

DISTRICT OF COLUMBIA

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ALCOHOLIC BEVERAGE CONTROL BOARD

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MEETING

IN THE MATTER OF: :

:

Lovable Business, LLC, :

t/a Infusion Club and :

Restaurant :

1725 Columbia Road, N.W. : Protest

Retailer CT - ANC 1C : Hearing (Status)

License No. 108251 :

Case #18-PRO-00002 :

:

(Application for a New :

License) :

Wednesday
March 7, 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
BOBBY CATO, JR., Member
MIKE SILVERSTEIN, Member
JAMES SHORT, Member

ALSO PRESENT:

KELLY BURCHELL, Attorney for Licensee

TED GUTHRIE, ANC 1C

ERMIAS HAILE, Licensee

ELLEN JAFFE, Group of 15

DENIS JAMES, Kalorama Citizens Association

MATTHEW WEXLER, Group of 5

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

2 9:42 a.m.

3 CHAIRPERSON ANDERSON: Good morning,
4 everyone. I would like to welcome you to the
5 regularly scheduled meeting of the District of
6 Columbia Alcoholic Beverage Control Board.
7 Please know that today's hearings will be
8 conducted in accordance with D.C. Official Code
9 Section 2-574 of the Open Meetings Act.

10 Today is March 7, 2018. I would first
11 like to introduce Members of the Board with us
12 today. To my far right is Mr. Bobby Cato. To my
13 immediate right is Mr. Nick Alberti. To my far
14 left is Mr. Mike Silverstein and to my immediate
15 left is Mr. James Short. My name is Donovan
16 Anderson. I'm the Chairman of the Board. We
17 have five Members in attendance today and we do
18 have a quorum.

19 I would like to mention two things
20 before we get started. First of all, if you have
21 any electronic devices, pagers, cell phones or
22 such, please, make certain that they are turned

1 off to avoid any interruption of the proceedings.

2 Secondly, there is a piece of paper on
3 each table. When you come forward as your case
4 is called, please, take a seat at the table and,
5 please, sign-in. This is to ensure the correct
6 spelling of your name for the record.

7 Additionally, when you introduce
8 yourself for the record, please, spell your name
9 aloud for the court reporter.

10 I would note that the approximate time
11 is 9:44 a.m.

12 Our first order of business is our
13 Protest (Status) Calendar, Case No. 18-PRO-00002,
14 Infusion Club and Restaurant, License No. 108251.

15 Would the parties, please, approach
16 and identify themselves for the record, please?

17 Let's start with the licensee, with the
18 Applicant. Good morning.

19 MR. BURCHELL: Kelly Burchell, K-E-L-
20 L-Y B, as in boy, U-R-C-H-E-L-L on behalf of
21 Lovable Business, LLC. Would you like me to
22 spell the client name?

1 CHAIRPERSON ANDERSON: Yeah, go ahead,
2 sir.

3 MR. BURCHELL: Go ahead? L-O-V-A-B-L-
4 E space B-U-S-I-N-E-S-S comma L-L-C.

5 CHAIRPERSON ANDERSON: And I know
6 there is no requirement, but I see that the
7 Licensee is not here. Is there some reason why
8 the Licensee is not here?

9 MR. BURCHELL: There was an issue with
10 traffic today. I guess there was an accident.
11 He is running a little bit late, but he is on his
12 way.

13 CHAIRPERSON ANDERSON: Do you want us
14 to wait for him or do you want us to move
15 forward?

16 MR. BURCHELL: Oh, we are ready to
17 move forward.

18 CHAIRPERSON ANDERSON: Okay. Fine.

19 MR. BURCHELL: Okay.

20 CHAIRPERSON ANDERSON: All right. Go
21 ahead.

22 MR. GUTHRIE: Ted Guthrie, T-E-D G-U-

1 T-H-R-I-E, for ANC-1C.

2 CHAIRPERSON ANDERSON: Go ahead.

3 MS. JAFFE: Ellen Jaffe, E-L-L-E-N J-
4 A-F-F-E, for the Group of 15.

5 MR. JAMES: Good morning. Denis James
6 representing Kalorama Citizens Association.

7 CHAIRPERSON ANDERSON: Good morning.

8 MR. JAMES: D-E-N-I-S J-A-M-E-S.

9 MR. WEXLER: Good morning. Matthew
10 Wexler on behalf of the Group of Five. It's M-A-
11 T-T-H-E-W last name W-E-X-L-E-R.

12 CHAIRPERSON ANDERSON: Mr. Wexler,
13 it's my understanding that there was -- you were
14 granted conditional standing and so, therefore,
15 you were supposed to have produced four members
16 here today, four additional members. Are there
17 four additional members at this hearing today,
18 sir?

19 MR. WEXLER: No, there are not.

20 CHAIRPERSON ANDERSON: Mr. Burchell,
21 are there any preliminary matters that you want
22 to raise?

1 MR. BURCHELL: Not at this time.

2 CHAIRPERSON ANDERSON: All right.

3 Well, I'll raise an issue. As far as the Group
4 of Five or More, they were granted, the Group of
5 Five or More, preliminary standing at the Roll
6 Call Hearing. The Group of Five or More were
7 specifically advised that in order to be granted
8 full standing, that four additional members were
9 supposed to be present here today to give that
10 group full standing.

11 In speaking to Mr. Wexler, he informed
12 me that there are not four additional members
13 here. With that said, I'm making a motion to the
14 Board that the Group of Five or More be dismissed
15 from these proceedings.

16 MEMBER SHORT: Second.

17 CHAIRPERSON ANDERSON: Mr. Short has
18 seconded the motion.

19 All those in favor say aye.

20 ALL: Aye.

21 MR. WEXLER: Can I make a request
22 before --

1 CHAIRPERSON ANDERSON: You can't make
2 a request, sir. I specifically asked you a
3 question. You gave me no -- you were told --
4 were you told at the Roll Call Hearing that you
5 were given conditional standing and that in order
6 for you to be granted full standing, you must
7 have four additional members show up here today,
8 sir? Were you told that?

9 MR. WEXLER: Yes.

10 CHAIRPERSON ANDERSON: And so are
11 there four additional members for your group here
12 today?

13 MR. WEXLER: No, there are not. But
14 if we can just have a second, so that my group
15 can hopefully joint --

16 CHAIRPERSON ANDERSON: There is one,
17 two, three. There is not five. There has to be
18 five people here today, sir, and there is one,
19 two, three, four people standing in front of me
20 and even if by -- you were to try to get them to
21 join your group, you still don't have five people
22 in front of me today.

1 So whatever you want to do today, it's
2 irrelevant. There has to be five people here to
3 get standing.

4 The Group of 15 or More I assume, at
5 that Roll Call, there were five people there or
6 I'm not sure how many people were there, but they
7 were granted standing.

8 You did not have sufficient. You were
9 specifically told. I asked you today if there
10 were four additional folks here. You told me no.
11 You gave me no explanation, so, therefore, I'm
12 making the motion and the motion has been
13 seconded.

