 the parties -- and I probably should have asked
8 this before we had had the witness testify, but
9 I'm hearing there is some stipulation.

10 MR. ADAMS: Right.

11 CHAIRPERSON ANDERSON: So --

12 MR. ADAMS: Well, let me -- actually,
13 Mr. Chairman, I think maybe we should be --
14 clarify from the respondent here in terms of
15 exactly what they want. If that's the case, then
16 we can suspend Mr. -- I would like to at least
17 admit it, since we have gone --

18 CHAIRPERSON ANDERSON: Right. Since
19 we have gone --

20 MR. ADAMS: -- gotten this far.

21 CHAIRPERSON ANDERSON: -- this far.

22 THE WITNESS: Right.

1 MR. ADAMS: If that is the case, I
2 think the question is really for respondent to be
3 clear on the record in terms of what he is
4 willing to do, how he wants to proceed with this
5 hearing.

6 CHAIRPERSON ANDERSON: Right. And
7 that's one of the reasons why I ask for opening
8 statements, because I need the parties to -- so
9 if there is stipulations, then tell me what it is
10 that the parties have stipulated to and then I'll
11 know what it is that I'm looking for in the
12 record.

13 So what I could do, I mean, I could --
14 we could maybe take a five minute recess and the
15 parties can tell me what their stipulations are.

16 MR. ADAMS: Well, what we -- Mr.
17 Chairman, I don't think that's necessary without
18 knowing exactly what he --

19 CHAIRPERSON ANDERSON: That's what --

20 MR. ADAMS: Yeah.

21 CHAIRPERSON ANDERSON: -- that's why
22 I said take a five minute, so you guys can tell

1 me what the stipulations are and then we move
2 forward.

3 MR. ADAMS: Well, from what I just
4 heard, that he is willing to stipulate that the
5 establishment -- the establishment is willing to
6 stipulate that they violated Charges 1 and 2.
7 And if they stipulate to that, that they violated
8 1 and 2, then there really is no need to have any
9 additional evidence.

10 Essentially, they are pleaing or they
11 are admitting that they violated the charge and
12 we really just need to discuss penalty.

13 CHAIRPERSON ANDERSON: Right.

14 MR. ADAMS: All right. And so I just
15 need Mr. Sung to address what he meant by his
16 statement.

17 CHAIRPERSON ANDERSON: So is that your
18 position, Mr. Sung, that you are stipulating to
19 the two violations?

20 MR. SUNG: No, no. My stipulation is
21 that Chinese Disco was over capacity that
22 evening.

1 MEMBER SILVERSTEIN: Please, speak a
2 little louder, sir.

3 MR. SUNG: That --

4 CHAIRPERSON ANDERSON: Sir?

5 MR. SUNG: I apologize. My offer of
6 stipulation is that Chinese Disco was over
7 capacity that evening.

8 CHAIRPERSON ANDERSON: Right.

9 MR. SUNG: And that's my only
10 stipulation as to the facts.

11 CHAIRPERSON ANDERSON: But that's --
12 the charge is that you -- and all right.

13 MEMBER ALBERTI: May I help?

14 CHAIRPERSON ANDERSON: No, hold on.

15 MEMBER ALBERTI: I think what Mr. --
16 there is a distinction Mr. Sung is making. He is
17 not admitting liability for the charges. He is
18 only stipulating to the facts.

19 MR. SUNG: That's correct.

20 MEMBER ALBERTI: And then it's up to
21 the Board then to decide how those facts apply to
22 the charges. Is that correct, Mr. Sung?

1 MR. SUNG: Yes, sir. Thank you very
2 much.

3 MEMBER ALBERTI: Thank you.

4 MR. ADAMS: So with that being the
5 case, I would prefer for the record, since to --
6 to establish the record here and proceed with
7 examination.

8 CHAIRPERSON ANDERSON: Go ahead.

9 MR. ADAMS: As I was doing.

10 CHAIRPERSON ANDERSON: Go ahead, Mr.
11 Adams.

12 MR. ADAMS: Very well.

13 BY MR. ADAMS:

14 Q Mr. Puente, the first three exhibits
15 of your case report appear to be photographs. Is
16 that correct?

17 A Yes.

18 (Whereupon, the above-
19 referred to documents were
20 marked as Government Exhibit
21 No. 1.1 through 1.3 for
22 identification.)

1 BY MR. ADAMS:

2 Q All right. Who took those
3 photographs?

4 A I did.

5 Q All right. And what do they -- and
6 what do they purport to represent, in terms of
7 content, those photographs?

8 A The patrons inside the establishment.

9 Q Okay. And in terms of the patrons
10 inside the establishment, what does this
11 demonstrate?

12 A That a large group of patrons were
13 inside.

14 Q Okay. And is this -- can you tell us
15 how this correlated with why you asked for the
16 clickers?

17 A Yeah, to show that there was more than
18 99 people inside the establishment.

19 Q Turning to Exhibit No. 4 of your
20 report.

21 A Yes.

22 Q What is -- Exhibit 4, now this is the

1 settlement agreement?

2 A Yes.

3 (Whereupon, the above-
4 referred to document was
5 marked as Government Exhibit
6 No. 1.4 for identification.)

7 BY MR. ADAMS:

8 Q All right. Now, I believe this would
9 be the fifth page of the settlement agreement, is
10 this -- first of all, is this the document that
11 you consulted while you were at the
12 establishment?

13 A Yes.

14 Q All right. So what portion of this
15 agreement was -- did you find relevant to this
16 matter?

17 A Page 5, Section 1, Occupancy and
18 Safety.

19 Q All right. And what does it state
20 there?

21 A "The establishment shall have a
22 maximum capacity of 99 persons. This limit shall

1 be properly posted and shall not be exceeded.
2 The applicant shall ensure that there is a clear
3 passageway is maintained at all times for the
4 sake of egress of occupants in case of fire or
5 other emergency."

6 Q Now, this doesn't show up very well on
7 here, but I'm going to turn to Exhibit 5. What
8 is Exhibit 5?

9 A Those are photographs of the clickers.
10 (Whereupon, the above-
11 referred to document was
12 marked as Government Exhibit
13 No. 1.5 for identification.)

14 BY MR. ADAMS:

15 Q And what's the significance of the
16 click -- of you photographing the clickers?

17 A To show us the number that they were
18 maintaining at the door of the patrons exiting
19 and entering the establishment.

20 Q And then turn to Exhibit 6. What is
21 Exhibit 6?

22 A More pictures of inside the

1 establishment.

2 (Whereupon, the above-
3 referred to document was
4 marked as Government Exhibit
5 No. 1.6 for identification.)

