

DISTRICT OF COLUMBIA  
 + + + + +  
 ALCOHOLIC BEVERAGE CONTROL BOARD  
 + + + + +  
 MEETING

-----  
 IN THE MATTER OF:           :  
                                      :  
 Kiss, LLC,                       :  
 t/a Kiss Tavern                   :  
 637 T Street NW                 : Show Cause  
 Retailer CT - ANC 1B            : Hearing  
 License No. 104710             :  
 Case #17-CMP-00570            :  
                                      :  
 (Violation of Settlement       :  
 Agreement)                      :  
 -----

Wednesday  
 April 11, 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  
  
 DONALD ISAAC, SR., Member  
  
 MIKE SILVERSTEIN, Member  
  
 JAMES SHORT, Member

**ALSO PRESENT:**

**EYOB ASBEAJ, Licensee**

**KEVIN HARGRAVE, ABRA Investigator**

**LOUISE PHILLIPS, OAG**

C-O-N-T-E-N-T-S

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 Closing Statement by Government. . . . .73  
 Closing Statement by Licensee. . . . .74

WITNESSES            DIRECT   CROSS   REDIRECT   RECDROSS

Kevin Hargrave        8        23                            41  
 Eyob Asbeaj            51

VIDEOS:

Government Video 1 Played. . . . . 15/39  
 Licensee Video 2 Played. . . . .60

EXHIBITS

MARK RECD

GOVERNMENT

1        Hargrave ROI                            12        12  
 1.1     Video Surveillance of Kiss            15  
 1.2     Mr. Asbeaj Driver License            19  
 1.3     Settlement Agreement                20

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

2 10:09 a.m.

3 CHAIRPERSON ANDERSON: The next case  
4 on our calendar is Case No. 17-CMP-00570, Kiss  
5 Tavern, License No. 104710.

6 Would the parties, please, approach  
7 and identify themselves for the record, please?

8 MS. PHILLIPS: Louise Phillips,  
9 Assistant Attorney General for the District of  
10 Columbia. Good morning, Board Members.

11 CHAIRPERSON ANDERSON: Good morning,  
12 Ms. Phillips. Yes, sir?

13 MR. ASBEAJ: Good morning. I'm Eyob  
14 Asbeaj.

15 CHAIRPERSON ANDERSON: Good morning,  
16 Mr. Asbeaj.

17 Are there any preliminary matters in  
18 this case?

19 MS. PHILLIPS: No, Mr. Chair, there  
20 are not.

21 CHAIRPERSON ANDERSON: All right. Mr.  
22 Asbeaj, are there any preliminary matters in this

1 case, sir?

2 (No audible answer.)

3 CHAIRPERSON ANDERSON: Preliminary  
4 matters is that is there anything that we need to  
5 say before we formally start the hearing?

6 MR. ASBEAJ: It's like --

7 CHAIRPERSON ANDERSON: I'm sorry, sir?

8 MR. ASBEAJ: Yeah, I would like to say  
9 like I feel like I've been harassed by you and  
10 everything and I would like to move forward with  
11 this matter.

12 CHAIRPERSON ANDERSON: I'm sorry, sir,  
13 you what?

14 MR. ASBEAJ: Yeah, I feel like I come  
15 here, you know, every day, every week, then I  
16 feel like I've been harassed by the Investigators  
17 and everything.

18 CHAIRPERSON ANDERSON: All right.

19 MR. ASBEAJ: And --

20 CHAIRPERSON ANDERSON: Well, that's  
21 not a preliminary. That's your opinion, sir.  
22 I'm not quite sure whether or not you are correct

1 that, I think, this is probably the third week  
2 that we are seeing you here, but that just tells  
3 us that something is not right. I'm not sure  
4 from -- if it's from your perspective or from the  
5 Agency's perspective, because usually when we see  
6 licensees in front of us, it tells us that  
7 someone is not doing something right.

8 So but we do have this hearing and the  
9 Board will listen to each side and based on the  
10 presentation of the evidence, the Board will make  
11 a decision what is it that needs to be done.

12 All right. So does the Government  
13 wish to make an opening statement?

14 MS. PHILLIPS: Briefly, Mr. Chair.  
15 This matter concerns one charge for a noise  
16 complaint in violation of a settlement agreement.  
17 The -- it's another door open case in violation  
18 of a settlement agreement and Board's Order,  
19 which occurred on August 24, 2017.

20 We believe the evidence will show that  
21 the door was open in violation and that the Board  
22 should find for the District and uphold the

1 notice.

2 CHAIRPERSON ANDERSON: Mr. Asbeaj, do  
3 you wish to make an opening statement at this  
4 juncture or do you want to make an opening  
5 statement once you present your case?

6 MR. ASBEAJ: Well, if it's better for  
7 me --

8 CHAIRPERSON ANDERSON: I'm sorry, sir?

9 MR. ASBEAJ: It's better if I do after  
10 my case.

11 CHAIRPERSON ANDERSON: It's up to you.  
12 All right. Does the Government wish to call a  
13 witness?

14 MS. PHILLIPS: Yes, Mr. Chair. The  
15 Government calls Kevin Hargrave.

16 CHAIRPERSON ANDERSON: Can you raise  
17 your right hand, sir?

18 INVESTIGATOR HARGRAVE: Yes, sir.

19 Whereupon,

20 INVESTIGATOR KEVIN HARGRAVE  
21 was called as a witness by Counsel for the  
22 Government, and having been first duly sworn,

1 assumed the witness stand and was examined and  
2 testified as follows:

3 INVESTIGATOR HARGRAVE: I do.

4 CHAIRPERSON ANDERSON: Okay. Have a  
5 seat. Go ahead.

6 DIRECT EXAMINATION

7 BY MS. PHILLIPS:

8 Q Good morning, sir. Will you state  
9 your name and spell it for the record?

10 A Good morning, Mr. Chair and Board. My  
11 name is Supervisor Investigator Kevin Hargrave,  
12 K-E-V-I-N H-A-R-G-R-A-V-E.

13 CHAIRPERSON ANDERSON: Pull the  
14 microphone closer to you, so -- yeah, thank you.  
15 Go ahead.

16 BY MS. PHILLIPS:

17 Q And what is your position with ABRA?

18 A I'm the Supervisory Investigator for  
19 the Orange Team.

20 Q The what team?

21 A Orange Team.

22 Q And what is the Orange Team?



1           A           The Orange Team is a team of ABRA  
2           Investigators and myself as a supervisor that  
3           works from 7:30 p.m. until 4:00 a.m., Sunday  
4           through Thursdays for the ABRA.

5           Q           Okay. And in your capacity as a  
6           Supervisory Investigator, do you sometimes  
7           conduct investigations either in conjunction with  
8           another Investigator or as a solo Investigator?

9           A           Yes. Yes, I do.

10          Q           And in this case were you the  
11          Supervisory Investigator or acting as just an  
12          Investigator?

13          A           In this -- on this date, I was acting  
14          as an Investigator.

15          Q           And you were the only ABRA official to  
16          be on the scene on August 24, 2017. Is that  
17          fair?

18          A           Yes, that's correct.

19          Q           Okay. How long have you worked for  
20          ABRA?

21          A           I have been an employee of ABRA since  
22          July 4, 2015.

1 Q And prior to your working at ABRA, did  
2 you have any employment which -- in which you did  
3 investigative work and subsequently wrote reports  
4 of your investigations?

5 A Yes, I did.

6 Q And how many years did you spend doing  
7 that prior to coming to ABRA?

8 A 23 years.

9 Q Okay. And in this matter, did you go  
10 to Kiss Tavern on August 24, 2017?

11 A Yes, I did.

12 Q And did you reduce your findings into  
13 a report?

14 A Yes, I did.

15 MS. PHILLIPS: I would like to hand  
16 the witness his report.

17 CHAIRPERSON ANDERSON: Does Mr. -- Mr.  
18 Asbeaj, do you have a copy of the Investigator's  
19 report, sir?

20 MS. PHILLIPS: If he doesn't, I have  
21 one.

22 CHAIRPERSON ANDERSON: Huh?

1 MS. PHILLIPS: If he doesn't, I have  
2 one for him.

3 CHAIRPERSON ANDERSON: Yes, give him.  
4 Thank you, Ms. Phillips.

5 MS. PHILLIPS: You're welcome.

6 CHAIRPERSON ANDERSON: Appreciate it.

7 BY MS. PHILLIPS:

8 Q All right. Looking at this document  
9 briefly, is this the report you wrote on August  
10 24th or subsequently thereafter about the  
11 incident on August 24, 2017?

12 A Yes, it is.

13 Q And looking at page 3, is that your  
14 signature?

15 A Yes, that is my signature.

16 Q And there is another signature on that  
17 page. Whose signature is that?

18 A That is the signature of Chief Johnnie  
19 E. Jackson, Jr., who is the Chief of Enforcement  
20 for ABRA.

21 Q Okay. All right.

22 MS. PHILLIPS: So I would like to move

1 for the admission of the case report and the  
2 investigation report into evidence.

3 CHAIRPERSON ANDERSON: Mr. Asbeaj, do  
4 you have any problem with this?

5 (No audible answer.)

6 CHAIRPERSON ANDERSON: So moved.

7 (Whereupon, the above-  
8 referred to document was  
9 marked as Government Exhibit  
10 No. 1 for identification and  
11 was received into evidence.)