14 All those in favor say aye.

15 ALL: Aye.

16 CHAIRPERSON ANDERSON: Those opposed?
17 The matter passes 5-0-0. The Group of Five or
18 More has been dismissed as a party in these
19 proceedings.

20 And what that means, you can still
21 participate with either the ANC, the Kalorama
22 Citizens Association or the Group of 15 or More,

1 but you, yourself, you are not a party to these
2 proceedings. Okay?

3 MR. WEXLER: Fine.

4 CHAIRPERSON ANDERSON: All right. Are
5 there any other preliminary matters that either
6 side wants to raise today? Did somebody file a
7 motion? Come on folks. It's not me to tell you
8 what you do -- you did what you -- all right.
9 Okay. If you file motions, when I say are there
10 any preliminary matters, you need to tell me. If
11 you file motions, tell me what you filed and what
12 you want me to do. I shouldn't be pulling this
13 out of you. Go ahead, Mr. Guthrie. Go ahead,
14 sir. Yes?

15 MR. GUTHRIE: There are two things.

16 CHAIRPERSON ANDERSON: What are they,
17 please, yes.

18 MR. GUTHRIE: One is the Motion to
19 Dismiss for failure to show up at the mediation.
20 And the second would be our request to put the
21 hearing date off until April, so that -- we are
22 in the process of actively negotiating and coming

1 to terms, but our problem is tonight is the only
2 ANC meeting in March before the hearing is
3 scheduled. And if we don't get it resolved
4 before 7:00 tonight, we can't vote on it tonight,
5 so we would have to put it off until our meeting
6 in the first week, the first Wednesday of April,
7 rather than having to go through the subsequent,
8 we need to have this set over.

9 We would like to have it set over into
10 April. It looks like there is a very good chance
11 that it will all get resolved and that everything
12 will go away, but, you know, --

13 CHAIRPERSON ANDERSON: Does that --

14 MR. GUTHRIE: -- the clock is ticking
15 for a resolution if we have to have it done
16 today.

17 CHAIRPERSON ANDERSON: -- include the
18 other two groups? Are they a party to this
19 settlement agreement?

20 MR. GUTHRIE: We have all --

21 MR. JAMES: Yes.

22 MR. GUTHRIE: -- been involved in the

1 process.

2 CHAIRPERSON ANDERSON: So if the Board
3 was to postpone the Protest Hearing to give the
4 ANC a chance to vote on it, the other two parties
5 will also --

6 MR. GUTHRIE: Yes.

7 CHAIRPERSON ANDERSON: -- would be a
8 part of that settlement agreement. Okay.
9 Because the reason I'm asking is because if --
10 you have asked -- if you are asking for a
11 postponement and the other two group, they don't
12 agree, and the Applicant doesn't agree --

13 MR. GUTHRIE: Right.

14 CHAIRPERSON ANDERSON: All right. So
15 let's start with the first issue. The first
16 issue is that there was a motion filed stating
17 that -- a dismissal motion because the Applicant
18 did not participate in mediation. That's -- so
19 you filed a motion.

20 It's my understanding that the
21 Applicant filed a response. So what's the
22 response from the Applicant?

1 MR. BURCHELL: The response was that
2 initially my client when he had agreed to the
3 mediation date, he accidentally entered the
4 mediation date incorrectly into his calendar and
5 missed the mediation.

6 Since that time, I have come on as
7 counsel and we immediately scheduled another time
8 for us to meet, that was last Sunday. The
9 parties did sit down. They went over a draft of
10 the agreement. We were able to agree on some
11 parts of the agreement. There are a few matters
12 that are still outstanding and there is an
13 agreement with the parties to try and meet today
14 and try and resolve a lot of the remaining
15 issues.

16 So the parties are discussing the
17 settlement agreement in good faith. It was just
18 an issue with an electronic device and the date
19 was entered in incorrectly.

20 CHAIRPERSON ANDERSON: Well, let me --
21 all right. You filed a motion stating that there
22 was no mediation. There was a mediation. Is

1 that still an issue? Are you withdrawing your
2 motion? Are you asking the Board to -- because
3 you filed a motion saying that there was no
4 mediation.

5 The representation I'm told is that
6 there is mediation. So is that -- are you --
7 just on the motion --

8 MR. GUTHRIE: Okay.

9 CHAIRPERSON ANDERSON: -- based on the
10 fact that there was now a mediation was held, are
11 you withdrawing your motion?

12 MR. GUTHRIE: No. We had discussions
13 with the other side. It was not a facilitated
14 mediation --

15 CHAIRPERSON ANDERSON: All right.

16 MR. GUTHRIE: -- with Ms. Fletcher.

17 CHAIRPERSON ANDERSON: All right.

18 Any --

19 MS. JAFFE: And we are nowhere near a
20 settlement, as far as I can tell.

21 CHAIRPERSON ANDERSON: That's a
22 different issue. We are not talking about a

1 settlement. We are talking about the motion.

2 MS. JAFFE: Okay.

3 MR. JAMES: I would like to speak on
4 the motion.

5 CHAIRPERSON ANDERSON: I'm going to go
6 through every one. Okay. Go ahead, ma'am. I
7 did not write your name down. Give me your name
8 again before you speak.

9 MS. JAFFE: My name?

10 CHAIRPERSON ANDERSON: Yes.

11 MS. JAFFE: Ellen Jaffe.

12 CHAIRPERSON ANDERSON: Ms. Jaffe, go
13 ahead, Ms. Jaffe.

14 MS. JAFFE: I just was concerned that
15 even though we have potentially scheduled a
16 meeting for late this afternoon, my feeling from
17 our last discussion is that we are not really
18 close enough to any kind of final thing that we
19 would have it before the ANC met.

20 CHAIRPERSON ANDERSON: All right.

21 MS. JAFFE: That is all --

22 CHAIRPERSON ANDERSON: All right.

1 MS. JAFFE: -- I wanted to say.

2 CHAIRPERSON ANDERSON: Mr. James?

3 MR. JAMES: Yes. So I believe --

4 CHAIRPERSON ANDERSON: This is just on
5 the motion for -- were you a part of the motion
6 or was it just the ANC?

7 MR. JAMES: Yes.

8 CHAIRPERSON ANDERSON: So the motion
9 was jointly filed by --

10 MR. JAMES: By all four --

11 MS. JAFFE: By all.

12 CHAIRPERSON ANDERSON: Okay. Go
13 ahead.

14 MR. JAMES: parties were parties
15 waiting for --

16 CHAIRPERSON ANDERSON: All right. Go
17 ahead.

18 MR. JAMES: -- clarification. So the
19 time is not ripe for the motion discussion,
20 because the protestants have until close of
21 business tomorrow. We have three days under 23
22 DCMR 1716.6 to answer their motion and respond to

1 it.