6 MR. ADAMS: Very briefly, Board,
7 indulgence.

8 BY MR. ADAMS:

9 Q Turn to Exhibit 16. What is Exhibit
10 16?

11 A That's a regulatory inspection.

12 (Whereupon, the above-
13 referred to document was
14 marked as Government Exhibit
15 No. 1.16 for identifi-
16 cation.)

17 BY MR. ADAMS:

18 Q All right. And what is the
19 significance of your regulatory inspection here?

20 A Oh, that's when an Investigator
21 conducted a regulatory inspection at the
22 establishment to make sure the establishment was

1 compliant with other issues.

2 Q Oh, was this on the same day?

3 A This was a couple weeks prior.

4 Q Okay. So actually, so it's not really
5 important to this case.

6 A Um-hum.

7 Q All right. Now, after you noticed
8 that there -- oh, sorry. The Court's -- there is
9 a security plan, correct?

10 A Yes.

11 Q All right. All right. So we have
12 examined this -- the exhibits in terms of what
13 was -- what is relevant within the -- would you
14 agree that those are the exhibits that are
15 relevant to the charges of the establishment
16 exceeding their occupancy?

17 A Yes.

18 Q Now, after you had a conversation with
19 the establishment, while you were at the
20 establishment, did you have any other
21 communications with District of Columbia
22 Government regarding this?

1 A Yes. I called for a Fire Marshal to
2 come out to the establishment.

3 Q And what happened?

4 A He got there, approximately, 30
5 minutes later and talked to Greg Bartholomew and
6 advised him of the -- he would have to work out--
7 pay attention to the numbers.

8 CHAIRPERSON ANDERSON: Mr. Puente, you
9 keep on trailing off. So pull the microphone up
10 to you.

11 THE WITNESS: Okay. Oh, he advised
12 the establishment, since they have a settlement
13 agreement, they had to stay within that number
14 and they would have to rework the settlement
15 agreement to show a higher occupancy if they
16 wanted more people inside.

17 MR. ADAMS: Very well. So I have no
18 further questions for Mr. Puente.

19 CHAIRPERSON ANDERSON: Mr. Sung?

20 MR. SUNG: I have none. Thank you.

21 CHAIRPERSON ANDERSON: Any questions
22 by the Board? Mr. Short?

1 MEMBER SHORT: Good morning still, Mr.
2 Puente, Investigator Puente.

3 In your opinion in citing them for
4 overcrowding and checking the clickers and all
5 the other things you did, thank you for a great
6 report, as an Investigator, when you go to a
7 location that are full of patrons and
8 overcrowded, what is your greatest concern?

9 THE WITNESS: Safety. To make sure
10 egress/ingress is adhered to and that patrons can
11 flow evenly within the establishment.

12 MEMBER SHORT: Could they flow evenly
13 that evening in the establishment?

14 THE WITNESS: Yes. It's a very large
15 establishment, so there is a lot of room, but
16 mainly by the bar area it is more congested,
17 because against the wall there is booths and the
18 DJ, where the DJ plays, so that's more congested
19 because there is not a lot of space right there.

20 But off to the sides of the
21 establishment there is a lot more room in the
22 area.

1 MEMBER SHORT: Okay. But it still
2 rose to the occasion for you to write them a
3 violation?

4 THE WITNESS: Yes.

5 MEMBER SHORT: Because they were
6 overcrowded?

7 THE WITNESS: Yes, due to the
8 settlement agreement stating 99 patrons.

9 MEMBER SHORT: Thank you. Thank you,
10 Mr. Chair.

11 CHAIRPERSON ANDERSON: Mr. Alberti?

12 MEMBER ALBERTI: Mr. Puente, I'm going
13 to stay in that line of questioning, because,
14 quite honestly, the --

15 CHAIRPERSON ANDERSON: Microphone.

16 MEMBER ALBERTI: I'm sorry. The first
17 item in the settlement agreement has two parts.
18 One part deals with occupancy. And we already
19 have a stipulation that it was overcrowded.

20 But the second part deals with safe
21 egress. And if I'm understanding -- well, all
22 right. So did your concern -- with respect to

1 the settlement agreement, did your concern go to
2 that second part of one? Did you have concerns
3 about safe egress in and out of the
4 establishment?

5 THE WITNESS: We did. The Fire
6 Inspector Burr, who came out, he spoke to the
7 manager that night about making sure that the
8 line for the front door is controlled and that no
9 patrons are huddled around the front door, so
10 people can exit timely. By the time the Fire
11 Inspector got there, which was approximately a
12 half hour later, so the patrons kind of left by
13 that point, so that's why he couldn't cite them
14 for anything. But he advised them to make sure
15 that the egress and everything is clear.

16 MEMBER ALBERTI: So how did he know
17 that they were huddled around the front door?

18 THE WITNESS: When you walk up to the
19 establishment, there is a tunnel right there. So
20 his concern was that tunnel for the patrons.

21 MEMBER ALBERTI: I understand, but why
22 did he suspect --

1 THE WITNESS: He just -- he reminded
2 the staff to remind him to make sure no one was -
3 -

4 MEMBER ALBERTI: Okay. Did you
5 witness anything?

6 THE WITNESS: No. There was no
7 patrons by the front door, because when you come
8 in the front door --

9 MEMBER ALBERTI: When you came in, did
10 you witness a crowd by that -- in that tunnel
11 where the Fire Chief was concerned?

12 THE WITNESS: Yes, that's where they
13 check IDs for the patrons.

14 MEMBER ALBERTI: All right. I'm
15 trying to understand what you observed.

16 THE WITNESS: Um-hum.

17 MEMBER ALBERTI: Did you observe the
18 condition that would have gone to the Fire
19 Chief's concerns?

20 THE WITNESS: Yes, because the bar
21 area was more congested. So when you walk into
22 the establishment, you come through the front

1 door.

2 MEMBER ALBERTI: Right.

3 THE WITNESS: There is a little
4 hallway right there.

5 MEMBER ALBERTI: All right.

6 THE WITNESS: There is a wall. You
7 make a right, there is a long hallway that goes
8 to the bathroom and goes to the back bar. Then
9 you turn right, there is another open area.

10 MEMBER ALBERTI: Okay.

11 THE WITNESS: And you walk back maybe
12 about 50 feet and there is the bar area. So the
13 front door was not congested at all, because
14 there was no patrons over there, because the bar
15 was more on the other side of the establishment.