12 MS. PHILLIPS: Thank you, Mr. Chair.

13 BY MS. PHILLIPS:

14 Q All right. Could you tell me briefly,  
15 in your own words, how you came to be at Kiss  
16 Tavern on August 24, 2017?

17 A Yes. I responded to the area in  
18 response to a noise complaint from that area.

19 Q Was this a noise complaint on a  
20 hotline or directly to you or through another  
21 means?

22 A This noise complaint was made directly

1 to me via the hotline.

2 Q Okay. All right. And subsequently  
3 did you go visit the establishment?

4 A Yes, I did. I responded to the  
5 general area.

6 Q Okay. And approximately, what time  
7 did you respond to the general area?

8 A I responded to the general area at,  
9 approximately, 10:05 p.m.

10 Q Okay. And what did you see, learn or  
11 discover once you responded to the area?

12 A Upon my arrival, I observed music or  
13 sounds coming, emanating from the establishment,  
14 which had its rear doors open.

15 Q So when you first heard the  
16 information -- I mean the music emanating from  
17 the establishment through the open door, the open  
18 back door you said, correct?

19 A Yes, correct.

20 Q Where were you, approximately, when  
21 you first heard the music?

22 A I had arrived, approximately, 500

1 yards from the establishment opposite street  
2 side, which I parked my vehicle and exited the  
3 vehicle and had direct observation of the door  
4 upon exiting my vehicle from across the street.

5 Q Now, I think it has been determined in  
6 a previous hearing that there are other  
7 establishments that play music across the street.  
8 Were you able to determine that the music was  
9 emanating from the open door at Kiss as opposed  
10 to other establishments that I understand are on  
11 the other side of the street?

12 A I was able to determine that the music  
13 was coming from Kiss Tavern.

14 Q And so what did you do after first --  
15 after parking your car and seeing the door open  
16 and hearing the music, what did you do next?

17 A I began to monitor the audio and  
18 obtain video surveillance of the area, noting  
19 that the doors were open and the music from the  
20 establishment could be heard from my location  
21 across the street.

22 Q Okay. And I understand and we can

1 look on page 2 that you made the video a part of  
2 this record. Is that correct?

3 A That is correct, Exhibit 1.

4 Q All right.

5 (Whereupon, the above-  
6 referred to video was marked  
7 as Government Exhibit No.  
8 1.1 for identification)

9 MS. PHILLIPS: I would like to show  
10 Exhibit 1, at this time.

11 BY MS. PHILLIPS:

12 Q Is this the video you took, sir? Can  
13 you see it? It's either there, it's there.

14 A Yes, that is the video.

15 Q Okay. We will play it now and I want  
16 you to watch it and point out anything that is of  
17 interest. You may have to move.

18 (Video 1 Played)

19 (Loud music/noise)

20 (Video 1 Paused)

21 BY MS. PHILLIPS:

22 Q And you took a picture of what looks

1       like Joe Caplan? Is that what that says?

2           A       Well, that version, the portion of  
3       this video simply appears that way, because I was  
4       scanning the other establishments as I was  
5       videotaping from across the street. So it was --  
6       I was walking and holding the video.

7           Q       Okay. Now, that looks like its  
8       abandoned on at least on the bottom half. Is  
9       that true or not true or is it just closed or do  
10      you know?

11          A       Are you referring to Joe Caplan?

12          Q       I am indeed.

13          A       Joe Caplan has been previously  
14      determined to be out of business.

15          Q       Okay. Thank you. Continue, please.

16                    (Video 1 Played/Paused)

17                    MS. PHILLIPS: Pause that, please.

18                    BY MS. PHILLIPS:

19          Q       Do you know that person that is  
20      entering the establishment at -- through the open  
21      door?

22          A       No, I do not.



1 Q Do you know his capacity?

2 A No, I do not.

3 Q Okay. Thank you.

4 (Video 1 Played/Paused)

5 BY MS. PHILLIPS:

6 Q Are you now inside the establishment  
7 or at the front door?

8 A At this point, I'm at -- standing at  
9 the double door opening observing the gentleman  
10 that I observed arrive from across the street, go  
11 to security guard and subsequently go and speak  
12 to the owner.

13 Q So we can still see that guy with the  
14 white pants in this screen and see that he is  
15 speaking, or it looks like he is speaking, to the  
16 security guard, which happened to have security  
17 written on the back of his jacket. Is that what  
18 we are seeing there?

19 A Yes, it is.

20 Q Okay.

21 MS. PHILLIPS: Please, continue.

22 (Video 1 Played/Stopped)

1 BY MS. PHILLIPS:

2 Q Now, you are entering the  
3 establishment down the stairs. Is that fair?

4 A Yes, that would be fair.

5 Q And then does this picture that we  
6 just saw show that the door is still open after  
7 you entered?

8 A Yes, it does.

9 Q Okay. Thank you.

10 MS. PHILLIPS: You may need to stay  
11 here, because he may need it.

12 BY MS. PHILLIPS:

13 Q Okay. So once you went into the  
14 establishment, what did you do?

15 A I identified myself as an ABRA  
16 Investigator to the owner, who was later  
17 identified to be the owner, Mr. Eyob Asbeaj.  
18 Excuse me for pronouncing it.

19 Q Okay. And what did you do after that?

20 A I advised the owner that I was  
21 responding to the area based on a noise complaint  
22 received from that area.

1 Q And did he say anything about having  
2 the door open or the noise or did he turn down  
3 the noise? What did he do that you observed, if  
4 anything?

5 A I requested that he close the doors  
6 and then I also advised him that I would respond  
7 back to ABRA -- upon my response back to ABRA, I  
8 would review any settlement agreements and  
9 subsequently notify him if there were any  
10 determined violations.

11 Q And did you subsequently notify him  
12 once you determined there was a violation?

13 A Yes, I did.

14 Q And when was that?

15 A That was, approximately, two days  
16 later or three days later when I responded to the  
17 establishment with Investigator Countee Gilliam.

18 Q Okay. So let's turn to Exhibit 2.  
19 Exhibit 2 appears to be the owner's driver's  
20 license. Is that correct?

21 A That would be correct.

22 (Whereupon, the above-

1 referred to document was  
2 marked as Government Exhibit  
3 No. 1.2 for identification.)

4 BY MS. PHILLIPS:

5 Q And you take this -- you made this a  
6 part of the investigation report because?

7 A That was made part of the  
8 investigative report because that was the  
9 document that he submitted to me to let me know  
10 who he was.

11 Q Okay. And Exhibit 3 is what?

12 A Exhibit 3 would be a copy of the  
13 settlement agreement.

14 (Whereupon, the above-  
15 referred to document was  
16 marked as Government Exhibit  
17 No. 1.3 for identification.)

18 BY MS. PHILLIPS:

19 Q And I believe Section 3 concerns  
20 noise. Is that the section you used to determine  
21 that there was a violation?

22 A Yes. I relied on Page 6, Section 3,

1 Statement C.

2 Q Statement C and that says "The  
3 applicant agrees to keep its doors and windows  
4 closed when music is playing at the  
5 establishment?"

6 A Yes.

7 Q Okay. And that's the first clause.  
8 And then it says "But the applicant may open its  
9 windows," not doors I see, "provided that the  
10 music is not audible beyond the street curbside."

11 A Yes. It says "Applicant may open its  
12 window pane seasonally" --

13 Q Okay.

14 A -- "provided that the music is not  
15 audible beyond the street curbside."

16 Q Right. So seasonally, is August  
17 considered seasonally?

18 A Yes, it would be.

19 Q Okay. All right. Okay. I looked at  
20 Section B. Is that relevant at all to your  
21 investigation?

22 A At the point of my investigation and

1 preparation of this case report, I didn't  
2 determine any other relevant charges.

3 Q Okay. All right. Let's see, and you  
4 included a copy of the security plan. Were there  
5 any violations of the security plan?

6 A Based on a review of the security  
7 plan, there were no violations determined.

8 Q Okay. So have we discussed everything  
9 you did as part of your investigation, which you  
10 reduced into the report, that you have  
11 identified?

12 A Yes. Yes, we have.

13 Q Okay. Thank you.

14 MS. PHILLIPS: No further questions,  
15 Mr. Chair.

16 CHAIRPERSON ANDERSON: Your witness,  
17 Mr. Asbeaj.

18 MR. ASBEAJ: Hum?

19 CHAIRPERSON ANDERSON: And I said your  
20 witness. Do you have any specific questions you  
21 want to ask the Investigator based on the  
22 testimony he just gave?

1 MR. ASBEAJ: Yes, sir.

2 CHAIRPERSON ANDERSON: Go ahead.

3 MR. ASBEAJ: Thank you, sir.

4 CROSS-EXAMINATION

5 BY MR. ASBEAJ:

6 Q Good morning.

7 A Good morning.

8 Q So you say you find out on the hotline  
9 you find out there was a violation on the  
10 premises. Is that what it is?

11 CHAIRPERSON ANDERSON: Remember, Mr.  
12 Asbeaj, you need to ask the questions.

13 MR. ASBEAJ: Yeah.

14 CHAIRPERSON ANDERSON: You ask him a  
15 question. Okay? Right now, you are making a  
16 statement, so just --

17 MR. ASBEAJ: Okay.

18 CHAIRPERSON ANDERSON: Yeah.

19 BY MR. ASBEAJ:

20 Q When you found out about the noise  
21 violations, you say it was on the hotline?  
22 Somebody called on the hotline and that's what it

1 is? That's what you say?