2 CHAIRPERSON ANDERSON: Right.

3 MR. JAMES: So we --

4 CHAIRPERSON ANDERSON: All right.

5 MR. JAMES: -- that's just the way it
6 is.

7 CHAIRPERSON ANDERSON: All right.

8 MR. JAMES: You know, it shouldn't be
9 discussed.

10 CHAIRPERSON ANDERSON: Well --

11 MR. JAMES: It shouldn't.

12 CHAIRPERSON ANDERSON: -- thank you
13 for indicating that to me, Mr. James. I see that
14 there is another party at the table, so could
15 that person identify themselves for the record,
16 please?

17 MR. HAILE: My name is Ermias Haile
18 and I'm the manager for Infusion Club and
19 Restaurant.

20 CHAIRPERSON ANDERSON: Can you spell
21 your name for the record?

22 MR. HAILE: E-R-M-I-A-S last name

1 Haile, H-A-I-L-E.

2 CHAIRPERSON ANDERSON: All right.

3 Does any side, either side, want to make any
4 other representation regarding the Motion to
5 Dismiss?

6 MR. BURCHELL: There is one additional
7 piece of information --

8 CHAIRPERSON ANDERSON: Yes.

9 MR. BURCHELL: -- that I want to make
10 sure is clear before the Board. Another issue
11 with my client was that there was another
12 attorney that was handling the matter. Some of
13 the information regarding this case was not
14 handed over, so that's another reason for the
15 delay and we apologize for that.

16 But we have exchanged drafts, a
17 prospect of settlement agreement. There has been
18 discussions between the parties, even as recently
19 as last night. There was a draft that was sent
20 over. So we wanted to make sure that is clear
21 that we are working with the parties to try and
22 resolve the issue.

1 MR. JAMES: Sir, I wish to make a
2 further comment?

3 CHAIRPERSON ANDERSON: Yes, go ahead,
4 Mr. James.

5 MR. JAMES: So this is a Status
6 Hearing and we were -- the purpose of it is to
7 report on our progress towards settlement or not.
8 And for the Board to make a date and tell us our
9 responsibilities for Protest Hearing.

10 It's not a motion's hearing. The
11 Board has never advertised it as a motion's
12 hearing. The Board's Assistant General Counsel
13 wrote to us yesterday saying, oh, it can be --
14 you can argue your motions in front of the Board.

15 Well, it hasn't been properly noticed.
16 And we haven't had our time, so I just wanted
17 this to be on the record that --

18 CHAIRPERSON ANDERSON: All right. Mr.
19 James --

20 MR. JAMES: -- we still have rights.
21 We --

22 CHAIRPERSON ANDERSON: Mr. James, with

1 all due respect, November is going to be three
2 years I have been on the Board as Chair and every
3 Protest Hearing that I have ever had, I have
4 asked for preliminary -- are there any
5 preliminary issues.

6 And preliminary issues mean that if
7 someone has filed a motion, in all the Protest
8 Hearings we have spent an extensive period of
9 time at this hearing arguing the motion. So
10 that's -- at least -- I don't know what happened
11 before I got here as Chair, but since I have been
12 here, this is my -- I'm about to enter my third
13 year, that's the way it has been that we -- that
14 it is argued.

15 I'm hearing that you are saying that
16 you filed a motion. The Applicant responded.
17 And you have -- and you want to respond to their
18 response. And our rules say that you have three
19 days. You can respond in three days. So yes,
20 you want to file opposition and nothing is wrong
21 with the General Counsel saying to you that you
22 can make the oral motion or people can even make

1 oral motions here.

2 One of the -- for example, I made a
3 decision this morning because when I knocked out
4 the Group of Five or More, counsel could have
5 said to me oh, he was supposed to have brought
6 four other members here. They are not here. I'm
7 making an oral motion that they be dismissed.

8 So motions can always be made and
9 motions are made at these hearings.

10 Now, the ruling is I'm going to make
11 a recommendation to the Board regarding the
12 issue. It is right, but -- and the
13 recommendation I'm making to the Board. All
14 right.

15 Any -- so, Mr. James, you are saying
16 that it's not right for us to discuss these
17 motions today. That's your position. Is that
18 correct?

19 MR. JAMES: Yes.

20 CHAIRPERSON ANDERSON: Do we have any
21 other representations from the other side?

22 MR. BURCHELL: Well, the reply is a

1 discretionary argument that could be submitted.
2 There has been no additional information that has
3 been provided by the other side that shows any
4 new argument or anything that they wish to refute
5 in our -- in the motion that we filed. Nothing
6 that shows that we aren't working with the other
7 side.

8 So unless there is some additional
9 information that could be valuable, we submit
10 that waiting an additional day only serves to
11 delay the decision.

12 MR. JAMES: The Board wouldn't --

13 CHAIRPERSON ANDERSON: Go ahead, yes.

14 MR. JAMES: -- have information on
15 whether or not, you know, we are providing any
16 new argument or information or any relevant
17 information, because we are not supposed to
18 create new argument with this type of motion
19 until we actually file it.

20 CHAIRPERSON ANDERSON: All right.

21 MR. JAMES: It will be on Thursday.
22 That should perhaps be taken up by the Board next

1 Wednesday. If you want to schedule a motion's
2 hearing then, I think that would be the
3 appropriate thing to do.

4 CHAIRPERSON ANDERSON: All right. Any
5 other comments by any of the Board -- I'm sorry,
6 by any other parties? Do we have any questions?
7 Do any Board Members have any questions before we
8 rule, before I make a -- I ask for a vote?

9 Do we have any questions by any Board
10 Members? Hearing none, on the motion that was
11 filed by the protestant to dismiss the
12 application, based on its failure to participate
13 in mediation, my motion that I'm making to the
14 Board is that we dismiss the motion.

15 And the reason why I'm -- although,
16 Mr. James, you are stating that you still have
17 three more days to respond, the reason why I'm
18 asking the Board to dismiss it is because
19 mediation is not mandatory.

20 So therefore, they do not have to
21 participate in mediation. There is nothing in
22 the law that says that it is -- that mediation is

1 mandatory and that if the party does not
2 participate in mediation, that the matter can be
3 dismissed. So because it's not mandatory, it's
4 voluntary, then you responding in a couple of
5 days to their motion, it's irrelevant, because
6 the motion cannot stand.

7 And so that's the motion I'm making to
8 the Board that the motion be dismissed, because
9 based on the failure -- yes, Mr. James?

10 MR. JAMES: Well, there is a
11 regulation --

12 CHAIRPERSON ANDERSON: What's the
13 regulation?

14 MR. JAMES: -- about mediation and it
15 says the parties shall attend mediation, shall
16 have mediation.

17 CHAIRPERSON ANDERSON: Shall is not --
18 it says shall. Shall does not mean that must.
19 Shall is not -- it's not mandatory. And so
20 therefore -- and the representation that was made
21 is that there was some confusion. There was an
22 error. The Applicant is not saying that they are

1 not open to mediation. And so, therefore, they
2 are saying that -- the view is that it's not
3 mandatory. And the representation that has been
4 made by the Applicant today is that they are open
5 to attend mediation.

