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

2 1:37 p.m.

3 CHAIRPERSON ANDERSON: First afternoon
4 hearing is Case Number 19-PRO-00064, Po Boy Jim
5 2, License Number 1056 -- I'm sorry -- 105468.

6 This is a protest hearing and the
7 application to renew a license. The license --
8 the renewal has been protested by the ANC and so
9 would the parties please approach and identify
10 themselves for the record, please?

11 I'll start with the licensee.

12 MR. REID: I'm Ian Reid, owner of Po
13 Boy Jim Bar and Grill, co-owner.

14 CHAIRPERSON ANDERSON: Good afternoon,
15 Mr. Reid.

16 MR. REID: Good afternoon, sir.

17 MR. SCHLOM: Good afternoon, Mr.
18 Chairman. My name is Evan Schlom, I am the
19 protesting abutting property owner. So, just for
20 the record, the ANC is not the protestant.

21 CHAIRPERSON ANDERSON: I apologize.

22 MR. SCHLOM: No, I just wanted to make

1 sure that was clear for the record.

2 CHAIRPERSON ANDERSON: All right.
3 It's being protested by the abutting property
4 owner.

5 MR. SCHLOM: Yes, Mr. Chairman.

6 CHAIRPERSON ANDERSON: All right.
7 We're here today at a protest hearing, well,
8 clearly we're at a protest hearing because the
9 parties couldn't agree to a settlement agreement,
10 but is it that, and I don't have a problem doing
11 it, is it that we have an agreement, and if the
12 parties could make stipulations to say that --
13 and we could issue a board order on a stipulation
14 that the parties have reached or is that we're at
15 the point where the parties believe that we're at
16 an impasse, so the Board has to make a decision.

17 MR. SCHLOM: As far as I'm concerned,
18 Mr. Chairman, we have no agreement.

19 CHAIRPERSON ANDERSON: No, I'm just
20 saying that I -- my position's always been, no
21 member of the Board lives in the neighborhood and
22 so I've always supported having a settlement

1 agreement, so therefore if you can make a
2 decision of you can, then the Board has to agree.
3 I don't have a -- I really don't have a concern
4 with that.

5 All right. So, this is a protest
6 hearing. The way -- all right, hold on one
7 minute, please. All right. The way the
8 operation of the protest hearing is that we'll
9 first start off with, if there are any
10 preliminary motions, then the applicant will make
11 an opening statement, then the protestant can
12 make an opening statement, then the Board will
13 call its first witness which is the -- our
14 investigator and once our investigator testifies,
15 the board members will ask questions of the
16 investigator.

17 Once the board members have concluded
18 its questions of the board members, I'm sorry, of
19 the investigator, then the applicant will have an
20 opportunity to ask questions of the investigator.

21 Once the applicant has had an
22 opportunity to ask questions of the investigator,

1 then the protestant will have an opportunity to
2 ask questions of the investigator and the Board
3 might ask questions and I might give -- I might
4 -- the Board might ask questions and I might --
5 depending on how the hearing is going, I might
6 decide that either side might have opportunities
7 to further question him.

8 All right. Once the Board has
9 completed its questions of our investigator, then
10 the applicant will present its case. So, they
11 will do direct examination for the applicant. If
12 the applicant has no witnesses to call and
13 testify, then we have -- then the protestant can
14 make cross-examination of the applicant and its
15 witnesses. The Board will ask questions and then
16 we'll got back further, back and forth.

17 Once that's done, then the protestant
18 will have -- will present its case-in-chief by
19 having -- calling -- having testimony, whatever
20 testimony of their witnesses.

21 If at the end of the protestant's
22 case, if the -- we do have rebuttal witnesses, so

1 the applicant would have an opportunity to call a
2 rebuttal witness and the same for the protestant.

3 At the end of the hearing, then the
4 applicant makes a closing statement, then the
5 protestant will also make a closing statement if
6 they so choose. I make some remarks, ask some
7 further questions and then we'll give both sides
8 an opportunity to legal writings or have the
9 Court -- the Board make this decision on the
10 presentation here today.

11 All right. This process, each side
12 has -- it's supposed to be over in three hours.
13 So, each side has 90 minutes to present its case.
14 So, your timeline starts once your case starts,
15 so the part of it doesn't start when the Board
16 does its investigation.

17 So, I would say that don't spend all
18 your time cross-examining the other side if --
19 because your time is being utilized from cross-
20 examination if you believe that you can do a
21 better job doing direct questioning, okay?

22 Are there any preliminary motions or

1 any preliminary issues that either side needs to
2 bring to our -- the Board's attention?

3 MR. SCHLOM: Yes, Mr. Chairman.

4 CHAIRPERSON ANDERSON: Yes.

5 MR. SCHLOM: I have a number of
6 preliminary matters.

7 First of all, I am an attorney
8 licensed to practice in the District of Columbia
9 and in California, but I am here appearing as a
10 pro se abutting property owner. So, I just want
11 to make that clear for the record.

12 Second, I have a motion to exclude
13 evidence. I'd like to move that the Board
14 prohibit the applicant from presenting any
15 witnesses or documentary evidence today.

16 The applicant did not submit a protest
17 information form or an exhibit list at all, I
18 haven't seen it, and they did send what appear to
19 be eight exhibits, but that was less than 48
20 hours before this hearing and a blank email, no
21 explanation, no context, nothing, and that was at
22 2:53 p.m. on Monday.

1 So, to be clear, I am not moving that
2 the Board dismiss the applicant's application to
3 renew. I am moving that the Board prohibit the
4 applicant from entering any documentary evidence
5 in his case or to present any witnesses on his
6 behalf because I haven't been able to prepare. I
7 haven't seen a protest information form. I
8 haven't seen an exhibit list, and even the
9 exhibits, the purported exhibits I received, was
10 less than 48 hours ago.

11 The applicant was reminded three times
12 at least of these deadlines. Once was by the
13 Chairman at the August 14th status hearing. Then
14 again, Ms. April Randall of ABRA OGC reminded
15 both me and the applicant via email on September
16 16th, that's two days before the deadline, and
17 then ABRA legal reminded the applicant of this
18 requirement after the deadline had already
19 passed. That was on Monday at 3:45 p.m.

20 The applicant simply has no good cause
21 to have not submitted any of the required
22 documents here.

1 So, I would move that the Board
2 prohibit the applicant from presenting any
3 affirmative evidence on his behalf. He is still
4 welcome to cross-examine my witnesses and, of
5 course, he's still welcome to witness the Board
6 witnesses. I'm not asking to prohibit him from
7 doing that.

8 CHAIRPERSON ANDERSON: But -- well, I
9 know the ruling that I usually issue, I said that
10 I will prevent you from introducing documents or
11 witnesses unless you can show cause why it was
12 not submitted seven days in advance. So, I'll
13 ask the applicant, is there -- and I don't know
14 this, so was there --

15 MR. REID: I honestly forgot. This is
16 my first hearing.

17 CHAIRPERSON ANDERSON: I'm sorry, sir.
18 I didn't hear -- let me finish. Let me ask the
19 question.

20 MR. REID: Okay.

21 CHAIRPERSON ANDERSON: So, was there
22 a PIF offer provided?

1 MR. REID: Yes, they sent it to me.

2 CHAIRPERSON ANDERSON: The what?

3 MR. REID: Are you talking about the
4 PIF form they sent to me?

5 CHAIRPERSON ANDERSON: All right. How
6 do you present to -- how do you plan to present
7 your case today? Do you have documents and
8 witnesses that you plan to rely upon?

9 MR. REID: That was the alternative.
10 I mean, I could use --

11 CHAIRPERSON ANDERSON: I'm ask -- I
12 don't know, sir. I don't know. I'm asking you a
13 question. Listen to the question --

14 MR. REID: Right.

15 CHAIRPERSON ANDERSON: -- that I'm
16 asking. Did you present document -- were you
17 planning to rely on documents and witnesses at
18 this hearing today?

19 MR. REID: I mean, it would have been
20 helpful, but it's not a big deal. No. It's
21 good.

22 CHAIRPERSON ANDERSON: No, listen,

1 listen, listen. Listen to the questions I'm
2 asking you.