2 A Yes, I received an ABRA Hotline  
3 telephone call for the general area.

4 Q Yeah, have they ever take or did you  
5 ever take a video before that, before this August  
6 27?

7 A I can only respond to the video that  
8 was captured on this date.

9 CHAIRPERSON ANDERSON: All right.  
10 What's the question? Are you asking him did he  
11 ever take a video or did somebody else take a  
12 video?

13 MR. ASBEAJ: No, no.

14 BY MR. ASBEAJ:

15 Q Like on before the 27th, have you ever  
16 visited Kiss Tavern?

17 A You are responding to the 27th, which  
18 this case report is --

19 CHAIRPERSON ANDERSON: So ask him --  
20 the question, sir, have you visited Kiss Tavern  
21 before this date. I think that's what he is  
22 asking you.



1                   INVESTIGATOR HARGRAVE:  Oh, yes, I  
2    have.

3                   BY MR. ASBEAJ:

4                   Q       And have you ever like take a video  
5    before that or no?

6                   A       Not to my knowledge and recollection.

7                   Q       When you always come to Kiss, do you  
8    come by yourself or do you come with other  
9    partners that you have?

10                  A       My arrival at any ABRA-licensed  
11    establishment is determined by what our staffing  
12    is or what the cause of our response is on a  
13    daily basis.

14                  Q       During your report or during the  
15    investigation, how many times did you visit Kiss  
16    Tavern?

17                  A       Based on this investigation, I can  
18    confirm that two visits were made based on this  
19    case report.

20                  Q       On your arrival, were the -- Kiss  
21    Lounge was the only establishment that was  
22    playing music?

1           A       On the date, based on this case report  
2           and this determination, Kiss Tavern was the only  
3           establishment that I observed playing music.

4           Q       And did you only record on your  
5           reports that you have, do you have any knowledge  
6           or do you have any complaint around that area or  
7           other establishments were violating the noise,  
8           too?

9                   MS. PHILLIPS:  Objection.  Relevance.

10                  CHAIRPERSON ANDERSON:  I'm sorry, I --  
11           what was the question?  I wasn't --

12                  MR. ASBEAJ:  The question was on its  
13           record or on his investigation report before or  
14           after that, does he have any violations that he  
15           remember from other establishments around the  
16           area.

17                  MS. PHILLIPS:  It's a slightly  
18           different question.  The same objection to  
19           relevance.  But anything that happened after this  
20           event is even less relevant to this  
21           establishment.

22                  MR. ASBEAJ:  I said before and after.

1 MS. PHILLIPS: Right.

2 CHAIRPERSON ANDERSON: Well, why is  
3 that relevant to this particular charge, sir?

4 MR. ASBEAJ: Because we were here last  
5 week and --

6 CHAIRPERSON ANDERSON: All right.  
7 Well, I'm going to --

8 MR. ASBEAJ: No, no.

9 CHAIRPERSON ANDERSON: -- sustain the  
10 objection. So I need -- you need to ask a  
11 different question, sir.

12 BY MR. ASBEAJ:

13 Q I'm asking you, you say whether Kiss  
14 Tavern was the only establishment that was  
15 playing music on that day, on that night?

16 MS. PHILLIPS: Asked and answered.

17 CHAIRPERSON ANDERSON: Sustained. Ask  
18 a different question, sir.

19 MR. ASBEAJ: Can I get an answer from  
20 him?

21 CHAIRPERSON ANDERSON: Because she  
22 objected to it and I sustained her objection,

1 meaning that you can't ask that question.

2 MR. ASBEAJ: You said you came to Kiss  
3 before that. And when you guys leave -- I have  
4 here my exhibit or not, now or later? I don't  
5 understand --

6 CHAIRPERSON ANDERSON: What --

7 MR. ASBEAJ: -- how it works.

8 CHAIRPERSON ANDERSON: All right.

9 Okay. You are cross-examining him, right?

10 MR. ASBEAJ: Okay.

11 CHAIRPERSON ANDERSON: As I told you  
12 before, when you cross-examine the witness, you  
13 are cross-examining the witness based on the  
14 questions that Ms. Phillips asked. So if  
15 whatever document that you have, if Ms. Phillips  
16 didn't ask him questions about whatever document  
17 you have, you cannot ask him.

18 When you present your case, you can  
19 present whatever documents that you have, sir.

20 MR. ASBEAJ: Okay.

21 BY MR. ASBEAJ:

22 Q After you took the video and you do

1 the investigation, where did you go?

2 A Upon my completion at the  
3 establishment, I returned to ABRA Headquarters.

4 MR. ASBEAJ: No further questions.

5 CHAIRPERSON ANDERSON: All right. Mr.  
6 Hargrave, I just want to ask you a question.

7 Did you walk directly across the  
8 street inside the establishment?

9 INVESTIGATOR HARGRAVE: Eventually,  
10 yes, sir, I did.

11 CHAIRPERSON ANDERSON: No, what I'm  
12 trying to ask is did you have to open a door?  
13 Was the door open or did you have to open the  
14 door to enter?

15 INVESTIGATOR HARGRAVE: The doors were  
16 ajar, being held ajar, open.

17 CHAIRPERSON ANDERSON: What do you  
18 mean it was being held ajar?

19 INVESTIGATOR HARGRAVE: They were both  
20 open and they had rope holders/stands using them  
21 as doorstops.

22 CHAIRPERSON ANDERSON: All right. So

1 it's your testimony that the door was permanently  
2 open. Someone wasn't opening it to -- someone  
3 wasn't holding the door to let people in and out  
4 or was the door permanently open?

5 INVESTIGATOR HARGRAVE: No, Mr.  
6 Chairman. No one was holding the door and the  
7 doors were held open by an inanimate object/  
8 doorstep.

9 CHAIRPERSON ANDERSON: And how long,  
10 approximately, were you at the facility?

11 INVESTIGATOR HARGRAVE: I was there,  
12 approximately, 15 minutes.

13 CHAIRPERSON ANDERSON: And during the  
14 15 minutes you were there, was the door ever  
15 closed?

16 INVESTIGATOR HARGRAVE: Upon my  
17 departure, the owner and his security  
18 representative did secure the doors.

19 CHAIRPERSON ANDERSON: But so during  
20 the 15 minutes you were there, the door was  
21 always open?

22 INVESTIGATOR HARGRAVE: Yes, sir. The

1 doors remained open as I spoke to the owner right  
2 outside the door.

3 CHAIRPERSON ANDERSON: Any other  
4 questions by any other Board Members? Mr.  
5 Alberti?

6 MEMBER ALBERTI: So just to be clear,  
7 we are looking at this video. You are standing  
8 on Florida Avenue?

9 INVESTIGATOR HARGRAVE: Yes, sir.

10 MEMBER ALBERTI: Because that wasn't  
11 articulated earlier. I just wanted to make sure.  
12 So it's -- from the establishment as I'm looking  
13 at this video facing Kiss to the right is Joe  
14 Caplan, which is not in business, right? It's  
15 not operating currently.

16 INVESTIGATOR HARGRAVE: Joe Caplan  
17 sits at Georgia and Florida Avenue, which would  
18 be to the left of Kiss Tavern or the right from T  
19 Street.

20 MEMBER ALBERTI: Okay. I'm looking at  
21 --

22 INVESTIGATOR HARGRAVE: Depending on

1 what -- what are you --

2 MEMBER ALBERTI: We have the video up  
3 there. Can you see it?

4 INVESTIGATOR HARGRAVE: Well, looking  
5 at it from this venture, it is to the right.

6 MEMBER ALBERTI: To the right. You  
7 are on Florida Avenue, I'm facing Kiss and to the  
8 right of it is Caplan, Joe Caplans, right?

9 INVESTIGATOR HARGRAVE: Yes, sir.

10 MEMBER ALBERTI: Okay. To the left of  
11 it is what?

12 INVESTIGATOR HARGRAVE: To the left of  
13 it is a -- has been determined to be private  
14 establishments or residence and one of them is a  
15 clothing boutique.

16 MEMBER ALBERTI: The same building, it  
17 appears to be the establishment to the left of  
18 Kiss or is that part of Kiss?

19 INVESTIGATOR HARGRAVE: That is not  
20 part of Kiss.

21 MEMBER ALBERTI: And what is it? Do  
22 you know?



1           INVESTIGATOR HARGRAVE:  Previously, I  
2           have determined it to be a private residential  
3           location.

4           MEMBER ALBERTI:  It looks like  
5           personal property.

6           INVESTIGATOR HARGRAVE:  It varies.

7           MEMBER ALBERTI:  The window says ATM  
8           in it, in the window right there.

9           INVESTIGATOR HARGRAVE:  Oh, the ATM  
10          portion, yes, all the white portion down where  
11          the lights is --

12          MEMBER ALBERTI:  That's all part of  
13          Kiss?

14          INVESTIGATOR HARGRAVE:  -- the ATM  
15          portion, it is marked as Kiss, but it's not a  
16          space that I have ever observed to be utilized by  
17          Kiss.  In other words, the signage above it is  
18          incorporated into the Kiss paintings and logos,  
19          but --

20          MEMBER ALBERTI:  So you don't -- you  
21          don't know whether it is a separate establishment  
22          in that -- so I see where Kiss is.  All right.