6 And so, therefore, I believe that the
7 motion should fall. And so, therefore, is there
8 a second?

9 MEMBER SHORT: Second.

10 CHAIRPERSON ANDERSON: Mr. Short has
11 seconded the motion.

12 All those in favor say aye.

13 ALL: Aye.

14 CHAIRPERSON ANDERSON: All those
15 opposed? The matter passes 5-0-0. So therefore,
16 the motion, your motion is dismissed. All right.

17 Now, the other issue is now the
18 parties are asking for leave. Now, if you are
19 asking for leave because you are saying that
20 there is some settlement agreement, that the ANC
21 needs to sign-off on it and that all the other
22 parties are a part of it, I mean, that is

1 something that the parties can jointly make a
2 motion to the Board to continue the Protest
3 Hearing to give -- if there is a settlement
4 agreement, that -- to give the parties further
5 time to go to their respective -- that's
6 something -- you don't have to do that today.

7 MR. GUTHRIE: Well, I know we don't
8 have to do that today, but I thought as long as
9 we were here, that is a status issue --

10 CHAIRPERSON ANDERSON: Right.

11 MR. GUTHRIE: -- that is very,
12 obviously, going to come up. And rather than
13 doing the phone calls back and forth and last
14 minute stuff, it seemed to me that, as long as
15 the Applicant doesn't have an objection to it,
16 that you folks could order it now, so that we
17 know where we stand and we can establish it.

18 CHAIRPERSON ANDERSON: It's -- all
19 right. It's a new license. And so we do have a
20 timeline when it is that this needs to be
21 granted. What is the Applicant's position on the
22 Motion to Postpone? This matter is scheduled for

1 a Protest Hearing on March 28th at 4:30.

2 What is being asked is that -- I'm
3 being told, the representation that is being
4 told, but it appears that there is -- I'm not
5 hearing that all the other parties are in
6 agreement that there is a settlement agreement on
7 the table, that the ANC needs to take it to --
8 for a vote.

9 MR. JAMES: We are not there yet.

10 MR. GUTHRIE: Yes, we need to take it
11 for a vote. The problem is that our meeting for
12 the month of March is tonight.

13 CHAIRPERSON ANDERSON: All right.

14 MR. GUTHRIE: And unless we get these
15 final matters --

16 CHAIRPERSON ANDERSON: Okay. Fine.

17 MR. GUTHRIE: -- filled out, we are
18 not going to be able to do it until the first
19 Wednesday of April, which comes after the 28th.

20 CHAIRPERSON ANDERSON: Okay. Okay.
21 That's fine. Would the Applicant agree to a
22 continuance?

1 MR. BURCHELL: Not at this time, Your
2 Honor.

3 CHAIRPERSON ANDERSON: You would or
4 would not?

5 MR. BURCHELL: We do not agree. We
6 would prefer to keep the March 28th date set.
7 And if we do reach a settlement agreement, then
8 the parties can file a joint motion. We would be
9 fine. We would prefer to go that route.

10 MR. GUTHRIE: Fine.

11 CHAIRPERSON ANDERSON: Yes, Mr. James?

12 MR. JAMES: Just one further comment.
13 The KCA has been dismissed for not attending a
14 Board mediation in the past and I just would like
15 to point out that it is patently unfair to treat
16 the licensee in a different manner than you do
17 the protestants, especially when there is no must
18 associated.

19 CHAIRPERSON ANDERSON: I'm not aware
20 of that, Mr. James. But if you --

21 MR. JAMES: It's in the past.

22 CHAIRPERSON ANDERSON: -- provide me,

1 at some point, with a copy of that Board Order
2 that stated that the KCA was dismissed from the
3 case based specifically because they did not show
4 up at mediation, I will -- all right.

5 So but I'm just saying, at some point.
6 I'm not aware of that, but as I'm being -- what I
7 do when I'm here, I'm a lawyer and although --
8 you have to be a lawyer to be Chair, but I'm not
9 the lawyer for the Agency. And so, therefore,
10 the decision, every decision that is made by me,
11 it's based on consultation with our lawyers.

12 And so the information that is given
13 to me, that I'm sharing with my Board Members, is
14 that from a legal perspective, that the Board has
15 been told that it is not mandatory, so,
16 therefore, that's why the motion falls. That is
17 the law that has been given to me.

18 And then I advise we have the Board,
19 we will sit here, we will hear the discussion,
20 and I will make recommendations to the Board
21 based on the legal advice that is given and then
22 the Board will make. And so that's how I make my

1 decisions. So that was the law, find out what
2 the law is and then we are open to discussion.

3 So that's one of the reasons why when
4 I made the recommendation to the Board, what I
5 specifically stated is that based on the
6 interpretation of the law, mediation is not
7 mandatory. You read the language and you said
8 shall and shall doesn't say must.

9 And also from what I'm being told, the
10 representation that has been made by the
11 Applicant is that there wa a mix-up why they did
12 not show up and that they are open to do
13 mediation. All right.

14 So because the Board is on a specific
15 timeline, when is it that we have to issue, make
16 a decision on a new license. For a renewal,
17 whether or not -- I could say to the licensee you
18 have asked for a continuance of the Protest
19 Hearing, the licensee objects, but the Board
20 could decide that we will grant the request
21 because he has operated.

22 Now, he is not in -- he is in

1 opposition and so, therefore, we are preventing
2 him from opening up. Of course, if there is a
3 settlement that is reached or, as you have
4 stated, that the ANC needs to sign-off on the
5 settlement, at that point, my assumption is that
6 they will agree and will jointly make a motion to
7 the Board to continue it, because a settlement
8 was reached.

9 And the Board is aware that in order
10 for the settlement to take effect, that the ANC
11 has to have a public vote on the matter. And I
12 think, in that particular case, it would not be
13 preventing. So there would be no reason for us
14 not to grant the motion under those
15 circumstances.

16 But at this juncture, because the
17 licensee states that they object and we are
18 preventing him from opening his business, then I
19 cannot entertain this motion. But the Board
20 though, if all the parties agree as we progress,
21 would be open to revisit the motion and I would
22 hope that the licensee would, at that juncture,

1 feel secure and confident that this is going to
2 happen, so, therefore, yes, we can continue the
3 matter because it will be settled. Okay?

4 MR. JAMES: Thank you for that.

5 CHAIRPERSON ANDERSON: All right. Are
6 there any other preliminary matters in this case?
7 All right. So as I stated before, the hearing is
8 currently scheduled for March 28th at 4:30.

9 However, the Board will be open to consider a
10 postponement if a joint motion is provided to the
11 Board stating that all the parties are agreeing,
12 are in agreement to continue this matter because
13 we have a settlement agreement and we just need
14 to have a public vote.