16 MEMBER ALBERTI: Would that have
17 prevented people from easily exiting?

18 THE WITNESS: I don't understand.

19 MEMBER ALBERTI: Well, we are talking
20 about egress. We are talking about safety of
21 egress and I'm not understanding through your
22 testimony why you had a concern of egress. And

1 maybe it's just my lack of understanding.

2 THE WITNESS: Because my concern was
3 the bar -- so if you look on the last page of the
4 security plan, there is a map of the
5 establishment. This might be able to help .

6 MEMBER ALBERTI: Yes, maybe that will
7 help. Let me get it the right way. Okay. All
8 right. So you -- where is the front door on
9 this?

10 THE WITNESS: It's right here labeled
11 vestibule, that's the front door.

12 MEMBER ALBERTI: I'm not sure I see
13 vestibule.

14 MR. ADAMS: Can I ask --

15 MEMBER ALBERTI: Is it off to the left
16 or to the right?

17 THE WITNESS: The left.

18 MEMBER ALBERTI: To the left. Oh,
19 that's to the right or maybe I'm looking at this
20 the wrong way. I'm looking at it as if the
21 printing is right-side-up. So off to the right
22 would be the vestibule.

1 THE WITNESS: Yes.

2 MEMBER ALBERTI: Right?

3 THE WITNESS: Yes.

4 MEMBER ALBERTI: So I'm -- so the
5 printing is not upside down and now the vestibule
6 is off to the right?

7 THE WITNESS: Yes.

8 MEMBER ALBERTI: Okay. All right.
9 Very good. Okay. So that's the front entrance.

10 THE WITNESS: Yes.

11 MEMBER ALBERTI: All right. All
12 right. So continue.

13 THE WITNESS: So when I come in, you
14 go through that vestibule. There is a hallway
15 right there. There was no patrons right there.
16 You go all the way down to the hallway to the
17 back of the establishment, there is patrons
18 starting to form right there.

19 MEMBER ALBERTI: All the way to the
20 back of the establishment?

21 THE WITNESS: Yes.

22 MEMBER ALBERTI: So I come in. I make

1 a right hand turn, right?

2 THE WITNESS: Yes. And when you come
3 in, you will make a right hand turn and you will
4 walk all the way down.

5 MEMBER ALBERTI: All right.

6 THE WITNESS: And you will pass the
7 bathrooms. You will pass the kitchen. You will
8 pass the manager's office right there.

9 MEMBER ALBERTI: All right.

10 THE WITNESS: And there is another
11 back bar area right there as well as it leads
12 into the main bar area, that's where all the
13 patrons were.

14 MEMBER ALBERTI: So it's before you
15 get to the dining room? No?

16 THE WITNESS: Yes. That's where all
17 the patrons are in the dining room.

18 MEMBER ALBERTI: In the dining room?

19 THE WITNESS: Yes.

20 MEMBER ALBERTI: Oh, I see bottle
21 service, right in that little --

22 THE WITNESS: Yes.

1 MEMBER ALBERTI: Then on the top there
2 is a big area. Oh, I see, there is main --

3 THE WITNESS: Yes.

4 MEMBER ALBERTI: -- bar.

5 THE WITNESS: So that was where more
6 patrons are. So that's where the area was
7 congested at for us.

8 MEMBER ALBERTI: And why was that of
9 concern?

10 THE WITNESS: Because that's where the
11 main bar is at and that's where everyone was
12 huddled. And against the wall back there, there
13 was booths coming out, so it's a very narrow area
14 right there between the bar and the booth area.

15 MEMBER ALBERTI: So what was your
16 concern about that?

17 THE WITNESS: That it was a lot of
18 people in one area and --

19 MEMBER ALBERTI: Meaning? Why is that
20 a problem?

21 THE WITNESS: Because with it being
22 over-occupancy, it could lead to other issues.

1 MEMBER ALBERTI: Like what?

2 THE WITNESS: If there is a fire,
3 where do people go? Do people know where the
4 exits are and everything?

5 MEMBER ALBERTI: Are you trying -- I
6 mean, I don't want to put words in your mouth.

7 THE WITNESS: Um-hum.

8 MEMBER ALBERTI: But am I
9 understanding that your concern was that it would
10 hamper egress out --

11 THE WITNESS: Yes.

12 MEMBER ALBERTI: -- of it because of
13 that crowding?

14 THE WITNESS: Um-hum, yes. And the
15 Fire Inspector Burr went over that with the
16 manager.

17 MEMBER ALBERTI: Okay. So when you
18 came in, you saw that kind of overcrowded. Did
19 you see that kind of overcrowding that the Fire
20 Chief was concerned about?

21 THE WITNESS: Mainly by the back bar
22 area, yes.

1 MEMBER ALBERTI: Okay.

2 THE WITNESS: So that's why we called.

3 MEMBER ALBERTI: You saw the -- so
4 again, you saw the conditions that were described
5 to you as a concern by the Fire Chief?

6 THE WITNESS: Yes.

7 MEMBER ALBERTI: Okay. Thank you.

8 CHAIRPERSON ANDERSON: Any other
9 questions by any other Board Members?

10 MEMBER SHORT: I have one last follow-
11 up.

12 CHAIRPERSON ANDERSON: Mr. Short?

13 MEMBER SHORT: Did the Fire Marshal
14 give any citations or give any warnings or --

15 THE WITNESS: He gave a lecture to the
16 manager, because by the time he got there, the
17 place kind of cleared out. He did a walk-through
18 and reminded the staff what to look for and how
19 to keep the flow of traffic moving.

20 MEMBER SHORT: So he gave him a verbal
21 reprimand?

22 THE WITNESS: Yes, just education, um-

1 hum.

2 MEMBER SHORT: All right. Thank you.

3 MEMBER ALBERTI: Can I ask just really
4 one quick question?

5 CHAIRPERSON ANDERSON: Yes.

6 MEMBER ALBERTI: Were you present when
7 that -- when he spoke?

8 THE WITNESS: Yes.

9 MEMBER ALBERTI: So you were aware of
10 what was said between --

11 THE WITNESS: Yes.

12 MEMBER ALBERTI: -- the two parties?
13 Okay. Thank you.

14 CHAIRPERSON ANDERSON: All right. Any
15 other questions by any other Board Members?

16 Mr. Sung, do you have any questions of
17 Mr. Puente based on the questions that were asked
18 by the Board Members?

19 MR. SUNG: Yes, sir.

20 CROSS-EXAMINATION

21 BY MR. SUNG:

22 Q Mr. Puente, are you aware of any other

1 means of egress?