1 And there looks to be a door and a separate  
2 establishment and you don't know whether that is  
3 part of Kiss or whether it is a separate  
4 establishment, correct?

5 INVESTIGATOR HARGRAVE: No, I do not.

6 MEMBER ALBERTI: All right. Very  
7 good. And to the left of that is a private  
8 residence or a house?

9 INVESTIGATOR HARGRAVE: Yes.

10 MEMBER ALBERTI: A townhouse, right?

11 INVESTIGATOR HARGRAVE: To my  
12 knowledge, yes, sir.

13 MEMBER ALBERTI: It's not a commercial  
14 establishment.

15 INVESTIGATOR HARGRAVE: No, it's not  
16 an ABRA-licensed establishment.

17 MEMBER ALBERTI: Okay. So now, how  
18 long were you out in front before you began this  
19 video?

20 INVESTIGATOR HARGRAVE: I was,  
21 approximately, probably less than a minute as I  
22 exited my vehicle, because I could hear music

1 playing throughout the area. And I was  
2 attempting to determine where the music was  
3 coming from.

4 MEMBER ALBERTI: And you parked where?

5 INVESTIGATOR HARGRAVE: There is a  
6 side street. I'm not clear on what that street  
7 is, but the side street right off of Florida  
8 Avenue.

9 MEMBER ALBERTI: All right. So you  
10 right off Florida and were you directly, sort of  
11 directly, almost directly across from Kiss when  
12 you parked your car? Where the side street  
13 intersects with Florida Avenue, is that,  
14 approximately, directly across the street from  
15 Kiss?

16 INVESTIGATOR HARGRAVE: Upon exiting  
17 my vehicle, it would be.

18 MEMBER ALBERTI: Yeah, okay. And you  
19 heard the noise, you heard the music when you got  
20 out, right?

21 INVESTIGATOR HARGRAVE: Yes, I did.

22 MEMBER ALBERTI: Now, correct me if

1 I'm wrong, well, is it correct when I look at  
2 this video as the video starts and you approach  
3 to cross the street, the doors are open, correct?

4 INVESTIGATOR HARGRAVE: Yes, they are.

5 MEMBER ALBERTI: And as you walk  
6 towards this place and you see an individual come  
7 in, he enters through doors that are open?

8 INVESTIGATOR HARGRAVE: Yes, he does.

9 MEMBER ALBERTI: You don't see him  
10 pushing the doors open?

11 INVESTIGATOR HARGRAVE: No, you do  
12 not, sir.

13 MEMBER ALBERTI: You don't see anyone  
14 -- we don't see the doors being pulled open as he  
15 enters, correct?

16 INVESTIGATOR HARGRAVE: No, sir.

17 MEMBER ALBERTI: All right. Thank  
18 you. I have no further questions.

19 CHAIRPERSON ANDERSON: Mr. Short?

20 MEMBER SHORT: Yes, thank you very  
21 much for your testimony, Investigator Hargrave.  
22 You have been quite clear and precise and it

1 helps me with my determinations.

2 Can we go back to the beginning of the  
3 tape when he first gets out of his vehicle?

4 Investigator Hargrave gets out of the vehicle.

5 (Video 1 Played/Paused)

6 MEMBER SHORT: Okay. Now, your  
7 testimony earlier was that stanchions or some  
8 type of objects were holding the doors open. Is  
9 that what we are seeing right now with the doors  
10 being propped open?

11 INVESTIGATOR HARGRAVE: Yes, I can see  
12 them directly on the left side and the right side  
13 of the doorways.

14 MEMBER SHORT: Okay. And those  
15 stanchions were there to keep those doors propped  
16 open?

17 INVESTIGATOR HARGRAVE: Upon my  
18 arrival, I observed that those were the items  
19 being used to hold the doors open.

20 MEMBER SHORT: So there were no humans  
21 there going, entering or exiting?

22 INVESTIGATOR HARGRAVE: No, sir.

1                   MEMBER SHORT: And you heard music  
2 coming from those open doors?

3                   INVESTIGATOR HARGRAVE: Yes, I did.

4                   MEMBER SHORT: All right. Can we move  
5 the tape a little further, please? You are  
6 across the street.

7                   INVESTIGATOR HARGRAVE: Yes.

8                   (Video 1 Played/Paused)

9                   MEMBER SHORT: Stop the video, please.  
10 The person in the white pants went through the  
11 doors. No one held the doors open, opened or  
12 closed the doors. And we can clearly see the  
13 stanchions now that we were speaking of holding  
14 the door open. Is that correct?

15                  INVESTIGATOR HARGRAVE: Yes, sir, that  
16 is correct.

17                  MEMBER SHORT: Okay. Can we continue?

18                  (Video 1 Played/Paused)

19                  MEMBER SHORT: Now, we are hearing the  
20 same music now as we enter those doors that were  
21 propped open at Kiss as we heard across the  
22 street?

1                   INVESTIGATOR HARGRAVE: Yes, sir, that  
2 is correct.

3                   MEMBER SHORT: All right. Continue  
4 the tape, please.

5                   (Video 1 Played/Paused)

6                   MEMBER SHORT: Stop it right there  
7 again. This begins the 15 minutes that you were  
8 inside of Kiss?

9                   INVESTIGATOR HARGRAVE: This captures  
10 a portion of the time I spent at the  
11 establishment.

12                  MEMBER SHORT: Okay. And this is your  
13 entering?

14                  INVESTIGATOR HARGRAVE: Yes. Yes,  
15 sir.

16                  MEMBER SHORT: And you are saying it  
17 was 15 minutes of that music continually playing  
18 while you were there before those doors were  
19 closed?

20                  INVESTIGATOR HARGRAVE: From the time  
21 of my arrival and the time of my conversation  
22 with the owner outside was, approximately, 15

1 minutes before total compliance was received.

2 MEMBER SHORT: So no one closed the  
3 doors or attempted to close the doors while you  
4 were there conducting your investigation of this  
5 noise?

6 INVESTIGATOR HARGRAVE: Not until I  
7 made my request and advised them completely of  
8 what the substance of my arrival was.

9 MEMBER SHORT: So in your opinion, had  
10 you not asked them to close the doors, would  
11 those doors have remained open when you left? In  
12 your opinion as an Investigator.

13 INVESTIGATOR HARGRAVE: In my opinion,  
14 the doors would have remained opened, had I not  
15 requested that they be closed.

16 MEMBER SHORT: And this is a violation  
17 of the settlement agreement that we have as  
18 evidence here in the case?

19 INVESTIGATOR HARGRAVE: Yes, sir.

20 MEMBER SHORT: Again, thank you for  
21 your very clear and concise answers to our  
22 questions.



1                   INVESTIGATOR HARGRAVE: Thank you,  
2                   sir.

3                   MEMBER SHORT: And your accurate  
4                   report.

5                   INVESTIGATOR HARGRAVE: Thank you.

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

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

10                  Mr. Asbeaj, do you have any questions  
11                  of Mr. Hargrave based on the questions that the  
12                  Board Members just asked, sir?

13                  MR. ASBEAJ: Yes.

14                  RE CROSS-EXAMINATION

15                  BY MR. ASBEAJ:

16                  Q        After you arrived and you told us you  
17                  requested that the door should be remained  
18                  closed, did we close the door or when you come  
19                  back, did you see any violations?

20                  A        I'm not clear on was it one question  
21                  or two questions?

22                  Q        It is one question. And upon your

1 arrival and you requested us to close the door,  
2 did we close the door or not after you told us?

3 A Upon completion of my advisement to  
4 the owner, there was compliance received that  
5 doors be secured.

6 Q And upon your report, you said the  
7 settlement agreement says seasonally we can open  
8 door and window when it is seasonal.

9 MS. PHILLIPS: Objection. Misstates  
10 the settlement agreement in his question.

11 CHAIRPERSON ANDERSON: Rephrase the  
12 question, Mr. Asbeaj. What is this -- if you are  
13 going to -- why don't you show him the settlement  
14 agreement and ask him what it means rather than--  
15 we have the document, so why don't you either  
16 read from the document or show him the document  
17 and then ask your question, please.

18 BY MR. ASBEAJ:

19 Q Have you read the settlement agreement  
20 of Kiss?

21 A Yes, I did conduct a review of the  
22 settlement agreement for the establishment, Kiss

1 Tavern.

2 Q And on the settlement agreement does  
3 it say yes, the door can be open when seasonal?

4 MS. PHILLIPS: Objection. Misstates  
5 the --

6 CHAIRPERSON ANDERSON: Mr. Asbeaj, you  
7 have the settlement agreement in front of you.  
8 And maybe we need to -- why don't we give the  
9 witness a copy of the settlement agreement and  
10 the provision and maybe ask him what is it that  
11 it says specifically, rather than us rephrasing.  
12 The document is in the record, so rather than --

13 MS. PHILLIPS: All right. And he has  
14 it in front of him, Mr. Chair.

15 BY MR. ASBEAJ:

16 Q You mentioned, earlier you mentioned,  
17 that the doors can all be open seasonal, that's  
18 what he said on his --

19 CHAIRPERSON ANDERSON: He said what,  
20 Mr. Asbeaj?

21 MR. ASBEAJ: From the -- he mentioned  
22 the settlement agreement and saying that earlier

1 that the door can be open seasonally, that's what  
2 he say on the --

3 CHAIRPERSON ANDERSON: Mr. Asbeaj?

4 MR. ASBEAJ: -- on his report.

5 CHAIRPERSON ANDERSON: I don't -- I  
6 didn't hear that. I didn't hear that and I don't  
7 know where -- are you -- I don't know where that  
8 is coming from. I did not hear that testimony.  
9 And at least when we read the -- when we went  
10 through the settlement agreement, there is  
11 nothing in the settlement agreement talking about  
12 the door being open.