15 All right. Now, do I need to read the
16 instructions or are -- all the parties are fully-
17 versed with the instructions of a Protest
18 Hearing?

19 MR. BURCHELL: Go ahead and read it.

20 CHAIRPERSON ANDERSON: Okay. Let me
21 read it. Which one, should I read it or --

22 MR. JAMES: We are familiar with the

1 situation.

2 CHAIRPERSON ANDERSON: Okay. All
3 right. Okay.

4 MR. JAMES: And we will get written--

5 CHAIRPERSON ANDERSON: Okay. Let me--
6 I'll read them. Okay. All right.

7 Now that we have scheduled this matter
8 for a Protest Hearing, there are a few things I
9 would like to instruct the Applicant and the
10 protestants about, so that the Protest Hearing is
11 focused and addresses only those issues that are
12 being protested.

13 The Board does not intend to hear
14 testimony on matters that are not relevant to
15 this case. You should have received by
16 electronic or regular mail a letter explaining
17 the protest process, a copy of the Protest
18 Information Form and a copy of the Exhibit Form.
19 If you do not have these documents, please,
20 contact Assistant General Counsel Ms. April
21 Randall following this hearing.

22 It is imperative that you review the

1 rules closely and follow them before and during
2 the Protest Hearing. You are also required to
3 complete and submit the Protest Information Form
4 (PIF) and the Exhibit Form seven days before the
5 date of the hearing. These two forms and
6 accompanying documents need to be submitted to
7 ABRA's Legal Division and to all opposing parties
8 in this matter.

9 If we do not receive a copy of your
10 PIF, your application or your protest, whichever
11 side you are representing, may be subject to
12 dismissal. Likewise, if we do not receive a copy
13 of the Exhibit Form and the exhibits themselves,
14 your exhibits may be excluded from the record
15 upon a finding that the opposing party has been
16 prejudiced or no good cause for failure to submit
17 has been shown.

18 Likewise witnesses other than a party
19 may also be subject to exclusion if not
20 identified on the PIF.

21 Accordingly, these forms are very
22 important as they greatly assist the Board in

1 narrowing the protest issues, facilitating the
2 process and keeping the parties on point during
3 the hearing. They likewise provide notice to the
4 opposing parties enabling them to better prepare
5 for the hearing.

6 We thank you greatly for your
7 cooperation. If you have any questions today or
8 at any time leading up to the hearing, please, do
9 not hesitate to contact AGC Randall at (202) 442-
10 4353.

11 Thank you very much. Regarding the
12 mediation issue, Ms. Fletcher is in the room, you
13 can meet with her. She is at the back of the
14 room. You can meet with her today and she will
15 give you a date to reschedule the mediation
16 hearing.

17 As I said before, if you believe that
18 you are close to settlement and you want to
19 postpone the protest, send a joint request to the
20 Board and we will consider it and more likely
21 grant it.

22 Okay. Thank you, guys. Thank you

1 very much for being here today.

2 MR. BURCHELL: Thank you.

3 MR. JAMES: Thank you.

4 MS. JAFFE: Thank you.

5 (Whereupon, the Protest (Status)

6 Hearing was concluded at 10:14 a.m.)

A			
A-F-F-E 6:4 a.m 3:2 4:11 36:6 able 13:10 27:18 ABRA's 34:7 accident 5:10 accidentally 13:3 accompanying 34:6 Act 3:9 actively 10:22 additional 6:16,17 7:8,12 8:7,11 9:10 18:6 22:2,8,10 Additionally 4:7 addresses 33:11 advertised 19:11 advice 29:21 advise 29:18 advised 7:7 afternoon 15:16 AGC 35:9 Agency 29:9 agree 12:12,12 13:10 27:21 28:5 31:6,20 agreed 13:2 agreeing 32:11 agreement 11:19 12:8 13:10,11,13 13:17 18:17 25:20 26:4 27:6,6 28:7 32:12,13 ahead 5:1,3,21 6:2 10:13,13 15:6,13 16:13,17 19:3 22:13 32:19 Alberti 1:20 3:13 Alcoholic 1:3,15,16 3:6 aloud 4:9 ANC 1:10 2:12 9:21 11:2 12:4 15:19 16:6 25:20 27:7 31:4,10 ANC-1C 6:1 Anderson 1:17,19 3:3,16 5:1,5,13,18	5:20 6:2,7,12,20 7:2,17 8:1,10,16 9:16 10:4,16 11:13,17 12:2,7 12:14 13:20 14:9 14:15,17,21 15:5 15:10,12,20,22 16:2,4,8,12,16 17:2,4,7,10,12,20 18:2,8 19:3,18,22 21:20 22:13,20 23:4 24:12,17 25:10,14 26:10,18 27:13,16,20 28:3 28:11,19,22 32:5 32:20 33:2,5 answer 16:22 apologize 18:15 appears 27:4 Applicant 4:18 12:12,17,21,22 20:16 24:22 25:4 26:15 27:21 30:11 33:9 Applicant's 26:21 application 1:12 23:12 34:10 approach 4:15 appropriate 23:3 approximate 4:10 April 10:21 11:6,10 27:19 33:20 argue 19:14 argued 20:14 arguing 20:9 argument 22:1,4,16 22:18 asked 8:2 9:9 12:10 20:4 27:2 30:18 asking 12:9,10 14:2 23:18 25:18,19 assist 34:22 Assistant 19:12 33:20 associated 28:18 Association 2:15 6:6 9:22 assume 9:4	assumption 31:5 attend 24:15 25:5 attendance 3:17 attending 28:13 attorney 2:11 18:12 avoid 4:1 aware 28:19 29:6 31:9 aye 7:19,20 9:14,15 25:12,13 B B 4:20 B-U-S-I-N-E-S-S 5:4 back 26:13 35:13 based 14:9 23:12 24:9 29:3,11,21 30:5 behalf 4:20 6:10 believe 16:3 25:6 35:17 better 35:4 Beverage 1:3,15,16 3:6 bit 5:11 Board 1:3,15 3:6,11 3:16 7:14 12:2 14:2 18:10 19:8 19:11,14 20:2 21:11,13 22:12,22 23:5,7,9,14,18 24:8 26:2 28:14 29:1,13,14,18,20 29:22 30:4,14,19 31:7,9,19 32:9,11 33:13 34:22 35:20 Board's 19:12 Bobby 1:20 3:12 boy 4:20 brought 21:5 Building 1:16 Burchell 2:11 4:19 4:19 5:3,9,16,19 6:20 7:1 13:1 18:6 18:9 21:22 28:1,5 32:19 36:2 business 1:8 4:12	4:21 16:21 31:18 C calendar 4:13 13:4 Call 7:6 8:4 9:5 called 4:4 calls 26:13 case 1:11 4:3,13 18:13 29:3 31:12 32:6 33:15 Cato 1:20 3:12 cause 34:16 cell 3:21 certain 3:22 Chair 20:2,11 29:8 Chairman 3:16 Chairperson 1:17 1:19 3:3 5:1,5,13 5:18,20 6:2,7,12 6:20 7:2,17 8:1,10 8:16 9:16 10:4,16 11:13,17 12:2,7 12:14 13:20 14:9 14:15,17,21 15:5 15:10,12,20,22 16:2,4,8,12,16 17:2,4,7,10,12,20 18:2,8 19:3,18,22 21:20 22:13,20 23:4 24:12,17 25:10,14 26:10,18 27:13,16,20 28:3 28:11,19,22 32:5 32:20 33:2,5 chance 11:10 12:4 circumstances 31:15 Citizens 2:15 6:6 9:22 clarification 16:18 clear 18:10,20 client 4:22 13:2 18:11 clock 11:14 close 15:18 16:20 35:18 closely 34:1 Club 1:8 4:14 17:18