3 MR. REID: Okay. Okay.

4 CHAIRPERSON ANDERSON: And based on
5 the questions I ask you --

6 MR. REID: Right.

7 CHAIRPERSON ANDERSON: -- you answer
8 me, okay?

9 MR. REID: Right.

10 CHAIRPERSON ANDERSON: The question I
11 ask you, were you planning to -- did you
12 introduce documents and witnesses that you plan
13 to rely on today at the hearing? Did you
14 introduce any documents and witnesses, did you
15 provide the other side or ABRA --

16 MR. REID: Yes.

17 CHAIRPERSON ANDERSON: -- with
18 documents and witnesses that you plan to --

19 MR. REID: Yes.

20 CHAIRPERSON ANDERSON: -- rely on
21 today?

22 MR. REID: Yes, I did.

1 CHAIRPERSON ANDERSON: You did?

2 MR. REID: Yes.

3 CHAIRPERSON ANDERSON: And when did
4 you provide those documents?

5 MR. REID: It was late.

6 CHAIRPERSON ANDERSON: When was it
7 provided?

8 MR. REID: Maybe two days ago.

9 CHAIRPERSON ANDERSON: Two days ago.
10 Why did you not provide it to the agency and to
11 the protestant seven days ago?

12 MR. REID: To be honest with you, I
13 was just going to bring the pictures in to you
14 guys and show it to you. I didn't know we had to
15 go through that channel.

16 CHAIRPERSON ANDERSON: How do you mean
17 you did not know. Weren't you here at the show
18 of cause hear -- at the protest hearing status?
19 Were you here -- have you appeared before me
20 before for this case?

21 MR. REID: No.

22 CHAIRPERSON ANDERSON: Then who was

1 here?

2 MR. REID: I'm not sure. The last
3 time I was here, I think it was mediation.

4 CHAIRPERSON ANDERSON: Yes, sir. You
5 had to have been -- either you --

6 MR. REID: It was a lady. It wasn't
7 you.

8 CHAIRPERSON ANDERSON: Have you
9 appeared in front of me before?

10 MR. REID: No.

11 CHAIRPERSON ANDERSON: Who appeared --
12 when was this -- sorry, hold on. Who was here
13 August 14th?

14 MR. REID: Maybe my aunt maybe.

15 CHAIRPERSON ANDERSON: And so, she
16 didn't tell you anything?

17 MR. REID: No. She told me to wait
18 here. She asked me did I fill out that PIF form
19 and I told her no.

20 CHAIRPERSON ANDERSON: Did she tell
21 you why?

22 MR. REID: She asked me that I fill it

1 out and come into the hearing and I told her no.

2 CHAIRPERSON ANDERSON: Well, why --

3 MR. REID: I sent it in late.

4 CHAIRPERSON ANDERSON: But why didn't
5 -- did she tell you when you were supposed to
6 send it in?

7 MR. REID: I'm not sure.

8 CHAIRPERSON ANDERSON: So, how is it
9 that you plan to defend yourself to the
10 establishment here today, sir?

11 MR. REID: To be honest with you, so,
12 we went to mediation and Mr. Evans stated, you
13 know, his problems that he had with the
14 establishment and we addressed -- I don't even
15 know what his -- there's no preparing for him
16 because it's unpredictable what he's about to
17 say.

18 So, I don't know how to prepare for
19 what he's about to present to you because I'm
20 pretty -- when I sound ignorant, I don't even
21 think -- what he's presenting is not even, like,
22 for real. It's not even, like, a real issue. I

1 think he's a lawyer and this is him just, you
2 know, showing you how good of a lawyer he is.
3 It's like a rain dance.

4 CHAIRPERSON ANDERSON: All right. But
5 -- so, what you're saying is that in order for
6 you to present your case today, you're the only
7 person who is going to testify, is that --

8 MR. REID: Yes.

9 CHAIRPERSON ANDERSON: -- what you're
10 saying?

11 MR. REID: Yes.

12 CHAIRPERSON ANDERSON: And you don't
13 have any other -- any -- other documents you're
14 going to rely on. Is that correct?

15 MR. REID: I mean, I'm pretty sure the
16 investigator might have come and took some
17 pictures --

18 CHAIRPERSON ANDERSON: I'm asking you,
19 sir.

20 MR. REID: No.

21 CHAIRPERSON ANDERSON: You.

22 MR. REID: No, I don't.

1 CHAIRPERSON ANDERSON: All right.
2 Well, it's not an issue because he's not -- it's
3 not an issue since -- the information that I
4 received, he doesn't plan to rely on any
5 documents and witnesses outside of himself, so
6 that's fine.

7 What other preliminary issues, if any,
8 do you have, sir?

9 MR. SCHLOM: So, the third preliminary
10 issue is, on my PIF form I listed a number of
11 witnesses, including myself, I listed four
12 witnesses who I intended to call today, but due
13 to a number of issues, including when we were
14 informed late last week that the time of the
15 hearing had changed, as well as a family
16 emergency for one of my witnesses, I will be the
17 only witness on my side today.

18 Dan Orlasky, who is the SMD member of
19 the ANC for my district where this establishment
20 and I are located, he was on my witness list, but
21 because of the time change of the hearing, was
22 unable to attend at 1:30 and was planning to

1 attend when he was planned for 4:30.

2 I believe he has submitted a letter to
3 the Board sometime today expressing his views and
4 recommendations under the statute for the ANC.

5 Then another one of my witnesses,
6 Caroline Renzulli, who I was planning to call
7 today, her husband's grandmother passed away and
8 she -- the funeral was yesterday in Kansas, and
9 she is flying back to D.C. today, so will be
10 unable to testify.

11 So, I will be the only witness
12 testifying for my side.

13 The next preliminary issue is, I would
14 -- I don't know what the Board -- this is my
15 first time appearing in front of the Board in a
16 protest hearing, what the Board's procedures are.

17 I have a large number of exhibits, all
18 of which I disclosed -- served on both ABRA and
19 the other side a week ago, how that works, if I
20 am testifying and having to hand out copies and
21 things like that, I just don't know what the
22 Board's regular procedure is for that --

1 CHAIRPERSON ANDERSON: Well, I
2 guess --

3 MR. SCHLOM: -- when you have a pro
4 se.

5 CHAIRPERSON ANDERSON: Well, I guess
6 the bottom line is that since you're the only --
7 so, I guess you have to ask yourself questions
8 and I'll swear you in and I'll ask you some
9 questions and then you can, if you're going to
10 rely on documents, then you show it to him, and
11 then you identify, at least for the record is
12 concerned, you'll identify the documents and then
13 you can testify on the contents of the documents.

14 MR. SCHLOM: Okay. And my plan, given
15 my review of previous transcripts for pro se,
16 some pro se -- people appearing pro se, was that
17 I was planning to simply give a narrative
18 effectively the direct examination, but without
19 the questions and then submit myself to cross-
20 examination by the applicant and examination by
21 the Board.

22 CHAIRPERSON ANDERSON: That's normally

1 how it -- I appreciate the fact that you told me
2 that you're an attorney, but that doesn't -- your
3 -- as I said before, I'm -- if there was an
4 attorney on either side, then I have expectations
5 for attorneys, but -- and I've said that when
6 there are two attorneys on each side, then I have
7 expectations, but as this is a matter of a pro se
8 hearing and so therefore I won't have those
9 expectations that there are attorneys.

10 So, therefore we'll -- and even if
11 there are attorneys, I mean, this is -- it's an
12 administrative hearing and it's more informal and
13 so I -- the cross-examinations of the people, you
14 can make objections and then I will make rulings
15 appropriately, okay?

16 MR. SCHLOM: And then the final
17 preliminary matter I had, Mr. Chairman, is in
18 order to be efficient and to save time, I'd like
19 to enter into evidence now the ABRA Board order,
20 approving this establishment's existing
21 settlement agreement and the settlement
22 agreement.

1 It was not included in the
2 investigator's investigative report, so I wasn't
3 sure whether it was already part of the record.
4 It's a Board document and obviously, it's going
5 to be referred to many times. So --

6 CHAIRPERSON ANDERSON: It's already a
7 part of our records.

8 MR. SCHLOM: Okay.

9 CHAIRPERSON ANDERSON: It's a part of
10 their license. So, there's really no need for
11 you to submit it because it's a part of their
12 license, so.