13 So what is the specific question you  
14 are asking him, sir?

15 MR. ASBEAJ: The question is I don't  
16 see the violation, because it says the doors can  
17 be open seasonal until the noise is not, you  
18 know, heard from anybody. That's what it says.

19 MS. PHILLIPS: Objection. Misstates  
20 the settlement agreement.

21 CHAIRPERSON ANDERSON: As I stated  
22 before, Mr. Asbeaj, you have the settlement

1 agreement in front of you. Can you -- then if  
2 you ask -- why don't you, to clarify the record,  
3 ask the witness to state, to read the settlement  
4 agreement that says whatever you say it says?  
5 Let's -- because we have the document, it  
6 shouldn't be an interpretation.

7 So if you have a specific question  
8 about that provision, point him to that provision  
9 that you are reading from and then if that  
10 provision said the door can be open, then show  
11 him the provision and let him state for the  
12 record what the provision states.

13 MEMBER SHORT: Or does not state.

14 MS. PHILLIPS: Objection. Document  
15 speaks for itself, Mr. Chair.

16 CHAIRPERSON ANDERSON: I know, Ms.  
17 Phillips. Remember he isn't an attorney and so  
18 I'm trying to -- I agree with you, but I think  
19 I'm not quite sure where he is going, so I just  
20 want to make sure that the record is clear what  
21 is being referenced.

22 So is there a question that you have,

1       sir, or do you have a question pending that you  
2       want to ask about the provision in the settlement  
3       agreement?

4                   MR. ASBEAJ:  Yeah.

5                   BY MR. ASBEAJ:

6           Q        Across the street when were you were  
7       recording the video, what's the address?  What's  
8       the establishment there?  Are there any ABRA  
9       establishments when you come across the street?

10                   MS. PHILLIPS:  Objection.  Beyond the  
11       scope of the Board's questions.

12                   CHAIRPERSON ANDERSON:  Sustained.

13                   MR. ASBEAJ:  Okay.  Mr. Alberti asked  
14       him that record from the street.  He asked him  
15       the street address or where he was recording it.  
16       And I just want to ask if Kiss is the only  
17       establishment in that area, because --

18                   CHAIRPERSON ANDERSON:  All right.  
19       I'll allow the question.  Go ahead.  Ask the  
20       question.  So I'll overrule the objection.  Go  
21       ahead.

22                   INVESTIGATOR HARGRAVE:  Yes, there are

1 three determined ABRA-licensed establishments  
2 that are located directly across the street from  
3 Kiss Tavern.

4 BY MR. ASBEAJ:

5 Q And when you on August 24 come talk to  
6 me, do you tell me you can play music until 10:00  
7 p.m.?

8 MS. PHILLIPS: Objection. Relevance.

9 BY MR. ASBEAJ:

10 Q No, on our discussion on that day, you  
11 told me we can play music. And we have rooftop,  
12 they can stay until 10:00 p.m.

13 CHAIRPERSON ANDERSON: But --

14 MEMBER ALBERTI: This is beyond the  
15 scope.

16 CHAIRPERSON ANDERSON: -- hold on, Mr.  
17 Asbeaj. It's not relevant.

18 MR. ASBEAJ: Okay.

19 CHAIRPERSON ANDERSON: Because the  
20 issue, sir, is not whether or not you were  
21 playing music. The issue is that the door is  
22 open. So the objection is that it's not

1 relevant, so it doesn't matter what time you are  
2 playing music until, but that's not the issue.  
3 There is no issue saying that you can't play  
4 music.

5 I think the issue is that there was a  
6 noise, that at least from what I was told, the  
7 Investigator went to the establishment because  
8 there was a noise complaint. And the  
9 Investigator stated that when he went to the  
10 establishment, the door was open. There was  
11 nothing stating whether or not you can or can't  
12 play music or whether or not your music as  
13 playing, it was too early or too late.

14 Okay. So that's not relevant. So  
15 let's move on to another question that is based  
16 on the questions that the Board asked.

17 BY MR. ASBEAJ:

18 Q All right. After you arrived, do you  
19 come back and check any -- do you see any  
20 violations after that when you do -- concerning  
21 you finding violations on the noise?

22 MS. PHILLIPS: Objection as to time



1 and relevance.

2 CHAIRPERSON ANDERSON: Sustained.

3 Move on, sir.

4 MR. ASBEAJ: All right. I have no  
5 questions, because I'm going to go awhile.

6 CHAIRPERSON ANDERSON: Thank you. Ms.  
7 Phillips, do you have any questions that you want  
8 to ask, based on the questions that the Board  
9 asked?

10 MS. PHILLIPS: No, Mr. Chair, I --

11 CHAIRPERSON ANDERSON: Thank you.

12 MS. PHILLIPS: -- the District does  
13 not.

14 CHAIRPERSON ANDERSON: Mr. Hargrave,  
15 thank you very much for your testimony. You can  
16 step down.

17 INVESTIGATOR HARGRAVE: Okay. Thank  
18 you, sir. And just for the record, it's  
19 Hargrave.

20 CHAIRPERSON ANDERSON: I'm sorry, Mr.  
21 Hargrave. I'm sorry.

22 INVESTIGATOR HARGRAVE: Thank you.

1                   CHAIRPERSON ANDERSON: I apologize,  
2 Mr. Hargrave. The record is corrected,  
3 Investigator Hargrave.

4                   INVESTIGATOR HARGRAVE: Thank you.

5                   CHAIRPERSON ANDERSON: All right.

6                   (Whereupon, the witness was excused.)

7                   CHAIRPERSON ANDERSON: Ms. Phillips,  
8 do you have any other witnesses?

9                   MS. PHILLIPS: No, Mr. Chair.

10                  CHAIRPERSON ANDERSON: Does the  
11 Government -- prior to resting, does the  
12 Government have any other documents that they  
13 want to submit for the record?

14                  MS. PHILLIPS: No, just the  
15 investigative report and the attached exhibits.

16                  CHAIRPERSON ANDERSON: All right.

17                  MS. PHILLIPS: Which has already been  
18 admitted into evidence.

19                  CHAIRPERSON ANDERSON: Thank you.

20                  MS. PHILLIPS: Thank you, Mr. Chair.

21                  CHAIRPERSON ANDERSON: Mr. Asbeaj, are  
22 you ready to present your case?

1 MR. ASBEAJ: Yes, sir.

2 CHAIRPERSON ANDERSON: Do you wish to  
3 make an opening statement or do you want to --  
4 let me ask you, do you -- are you going to call  
5 any witnesses or are you the only witness?

6 MR. ASBEAJ: I'm the only exhibit --  
7 witness.

8 CHAIRPERSON ANDERSON: But I'm saying,  
9 you are the only witness. Is that correct?

10 MR. ASBEAJ: Yes, sir.

11 CHAIRPERSON ANDERSON: Raise your  
12 hand, sir.

13 Whereupon,

14 EYOB ASBEAJ  
15 was called as a witness for the Licensee, and  
16 having been first duly sworn, assumed the witness  
17 stand and was examined and testified as follows:

18 MR. ASBEAJ: I do, sir. I do.

19 CHAIRPERSON ANDERSON: Okay. Go  
20 ahead.

21 DIRECT EXAMINATION

22 MR. ASBEAJ: So can I present my

1 exhibits or do I have to --

2 CHAIRPERSON ANDERSON: Give a copy to  
3 Ms. Phillips and then you give us, the Board, a  
4 copy and then you can tell us -- you can explain  
5 this exhibit that you are providing to -- do you  
6 have a lot of exhibits that you want to give? Is  
7 there a lot of exhibits that you have?

8 MR. ASBEAJ: I have a video.

9 CHAIRPERSON ANDERSON: I'm sorry?

10 MR. ASBEAJ: I have a video.

11 CHAIRPERSON ANDERSON: Okay. So but  
12 those are all the exhibits that you have that you  
13 want the Board to see? And you have given Ms.  
14 Phillips a copy of all those exhibits?

15 MR. ASBEAJ: I give her one.

16 MS. PHILLIPS: You gave me two.

17 MR. ASBEAJ: Thank you.

18 CHAIRPERSON ANDERSON: We -- I see  
19 there is a lot more coming to us.

20 MR. ASBEAJ: I will give you.

21 CHAIRPERSON ANDERSON: Oh, so it's  
22 just a copy for everybody. Okay. Yes, Ms. --

1 well, before the exhibits are distributed to the  
2 Board, what -- is there an objection?

3 MS. PHILLIPS: Yes, there is. One  
4 exhibit served is a Notice of Violation for  
5 1/2/18, which is not relevant after the event.  
6 And the next one seems to be a Notice of  
7 Violation for 8/27/17, also after the event, also  
8 not relevant. Should not be made part of the  
9 record, should not be discussed.

10 CHAIRPERSON ANDERSON: Why is it that  
11 you believe that the exhibits that you have  
12 provided, sir, what's the purpose of these  
13 exhibits?