Code 3:8
Columbia 1:1,9 3:6
come 4:3 10:7 13:6
 26:12
comes 27:19
coming 10:22
comma 5:4
comment 19:2
 28:12
comments 23:5
complete 34:3
concerned 15:14
concluded 36:6
conditional 6:14
 8:5
conducted 3:8
confident 32:1
confusion 24:21
consider 32:9
 35:20
consultation 29:11
contact 33:20 35:9
continuance 27:22
 30:18
continue 26:2 31:7
 32:2,12
Control 1:3,15,16
 3:6
cooperation 35:7
copy 29:1 33:17,18
 34:9,12
correct 4:5 21:18
counsel 13:7 19:12
 20:21 21:4 33:20
couple 24:4
course 31:2
court 4:9
create 22:18
CT 1:10
currently 32:8

D

D-E-N-I-S 6:8
D.C 1:17 3:8
date 10:21 13:3,4
 13:18 19:8 28:6
 34:5 35:15
day 22:10

days 16:21 20:19
 20:19 23:17 24:5
 34:4
DCMR 16:22
decide 30:20
decision 21:3 22:11
 29:10,10 30:16
decisions 30:1
delay 18:15 22:11
Denis 2:15 6:5
device 13:18
devices 3:21
different 14:22
 28:16
discretionary 22:1
discuss 21:16
discussed 17:9
discussing 13:16
discussion 15:17
 16:19 29:19 30:2
discussions 14:12
 18:18
dismiss 10:19 18:5
 23:11,14,18
dismissal 12:17
 34:12
dismissed 7:14
 9:18 21:7 24:3,8
 25:16 28:13 29:2
District 1:1 3:5
Division 34:7
documents 33:19
 34:6
doing 26:13
Donovan 1:17,19
 3:15
draft 13:9 18:19
drafts 18:16
due 20:1

E

E 5:4
E-L-L-E-N 6:3
E-R-M-I-A-S 17:22
effect 31:10
either 9:21 10:5
 18:3
electronic 3:21

13:18 33:16
Ellen 2:14 6:3 15:11
enabling 35:4
ensure 4:5
enter 20:12
entered 13:3,19
entertain 31:19
Ermias 2:13 17:17
error 24:22
especially 28:17
establish 26:17
example 21:2
exchanged 18:16
excluded 34:14
exclusion 34:19
Exhibit 33:18 34:4
 34:13
exhibits 34:13,14
explaining 33:16
explanation 9:11
extensive 20:8

F

facilitated 14:13
facilitating 35:1
fact 14:10
failure 10:19 23:12
 24:9 34:16
faith 13:17
fall 25:7
falls 29:16
familiar 32:22
far 3:12,13 7:3
 14:20
favor 7:19 9:14
 25:12
feel 32:1
feeling 15:16
file 10:6,9,11 20:20
 22:19 28:8
filed 10:11 12:16,19
 12:21 13:21 14:3
 16:9 20:7,16 22:5
 23:11
filled 27:17
final 15:18 27:15
find 30:1
finding 34:15

fine 5:18 10:3 27:16
 27:21 28:9,10
first 3:10,20 4:12
 11:6,6 12:15,15
 27:18
five 3:17 6:10 7:4,5
 7:6,14 8:17,18,21
 9:2,5,17 21:4
Fletcher 14:16
 35:12
focused 33:11
folks 9:10 10:7
 26:16
follow 34:1
following 33:21
Form 33:18,18 34:3
 34:4,13
forms 34:5,21
forth 26:13
forward 4:3 5:15,17
four 6:15,16,17 7:8
 7:12 8:7,11,19
 9:10 16:10 21:6
front 8:19,22 19:14
full 7:8,10 8:6
fully- 32:16
further 19:2 26:4
 28:12

G

G-U- 5:22
General 19:12
 20:21 33:20
give 7:9 12:3 15:7
 26:3,4 35:15
given 8:5 29:12,17
 29:21
go 5:1,3,20 6:2
 10:13,13 11:7,12
 15:5,6,12 16:12
 16:16 19:3 22:13
 26:5 28:9 32:19
going 15:5 20:1
 21:10 26:12 27:18
 32:1
good 3:3 4:18 6:5,7
 6:9 11:10 13:17
 34:16

grant 30:20 31:14
35:21
granted 6:14 7:4,7
8:6 9:7 26:21
greatly 34:22 35:6
group 2:14,16 6:4
6:10 7:3,4,6,10,14
8:11,14,21 9:4,17
9:22 12:11 21:4
groups 11:18
guess 5:10
Guthrie 2:12 5:22
5:22 10:13,15,18
11:14,20,22 12:6
12:13 14:8,12,16
26:7,11 27:10,14
27:17 28:10
guys 35:22

H

H-A-I-L-E 18:1
Haile 2:13 17:17,17
17:22 18:1
handed 18:14
handling 18:12
happen 32:2
happened 20:10
hear 29:19 33:13
hearing 1:10,16
6:17 7:6 8:4 10:21
11:2 12:3 19:6,9
19:10,12 20:3,9
20:15 23:2,10
26:3 27:1,5 30:19
32:7,18 33:8,10
33:21 34:2,5 35:3
35:5,8,16 36:6
hearings 3:7 20:8
21:9
held 14:10
hesitate 35:9
Honor 28:2
hope 31:22
hopefully 8:15

I

identified 34:20
identify 4:16 17:15

immediate 3:13,14
immediately 13:7
imperative 33:22
important 34:22
include 11:17
incorrectly 13:4,19
indicating 17:13
information 18:7
18:13 22:2,9,14
22:16,17 29:12
33:18 34:3
informed 7:11
Infusion 1:8 4:14
17:18
initially 13:2
instruct 33:9
instructions 32:16
32:17
intend 33:13
interpretation 30:6
interruption 4:1
introduce 3:11 4:7
involved 11:22
irrelevant 9:2 24:5
issue 5:9 7:3 12:15
12:16 13:18 14:1
14:22 18:10,22
21:12 25:17 26:9
30:15 35:12
issues 13:15 20:5,6
33:11 35:1