13 MR. SCHLOM: Great. And those are all
14 the preliminary matters I have, Mr. Chairman.
15 Thank you.

16 CHAIRPERSON ANDERSON: All right. The
17 Board will call its first witness.

18 MR. SCHLOM: Mr. Chairman, are we
19 supposed to make opening statements before the
20 Board witness or after?

21 CHAIRPERSON ANDERSON: Oh, all right.
22 All right. Yes. So, we'll start with the

1 applicant. This is what -- and opening
2 statements are for you to tell me from your
3 perspective, what is it that you want the Board
4 to do today? What is it you intend to show, and
5 at the end of the hearing, what is it that you
6 want the Board to do.

7 Yes, you.

8 MR. REID: Yeah so, basically, I want
9 the Board to keep the existing --

10 CHAIRPERSON ANDERSON: Who are you?

11 MR. REID: Ian Reid from Po Boy Jim.

12 CHAIRPERSON ANDERSON: All right.

13 MR. REID: And, you know, I ask that
14 the Board renew our license and keep the current
15 settlement agreement in place.

16 I think it's already sort of
17 restrictive, so, I mean, as it is, we operate
18 like a club or a lounge and there's certain
19 things in there that's kind of tough for us, you
20 know, rules and regulations that we have to go
21 by.

22 I don't think we need a more

1 restrictive settlement agreement that he's
2 proposing. I think he's trying to make us run
3 our business through, like, a coffee straw.

4 You know, I'm surprised that he's even
5 here right now because the problems that we had
6 at hand didn't even involve him. He's not even
7 -- so, I thought we were coming here for noise
8 and we kind of fixed that issue through the
9 office, the Mayor's office.

10 I was surprised to see Mr. Evans come
11 today complaining about the things he was
12 complaining about because he's not even like --
13 he's abutting our property, but none of the
14 things we do directly affect him.

15 I think he's a lawyer, and I think
16 this is, like, a time for him to show, like, how
17 good of a lawyer he is. You know, I see him
18 every day, I see his behavior every day. I see
19 the way he locks his apartment, the way he looks
20 back, and I think he's just getting a kick out of
21 this, honestly, I'm not trying to sound ignorant
22 or anything like that, but this is honestly what

1 this is.

2 CHAIRPERSON ANDERSON: All right. So,
3 you're saying then that you're asking the Board
4 to renew your license with the current settlement
5 agreement and restrictions that are in place.

6 That's what you're asking --

7 MR. REID: Right.

8 CHAIRPERSON ANDERSON: -- the Board to
9 do? All right. Yes, sir. What is it that
10 you're asking the Board to do?

11 MR. SCHLOM: So, thank you, Mr.
12 Chairman and members of the Board. I'm here for
13 one reason and it's because my neighbors and I,
14 who live next door to Poe Boy Jim, feel as though
15 we have no other choice. This is not a game. I
16 have put countless hours into working on and
17 preparing for this hearing through this process.
18 This is not a game.

19 I offered them a settlement agreement.
20 I didn't want to go through this process. Nobody
21 wanted to go through this process, but we're
22 here, I'm here because we believe the status quo

1 is unworkable and the establishment has not taken
2 the necessary steps to comply with the settlement
3 agreement that has been in place since 2017.

4 So, this hearing is what we feel this
5 is our only option now for anything to change.
6 Despite numerous complaints to ABRA and to Po Boy
7 Jim directly, trying to get them to do what
8 they've already agreed to do, we've seen them
9 consistently operate in a way that flaunts and
10 ignores their settlement agreement, and it is
11 having detrimental impact on peace, order, and
12 quiet in our neighborhood.

13 So, the establishment signed a
14 settlement agreement with ANC 1B in June of 2017
15 and that agreement was approved by the Board in
16 July of 2017, and as the Board knows, settlement
17 agreements are a deal.

18 The deal is the protestant agrees to
19 drop their protest if the establishment agrees to
20 take steps to address the concerns that the
21 protestant had, but the evidence will show that
22 the owners of Po Boy Jim were experienced ABC

1 licensees, who had owned and managed a restaurant
2 with an ABC license that had a settlement
3 agreement on H Street NE since 2014.

4 Mr. Reid and his co-owners knew what
5 a settlement agreement was. They knew what they
6 were getting into. They knew that ABRA enforces
7 the agreement. They knew that they were bound by
8 it. But despite this knowledge and
9 understanding, from the time the establishment
10 opened to the public in July of 2018, the
11 evidence will show that they've operated in a way
12 that ignored the agreement they signed with the
13 community.

14 You're going to hear extensive
15 testimony and evidence of the repeated and
16 ongoing violations of numerous provisions of the
17 agreement, including those related to trash,
18 security, cleaning, live entertainment, and
19 perhaps most importantly, noise.

20 You'll also see evidence of how the
21 establishment has failed to take the necessary
22 steps to rectify the situation and come into

1 compliance.

2 You'll also hear testimony and
3 evidence today about the severe limitations on
4 ABRA's ability and sometimes willingness to
5 enforce certain terms of the agreement, which is
6 a major reason why my neighbors and I feel that
7 this protest process, and indeed this hearing, is
8 our only hope now for an improvement.

9 Despite these limitations on
10 enforcement, the evidence will show that ABRA has
11 issued two warnings and four fines against Po Boy
12 Jim in the last 13 months, including three fines
13 just last month in the midst of this process.

14 To be clear, our goal is not, and
15 never has been, to have Joe Boy Jim's license
16 renewal application denied. Our goal instead is
17 to bring them into compliance with, an aid ABRA's
18 enforcement of, their existing settlement
19 agreement.

20 Indeed, I'm not sure I'd be here today
21 if they were, indeed, in compliance with that
22 agreement and had been -- and had a record of

1 compliance with the agreement.

2 So, at the end of this hearing, we're
3 going to ask the Board to issue -- I'm going to
4 ask the Board to issue an order mandating the
5 following modest actions that we hope will
6 mitigate the issues we've been having.

7 First, mandate that no speakers be
8 mounted on the wall of the establishment that
9 abuts my condominium building and that all other
10 speakers in the space be placed either on the
11 floor or mounted using spring suspension mounts
12 or other noise and vibration mitigation
13 technology.

14 Two, mandate that the establishment
15 provide proof upon the Board's request of its
16 trash pickup, grease control, and pest control
17 contracts, as well as photographic proof of its
18 power washing.

19 Third, mandate that the establishment
20 respond promptly to all complaints from neighbors
21 and maintain a log of all complaints made to the
22 establishment and the remedial actions that they

1 took.

2 If the Board is unwilling to mandate
3 these actions, and I know the Board is limited in
4 the actions it can take in these settings, we
5 would ask the Board prohibit operations on the
6 second floor of the establishment after 11 p.m.
7 seven days a week, as well as prohibit live
8 entertainment after 10 p.m. on the four days of
9 the week on which they are allowed to have live
10 entertainment.

11 CHAIRPERSON ANDERSON: You're saying
12 -- okay, so, you're saying no live entertainment
13 what?

14 MR. SCHLOM: So, no operations on the
15 second floor, it's a two-floor establishment, no
16 operations on the second floor after 11 and no --
17 they currently are allowed live entertainment
18 four days a week.

19 I am asking -- would ask the Board, in
20 that alternative scenario, to limit the live
21 entertainment to ending at 10 p.m. on all four of
22 those days. Currently, under the settlement

1 agreement, it's limited to 10 p.m. one of the
2 four days, on Wednesdays.

3 CHAIRPERSON ANDERSON: So, all right.
4 So, you're saying that -- so, what's the
5 operation currently on the second floor? How
6 long can they operate on the second floor?

7 MR. SCHLOM: So, there's no current
8 restrictions on the operation by floor. There is
9 operating hours restrictions in the settlement
10 agreement, but the second floor is the upper
11 floor that abuts both the second and the bottom
12 of the third floor of our condominium building.
13 It's where the residents of our condominium live
14 as the evidence will show.

15 So, that is the most problematic area
16 of the establishment --

17 CHAIRPERSON ANDERSON: So, current --
18 I guess what I'm trying -- currently, what time
19 are they open -- so, what time is their
20 entertainment or whatever it is that goes on the
21 second floor? What time does that end --

22 MR. SCHLOM: So --

1 CHAIRPERSON ANDERSON: -- from your
2 perspective?

3 MR. SCHLOM: So, from our -- we've
4 heard very loud music on the second floor at 1:30
5 in the morning, two in the morning, which --

6 CHAIRPERSON ANDERSON: When does their
7 settlement agreement say that they can operate
8 to?

9 MR. SCHLOM: Their settlement
10 agreement allows operating hours Sunday through
11 Thursday 11 a.m. to 2 a.m., Friday and Saturday
12 11 a.m. to 3 a.m.