14 MR. ASBEAJ: The exhibits are like,  
15 they are ones, two letters that have been given  
16 to me as a warning after this and my experience  
17 before you get -- to get violations, the first  
18 thing will be to get a warning. And Mr. Gilliam  
19 and Mr. Hargrave came back and give me that  
20 warning the same noise violations.

21 CHAIRPERSON ANDERSON: All right.

22 MR. ASBEAJ: And I accept that as a

1 warning. And I have never experienced that noise  
2 complaint.

3 CHAIRPERSON ANDERSON: I know. But  
4 the documents that you want to be a part of this  
5 record is to say that you have got warnings prior  
6 or before?

7 MR. ASBEAJ: After.

8 CHAIRPERSON ANDERSON: After?

9 MR. ASBEAJ: After.

10 CHAIRPERSON ANDERSON: Well, sir, I'm  
11 not going to allow those documents into evidence,  
12 because they are not relevant to this. It's --  
13 I'm not quite sure what the statute says, since  
14 I'm not reading the statute to say if there is a  
15 violation. If you -- if it's a mandatory warning  
16 or if the Investigator has the discretion to give  
17 you a warning or a violation, so that's not  
18 relevant. So I'm not going to allow these  
19 documents into evidence.

20 So you can pass them back to him. I'm  
21 not -- we are not -- I'm not going to allow those  
22 based on the fact that they are not relevant.

1 Do you have any other documents that  
2 are --

3 MR. ASBEAJ: I have this video.

4 CHAIRPERSON ANDERSON: All right. Can  
5 --

6 MS. PHILLIPS: Can we have the date of  
7 the video before we log it up?

8 CHAIRPERSON ANDERSON: What is this?  
9 I was trying to figure out if there is a way that  
10 you can see the video before we see the video.  
11 And I guess probably the only way that can occur  
12 is if all the Board Members turn off their --

13 MEMBER ALBERTI: Can we have the date  
14 first?

15 MS. PHILLIPS: Right.

16 MEMBER ALBERTI: I think that --

17 MS. PHILLIPS: I asked what the date  
18 of --

19 MEMBER ALBERTI: -- before we start --

20 MS. PHILLIPS: -- the -- because that  
21 will take care before we even load it up.

22 MR. ASBEAJ: Same date.

1 MS. PHILLIPS: Which date?

2 MR. ASBEAJ: Same night, August 24th.

3 CHAIRPERSON ANDERSON: August 24th.

4 So all right. So but have you seen the video  
5 before, Ms. --

6 MS. PHILLIPS: I have not.

7 CHAIRPERSON ANDERSON: -- Phillips?

8 Do you want to see the video before the Board  
9 sees the video to see --

10 MS. PHILLIPS: It really matters  
11 little.

12 CHAIRPERSON ANDERSON: All right.

13 MS. PHILLIPS: Unless the video has a  
14 date and time on the video itself, I can't  
15 authenticate it. I don't know when it was taken.  
16 And I have no witness other than this witness to  
17 tell me when he took it.

18 CHAIRPERSON ANDERSON: All right. So  
19 well, why don't you --

20 MEMBER ALBERTI: May I ask a real  
21 quick question?

22 CHAIRPERSON ANDERSON: Yes, Mr.



1 Alberti.

2 MEMBER ALBERTI: Sir, was this video  
3 that you have taken before or after Mr.  
4 Hargrave's visit?

5 MR. ASBEAJ: It's the same night.

6 MEMBER ALBERTI: Was it taken before  
7 or after Mr. Hargrave visited?

8 MR. ASBEAJ: During, when he was  
9 visiting me from first interview.

10 MEMBER ALBERTI: Right. Was it taken  
11 -- you took this?

12 MR. ASBEAJ: I took myself.

13 MEMBER ALBERTI: You took the video.

14 MR. ASBEAJ: Yes.

15 MEMBER ALBERTI: Was it before or  
16 after? Was it before Mr. Hargrave --

17 MR. ASBEAJ: After he was there.

18 MEMBER ALBERTI: -- arrived or was it  
19 after he left?

20 MR. ASBEAJ: During his present and  
21 after he left.

22 MEMBER ALBERTI: Okay. You took it

1 while you were talking to him?

2 MR. ASBEAJ: While I was taking --  
3 when I was talking to him, somebody was recording  
4 the video.

5 MEMBER ALBERTI: Okay. Thank you.

6 All right. I just wanted to make sure.

7 MR. ASBEAJ: And I followed them and  
8 I tell --

9 MEMBER ALBERTI: That's all right.  
10 That's all I need to know. Thank you. You  
11 answered my question.

12 MR. ASBEAJ: I -- you guys have --

13 CHAIRPERSON ANDERSON: Go ahead. Go  
14 ahead. You can play the video, sir, and you can  
15 explain whatever we are seeing on the video.

16 MEMBER ALBERTI: Just real quickly.  
17 So you didn't take the video? Someone else did?

18 MR. ASBEAJ: Okay. Listen --

19 MEMBER ALBERTI: No, no, no. I'm  
20 asking you a question. You didn't -- someone  
21 else took the video, not you?

22 MR. ASBEAJ: The video, while I was

1 talking to him, somebody was recording.

2 MEMBER ALBERTI: You did not take the  
3 video. Is that correct? Yes or no?

4 MR. ASBEAJ: There is two different  
5 videos.

6 MEMBER ALBERTI: Just yes or no, sir.

7 MR. ASBEAJ: No.

8 MEMBER ALBERTI: Okay. Thank you.

9 CHAIRPERSON ANDERSON: Go ahead, sir.  
10 Play the video, please.

11 MS. PHILLIPS: It takes a minute to  
12 get it all lined up. And you can just explain  
13 what it is. You don't have to get really close  
14 to the videographer.

15 MR. ASBEAJ: I have to explain that.

16 MS. PHILLIPS: All right. Which one  
17 do you want her to do?

18 CHAIRPERSON ANDERSON: Ms. Phillips?  
19 Ms. Phillips? Ms. Phillips, this is his case.

20 MS. PHILLIPS: Okay.

21 CHAIRPERSON ANDERSON: I need you to  
22 stay out of it, ma'am. Let him -- he did not

1 tell you what video or how close you are, so it's  
2 his exhibit. Please, let him explain to the  
3 operator what video he wants her to play and what  
4 it is. So, okay?

5 MR. ASBEAJ: I want all of them to be  
6 played.

7 CHAIRPERSON ANDERSON: So tell her.  
8 So which one first, please?

9 (Video 2 Played)

10 MR. ASBEAJ: This is after  
11 Investigator Hargrave left Kiss Tavern and there  
12 was music playing across the street. We don't  
13 have an organ, but upon this report or witness,  
14 he say he went straight to the other business  
15 there. He went to other establishment because I  
16 requested him.

17 CHAIRPERSON ANDERSON: Well, let me  
18 ask you --

19 MS. PHILLIPS: I'm going to object as  
20 to relevance. This is all --

21 CHAIRPERSON ANDERSON: And that's the  
22 question I'm asking you.

1 (Video 2 Stopped)

2 MR. ASBEAJ: There was nobody playing  
3 music. There was a lot of nightclubs playing  
4 music at that night.

5 CHAIRPERSON ANDERSON: But --

6 MR. ASBEAJ: Not only me.

7 CHAIRPERSON ANDERSON: -- why -- all  
8 right. All right. I'm getting there. All  
9 right. All right. This is what this case is  
10 about. The case is about there was a noise  
11 violation. Someone called ABRA. ABRA went to  
12 the vicinity because they were told that there  
13 was a noise violation. ABRA went to your  
14 establishment and ABRA has stated that your doors  
15 were open and the noise was coming from your  
16 facility.

17 It is not relevant that everybody else  
18 on the street was playing music. Okay? The  
19 bottom line is that this case is about a noise  
20 violation and whether or not noise was coming out  
21 of your establishment and whether or not your  
22 establishment -- and I think if I look at the

1 charging papers, is that you violated your  
2 settlement agreement by keeping your door open,  
3 sir. That's what this case is about.

4 So whatever testimony that you are  
5 giving, it should address that specific charge.  
6 I don't care about -- I don't care if there was a  
7 block party going on the street, that's not  
8 relevant to this case.

9 It doesn't matter if every other  
10 establishment on the street was making noise.  
11 Okay, because I don't know whether or not ABRA  
12 has brought violations against these other  
13 establishments, because they were also having  
14 violations.

15 This is about you. Okay?

16 MR. ASBEAJ: It is --

17 CHAIRPERSON ANDERSON: So we shouldn't  
18 be talking about what -- other places. So in  
19 order to defend yourself, sir, you need to focus  
20 on the issues in this case. The issue is that  
21 there was a noise violation. ABRA came to your  
22 establishment and you have a settlement agreement

1 stating that the doors need to be closed.

2 And so if you -- you need to defend  
3 that charge and not try to deflect what else was  
4 going on. So you need to focus your case on your  
5 defense on the charge.

6 You have the charging document, sir,  
7 right? You have that? And so whatever defense  
8 you are doing, the evidence that you are bringing  
9 forth today should address the specific charge.

10 Okay?

11 So if this video is about what was  
12 going on that the Investigator went other places,  
13 that's not relevant. I don't care.