J

J-6:3
J-A-M-E-S 6:8
Jaffe 2:14 6:3,3
14:19 15:2,9,11
15:11,12,13,14,21
16:1,11 36:4
James 1:21 2:15
3:15 6:5,5,8 11:21
15:3 16:2,3,7,10
16:14,18 17:3,5,8
17:11,13 19:1,4,5
19:19,20,22 21:15
21:19 22:12,14,21
23:16 24:9,10,14
27:9 28:11,12,20

28:21 32:4,22
33:4 36:3
join 8:21
joint 8:15 28:8
32:10 35:19
jointly 16:9 26:1
31:6
JR 1:20
juncture 31:16,22

K

K-E-L-4:19
Kalorama 2:15 6:6
9:21
KCA 28:13 29:2
keep 28:6
keeping 35:2
Kelly 2:11 4:19
kind 15:18
knocked 21:3
know 3:7 5:5 11:12
17:8 20:10 22:15
26:7,17

L

L-L-C 5:4
L-O-V-A-B-L-5:3
L-Y 4:20
language 30:7
late 5:11 15:16
law 23:22 29:17
30:1,2,6
lawyer 29:7,8,9
lawyers 29:11
leading 35:8
leave 25:18,19
left 3:14,15
legal 29:14,21 34:7
let's 4:17 12:15
letter 33:16
license 1:10,12
4:14 26:19 30:16
licensee 2:11,13
4:17 5:7,8 28:16
30:17,19 31:17,22
likewise 34:12,18
35:3
little 5:11

LLC 1:8 4:21
long 26:8,14
looks 11:10
lot 13:14
Lovable 1:8 4:21

M

M-A-6:10
ma'am 15:6
mail 33:16
making 7:13 9:12
21:7,13 23:13
24:7
manager 17:18
mandatory 23:19
24:1,3,19 25:3
29:15 30:7
manner 28:16
March 1:14 3:10
11:2 27:1,12 28:6
32:8
matter 1:7 9:17
18:12 24:2 25:15
26:22 31:11 32:3
32:12 33:7 34:8
matters 6:21 10:5
10:10 13:11 27:15
32:6 33:14
Matthew 2:16 6:9
me-- 33:5
mean 20:6 24:18
25:22
means 9:20
mediation 10:19
12:18 13:3,4,5,22
13:22 14:4,6,10
14:14 23:13,19,21
23:22 24:2,14,15
24:16 25:1,5
28:14 29:4 30:6
30:13 35:12,15
meet 13:8,13 35:13
35:14
meeting 1:5 3:5
11:2,5 15:16
27:11
Meetings 3:9
Member 1:20,20,21

1:21 7:16 25:9
members 3:11,17
 6:15,16,17 7:8,12
 8:7,11 21:6 23:7
 23:10 29:13
mention 3:19
met 1:16 15:19
Mike 1:21 3:14
minute 26:14
missed 13:5
mix-up 30:11
month 27:12
morning 3:3 4:18
 6:5,7,9 21:3
motion 7:13,18
 9:12,12 10:7,18
 12:16,17,19 13:21
 14:2,3,7,11 15:1,4
 16:5,5,8,19,22
 18:4 20:7,9,16,22
 21:7 22:5,18
 23:10,13,14 24:5
 24:6,7,8 25:7,11
 25:16,16 26:2,22
 28:8 29:16 31:6
 31:14,19,21 32:10
motion's 19:10,11
 23:1
motions 10:9,11
 19:14 21:1,8,9,17
move 5:14,17

N

N.W 1:9,16
name 3:15 4:6,8,22
 6:11 15:7,7,9
 17:17,21,22
narrowing 35:1
near 14:19
need 10:10 11:8
 27:10 32:13,15
 34:6
needs 25:21 26:20
 27:7 31:4
negotiating 10:22
never 19:11
new 1:12 22:4,16
 22:18 26:19 30:16

Nick 1:20 3:13
night 18:19
note 4:10
notice 35:3
noticed 19:15
November 20:1

O

object 31:17
objection 26:15
objects 30:19
obviously 26:12
Official 3:8
oh 5:16 19:13 21:5
Okay 5:18,19 10:2
 10:9 12:8 14:8
 15:2,6 16:12
 27:16,20,20 32:3
 32:20 33:2,3,5,6
 35:22
open 3:9 25:1,4
 30:2,12 31:21
 32:9
opening 31:2,18
operated 30:21
opposed 9:16
 25:15
opposing 34:7,15
 35:4
opposition 20:20
 31:1
oral 20:22 21:1,7
order 4:12 7:7 8:5
 26:16 29:1 31:9
outstanding 13:12

P

P-R-O-C-E-E-D-I-...
 3:1
paggers 3:21
paper 4:2
part 12:8 16:5
 25:22
participate 9:21
 12:18 23:12,21
 24:2
particular 31:12
parties 4:15 12:4

13:9,13,16 16:14
 16:14 18:18,21
 23:6 24:15 25:18
 25:22 26:1,4 27:5
 28:8 31:20 32:11
 32:16 34:7 35:2,4
parts 13:11
party 9:18 10:1
 11:18 17:14 24:1
 34:15,18
passes 9:17 25:15
patently 28:15
people 8:18,19,21
 9:2,5,6 20:22
period 20:8
person 17:15
perspective 29:14
phone 26:13
phones 3:21
piece 4:2 18:7
PIF 34:4,10,20
please 3:7,22 4:4,5
 4:8,15,16 10:17
 17:16 33:19 35:8
point 28:15 29:1,5
 31:5 35:2
position 21:17
 26:21
postpone 12:3
 26:22 35:19
postponement
 12:11 32:10
potentially 15:15
prefer 28:6,9
prejudiced 34:16
preliminary 6:21
 7:5 10:5,10 20:4,5
 20:6 32:6
prepare 35:4
present 1:18 2:9
 7:9
presiding 1:17
preventing 31:1,13
 31:18
problem 11:1 27:11
proceedings 4:1
 7:15 9:19 10:2
process 10:22 12:1

33:17 35:2
produced 6:15
progress 19:7
 31:20
properly 19:15
prospect 18:17
protest 1:9 4:13
 12:3 19:9 20:3,7
 26:2 27:1 30:18
 32:17 33:8,10,17
 33:17 34:2,3,10
 35:1,19 36:5
protestant 23:11
protestants 16:20
 28:17 33:10
protested 33:12
provide 28:22 35:3
provided 22:3
 32:10
providing 22:15
public 31:11 32:14
pulling 10:12
purpose 19:6
put 10:20 11:5