13 Live entertainment is permitted on
14 Wednesdays, 11 a.m. to 10 p.m., Thursday, Friday,
15 and Saturday, from 11 a.m. to 2 a.m.

16 They are not permitted to have live
17 entertainment Sunday, Monday, and Tuesday under
18 their current settlement agreement. This is on
19 page two of the agreement.

20 CHAIRPERSON ANDERSON: And so, you're
21 -- so, are there currently speakers on this -- on
22 their rooftop?

1 MR. SCHLOM: They're not allowed to
2 operate on their roof right now --

3 CHAIRPERSON ANDERSON: I'm sorry.
4 Whatever the second floor, are there currently --

5 MR. SCHLOM: Yes, there are. There's
6 evidence in the investigator's report that shows
7 the speakers on the second floor as well as, of
8 course, the first floor.

9 CHAIRPERSON ANDERSON: And so you're
10 saying that they should, what, remove the speaker
11 is that --

12 MR. SCHLOM: So, if they -- so, there
13 are currently speakers on both the first and
14 second floor that are mounted to the shared wall,
15 to the abutting wall.

16 What we are asking for is to prohibit
17 any speakers from being mounted to that wall, of
18 course, that's how vibration is transferred, if
19 it's mounted it transfer the vibration, but if
20 they are going to mount speakers to other walls,
21 to use vibration mitigation technology, like six-
22 spring suspension mounts that are commonly used

1 to prevent vibration from being transferred.

2 Mr. Chairman, I would -- taking a step
3 back, their existing agreement already says that
4 sound, noise or music emanating from the
5 establishment shall not be heard beyond the
6 property boundary. It already says that.

7 It also says that the applicant shall
8 take all necessary actions to ensure that music,
9 noise, and vibration from the establishment are
10 not audible in any residential premises,
11 including, but not limited to, making
12 architectural modifications to the establishment.

13 The reason we're here today is because
14 they have not complied with those provisions.

15 MR. REID: That's not true.

16 MR. SCHLOM: So, what we are asking
17 the Board to do to aid both their compliance and
18 enforcement is to take additional actions to
19 attempt to prevent noise, vibration, and music
20 from being felt in the property next door, but I
21 would note they are already required to prevent
22 all noise and music from being heard in our

1 establishment and you will hear evidence and
2 testimony today that it still is heard in our
3 establishment.

4 So, we're left with -- under the
5 existing agreement has not worked. So, we need
6 more specific provisions to both aid in the
7 compliance with the existing obligation and to
8 aid in ABRA's enforcement of the existing
9 obligations.

10 CHAIRPERSON ANDERSON: Okay. That's
11 it?

12 MR. SCHLOM: That's it. Thank you,
13 Mr. Chairman.

14 CHAIRPERSON ANDERSON: All right. All
15 right. So, the Board will call its first witness
16 and that's Vanessa Pleitez. Can you raise your
17 right hand, please?

18 Do you swear or affirm to tell the
19 truth and nothing but the truth?

20 MS. PLEITEZ: Yes.

21 CHAIRPERSON ANDERSON: Have a seat,
22 please. Ms. Pleitez, can you state your name for

1 the record, please?

2 MS. PLEITEZ: Vanessa Pleitez.

3 CHAIRPERSON ANDERSON: And where are
4 you currently employed?

5 MS. PLEITEZ: I'm an investigator for
6 ABRA.

7 CHAIRPERSON ANDERSON: And how long
8 have you been employed by ABRA?

9 MS. PLEITEZ: Approximately three and
10 a half years.

11 CHAIRPERSON ANDERSON: You have to
12 speak up, please.

13 MS. PLEITEZ: Approximately three and
14 a half years.

15 CHAIRPERSON ANDERSON: Pull the
16 microphone closer to you, please.

17 MS. PLEITEZ: Okay.

18 CHAIRPERSON ANDERSON: And what are
19 your duties and responsibilities?

20 MS. PLEITEZ: I investigate and
21 conduct inspections for ABC establishments within
22 the District of Columbia.

1 CHAIRPERSON ANDERSON: Now, are you
2 familiar with this establishment, Po Boy Jim 2?

3 MS. PLEITEZ: Yes.

4 CHAIRPERSON ANDERSON: And how are you
5 familiar with this establishment?

6 MS. PLEITEZ: I was the investigator
7 assigned for the protest.

8 CHAIRPERSON ANDERSON: So, can you
9 just -- did you write a report as a result of
10 this protest?

11 MS. PLEITEZ: Yes, I did.

12 CHAIRPERSON ANDERSON: So, can you
13 just go through your report and share with the
14 Board what information were you able to find out,
15 please?

16 MS. PLEITEZ: Okay. So, I was
17 assigned to investigate the protest for Po Boy
18 Jim's 2, located at 13 -- I'm sorry -- 1934 9th
19 Street NW, Washington D.C.

20 The protest issues were adverse impact
21 of peace, order, and quiet. I visited the -- I'm
22 sorry. I, on Wednesday, August 28, 2019, I

1 telephonically contacted Mr. Evan Schlom to
2 discuss the protest request that -- the protest
3 he requested.

4 Mr. Schlom stated that he submitted a
5 letter to ABRA with all of his concerns. So, I
6 asked him if he could elaborate. Mr. Schlom
7 reiterated that the application for renewal for
8 Po Boy Jim's 2 was being protested on the grounds
9 that the establishment may negatively impact the
10 peace, order, and quiet in the community.

11 Mr. Schlom also stated that the
12 increase of noise disturbance and trash, along
13 with parking for the residents are also a
14 concern.

15 Mr. Schlom stated that the
16 establishment already has a settlement agreement
17 that they are not compliant with and he would
18 like to have a separate settlement agreement with
19 Po Boy Jim's 2 -- I'm sorry, give me one second
20 -- to enhance, basically, the settlement
21 agreement that was already in place.

22 Mr. Schlom concluded by stating that

1 he hopes that he can settle with Po Boy Jim's 2.
2 However, if that's not possible he would ask the
3 Board to restrict the hours of live
4 entertainment.

5 On Wednesday, September 4, 2019, I
6 visited Po Boy Jim's 2 to interview Mr. Ian Reid,
7 who is one of the owners of the establishment.
8 Mr. Reid stated that his understanding of the
9 protest was for peace, order, and quiet.

10 Mr. Reid emphasized that he met with
11 Mr. Schlom and explained to Mr. Schlom that Po
12 Boy Jim's 2 had installed soundproofing along the
13 left side of the wall on July 2019.

14 The soundproofing that was installed
15 is on the side of the wall that's -- where the
16 abutting property is located. So, it's on the
17 first and the second floor of the establishment.

18 Mr. Reid stated that the establishment
19 has two levels and that Mr. Schlom's located on
20 the third level of that -- of the abutting
21 property.

22 Mr. Reid stated that he's working

1 diligently to make sure that the trash is
2 maintained in good condition and is not
3 overflowing.

4 Mr. Reid also stated that he's hopeful
5 and positive that the noise is not hurting Mr.
6 Schlom's residence. They were supposed to meet
7 to do a sound check, a sound test, but he wasn't
8 able to do that with Mr. Schlom as of the date of
9 this report.

10 Mr. Reid stated that he's committed to
11 working with the neighborhood and is willing to
12 accommodate any reasonable request to ensure that
13 they are cooperating members of the community.

14 On September 17, 2019, I visited Po
15 Boy Jim's, again. Upon entering the
16 establishment, I did speak with Mr. Reid. I
17 needed to take some pictures for my report.

18 Mr. Reid explained that he applied for
19 a Robust Retail Grant through the Department of
20 Small and Local Business's Development, as a
21 result of the complaints to make sure that he had
22 the soundproofing that was located on the wall of

1 the abutting property.

2 He also provided me with the invoice
3 from Karma Home Designs, LLC, which was the
4 company that installed the soundproofing.

5 So, Po Boy Jim 2 is located in the
6 ARTS-2 zone within the District of Columbia.
7 According to the District of Columbia's graphic
8 information system, there are 69 establishments,
9 ABC establishments within 1200 feet of Po Boy
10 Jim's 2. Sixty-nine of the licenses within that
11 area -- I'm sorry -- there are 69 establishments
12 in that area. Forty-five of the establishments
13 have entertainment endorsements and 31 have
14 settlement agreements, which are located page
15 four, five, six, and part of seven of my report.