2 A I'm just familiar with that front
3 exit/entrance right there. I have never been out
4 any other entrances or exits.

5 Q Could you look at the diagram or floor
6 plan for Chinese Disco that you were referring to
7 earlier?

8 A Um-hum.

9 Q Do you notice that there are two
10 stairways in the middle of the space?

11 A Yes, I see them.

12 Q And do you see that there are two
13 doors for each stairway?

14 A Yes.

15 Q And but you're not aware whether these
16 are exits for Chinese Disco?

17 A No, because I never been out that way
18 before.

19 Q Understood.

20 MR. SUNG: And that's all I have.

21 Thank you.

22 THE WITNESS: Um-hum.

1 CHAIRPERSON ANDERSON: All right. Mr.
2 Adams, questions based on the Board's?

3 MR. ADAMS: Yes. I just have
4 questions just to make sure that this is reported
5 for the record, since we are at a hearing for
6 this case.

7 All right. So if the Board doesn't
8 mind, I would like to approach the witness with
9 this map.

10 REDIRECT EXAMINATION

11 BY MR. ADAMS:

12 Q All right. So you stated that the
13 entrance is the vestibule?

14 A Yes.

15 Q And that's on the right side of the
16 document?

17 A Yes.

18 Q And the vestibule gives -- do you
19 notice a letter or number that would identify the
20 vestibule? Is this -- let me ask you this. I'll
21 -- if you don't mind, I'll ask leading questions.

22 There is a number that says D1-1. Is

1 that the vestibule that you are speaking of?

2 A Yes.

3 Q And above it is a sign that says
4 patio?

5 A Yes.

6 Q Okay. So is that where you stated
7 that people enter?

8 A Yes. So that's a large patio and more
9 off to the right, that's where people come
10 through the little tunnel area and enter.

11 Q Okay. But the vestibule is the
12 entrance?

13 A Yes.

14 Q All right. So after you come through
15 the vestibule, where do patrons go? Is that to--
16 is the next place the foyer?

17 A Yes, so they will go through the
18 foyer.

19 Q Okay.

20 A Um-hum.

21 Q And that's 102?

22 A Yes.

1 Q And from your testimony, you are
2 saying that -- did you see patrons in that area?

3 A There would have been a few, but not
4 a lot.

5 Q Okay. And next is, if we were to have
6 a flow of this, a little to the left of the
7 vestibule is corridor and underneath it says 103?

8 A Yes.

9 Q All right. Is -- when you stated that
10 there was a hallway that once you make a right
11 turn, there is a hallway?

12 A Um-hum.

13 Q Is that the hallway that you are
14 referring to?

15 A Yes.

16 Q And what were the conditions there?

17 A There was a few people over there, but
18 not a lot.

19 Q All right. So going towards the top
20 of the document is the dining room?

21 A Yes.

22 Q Okay. And what's in that dining room

1 area?

2 A Well, that's where the main bar area
3 is at. There is booths, there is the DJ and
4 that's where all the -- mainly the patrons were.

5 Q So the majority of patrons are up at
6 the top area, that top area. And so can you tell
7 us is that where you stated -- is that where you
8 believe that you had concerns is that top area?

9 A Yes, because the patrons -- we move
10 more to the left and down, that's where all the
11 patrons were.

12 Q Um-hum. You were asked a question by
13 Mr. Sung regarding stairways, stairwells. Have
14 you ever been familiar with stairwells at the
15 establishment?

16 A No, because I've never been down the
17 stairwell.

18 Q From your experience, to what extent
19 would the stairwell or any stairwells be visible
20 to patrons or yourself once you were inside the
21 establishment?

22 A Usually there will be like exit signs

1 posted.

2 Q Okay. And from your experience, what
3 has been your experience in terms of where the
4 exit signs were within the establishment?

5 A Usually they are posted on the wall or
6 there is a sign hanging from the ceiling.

7 Q So again, from your experience, can
8 you -- to your knowledge and -- what would be the
9 most reasonable exit for anyone who is within
10 this establishment, to your knowledge?

11 A The front door.

12 Q Okay.

13 MR. ADAMS: I have no further
14 questions.

15 CHAIRPERSON ANDERSON: Thank you very
16 much, Mr. Puente, for your questions. You can
17 step down.

18 (Whereupon, the witness was excused.)

19 CHAIRPERSON ANDERSON: Does the
20 Government have any other witnesses?

21 MR. ADAMS: The Government has no
22 further witnesses and it rests its case pending a

1 potential rebuttal witness.

2 CHAIRPERSON ANDERSON: Thank you. All
3 right. Mr. Sung, how do you wish to move
4 forward?

5 MR. SUNG: I would just like to
6 testify briefly.

7 CHAIRPERSON ANDERSON: You want to
8 testify, sir?

9 MR. SUNG: I'm sorry?

10 CHAIRPERSON ANDERSON: You say you
11 want to testify?

12 MR. SUNG: Yes.

13 CHAIRPERSON ANDERSON: Can you raise
14 your right --

15 MR. SUNG: On the limited issue of --

16 CHAIRPERSON ANDERSON: And can you --

17 MR. SUNG: -- the fire exits.

18 CHAIRPERSON ANDERSON: Can you raise
19 your right hand, please?

20 MR. SUNG: Yes, sir.

21 Whereupon,

22 KIJUN SUNG

1 was called as a witness for the Licensee, and
2 having been first duly sworn, assumed the witness
3 stand and was examined and testified as follows:

4 MR. SUNG: I do.

5 CHAIRPERSON ANDERSON: Okay. What do
6 you want to say?

7 DIRECT EXAMINATION

8 THE WITNESS: I just want to inform
9 the Board that there are prominent exit signs.

10 CHAIRPERSON ANDERSON: Speak up.

11 THE WITNESS: Prominent exit signs
12 pointing to the two stairwells and each stairwell
13 has a sign on the door that says exit. So I'm
14 sure Mr. Puente wasn't looking for them, but they
15 are there.

16 And there is one specifically across
17 from where it says Dining Room 106, which is the
18 area Mr. Puente testified where he had a concern
19 about a bottleneck. You will see there is a door
20 that leads up to a stairway which exits onto N
21 Street.

22 Similarly, there is also another door

1 along the corridor, you will see that says Stair
2 1, that also exits onto N Street.

3 I just wanted to let the Board know
4 that there are other means of ingress and egress
5 besides the vestibule. Thank you.