14 MR. ASBEAJ: It is relevant because he  
15 just told us --

16 CHAIRPERSON ANDERSON: It doesn't  
17 matter, sir.

18 MR. ASBEAJ: -- nobody was playing  
19 music except me.

20 CHAIRPERSON ANDERSON: But it doesn't  
21 matter. That's what I'm trying to say. It's not  
22 relevant here. It doesn't matter. As I said

1 before, if there was a block party going on where  
2 everybody was in the street and making noise, in  
3 this particular case, because I don't know  
4 whether or not ABRA went to all these other  
5 establishments and give them an infraction.

6 MR. ASBEAJ: So every time music  
7 played or every time they come here, it's like  
8 Kiss Tavern, that's what it is.

9 CHAIRPERSON ANDERSON: Sir, I don't  
10 know that, because, as you said, we have --  
11 violations are given whether or not it's a  
12 warning, whether or not it's a violation and all  
13 those folks have the opportunity to come here and  
14 make the argument.

15 They are not going to come and say --  
16 so that's what I'm saying, in order to defend  
17 yourself, sir, you need to focus on the issue.  
18 You can't focus -- you can't tell me that  
19 everybody else was making noise on the block.  
20 Okay? Because I don't know if we visited.

21 And one other thing that you are  
22 saying is your video says that he went to other



1 establishments. Maybe they gave the other  
2 establishment, you don't know that, sir.

3 MR. ASBEAJ: I know.

4 CHAIRPERSON ANDERSON: And I don't  
5 know that. So maybe they gave -- because your  
6 video is now saying that they went to other  
7 establishments, so maybe next week I'll have a  
8 case from the other establishment who went there  
9 and they are going to say it wasn't me, it was  
10 you. It was Kiss Tavern who was doing the noise.

11 MR. ASBEAJ: That's what everybody --

12 CHAIRPERSON ANDERSON: But I'm just  
13 saying to you, but that's not the point.

14 MR. ASBEAJ: -- that's what is  
15 happening.

16 CHAIRPERSON ANDERSON: But that's not  
17 before me. You need to -- you have been here  
18 now, so you do understand this process. So this  
19 video, if this video is saying that the  
20 Investigator went other places before, during and  
21 after, that's not relevant. So this is not --  
22 I'm not going to admit this.

1           Do you have another video that you  
2           want us to see? I'm not trying for you not to  
3           present your evidence. I'm just saying to you  
4           your evidence that you need to put in today is to  
5           refute the charge. It's to refute the charge  
6           that you violated your settlement agreement by  
7           having your doors open. That's a specific -- I'm  
8           looking at the charging documents, that is the  
9           specific charge that you were charged with.

10           So the -- it says "Applicant agrees to  
11           keep its door and windows closed when music is  
12           being played at the establishment." That is the  
13           charge that you were charged with.

14           And so whatever testimony that you are  
15           providing today should specifically address that  
16           charge.

17           So do you have anything else? Do you  
18           have any statements?

19           MR. ASBEAJ: I have my statement, but  
20           I don't have any evidence. That's all the  
21           evidence I have.

22           CHAIRPERSON ANDERSON: All right. So

1 what is the statement that you have, sir, that  
2 you want to make to defend yourself?

3 MR. ASBEAJ: As a closing statement or  
4 just --

5 CHAIRPERSON ANDERSON: Well, as part  
6 of your case. As part of your case, I mean, I  
7 know that you are going to make a concluding  
8 statement, but I guess at this juncture, is there  
9 anything else that you -- and I'll say this to  
10 you.

11 You can -- because you are presenting  
12 your case, tell me what it is that you want to  
13 state. And remember whatever you state, Ms.  
14 Phillips is going to have -- she is going to  
15 cross-examine you on whatever you state. Okay?

16 MR. ASBEAJ: Yes. On this report, as  
17 I said and Mr. Hargrave say that, the door can be  
18 open seasonal, which is summertime and August and  
19 everything. That includes I can open the door  
20 until certain month time. And for that reason,  
21 after Mr. Hargrave requested and told me that I  
22 cannot open the door, that never happen. We

1 never open the door.

2 And he, Mr. Hargrave, say he came only  
3 twice. Mr. Hargrave came to my establishment  
4 more than 40 times and he knows it. I can -- I  
5 have all them in my establishment and everything  
6 and you understand, there is no way he can tell  
7 me that he only came twice. Mr. Hargrave came  
8 from August 24th until September 11th every day.

9 MS. PHILLIPS: Objection. Relevance.

10 MR. ASBEAJ: And --

11 CHAIRPERSON ANDERSON: I'm going to  
12 allow it. Please --

13 MR. ASBEAJ: -- on that door, when he  
14 told us we can open it when it's seasonal, we  
15 closed it. It never happen. And him and Mr.  
16 Gilliam came give us a warning, it never  
17 happened. And we always try to cooperate or work  
18 with them and after that, it has been a year now,  
19 never happen. We never had any noise violations.  
20 And I thought he going to write, you know,  
21 violation because they give me warning after it  
22 happened and I found out it was a violation.

1           And I don't think which one comes  
2 first, the warning, the violation or everything  
3 together, so I don't understand how it works.  
4 And after like when Investigator came to my  
5 establishment every day for like two, 20, 30  
6 times and pointed fingers at me, while others are  
7 doing -- having the same privilege, I feel I've  
8 been taken my Constitutional rights and have been  
9 --

10           MS. PHILLIPS: Objection.

11           MR. ASBEAJ: -- violating everything  
12 that I need.

13           MS. PHILLIPS: Continuing objection,  
14 please.

15           MR. ASBEAJ: So --

16           CHAIRPERSON ANDERSON: I'm going to  
17 overrule it, but it's --

18           MR. ASBEAJ: -- it's not --

19           CHAIRPERSON ANDERSON: -- noted for  
20 the record.

21           MR. ASBEAJ: -- I'm here like and  
22 that's the only thing I can say. And just ask me

1 any questions now and I'll -- I want to make a  
2 final statement after that.

3 CHAIRPERSON ANDERSON: Sure. Go  
4 ahead, Ms. Phillips.

5 MS. PHILLIPS: No questions, sir.

6 CHAIRPERSON ANDERSON: But I have a  
7 question to you, sir. You said that  
8 Investigators have been to your place 40 times.  
9 Is that correct?

10 MR. ASBEAJ: Yes, sir.

11 CHAIRPERSON ANDERSON: Did they give  
12 you 40 tickets, sir?

13 MR. ASBEAJ: No.

14 CHAIRPERSON ANDERSON: All right. Any  
15 other questions by any other Board Members? Yes,  
16 Mr. Short?

17 MEMBER SHORT: Yes, this is -- I would  
18 like to read for the record what I'm reading from  
19 your settlement agreement under No. 3 on page 3.

20 (c) "Applicant can agree to keep its  
21 doors and windows closed when music is being  
22 played at the establishment, but the applicant

1 may open its window panels seasonally provided  
2 that the music is not audible beyond the street  
3 curbside."

4 Can we see the video again, please?

5 CHAIRPERSON ANDERSON: What video?

6 MEMBER SHORT: The video that -- for  
7 the --

8 CHAIRPERSON ANDERSON: Well, you can't  
9 ask him that question if that's the way he --

10 MEMBER SHORT: Okay. No, I don't have  
11 a problem. Okay. It's just that --

12 MEMBER ALBERTI: He can ask you. He  
13 can ask you. He is asking the Chair if he can  
14 see the video.

15 CHAIRPERSON ANDERSON: But he is  
16 cross-examining him, that's not -- he didn't  
17 testify --

18 MEMBER ALBERTI: Oh, I see. I see.

19 CHAIRPERSON ANDERSON: Yeah.

20 MEMBER ALBERTI: Okay.

21 MEMBER SHORT: Okay. Not a problem.

22 Did you hear what I just read from your --

1 MR. ASBEAJ: Yes, sir.

2 MEMBER SHORT: Do you agree that that's  
3 what you signed and agreed to?

4 MR. ASBEAJ: Yes, sir.

5 MEMBER SHORT: Thank you. That's all  
6 I have, Mr. Chair.

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

9 All right. Well, Ms. Phillips, do you  
10 have any questions to ask of him based on the  
11 questions that the Board asked?

12 MS. PHILLIPS: No, Mr. Chair.

13 CHAIRPERSON ANDERSON: No. Mr.  
14 Asbeaj, do you wish to clarify anything before  
15 you do your concluding statement?

16 MR. ASBEAJ: No.

17 CHAIRPERSON ANDERSON: No. All right.  
18 Does the Government wish to make a -- do you  
19 rest?

20 MR. ASBEAJ: Okay.

21 CHAIRPERSON ANDERSON: I know you are  
22 still going to get a chance to make a closing



1 statement.

2 Does the Government wish to make a  
3 closing statement?

4 MS. PHILLIPS: Yes, Mr. Chair. The  
5 evidence really speaks for itself and now we have  
6 the pertinent part of the settlement agreement  
7 read into the record. I think twice now, so we  
8 are clear what it says and it speaks for itself  
9 and it is in evidence.

10 And therefore, I believe the  
11 Government has met its burden on the charge and  
12 the Board should consider the suggested fine of  
13 \$350 to be paid with -- whenever the Board wants  
14 it to be paid.

15 And that if they order a fine, they  
16 should suspend his license if he doesn't pay  
17 timely.

18 CHAIRPERSON ANDERSON: All right.  
19 That's it?

20 MS. PHILLIPS: That's it.

21 CHAIRPERSON ANDERSON: Do you -- you  
22 can make your closing statement, Mr. Asbeaj.

1                   MR. ASBEAJ: Like I said earlier, it  
2 has been a year since I opened this business and  
3 I spent all my savings and everything, but I'm  
4 thinking that I have been in business for six  
5 years, I felt like I have never been harassed all  
6 my life than this year.