16 The geographic information system also
17 provides schools. There are no schools or public
18 libraries within 400-feet of the establishment.

19 Po Boy Jim's 2 is a medium-size two-
20 level establishment located at 1934 9th Street
21 NW, Washington, D.C. Po Boy Jim's 2 is bounded
22 by the 900 block of U Street and the 900 block of

1 T Street. There is an alley behind Po Boy Jim's
2 2, but it's a dead end. There are also all
3 exhibits.

4 Okay, so, this area is known as Shaw,
5 primarily lined with commercial establishments,
6 such as restaurants, retail stores, and also a
7 residential area, a residential building.

8 Okay, so, on page seven and eight of
9 my report, I did show the entertainment hours.
10 Po Boy Jim has an entertainment endorsement on
11 their license, which you'll see on page eight, is
12 from 11 a.m. to 10 p.m. on Wednesdays and 11 a.m.
13 to 2 a.m. on Thursday, Friday, and Saturday.

14 ABRA investigators monitored Po Boy
15 Jim's 2 located at 1934 9th Street NW on seven
16 different occasions from Friday, August 13, 2019
17 through September 17, 2019. At no point in time
18 did ABRA investigators hear excessive noise or
19 observe any ABRA violations.

20 The investigators did not observe any
21 issues with peace, order, and quiet in relation
22 to Po Boy Jim's 2.

1 Okay. So, I'm going to move forward
2 to the residential parking and vehicular safety.
3 Po Boy Jim's 2 is located -- well you know where
4 it's located, 1934 9th Street, they offer four
5 hours of street meter parking from Monday through
6 Saturday, 7 a.m. to 6:30 p.m., Exhibits 24 and
7 25, along the 1900 block of 9th Street NW,
8 directly adjacent to the establishment.

9 The lower end of the 1900 block, it is
10 limited to zone one and two permit parking, which
11 is Monday through Friday, 7 a.m. to 8:30 p.m.

12 Directly across the street from Po Boy
13 Jim's 2 there is also street meter parking from
14 Monday through Saturday, 7 a.m. to 6:30 p.m., and
15 three and a half hour meter parking from Monday
16 through Saturday, 7:30 p.m. to 10 p.m.

17 So, at the time of this report, the
18 District of Columbia Office of Unified
19 Communication has not responded to my request in
20 reference to calls for service for Po Boy Jim's 2
21 between the time period of September 2018 and
22 September 2019.

1 On September 18th, I did conduct a
2 review of ABRA records relevant to Po Boy Jim's
3 2. The review revealed that Po Boy Jim's 2 had
4 received 11 noise complaints from September 2018
5 to September 2019. Out of the 11 noise
6 complaints one resulted in a settlement agreement
7 violation.

8 CHAIRPERSON ANDERSON: So, what were
9 the other ten?

10 MS. PLEITEZ: There were no -- they
11 weren't substantiated for the noise complaints.

12 CHAIRPERSON ANDERSON: Okay.

13 MS. PLEITEZ: And the investigative
14 history, I listed it as an Exhibit 29. Would you
15 like me to go over the exhibits?

16 CHAIRPERSON ANDERSON: Yes, please.

17 MS. PLEITEZ: Okay. Exhibit number 1
18 is the letter provided by Evan Schlom.
19 Unfortunately, it does not have a date, but it
20 was for the protesting of the license.

21 (Whereupon, the above-referred to
22 document was marked as Exhibit No. 1

1 for identification.)

2 MS. PLEITEZ: Exhibit 2 is the
3 regulatory inspection conducted by myself on
4 September 4, 2019 at Po Boy Jim's when I
5 interviewed Ian Schlom -- I mean, I'm sorry, Ian
6 Reid.

7 (Whereupon, the above-referred to
8 document was marked as Exhibit No. 2
9 for identification.)

10 MS. PLEITEZ: Okay. So, photo number
11 three is the first level of Po Boy Jim's
12 soundproofing system, or wall, that was put into
13 place.

14 (Whereupon, the above-referred to
15 document was marked as Exhibit No. 3
16 for identification.)

17 MS. PLEITEZ: Exhibit 4 is the
18 soundproofing on the second level on the abutting
19 property wall.

20 (Whereupon, the above-referred to
21 document was marked as Exhibit No. 4
22 for identification.)

1 MS. PLEITEZ: Exhibit 5 is a photo of
2 the rear exterior of the residence and Po Boy
3 Jim's 2.

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

7 MS. PLEITEZ: Exhibit 6 is the photo
8 of the abutting property's third level, I guess,
9 third and fourth level from the --

10 CHAIRPERSON ANDERSON: Which one is --
11 what's the -- I'm sorry.

12 MS. PLEITEZ: For which exhibit? Six?

13 CHAIRPERSON ANDERSON: Exhibit 6.

14 MS. PLEITEZ: Okay. So, I'm standing
15 on Po Boy Jim's roof --

16 CHAIRPERSON ANDERSON: Right.

17 MS. PLEITEZ: -- and to the left is
18 the abutting property.

19 CHAIRPERSON ANDERSON: Which is the
20 taller --

21 MS. PLEITEZ: Yes.

22 CHAIRPERSON ANDERSON: -- building?

1 Okay. All right.

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

5 MS. PLEITEZ: Okay. Exhibit 7 is the
6 back of Po Boy Jim's 2 where the trash is
7 located.

8 (Whereupon, the above-referred to
9 document was marked as Exhibit No. 7
10 for identification.)

11 MS. PLEITEZ: Same for Exhibit 8.

12 (Whereupon, the above-referred to
13 document was marked as Exhibit No. 8
14 for identification.)

15 MS. PLEITEZ: Exhibit 9 is the invoice
16 that was provided by Mr. Ian Reid for the
17 soundproofing.

18 CHAIRPERSON ANDERSON: When was this
19 done?

20 MS. PLEITEZ: She stated it was July
21 of 2019.

22 CHAIRPERSON ANDERSON: Okay.

1 MS. PLEITEZ: It was actually
2 installed in July.

3 CHAIRPERSON ANDERSON: Okay.

4 (Whereupon, the above-referred to
5 document was marked as Exhibit No. 9
6 for identification.)

7 MS. PLEITEZ: Okay. Exhibit 10 is the
8 GIS for 1200 feet of the establishment which
9 shows that there are 69 establishments within
10 that area.

11 (Whereupon, the above-referred to
12 document was marked as Exhibit No. 10
13 for identification.)

14 MS. PLEITEZ: Exhibit 11 is the
15 schools, there are no schools though.

16 (Whereupon, the above-referred to
17 document was marked as Exhibit No. 11
18 for identification.)

19 MS. PLEITEZ: Exhibit 12 is the front
20 of the establishment.

21 (Whereupon, the above-referred to
22 document was marked as Exhibit No. 12

1 for identification.)

2 MS. PLEITEZ: Exhibit 13 is the alley,
3 the dead end alley behind the establishment.

4 (Whereupon, the above-referred to
5 document was marked as Exhibit No. 13
6 for identification.)

7 MS. PLEITEZ: Exhibit 14 is part of
8 the first floor of the establishment, along with
9 Exhibit 15, 16, 17, and 18.

10 (Whereupon, the above-referred to
11 documents were marked as Exhibit No.
12 14 through Exhibit No. 18 for
13 identification.)

14 MS. PLEITEZ: So, Exhibit 19 is the
15 second floor of the establishment, along with
16 Exhibit 20, 21, 22, 23, are all the second floor.

17 (Whereupon, the above-referred to
18 documents were marked as Exhibit No.
19 19 through Exhibit No. 23 for
20 identification.)

21 MS. PLEITEZ: Exhibit 24 is the
22 parking signs in front of the establishment.

1 (Whereupon, the above-referred to
2 document was marked as Exhibit No. 24
3 for identification.)

4 MS. PLEITEZ: Exhibit 25 is the
5 parking in front of the establishment, the street
6 parking.

7 (Whereupon, the above-referred to
8 document was marked as Exhibit No. 25
9 for identification.)

10 MS. PLEITEZ: Exhibit 26 is the
11 residential parking, which is the lower end of
12 the 1900 block.

13 (Whereupon, the above-referred to
14 document was marked as Exhibit No. 26
15 for identification.)