6 CHAIRPERSON ANDERSON: Anything else
7 you wish to --

8 THE WITNESS: That's it.

9 CHAIRPERSON ANDERSON: Mr. Adams, do
10 you have any questions of Mr. Sung, based on his
11 testimony?

12 MR. ADAMS: Yes.

13 CROSS-EXAMINATION

14 BY MR. ADAMS:

15 Q Okay. Mr. Sung, you state that there
16 is two stairways that have egress to M Street?

17 A N Street. The letter N, as in Nancy.

18 Q N, as in Nancy. So from looking at
19 the -- this map, both -- so looking at this map,
20 both those stairways, those are normally areas
21 that the public have access to. Is that correct?

22 A They have access to them. They are

1 located in the general public area.

2 Q So located in the general public area.
3 So Stairway 2 is -- I notice you have dining room
4 and eating room. So you are saying that there is
5 Dining Room 100, is that one of the general
6 areas?

7 A My eyes are bad. I -- does that say
8 100 or 106? I apologize. Dining Room is it 100?
9 If so, I apologize.

10 Q Okay. And then not to be -- well, for
11 our -- it could be 106. So it would be then on
12 the right hand -- on the left hand side?

13 A If we're talking about --

14 Q So let's say 106.

15 A Okay. We're talking about 106.

16 Q For our purposes.

17 A All right.

18 Q So we're on the same page.

19 A Yes.

20 Q All right. So that's part of the
21 dining room area, correct?

22 A Yes.

1 Q And then there is a door going towards
2 the right, you have to pass a bar, correct?

3 A That's correct.

4 Q And then there is a door somewhere
5 there that goes to Stair 1, correct?

6 A That's right. You turn right and the
7 door is there with an exit sign as well as an
8 exit sign right before it.

9 Q All right. Now, for Stair 2, how
10 would one access Stair 2?

11 A From the corridor, which is what the
12 patrons use to access the bathrooms and either of
13 the dining areas. Again, there is an exit sign
14 that leads to it, exit signs that lead to that
15 exit as well as a prominent exit sign on the
16 door.

17 Q Okay. Now, I understand that, but how
18 -- from the corridor and I guess that's the
19 corridor which is on the right hand side of the
20 document, how -- can you describe how someone --
21 where they would go?

22 A They would open the door.

1 Q Which door?

2 A The door that says Corridor 113 or
3 115. Again, I apologize for my bad vision.

4 Q Um-hum. Is that storage or where is
5 that? So it would be a bit of a route to get
6 there. I mean, you have to make a couple of
7 turns to get there.

8 A No, no, I'm sorry. So you are right.
9 There is a door into the janitor's closet --

10 Q Right.

11 A -- which is separate. There is -- you
12 go passed that. There is another door, which has
13 an exit sign on it, and you open that, you're on
14 a landing and you go up the stairs --

15 Q So --

16 A -- thereto.

17 Q -- essentially, someone has to be led
18 to that janitor's closet in order to get to that?

19 A No, no. The janitor's closet is not
20 connected. There is a wall between the janitor's
21 closet and that stairwell.

22 Q Okay. So in other words, effectively,

1 you would have to go through a couple of doors in
2 order to get to that stairwell?

3 A No. No doors whatsoever. There is
4 one door from the corridor into the stairwell to
5 get to the exit.

6 Q But I see that this says janitor -- I
7 see storage. So where is that door?

8 A In between. Between the storage and
9 the janitor, there is three doors. One is to
10 storage. One is to the exit. One is to the
11 janitor's closet.

12 Q Okay. So I see it. So there is Foyer
13 102 where I guess is where it's described that no
14 one was really there in 102. And then to the
15 left of it is Corridor 113. 113, is that the
16 area that you say is the access to the stairwell?

17 A That's right.

18 Q And nobody -- and we really didn't
19 even cover that. Oh, and that's where the
20 bathrooms are?

21 (No audible answer.)

22 Q Okay. Very well.

1 A Correct.

2 Q But the bar is at the top? The bar in
3 question is at the very top of this document --

4 A Sure.

5 Q -- correct? All right.

6 MR. ADAMS: That's the only questions
7 I had.

8 MEMBER ALBERTI: I have questions.

9 CHAIRPERSON ANDERSON: Mr. Alberti?

10 MEMBER ALBERTI: Okay. I'm sorry. I
11 actually -- sir, so let's talk about that same
12 corridor we were just talking about. All right?

13 THE WITNESS: Yes, sir.

14 MEMBER ALBERTI: So I enter that
15 corridor from the left, what I'm talking the left
16 of the diagram, towards -- from the direction of
17 Dining Room 106. I enter that corridor.

18 THE WITNESS: Yes, sir.

19 MEMBER ALBERTI: How do I get out of
20 that corridor? Is there any way out of that
21 corridor other than going down the stairway once
22 I enter? I mean, other than retracing my steps

1 and going back the way I came in, is there
2 another way out of that corridor, other than that
3 doorway?

4 THE WITNESS: I'm sorry, I don't
5 understand what you are asking. The whole
6 place --

7 MEMBER ALBERTI: So if I pass the
8 bathrooms --

9 THE WITNESS: Yes.

10 MEMBER ALBERTI: -- and other than
11 retracing my steps, I come into that corridor, I
12 go to the bathrooms, other than retracing my
13 steps, how do I get out of that corridor?

14 THE WITNESS: You can either retrace
15 your steps or just proceed straight on forward
16 and you will get to the foyer. The --

17 MEMBER ALBERTI: There is no door
18 between -- there is no wall between the foyer and
19 that hallway?

20 THE WITNESS: So that's unfortunate.
21 You -- there is a break in the line in the wall
22 and--

1 MEMBER ALBERTI: That's an opening?

2 THE WITNESS: That's an opening, yes.

3 MEMBER ALBERTI: Okay.

4 THE WITNESS: I apologize.

5 MEMBER ALBERTI: Okay. All right.

6 And the corridor above that where the other exit
7 door -- well, that's all right. Thank you.

8 CHAIRPERSON ANDERSON: Mr. Short?

9 MEMBER SHORT: Good morning still, Mr.
10 Sung. Mr. Sung, what is your Certificate of
11 Occupancy? What is the number of occupants you
12 can have on your Certificate of Occupancy issued
13 by the Department of Consumer and Regulatory
14 Affairs?

15 THE WITNESS: 199.

16 MEMBER SHORT: 199 is on your
17 Certificate of Occupancy?

18 THE WITNESS: Yes, sir.

19 MEMBER SHORT: But you are only
20 permitted to have 99 according to your settlement
21 agreement?

22 THE WITNESS: Yes, sir.

1 MEMBER SHORT: Why was that?

2 THE WITNESS: The settlement agreement
3 was entered into between our predecessor,
4 Georgetown Billiards, with ANC. So it was over
5 15 to 20 years ago, I would approximate. And at
6 that time, Georgetown was a different place in
7 speaking with the ANC members and they were
8 concerned about another bar to add to the mix and
9 to add to the congestion, so they imposed the 99.