Q

question 8:3
questions 23:6,7,9
 35:7
quorum 3:18

R

raise 6:22 7:3 10:6
Randall 33:21 35:9
reach 28:7
reached 31:3,8
read 30:7 32:15,19
 32:21,21 33:6
ready 5:16
really 15:17
reason 5:7 12:9
 18:14 23:15,17
 31:13
reasons 30:3
receive 34:9,12
received 33:15
recommendation
 21:11,13 30:4

recommendations 29:20
record 4:6,8,16
 17:15,21 19:17
 34:14
Reeves 1:16
refute 22:4
regarding 18:4,13
 21:11 35:11
regular 33:16
regularly 3:5
regulation 24:11,13
relevant 22:16
 33:14
remaining 13:14
renewal 30:16
reply 21:22
report 19:7
reporter 4:9
representation
 14:5 18:4 24:20
 25:3 27:3 30:10
representations
 21:21
representing 6:6
 34:11
request 7:21 8:2
 10:20 30:20 35:19
required 34:2
requirement 5:6
reschedule 35:15
resolution 11:15
resolve 13:14 18:22
resolved 11:3,11
respect 20:1
respective 26:5
respond 16:22
 20:17,19 23:17
responded 20:16
responding 24:4
response 12:21,22
 13:1 20:18
responsibilities
 19:9
Restaurant 1:9
 4:14 17:19
Retailer 1:10
review 33:22

revisit 31:21
right 3:12,13 5:20
 7:2 10:4,8 12:13
 12:14 13:21 14:15
 14:17 15:20,22
 16:16 17:2,4,7
 18:2 19:18 21:12
 21:14,16 22:20
 23:4 25:16 26:10
 26:19 27:13 29:4
 30:13 32:5,7,15
 33:3,6
rights 19:20
ripe 16:19
Road 1:9
Roll 7:5 8:4 9:5
room 1:16 35:12,14
route 28:9
rule 23:8
rules 20:18 34:1
ruling 21:10
running 5:11

S

saying 14:3 19:13
 20:15,21 21:15
 24:22 25:2,19
 29:5
says 23:22 24:15
 24:18
schedule 23:1
scheduled 3:5 11:3
 13:7 15:15 26:22
 32:8 33:7
seat 4:4
second 7:16 8:14
 10:20 25:8,9
seconded 7:18
 9:13 25:11
Secondly 4:2
Section 3:9
secure 32:1
see 5:6 17:13
send 35:19
sent 18:19
serves 22:10
set 11:8,9 28:6
settled 32:3

settlement 11:19
 12:8 13:17 14:20
 15:1 18:17 19:7
 25:20 26:3 27:6
 28:7 31:3,5,7,10
 32:13 35:18
seven 34:4
sharing 29:13
Short 1:21 3:15
 7:16,17 25:9,10
show 8:7 10:19
 29:3 30:12
shown 34:17
shows 22:3,6
side 10:6 14:13
 18:3,3 21:21 22:3
 22:7 34:11
sign-in 4:5
sign-off 25:21 31:4
Silverstein 1:21
 3:14
sir 5:2 6:18 8:2,8,18
 10:14 19:1
sit 13:9 29:19
situation 33:1
somebody 10:6
sorry 23:5
space 5:4
speak 15:3,8
speaking 7:11
specific 30:14
specifically 7:7 8:2
 9:9 29:3 30:5
spell 4:8,22 17:20
spelling 4:6
spent 20:8
stand 24:6 26:17
standing 6:14 7:5,8
 7:10 8:5,6,19 9:3
 9:7
start 4:17 12:15
started 3:20
stated 29:2 30:5
 31:4 32:7
states 31:17
stating 12:16 13:21
 23:16 32:11
status 1:10 4:13

19:5 26:9 36:5
Street 1:16
stuff 26:14
subject 34:11,19
submit 22:9 34:3
 34:16
submitted 22:1
 34:6
subsequent 11:7
sufficient 9:8
Suite 1:17
Sunday 13:8
supposed 6:15 7:9
 21:5 22:17
sure 9:6 18:10,20

T

T-E-D 5:22
T-H-R-I-E 6:1
T-T-H-E-W 6:11
t/a 1:8
table 4:3,4 17:14
 27:7
take 4:4 27:7,10
 31:10
taken 22:22
talking 14:22 15:1
Ted 2:12 5:22
tell 10:7,10,11
 14:20 19:8
terms 11:1
testimony 33:14
thank 17:12 32:4
 35:6,11,22,22
 36:2,3,4
themselves 17:15
thing 15:18 23:3
things 3:19 10:15
 33:8
think 23:2 31:12
third 20:12
thought 26:8
three 8:17,19 16:21
 20:1,18,19 23:17
Thursday 22:21
ticking 11:14
time 4:10 7:1 13:6,7
 16:19 19:16 20:9

26:5 28:1 35:8
timeline 26:20
 30:15
today 3:10,12,17
 5:10 6:16,17 7:9
 8:7,12,18,22 9:1,9
 10:6 11:16 13:13
 21:17 25:4 26:6,8
 35:7,14 36:1
today's 3:7
told 8:3,4,8 9:9,10
 14:5 27:3,4 29:15
 30:9
tomorrow 16:21
tonight 11:1,4,4
 27:12
traffic 5:10
treat 28:15
try 8:20 13:13,14
 18:21
turned 3:22
two 3:19 8:17,19
 10:15 11:18 12:4
 12:11 34:5
type 22:18

U

U-R-C-H-E-L-L 4:20
understanding
 6:13 12:20
unfair 28:15

V

valuable 22:9
versed 32:17
view 25:2
voluntary 24:4
vote 11:4 12:4 23:8
 27:8,11 31:11
 32:14

W

W 1:17,19
W-E-X-L-E-R 6:11
wa 30:11
wait 5:14
waiting 16:15 22:10
want 5:13,14 6:21
 9:1 10:12 18:3,9

20:17,20 23:1
 35:18
wanted 16:1 18:20
 19:16
wants 10:6
Washington 1:17
way 5:12 17:5
 20:13
Wednesday 1:14
 11:6 23:1 27:19
week 11:6
welcome 3:4
went 13:9
Wexler 2:16 6:9,10
 6:12,19 7:11,21
 8:9,13 10:3
whichever 34:10
wish 19:1 22:4
withdrawing 14:1
 14:11
witnesses 34:18
working 18:21 22:6
wouldn't 22:12
write 15:7
written-- 33:4
wrong 20:20
wrote 19:13

X

Y

Yeah 5:1
year 20:13
years 20:2
yesterday 19:13

Z

0

1

10:14 36:6
108251 1:10 4:14
14th 1:16
15 2:14 6:4 9:4,22
1716.6 16:22
1725 1:9
18-PRO-00002 1:11
 4:13

1C 1:10 2:12

2

2-574 3:9
2000 1:16
20009 1:17
2018 1:14 3:10
202 35:9
23 16:21
28th 27:1,19 28:6
 32:8

3

4

4:30 27:1 32:8
400S 1:17
4353 35:10
442- 35:9

5

5 2:16
5-0-0 9:17 25:15

6

7

7 1:14 3:10
7:00 11:4

8

9

9:42 3:2
9:44 4:11

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Before: DC ABRA

Date: 03-07-18

Place: Washington, DC

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