16 MS. PLEITEZ: Exhibit 27 is across the
17 street from Po Boy Jim's 2 parking restrictions,
18 along with a picture for that area, Exhibit 28.

19 (Whereupon, the above-referred to
20 documents were marked as Exhibit No.
21 27 and Exhibit No. 28 for
22 identification.)

1 MS. PLEITEZ: And Exhibit 29 is the
2 investigative history.

3 (Whereupon, the above-referred to
4 document was marked as Exhibit No. 29
5 for identification.)

6 CHAIRPERSON ANDERSON: All right.
7 Let's try this. Tell me about the area of where
8 Po Boy Jim's is located. Just specifically
9 describe this area for me.

10 MS. PLEITEZ: That street, there is
11 approximately, I can give you a more accurate
12 number -- there is approximately 12
13 establishments on the same side of Po Boy
14 Jim's --

15 CHAIRPERSON ANDERSON: Okay.

16 MS. PLEITEZ: -- and approximately,
17 one, two, three, four, six establishments on the
18 adjacent side, on the opposite side of the
19 street.

20 CHAIRPERSON ANDERSON: Okay.

21 MS. PLEITEZ: There is a liquor store
22 and most of the other establishments are

1 restaurants or taverns.

2 CHAIRPERSON ANDERSON: Are they --

3 MS. PLEITEZ: It's a very busy street.

4 CHAIRPERSON ANDERSON: It's a very
5 busy street?

6 MS. PLEITEZ: Yes, it is.

7 CHAIRPERSON ANDERSON: Are these other
8 establishments, are they one floor or do you know
9 if they are multi floors?

10 MS. PLEITEZ: They are two -- most of
11 them are two floors.

12 CHAIRPERSON ANDERSON: Okay.

13 MS. PLEITEZ: Cloud, which is across
14 the street only uses the second floor. They
15 don't have a first floor, but that's the only one
16 I can think of that doesn't use the first floor.

17 CHAIRPERSON ANDERSON: Do you know if,
18 off the top of your head, are there any
19 establishments there that have a rooftop, open
20 rooftop, or are they -- I'm just asking.

21 MS. PLEITEZ: Yes. Nellie's, which is
22 on the corner of that --

1 CHAIRPERSON ANDERSON: Okay. So, how
2 far up is that?

3 MS. PLEITEZ: Maybe 500 feet, maybe
4 1000 feet.

5 CHAIRPERSON ANDERSON: Okay.

6 MS. PLEITEZ: Not even. I think it's
7 less than that.

8 CHAIRPERSON ANDERSON: Okay.

9 MS. PLEITEZ: It's, like, four
10 establishments away --

11 CHAIRPERSON ANDERSON: Okay.

12 MS. PLEITEZ: -- from Po Boy Jim's 2.
13 There is a rooftop and then across the street,
14 the Brixton has a rooftop, 801 restaurant has a
15 rooftop.

16 CHAIRPERSON ANDERSON: Okay.

17 MS. PLEITEZ: An actual rooftop, not
18 just a second floor.

19 CHAIRPERSON ANDERSON: This is not a
20 bedroom community?

21 MS. PLEITEZ: No.

22 CHAIRPERSON ANDERSON: So, how would

1 you -- do you describe this area as -- how would
2 you describe this area as an investigator?

3 MS. PLEITEZ: It's a very busy street.
4 We receive a lot of noise complaints in that
5 area. I personally have never been called to Po
6 Boy Jim's.

7 CHAIRPERSON ANDERSON: Okay.

8 MS. PLEITEZ: I have gone to other
9 establishments that are mostly known for being a
10 problem with noise, but a lot of the residents
11 that live there don't want you to enter their
12 house, so there's no way to --

13 CHAIRPERSON ANDERSON: Substantiate
14 the noise complaints.

15 MS. PLEITEZ: -- substantiate the noise
16 complaints.

17 CHAIRPERSON ANDERSON: Now, I would --
18 were -- I'm looking at the visits by ABRA and I
19 see that there are two late-night visits, at
20 least two, but let me see. So, there was a --

21 MS. PLEITEZ: Page eight.

22 CHAIRPERSON ANDERSON: Yes, I'm on

1 page eight. So, there was a visit there at 1:13
2 a.m. and 2:53 a.m. Were you the one who visited
3 that time or was that someone else who visited?

4 MS. PLEITEZ: I visit -- I don't
5 recall. I know for sure I visited on the 23rd,
6 August 23rd, 2019.

7 CHAIRPERSON ANDERSON: So, it's a
8 Friday. So --

9 MS. PLEITEZ: Yes.

10 CHAIRPERSON ANDERSON: -- you said
11 that there were no violations observed. I mean,
12 what was the -- can you tell me, if you recall,
13 what was -- that Friday night, what was that
14 like, if you recall, when you visited the
15 establishment?

16 MS. PLEITEZ: Well, I didn't visit the
17 establishment, I was monitoring from outside of
18 the establishment.

19 CHAIRPERSON ANDERSON: Right.

20 MS. PLEITEZ: That street is very
21 hectic.

22 CHAIRPERSON ANDERSON: Okay.

1 MS. PLEITEZ: So, it was -- it's a
2 predominantly loud street.

3 CHAIRPERSON ANDERSON: You said that
4 there were -- a significant amount of noise
5 violations were filed regarding this
6 establishment, but only one was substantiated?

7 MS. PLEITEZ: Yes, and it wasn't for
8 a noise complaint. It was for a settlement
9 agreement violation --

10 CHAIRPERSON ANDERSON: So --

11 MS. PLEITEZ: -- for Po Boy Jim's 2.

12 CHAIRPERSON ANDERSON: Right. So,
13 what do you mean there have been a lot of
14 complaints? What does that mean that there was a
15 lot of complaints, but they weren't
16 substantiated? I mean, what --

17 MS. PLEITEZ: So, one of the --

18 CHAIRPERSON ANDERSON: From your
19 perspective as an investigator.

20 MS. PLEITEZ: So, we have the
21 supervisor that keeps track of all of the noise
22 complaints that come in on the complaint

1 hotline --

2 CHAIRPERSON ANDERSON: Right.

3 MS. PLEITEZ: -- and that's what he
4 reported. He reported that there were 11 noise
5 complaints from the dates September 2018 through
6 September 2019 --

7 CHAIRPERSON ANDERSON: Right.

8 MS. PLEITEZ: -- and out of the 11,
9 one resulted in a settlement agreement violation.

10 CHAIRPERSON ANDERSON: All right.

11 MR. REID: Can I say something?

12 CHAIRPERSON ANDERSON: No, sir.

13 You'll get your opportunity when I -- the Board
14 is ask -- this is the Board's witness.

15 MR. REID: Okay.

16 CHAIRPERSON ANDERSON: The Board is
17 asking questions of its witness.

18 MR. REID: Okay.

19 CHAIRPERSON ANDERSON: Once I'm done
20 and all the other Board members are asking
21 questions --

22 MR. REID: Okay.

1 CHAIRPERSON ANDERSON: -- then you
2 will have an opportunity to ask any questions
3 that you want to ask. So, if you want to write
4 them down to keep track of the questions --

5 MR. REID: Okay.

6 CHAIRPERSON ANDERSON: -- you want to
7 ask, you are welcome to ask the witness any
8 questions on the report that she has. Do you
9 have a copy of the report that she's testifying
10 for -- from?

11 MR. REID: No.

12 CHAIRPERSON ANDERSON: Did you receive
13 a copy of --

14 MR. REID: Yes.

15 CHAIRPERSON ANDERSON: -- the report?
16 You --

17 MR. REID: It's okay.

18 CHAIRPERSON ANDERSON: But I'm just
19 saying you'll have your opportunity to ask her --

20 MR. REID: All right.

21 CHAIRPERSON ANDERSON: -- whatever
22 questions you want to ask.

1 MR. REID: Okay.

2 CHAIRPERSON ANDERSON: You'll have
3 that and if you need to get a copy of the report,
4 I will try to figure out how to give you a copy.
5 All right.