10 MEMBER SHORT: Not imposed. They had
11 an agreement?

12 THE WITNESS: Yes, there was an
13 agreement. The operator, at that time, agreed to
14 that 99.

15 MEMBER SHORT: And so if you want to
16 get that agreement changed, you would have to go
17 back down to the Department of -- I mean, you
18 would have to go back to the persons you have the
19 -- the ANCs who have the -- so have you attempted
20 to do that?

21 THE WITNESS: Yes. I am continuing
22 discussions with them. I'm trying to avoid

1 having to come here and ask for a termination of
2 the VA.

3 MEMBER SHORT: Well, until that time
4 happens, then you have to only have 99 people in,
5 correct?

6 THE WITNESS: Absolutely.

7 MEMBER SHORT: So why did you have
8 more than 99 on this occasion?

9 THE WITNESS: Unfortunately, our
10 manager did not follow our directives that
11 evening.

12 MEMBER SHORT: Has this ever occurred
13 before?

14 THE WITNESS: Yes, it has.

15 MEMBER SHORT: What are you doing to
16 correct it?

17 THE WITNESS: We are -- the owners are
18 now physically present as much as possible and we
19 are trying to enforce the occupancy issue.

20 MEMBER SHORT: Okay. Follow me just
21 a little bit here.

22 THE WITNESS: Yes, sir.

1 MEMBER SHORT: So if you were on a
2 road and the road said the speed limit is 25, but
3 your speedometer says you can do 100, what would
4 you do, 25 or would you do above 25? And why?

5 THE WITNESS: I'm sorry, I don't --

6 MEMBER SHORT: Okay. Let's say this.
7 If you break a law when you are driving your
8 vehicle and you go over the speed limit, what
9 happens, if the police catch you?

10 THE WITNESS: Most likely, they will
11 issue a ticket.

12 MEMBER SHORT: So if you do it more
13 than one time, what happens?

14 THE WITNESS: Potentially, you get a
15 harsher penalty from the courts.

16 MEMBER SHORT: Okay. So again I'll
17 ask you, how many times has the business been
18 cited since you have been the owner for
19 overcrowding?

20 THE WITNESS: Honestly, I don't know.
21 I would say at least one other time.

22 MEMBER SHORT: Would you say three or

1 four times?

2 THE WITNESS: I can't say with -- I
3 would need to review the records to give you an
4 honest, accurate answer.

5 MEMBER SHORT: Okay. But after one
6 time, you shouldn't do it any more, correct?

7 THE WITNESS: I agree.

8 MEMBER SHORT: But it has happened
9 more than once?

10 THE WITNESS: Yes.

11 MEMBER SHORT: And you have already
12 stated that you were overcrowded?

13 THE WITNESS: We were over the
14 capacity as per the voluntary agreement.

15 MEMBER SHORT: So you were in
16 violation of the agreement between yourself, your
17 business, the ANC and this Agency?

18 THE WITNESS: Yes, sir.

19 MEMBER SHORT: So why are we having
20 this hearing if you know you are guilty?

21 THE WITNESS: Well, I wouldn't use the
22 term guilty. But there are two charges against

1 us and we can address that at closing.

2 MEMBER SHORT: Are you guilty of
3 either of those?

4 THE WITNESS: Yes, sir. I have
5 stipulated that we were over-capacity in
6 violation of the settlement agreement.

7 MEMBER SHORT: That's all I have.
8 Thank you, Mr. Chair.

9 CHAIRPERSON ANDERSON: Any other
10 questions by any other Board Members? All right.
11 Mr. Adams, any questions for Mr. Sung based on
12 the Board's questions?

13 MR. ADAMS: I have no questions based
14 upon the Board's questions.

15 CHAIRPERSON ANDERSON: Mr. Sung, do
16 you wish to provide any clarification based on
17 the questions that were asked, that you need to--
18 I'm just saying you were asked questions and so
19 normally if you had a witness, you would have an
20 opportunity to -- so I'm giving you an
21 opportunity, if you need, to clarify any
22 statement that you made based on the questions

1 that you were asked by the Board?

2 MR. SUNG: Thank you, but, no.

3 CHAIRPERSON ANDERSON: No. All right.

4 So do you rest?

5 MR. SUNG: Yes.

6 CHAIRPERSON ANDERSON: All right.

7 Does the Government wish to make -- does the
8 Government wish to call a rebuttal witness or the
9 Government wants to make closing statement?

10 MR. ADAMS: Actually, Mr. Chairman, if
11 you don't mind and pardon the Board's
12 inconvenience, I would like to request a brief
13 five minute break. I just want to confirm
14 something, but I just want a brief break.

15 CHAIRPERSON ANDERSON: Okay. So we
16 will be in recess for five minutes.

17 MR. ADAMS: Thank you.

18 CHAIRPERSON ANDERSON: Yes. Well,
19 it's 12:01, so 12:10.

20 MR. ADAMS: Thank you very much, Mr.
21 Chairman.

22 CHAIRPERSON ANDERSON: All right.

1 (Whereupon, the above-entitled matter
2 went off the record at 12:01 p.m. and resumed at
3 12:14 p.m.)

4 MR. ADAMS: Are we back on the record?

5 MEMBER SILVERSTEIN: Yes.

6 CHAIRPERSON ANDERSON: Yes.

7 MR. ADAMS: All right. So, Mr.
8 Chairman, one matter before I start closing
9 argument. I just want to -- for the Board to
10 take Administrative Notice of the license in this
11 case for the Chinese Disco. If you happen to
12 have the license, I have a copy, but I believe
13 the Board might have it.

14 CHAIRPERSON ANDERSON: And so what on
15 the license you want us to take Administrative
16 Notice of?

17 MR. ADAMS: I just want to take
18 Administrative Notice of the license itself. And
19 I can get into it during closing arguments, the
20 fact that I believe you have the license, I just
21 want to make sure that it's on the record and in
22 evidence.

1 CHAIRPERSON ANDERSON: Well, then I
2 said before, during your closing then you -- I
3 mean, I can take Administrative Notice of the
4 license, but what am I looking for? That's all
5 I'm saying, sir.

6 MR. ADAMS: All right. Just the -- in
7 this case, capacity.

8 CHAIRPERSON ANDERSON: All right.

9 MR. ADAMS: Current capacity says 99.

10 CHAIRPERSON ANDERSON: Well, the
11 license is not clear, at least the documents in
12 the record is not clear, so --

13 MR. ADAMS: So if I could --

14 CHAIRPERSON ANDERSON: -- when --
15 well, it's the Agency's document. But I'm just
16 saying once in your closing, then you need to
17 just clarify what the license says. And since
18 you are -- because I'm looking at it and I can't
19 read it.