7                   And it has been I've been visited  
8 probably 126 times and out of it 40 times was  
9 from Mr. Hargrave, Kevin Hargrave and Mr.  
10 Gilliam.

11                   I have -- I know like if Mr. Hargrave  
12 will have intentions was positive or if Mr.  
13 Hargrave's intentions was to fairly evaluate or  
14 to fairly investigate, it would all be good for  
15 us, but on every time Mr. Hargrave come to my  
16 establishment, he is pointing fingers at me, at  
17 me, at me.

18                   I'm sure you are not allowed to see  
19 the video, but you can see from the video that  
20 Mr. Hargrave is pointing fingers at my  
21 establishment and defame my business and all the  
22 neighborhood.

1                   And Mr. Hargrave told me that every  
2                   time I have a violation or I heard music from  
3                   across the street, I should call and make a  
4                   complaint. And I know I made a call on that  
5                   weekend, because I figure I was going to be there  
6                   and there was no -- ABRA was closed on that day  
7                   that I called.

8                   And Mr. Hargrave called me back on --  
9                   returning my calls and I say this is Eyob Asbeaj  
10                  and I'm calling because I saw a violation, people  
11                  fighting across the street and people were the  
12                  big noise and everything.

13                  Straight to my like face like Mr.  
14                  Hargrave told me no, no, no, that's Kiss Tavern.  
15                  Kiss Tavern is the one who is violating and  
16                  everything. And I called him like Mr. Hargrave  
17                  I'm calling from Kiss Lounge. I'm the one who is  
18                  reporting a claim. For me that's unfair. Like  
19                  I'm doing business, I should be heard or I should  
20                  be supported by any establishment or ABRA or any  
21                  Government, but it's, for me, not supporting and  
22                  it's very unprofessional of Mr. Hargrave the way

1 the approach us. It's very aggressive the way he  
2 approach us is pointing fingers.

3 He came to me oh, you should wash this  
4 street and I showed him, I just washed it. And  
5 it's --

6 MS. PHILLIPS: Objection. Relevance.

7 MR. ASBEAJ: No, I'm making statement.

8 CHAIRPERSON ANDERSON: Yeah, but this  
9 is about -- all the arguments that you are  
10 making, sir, and I apologize that both myself and  
11 Ms. Phillips is interrupting your closing, which  
12 we don't normally do, but remember the charge is  
13 a noise violation and --

14 MR. ASBEAJ: Okay.

15 CHAIRPERSON ANDERSON: -- I don't  
16 care, I don't want to hear nothing about washing  
17 the street, sir.

18 MR. ASBEAJ: Yes.

19 CHAIRPERSON ANDERSON: It's not  
20 relevant.

21 MR. ASBEAJ: All right. And I was  
22 here last week over for a noise violation.

1 MS. PHILLIPS: Objection. Relevance.

2 MR. ASBEAJ: It is relevant, because  
3 Mr. Hargrave took that video from last week and  
4 he witnessed that. He never took a video. He  
5 took a video from last week. He took a video  
6 after that, the 24th, the 27th and I don't know  
7 why I'm getting two violations from last week and  
8 this week, why he took -- it's the same case.  
9 It's copy/paste.

10 Like he give -- he with Mr. Gilliam  
11 last week when he was doing the video and he was  
12 doing by himself. And I'm getting two violations  
13 at same time while he took the video, too, he was  
14 by himself. Two videos and he say he never took  
15 a video, but from the investigation, you can see  
16 the report, Mr. Hargrave took the video while he  
17 was with Mr. Gilliam on the 27th. And on the  
18 24th he came back, he did, he took a video and he  
19 said again, that I have never took a video  
20 before.

21 I think it shows that unfair that --  
22 the Investigator approach us or treat us on our

1 establishment. And I don't seem to be violent,  
2 violation twice and I have a warning on the 28th.  
3 I don't get it how am I going to get violation on  
4 the 24th? I don't think the warning comes first  
5 or the violation comes first. Which one?

6 Because the warning comes first, then  
7 after that if I violated the warning, I get a  
8 ticket or I get a violation. And after I get a  
9 warning, I have never had any noise violations  
10 and I keep the door closed all the time. And  
11 even the DCRA came and check it, nothing  
12 happened. And obviously, I'm trying to do the  
13 business the right way.

14 I'm not trying to like make money and  
15 leave. I'm going to stay there. I'm going to --  
16 I'm buying the property and everything. I'm  
17 going to stay there. I'm not doing it like  
18 short-term business. I want to have a good  
19 relationship with the Investigators. I want to  
20 have a good relationship with the Board. I want  
21 to have a good relationship with the  
22 Administrative Office.

1                   So the way I see it is it's very  
2 discouraging doing business in that area. It was  
3 abandoned. It was trash. It was a pissing  
4 alley. It was the most disgusting place and I  
5 invested a lot of money in that area just to make  
6 money out of it, but I'm not looking at it,  
7 because I've been harassed. I've been  
8 approached, pointed fingers every time.

9                   Somebody play music out on the street  
10 and it's me. And you can show that's not unfair  
11 towards the Investigators that have on us and I  
12 think the Board is fair. I think they should --  
13 you guys should consider it. And since I have  
14 the warning, it should be left as a warning and  
15 after that anything happen after the warning,  
16 they -- which I gave you, and you say it's not  
17 relevant.

18                   But it's relevant because it's a  
19 warning. Those violations on the 28th by Gilliam  
20 and Mr. Hargrave, they came to me and give me a  
21 warning after the violation. And I don't know  
22 which one comes first. And I don't think they

1 recorded each other or I don't think how they  
2 reported, because I'm getting two tickets out of  
3 one violation.

4 So it's up to you to make a judgment,  
5 but I don't think I should be fined for this. I  
6 should -- it should be left as a warning, because  
7 there is no violations after the warning date of  
8 08/27. It's the same time that he give me the  
9 ticket and they give me the warning. So it  
10 should be left as a warning.

11 And anything that has been reported  
12 after that, I should be fined. And I'm like I  
13 consider that is a fair violation, that's what it  
14 is.

15 CHAIRPERSON ANDERSON: That's it?

16 MR. ASBEAJ: Yes.

17 CHAIRPERSON ANDERSON: Do you rest?

18 (No audible answer.)

19 CHAIRPERSON ANDERSON: All right. The  
20 record is now closed. And I'm going to ask again  
21 and I have always done a horrible job in trying  
22 to explain this, but do the parties wish to file



1 proposed findings of fact and conclusions of law  
2 or waive their right to do that? That is when I  
3 ask you, do you want to go file some legal  
4 paperwork to address the case? It's not to bring  
5 in new -- any new evidence. It's just to say  
6 this is what the -- this is what was proven today  
7 or do you want to waive that and we will make the  
8 decision based on the presentation today, sir?

9 Do you want to waive it? Say -- you  
10 shake your head. All right. All right.

11 MS. PHILLIPS: The District waives.

12 CHAIRPERSON ANDERSON: Thank you, Ms.  
13 Phillips. The Board will issue a decision in 90  
14 days.

15 As Chairperson of the Alcoholic  
16 Beverage Control Board for the District of  
17 Columbia and in accordance with Section 405 of  
18 the Open Meetings Amendment Act of 2010, I move  
19 that the ABC Board hold a closed meeting for the  
20 purpose of seeking legal advice from our counsel  
21 on Case No. 17-CMP-00570, Kiss Tavern, per  
22 Section 405(b)(4) of the Open Meetings Amendment

1 Act of 2010, and deliberating upon Case No. 17-  
2 CMP-00570, Kiss Tavern, for the reasons cited in  
3 Section 405(b)(13) of the Open Meetings Amendment  
4 Act of 2010.

5 Is there a second?

6 MEMBER SHORT: Second.

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

11 Mr. Isaac?

12 MEMBER ISAAC: I agree.

13 CHAIRPERSON ANDERSON: Mr. Cato?

14 MEMBER CATO: I agree.

15 CHAIRPERSON ANDERSON: Mr. Alberti?

16 MEMBER ALBERTI: I agree.

17 CHAIRPERSON ANDERSON: Mr. Short?

18 MEMBER SHORT: I agree.

19 CHAIRPERSON ANDERSON: Mr.

20 Silverstein?

21 MEMBER SILVERSTEIN: I agree.

22 CHAIRPERSON ANDERSON: Mr. Anderson?

1 I agree.

2 As it appears that the motion has  
3 passed, I hereby give notice that the ABC Board  
4 will hold a closed meeting in the ABC Board  
5 conference room pursuant to the Open Meetings  
6 Amendment Act of 2010 and issue an order within  
7 90 days.

8 Thank you all for your presentation  
9 today. And this case is completed. Thank you.

10 MR. ASBEAJ: Thank you.

11 CHAIRPERSON ANDERSON: The Board,  
12 therefore, will go in recess until our 1:30  
13 hearing. Thank you.

14 (Whereupon, the Show Cause Hearing was  
15 concluded at 11:17 a.m.)

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This is to certify that the foregoing transcript

In the matter of: Kiss, LLC

Before: DC ABRA

Date: 04-11-18

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



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