6 Do we have any questions of the
7 witness by the Board members? Go ahead, Mr.
8 Short.

9 MEMBER SHORT: Good afternoon --

10 MS. PLEITEZ: Good afternoon.

11 MEMBER SHORT: -- Investigator
12 Pleitez. I'm looking at Exhibit Number 17 of
13 your report.

14 MS. PLEITEZ: Okay.

15 MEMBER SHORT: Can you describe where
16 that is in Po Boy Jim's and which floor it is
17 and --

18 MS. PLEITEZ: Yes. That is the bar
19 located on the first floor of the establishment.

20 CHAIRPERSON ANDERSON: We're going to
21 get you a copy of the report, sir.

22 MEMBER SILVERSTEIN: He needs a copy.

1 CHAIRPERSON ANDERSON: I think she
2 went to get a copy.

3 MEMBER SHORT: Okay. Again, this is
4 the first floor --

5 MS. PLEITEZ: Yes.

6 MEMBER SHORT: -- and I'm looking at
7 chairs on the ball --

8 MS. PLEITEZ: Yes.

9 MEMBER SHORT: -- and I'm looking at
10 lights hanging from the, is that a ceiling or are
11 those joists? Are those beams for the building?

12 MS. PLEITEZ: Yes. That's the ceiling
13 of the establishment.

14 MEMBER SHORT: Okay, thank you.
15 That's all I have Mr. Chair.

16 CHAIRPERSON ANDERSON: Okay. Any
17 other questions by the Board members? Let's -- I
18 have another question I want to ask you. Tell me
19 about the -- there's an invoice regarding the --
20 there's an invoice, I forget what --

21 MEMBER SILVERSTEIN: Soundproofing.

22 CHAIRPERSON ANDERSON: The

1 soundproofing. So, what was that -- was that
2 ever explained to you? Can you explain to me if
3 that was explained to you, what was that?

4 MS. PLEITEZ: So, he had to receive --

5 CHAIRPERSON ANDERSON: Tell me --
6 remind us again what exhibit that is, please.

7 MS. PLEITEZ: It is Exhibit 9.

8 CHAIRPERSON ANDERSON: Okay.

9 MS. PLEITEZ: Mr. Ian Reid provided me
10 with Exhibit 9. This is the document that he had
11 to provide to the Small Business -- to the
12 Department of Small and Local -- hold on one
13 second, Department of Small and Local Business
14 Development --

15 CHAIRPERSON ANDERSON: Okay.

16 MS. PLEITEZ: -- in order to receive
17 the grant for the soundproofing.

18 CHAIRPERSON ANDERSON: So, did -- I
19 mean, did they explain to you what is it that
20 they was trying to do? I don't know. That's why
21 I'm trying to get --

22 MS. PLEITEZ: So, he gave -- when he

1 provided me with the invoices, he also showed me
2 on the second -- first and second level where
3 they actually put the soundproofing, where they
4 installed the soundproofing, which is in Exhibit
5 3 and Exhibit 4.

6 CHAIRPERSON ANDERSON: Okay.

7 MS. PLEITEZ: That's where the
8 soundproofing was installed on the first and
9 second level of the abutting property wall.

10 CHAIRPERSON ANDERSON: Okay. All
11 right. Mr. Reid, all right, so, you are --

12 MR. REID: I know what the
13 soundproofing looks like. You can ask me if you
14 want.

15 CHAIRPERSON ANDERSON: I'm sorry --
16 no. I'm saying this are you asking her
17 questions. So, this is your opportunity to ask
18 the witness whatever questions you want to ask
19 regarding the testimony that she just gave.

20 MR. REID: I don't need to ask any
21 questions.

22 CHAIRPERSON ANDERSON: Sir, you've got

1 to prove your case. You had a question you
2 wanted to ask. So, she just -- you don't have no
3 questions you want to ask her?

4 MR. REID: I just -- it was about the
5 complaints, but I remember what she said though.

6 CHAIRPERSON ANDERSON: Do you want to
7 ask her a question?

8 MR. REID: Well, in what course of
9 time were those 11 complaints made?

10 MS. PLEITEZ: From September 2018 to
11 September 2019.

12 MR. REID: And the one that got
13 violated that one time, it wasn't for sound, but
14 for something else. What was it and what day was
15 that?

16 MS. PLEITEZ: According to your
17 investigative history, which is Exhibit 29, there
18 was a settlement agreement violation on January
19 26, 2019.

20 MR. REID: Okay.

21 MS. PLEITEZ: I'm not sure.

22 MR. REID: What was it for? You don't

1 know?

2 MS. PLEITEZ: No.

3 MR. REID: But it wasn't sound.

4 MS. PLEITEZ: I don't know.

5 MR. REID: Oh, you don't know. Okay.

6 CHAIRPERSON ANDERSON: Do you have any
7 other questions that you need to -- that you want
8 to ask?

9 MR. REID: No.

10 CHAIRPERSON ANDERSON: It's your
11 opportunity Mr. Schlom to ask questions of the
12 witness.

13 MR. SCHLOM: Thank you, Mr. Chairman.
14 Thank you, Investigator, is it Pleitez? Is
15 that --

16 MS. PLEITEZ: Yes. Pleitez.

17 MR. SCHLOM: Pleitez. Thank you. I
18 just want to make sure I pronounce that right.

19 MS. PLEITEZ: Thank you.

20 MR. SCHLOM: So, you testified
21 earlier, prior to the start of this protest
22 investigation, you had never been called to Po

1 Boy Jim's. Is that correct?

2 MS. PLEITEZ: Not for a noise
3 complaint.

4 MR. SCHLOM: How many times had you
5 been inside Po Boy Jim's prior to this protest
6 investigation?

7 MS. PLEITEZ: Countless.

8 MR. SCHLOM: Inside of the
9 establishment?

10 MS. PLEITEZ: I can't answer that
11 question. I'm not sure how many times I was
12 inside.

13 MR. SCHLOM: So, if it wasn't for
14 noise, what -- for what reason were you inside
15 their establishment these countless times prior
16 to this investigation?

17 MS. PLEITEZ: As my duty as an
18 investigator, I do regulatory inspections and
19 they give us -- we give regulatory inspections
20 for the establishments within the District of
21 Columbia, so if I entered the establishment, it
22 was probably to conduct a regulatory inspection.

1 MR. SCHLOM: All right. And you're
2 aware of this establishment's settlement
3 agreement, right?

4 MS. PLEITEZ: I am aware of it.

5 MR. SCHLOM: And you're aware that it
6 was approved by ABRA on July 19, 2017?

7 MS. PLEITEZ: Yes, I'm aware that they
8 do have a settlement agreement.

9 MR. SCHLOM: Now, on page three --
10 we'll get into the specific provisions of the
11 settlement agreement, on page three of your
12 report, you say that the establishment is in an
13 ARTS-2 zone --

14 MS. PLEITEZ: Correct.

15 MR. SCHLOM: -- is that right? And an
16 ARTS-2 zone is defined as a medium density
17 compact mixed-use development with an emphasis on
18 residential development. Did I -- is that
19 correct?

20 MS. PLEITEZ: Yes, that's what it
21 states.

22 MR. SCHLOM: Now, I want to talk a

1 little bit about the scope of your investigation.
2 On page two, roman numeral one, of your report,
3 you state that the protest issues are peace,
4 order, and quiet, adverse effect on real property
5 values, and residential parking needs, and
6 vehicular and pedestrian safety.

7 MS. PLEITEZ: Correct.

8 MR. SCHLOM: Did I read that
9 correctly? Now, I want to direct you to Exhibit
10 1 of your report which is my protest letter.

11 MS. PLEITEZ: Yes.

12 MR. SCHLOM: Can you read the bullet,
13 the fourth bullet, starting with the licensee's
14 record, please?

15 MS. PLEITEZ: The licensee's record of
16 compliance with the D.C. Official Code are
17 regulations promulgated under the D.C. Official
18 Code and any conditions placed on the license
19 during the period of licensure, including but not
20 limited to the terms of the establishment's
21 existing settlement agreement, dated June 21,
22 2017, and approved by the ABRA Board on July 19,

1 2017.

2 MR. SCHLOM: Thank you. Are you
3 familiar with Title 25 of the D.C. Code?

4 MS. PLEITEZ: I am familiar.

5 MR. SCHLOM: And are you aware that
6 D.C. Code 23-315 says the Board, in renewal
7 applications, shall consider the licensee's
8 record of compliance with this title and the
9 regulations promulgated under this title and any
10 conditions placed on the license during the
11 period of licensure, including the terms of the
12 settlement agreement?

13 Are you aware that it says that?

14 MS. PLEITEZ: I am now.

15 MR. SCHLOM: So, as a part of this
16 protest investigation, you didn't investigate
17 their record of compliance with the D.C. Code,
18 did you?