20 MR. ADAMS: Yes, I understand.

21 CHAIRPERSON ANDERSON: So in closing
22 then let me know what I'm -- what is it that you

1 want the Agency to take Administrative Notice of.

2 MR. ADAMS: Okay. Thank you, Mr.
3 Chairman.

4 CHAIRPERSON ANDERSON: Okay. All
5 right.

6 MR. ADAMS: And I can start with
7 closing.

8 CHAIRPERSON ANDERSON: Yes, Mr. Adams,
9 go ahead.

10 MR. ADAMS: All right. Mr. Chairman,
11 this case is actually very simple and cut and
12 dry. All right. So there are two charges.

13 The first charge is, obviously, the
14 most important, it is of most significance. It's
15 -- and obviously, we're saying Chinese Disco made
16 a substantial change or a substantial change
17 violation. Specifically that the establishment
18 made a change in the manner of its format which
19 would constitute a substantial change in the
20 nature of operation without getting an approval
21 by the Board, which is very important.

22 Obviously, what is important in

1 getting -- the establishment receiving licenses
2 is capacity. In fact, one of the first items
3 that are mentioned in the Board determining
4 whether or not a substantial change has been made
5 has been -- is Item A, which is whether or not
6 there has been an increase in the occupancy.

7 So what is -- the establishment has
8 already, through Mr. Sung, admitted -- stated
9 that there were more than 99 people within the
10 establishment on January 22, 2017.

11 And all the facts, the testimony from
12 Investigator Puente, points you in the same
13 direction, that he was -- he went inside the
14 establishment, that he noticed that there was a
15 line in front of the door, that there was a, from
16 his testimony, crowd of patrons at the bar area
17 of the establishment.

18 In this case, from the diagram that
19 was used, which was the last page of the case
20 report, that it was tough to get around that
21 area. But what is of most importance here is
22 that, obviously, there is a photograph that is,

1 like is agreed, hard to decipher of the actual
2 license.

3 Now, if the Board looks at their own
4 records, the official records, they will see
5 Chinese Disco's license that states that their
6 capacity is 99 patrons.

7 In this instance and from Mr. Sung's
8 standpoint, he states that he is entitled to more
9 from DCRA and I just want to make sure that it's
10 clear that as for the purposes of the ABC Board,
11 the magic number is, and the only operative
12 number, 99.

13 So from Mr. Puente's testimony, the
14 establishment's own admission was that they were
15 at 150. But in reality, what he saw was 200 from
16 his looking at and comparison of numbers, they
17 had one from an egress clicker and one from an
18 ingress clicker was a difference of 240, which is
19 more than twice the amount that the establishment
20 was allowed to have.

21 A significant number. There were 150
22 persons above the amount that was allowed by the

1 ABC License. So as a result, the District has
2 proven that there was a substantial change that
3 was made to -- sorry, a substantial change was
4 made in this case and that the Board can make a
5 ruling that substantial change was made without
6 its approval.

7 The second portion of this case is the
8 settlement agreement, in which the settlement --
9 is that the establishment violated the settlement
10 agreement. And again, since it's really the same
11 facts as has been established, that there were
12 more than 99 persons, the settlement agreement
13 says that there should be 99 persons. It cannot
14 exceed 99 persons.

15 But what the settlement agreement
16 does, it really go -- it really speaks to the
17 purpose of the number here. Why is it 99
18 persons? And the settlement agreement states
19 that it -- that the applicant shall insure that
20 there is a clear passageway that is maintained at
21 all times for safe egress of occupants in case of
22 emergency.

1 So there have been discussions
2 regarding what was safe in terms of being able to
3 have people get out of the establishment. Thus,
4 the agreement at the time was 99 persons, that
5 was made to ensure that there was safety
6 involved.

7 So since not only the letter of the
8 law has been violated, but also the purpose of
9 the law and the spirit of the law has been
10 violated by the establishment, both on -- in
11 terms of operating and creating substantial
12 change to how it operates, but also in terms of
13 just violating the clear numbers of the
14 settlement agreement, the violations has been
15 made.

16 The Board even looked at Puente's
17 testimony looking at the diagram that the only
18 obvious route for -- that he was aware of and
19 that most general people would be aware of was
20 the main exit. So therefore, and any
21 descriptions of stairwells, well, you can't even
22 use your eyes to see that there be a secured

1 route or for -- for patrons or others to find
2 that area and be able to use it.

3 So based upon the testimony, based
4 upon the case report, you do have in front of you
5 the Board -- the District has established the
6 violations of both Charges 1 and 2.

7 And as a result -- I guess the
8 District would like to reserve time for rebuttal,
9 but I would state that the -- what we would do is
10 that we would -- for the -- for Charge 1, which
11 is a primary tier violation, the District would
12 recommend a fine in the amount of \$2,000.

13 For Charge 2, which is a secondary
14 tier violation, the District would recommend a
15 charge of \$500 for the first secondary tier
16 violation.

17 CHAIRPERSON ANDERSON: Okay.

18 MR. ADAMS: That's my remarks, unless
19 I have rebuttal.

20 CHAIRPERSON ANDERSON: Okay. Mr.
21 Sung?

22 MR. SUNG: Yes, thank you. I

1 respectfully disagree with Mr. Adams'
2 interpretation of the substantial change statute.
3 Section 25-762, it's fairly clear that in order
4 to be in violation of this statute, one must make
5 a change in the interior, exterior or a change in
6 format of the licensed establishment, which would
7 change, substantially change, the nature of the
8 operation of the licensed establishment as set
9 forth in the initial application for the license.

10 Now, there is a subsection (b) which
11 sets forth 18 some illustrative examples of what
12 a substantial change would encompass.

13 We have had no testimony regarding a
14 change in the interior, no testimony regarding
15 the change of the exterior, and no testimony in
16 regards to a change in format from the initial
17 application of the license.

18 I have saved -- I have stipulated that
19 we were over-capacity that evening. I do
20 sincerely believe that our count was at 150 and
21 not at 241, but I leave that to the Board's
22 greater discretion.

1 I do -- however, must contest the
2 charge of the substantial change. And I would
3 ask the Board to apply the law as it is written.

4 And as per the testimony, there was no
5 testimony about the initial conditions. There is
6 no testimony about a change from the initial
7 conditions. We know that there was no interior
8 change. We know that there was no exterior
9 change, as per the testimony. There was no
10 testimony about a change.

11 The only ambiguous term here is
12 format. I am not aware of ABRA or the Court
13 defining that term. Webster simply defines that
14 term as the way in which something is arranged or
15 set-out.

16 What the Government would like to have
17 the Board believe is that any time there is a
18 violation of occupancy, that necessarily entails
19 a violation of the statute. I disagree with that
20 interpretation. You have to show some sort of
21 change, fundamental change, substantial change,
22 whether physical in the interior or exterior or

1 the format. There has been no testimony about
2 that.

3 If you read the 18 illustrative
4 examples, you will see there is talking about
5 increasing the occupancy of the space using
6 another floor, the roof or the deck. Changing
7 the meal service times space. I apologize.
8 Increasing or dancing the -- increasing or
9 decreasing the dance floor. Changing the
10 architecture. Provide music if none was
11 previously provided, etcetera, etcetera. None of
12 these things were testified to during the
13 Government's case.

14 I would submit respectfully that there
15 has been no showing of a substantial change. And
16 I leave it up to the Board's discretion to assess
17 the appropriate fine for the violation of the
18 settlement agreement. Thank you very much.

19 CHAIRPERSON ANDERSON: Thank you. Mr.
20 Adams, you said you wanted to do rebuttal?

21 MR. ADAMS: Yes, rebuttal, I think,
22 it's important in this case.

1 Members of the Board, it has been very
2 clear in terms of 25-762 that there is a
3 longstanding long history of this Board and
4 decisions by this Board that have interpreted
5 that where an establishment exceeds their
6 occupancy, that the Board has ruled that a
7 substantial change has taken place and that those
8 rulings have been affirmed in the past.

9 And it really doesn't change this
10 case. You can look at the plain language of
11 subsection (b) of Section 25-762. These are
12 charges or whether a proposed change is
13 substantial and a potential concern to residents
14 of the area surrounding the establishment.

15 It gives -- it cites the example. In
16 the very first example are situations in which
17 there is an increase in the occupancy of the
18 licensed establishment.

19 Now, here we have a situation where
20 again the occupancy is listed as 99. The number
21 is 99. We can argue about whether or not the
22 language applies to the initial application or

1 not, but the Board Order that applies here sets
2 that number. Anything different, number one,
3 would be a format change, even from the
4 licensee's own admission, he has admitted that
5 there have been times in which there have been
6 more than 99 patrons within the establishment.

7 Now, you can say it's from one of
8 their managers or you can say it's from his
9 knowledge, but there has been more than 99 in the
10 past.

11 So the District does not have to put
12 on a litany of different dates in which there was
13 more than 99 persons. It only has to establish
14 that by the mere allowance of a certain amount of
15 patrons with the knowledge of the management,
16 that there is indeed a format change in which the
17 Board can make the determination that a
18 substantial change has been made.

19 Especially whether the number is 150
20 or 240, we are not in the ballpark of a small
21 difference. We are -- that is a situation of a
22 major difference. So based upon the history of

1 decisions that have been made, but even in the
2 language of subsection (b) of Section 25-762, a
3 substantial change has been established.

4 The type of concern -- especially in
5 this context where there is a settlement
6 agreement that is entered into between the
7 establishment and members of the neighborhood,
8 certainly the amount of patrons is something of
9 concern to the residents.

10 And, therefore, the charge has been
11 established.

12 CHAIRPERSON ANDERSON: Thank you. The
13 record is now -- I'm sorry, before I close the
14 record, Mr. Sung, are there any documents that
15 you want to submit to the Board?

16 MR. SUNG: No, sir. Thank you.

17 CHAIRPERSON ANDERSON: No. All right.
18 The record is now closed.

19 Do the parties wish to file proposed
20 findings of fact and conclusions of law or waive
21 their right to do so?

22 MR. ADAMS: The District waives its

1 right.

2 MR. SUNG: We would like to file
3 proposed findings of facts and laws, please.

4 CHAIRPERSON ANDERSON: All right.
5 Then once the -- the Board will issue its
6 decision once the transcript is available, so I
7 think it says 90 days after the -- 90 days from
8 when the Board receives proposed findings of fact
9 and conclusions of law.

10 So probably within the next 30 days,
11 you should receive the transcript and then as the
12 documents, the proposed findings of fact and
13 conclusions of law will be required.

14 All right. As Chairperson of the
15 Alcoholic Beverage Control Board for the District
16 of Columbia and in accordance with Section 405 of
17 the Open Meetings Amendment Act of 2010, I move
18 that the ABC Board hold a closed meeting for the
19 purpose of seeking legal advice from our counsel
20 on Case No. 17-CMP-00033, Chinese Disco, per
21 Section 405(b)(4) of the Open Meetings Amendment
22 Act of 2010, and deliberating upon Case No. 17-

1 CMP-00033, Chinese Disco, for the reasons cited
2 in Section 405(b)(13) of the Open Meetings
3 Amendment Act of 2010. Is there a second?

4 MEMBER SHORT: Second.

5 CHAIRPERSON ANDERSON: Mr. Short has
6 seconded the vote. I will now take a roll call
7 vote on the motion before us now that it has been
8 seconded.

9 Mr. Silverstein?

10 MEMBER SILVERSTEIN: I agree.

11 CHAIRPERSON ANDERSON: Mr. Short?

12 MEMBER SHORT: I agree.

13 CHAIRPERSON ANDERSON: Mr. Alberti?

14 MEMBER ALBERTI: I agree.

15 CHAIRPERSON ANDERSON: Mr. Isaac?

16 MEMBER ISAAC: I agree.

17 CHAIRPERSON ANDERSON: Mr. Anderson?

18 I agree.

19 As it appears that the motion has
20 passed, I hereby give notice that the ABC Board
21 will hold a closed meeting in the ABC Board
22 conference room pursuant to the Open Meetings

1 Amendment Act of 2010 and issue an order.

2 Thank you very much for your
3 presentation today.

4 MR. SUNG: Thank you.

5 CHAIRPERSON ANDERSON: We will issue
6 an order once we receive the proposed findings of
7 fact and conclusions of law.

8 All right. Thank you.

9 (Whereupon, the Show Cause Hearing was
10 concluded at 12:32 a.m.)

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This is to certify that the foregoing transcript

In the matter of: Prospect Dining, LLC
t/a Chinese Disco

Before: DC Alcoholic Beverage Control Board

Date: 01-10-18

Place: Washington, DC

was duly recorded and accurately transcribed under
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Court Reporter

NEAL R. GROSS

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