19 MS. PLEITEZ: Can you elaborate on
20 that question?

21 MR. SCHLOM: I'm asking you from your
22 report, roman numeral one, you say the protest

1 issues -- you list the protest issues, but you do
2 not list the licensee's record of compliance with
3 the D.C. Code, D.C. Regulations with the
4 settlement agreement.

5 I'm asking whether you investigated
6 the licensee's record of compliance with the D.C.
7 Code, D.C. Regulations, and its settlement
8 agreement as part of preparing your report.

9 MS. PLEITEZ: Well, as part of
10 preparing my report, I used the investigative
11 history which states and lists the cases that
12 have been written against Po Boy Jim's. Is that
13 what you're asking?

14 MR. SCHLOM: But other than that, you
15 didn't do any separate investigation into this
16 licensee's compliance with the settlement
17 agreement.

18 MS. PLEITEZ: In reference to what?

19 MR. SCHLOM: In reference to preparing
20 this report. I'm looking at the investigative
21 history --

22 MS. PLEITEZ: Okay.

1 MR. SCHLOM: -- when you were
2 investigating this establishment, when you were
3 charged with investigating this establishment,
4 other than reading that investigative history
5 that's Exhibit 29, did you investigate whether
6 this establishment was in compliance with its
7 settlement agreement?

8 MS. PLEITEZ: I'm not understanding
9 the question.

10 MR. SCHLOM: So, what -- did you read
11 the settlement agreement as part of your
12 investigation? You said earlier you were
13 familiar with it. Did you read it as part of
14 your investigation?

15 MS. PLEITEZ: I'm familiar that they
16 have a settlement agreement. I did not read the
17 settlement agreement.

18 MR. SCHLOM: So, you're not familiar
19 with its terms?

20 MS. PLEITEZ: Not at this moment, no.

21 MR. SCHLOM: Okay. So, directing your
22 attention to page eight of your report, roman

1 numeral four, you wrote that investigators found
2 no issues with peace, order, and quiet, and did
3 not hear, quote, excessive noise on their seven
4 monitoring visits. Is that correct?

5 MS. PLEITEZ: Yes.

6 MR. SCHLOM: And you also wrote that
7 they found, quote, no other ABRA violations,
8 correct?

9 MS. PLEITEZ: Correct.

10 MR. SCHLOM: Now, I'll come back to
11 excessive noise later, but first I want to know,
12 when you write, quote, other ABRA violations,
13 what does that mean?

14 MS. PLEITEZ: So, when an investigator
15 conducts a regulatory inspection, we check books
16 and records -- we check several different things
17 and according to these dates, we didn't find any
18 ABRA violations.

19 MR. SCHLOM: All right. We'll get
20 more into that later. So, I'm going to Exhibit
21 29 of your report, which we've just talked about,
22 that's the Po Boy Jim's 2 investigative

1 history --

2 MS. PLEITEZ: Yes.

3 MR. SCHLOM: -- which you did review
4 as part of preparing this report, correct?

5 MS. PLEITEZ: Correct.

6 MR. SCHLOM: So, I want to walk
7 through each of the cases listed on here and find
8 out what you know about them. So, the earliest
9 case listed is on August 28, 2018, correct?
10 That's number eight?

11 MS. PLEITEZ: Yes. To clarify, the
12 investigative history -- I was not the author of
13 any of these reports. So, I may not have
14 details.

15 MR. SCHLOM: Understood, but you do
16 enforce the ABC Code, so, you're familiar with
17 the ABC Code and writing violations under the ABC
18 Code, correct?

19 MS. PLEITEZ: Correct.

20 MR. SCHLOM: And you review these
21 types of investigative histories regularly as
22 part of your job?

1 MS. PLEITEZ: I do.

2 MR. SCHLOM: All right. So, this --
3 number eight, on August 28, 2018, they were cited
4 for failure to have an accessible settlement
5 agreement. Is that correct?

6 MS. PLEITEZ: Correct.

7 MR. SCHLOM: And when that happens,
8 that means that an ABRA investigator asks the
9 manager or owner of the establishment for the
10 settlement agreement and the owner or the manager
11 didn't provide it. Is that what that violation
12 means?

13 MS. PLEITEZ: Correct.

14 MR. SCHLOM: And for that violation
15 they received a warning, correct?

16 MS. PLEITEZ: Correct.

17 MR. SCHLOM: Okay.

18 MS. PLEITEZ: According to the
19 history.

20 MR. SCHLOM: Sure. So, the next case
21 on there, number seven, is from January 26, 2019,
22 correct?

1 MS. PLEITEZ: Correct.

2 MR. SCHLOM: And they were cited for
3 failure to follow the settlement agreement. Is
4 that correct?

5 MS. PLEITEZ: Correct.

6 MR. SCHLOM: And you said as part of
7 your investigation, you didn't look into what
8 provision of the settlement agreement they were
9 alleged to have violated?

10 MS. PLEITEZ: No.

11 MR. SCHLOM: Okay. And the status of
12 that case is that it was referred to the Office
13 of the Attorney General for a show of cause
14 hearing, correct?

15 MS. PLEITEZ: Correct.

16 MR. SCHLOM: And it's still with the
17 Office of the Attorney General today?

18 MS. PLEITEZ: Correct.

19 MR. SCHLOM: Okay. So, the next one,
20 number six, that was on March 21st -- oh, sorry.
21 The next one was actually -- it's actually number
22 five. The order is slightly off. Number five is

1 March 17, 2019, correct?

2 MS. PLEITEZ: Yes.

3 MR. SCHLOM: And that was a citation
4 for simple assault?

5 MR. REID: What?

6 MS. PLEITEZ: Yes.

7 MR. SCHLOM: And no further action was
8 taken on that citation, correct?

9 MS. PLEITEZ: On that case.

10 MR. SCHLOM: On that case, sorry.

11 MS. PLEITEZ: Yes. No.

12 MR. SCHLOM: I thank you for
13 correcting the nomenclature.

14 MR. REID: What is simple assault?

15 CHAIRPERSON ANDERSON: Mr. Reid, this
16 is his cross-examination and he's going by --
17 he's asking her questions on the report. That's
18 the report says there.

19 So, you need to pay attention to
20 what's being said, sir. After he's done, I can
21 have questions. So, he's making references to
22 your investigative history. So --

1 MR. REID: All right.

2 CHAIRPERSON ANDERSON: -- look at the
3 investigative history to see what it says. He's
4 just asking her for clarification. That's one of
5 the reasons why I said, did you have the
6 documents. Now you have the documents.

7 When he's asking questions, he's
8 referring her to specific pages and if you want
9 to keep up, you need to look at those pages and
10 at the end of his cross -- his examination of
11 her, depending what comes up, I might give you an
12 opportunity to ask for clarification, sir, if
13 that's required.

14 Go ahead, sir.

15 MR. SCHLOM: Thank you, Mr. Chairman.
16 So, the next case listed on there is from May 6,
17 2019, that number four, correct?

18 MS. PLEITEZ: Yes.

19 MR. SCHLOM: And that was a case for
20 failing to conspicuously post their license,
21 correct?

22 MS. PLEITEZ: Correct.

1 MR. SCHLOM: And they received a
2 warning for that, didn't they?

3 MS. PLEITEZ: Yes.

4 MR. SCHLOM: Okay. The next case
5 listed on there, which is number three, was from
6 August 1st, 2019, correct?

7 MS. PLEITEZ: Yeah.

8 MR. SCHLOM: And that was failing to
9 file a quarterly statement, wasn't it?

10 MS. PLEITEZ: Correct.

11 MR. SCHLOM: And they received a \$500
12 fine for that violation, didn't they?

13 MS. PLEITEZ: Yes.

14 MR. SCHLOM: Okay. The next case on
15 there, which is number two, was from August 13,
16 2019, correct?

17 MS. PLEITEZ: Correct.

18 MR. SCHLOM: And that was for another
19 time failing to conspicuously post their license,
20 correct?

21 MS. PLEITEZ: Correct.

22 MR. SCHLOM: And they received a \$500

1 fine for that violation, didn't they?

2 MS. PLEITEZ: Yes, they did.

3 MR. SCHLOM: And then there's --
4 number one is another case from August 13, 2019,
5 correct?

6 MS. PLEITEZ: Yes.

7 MR. SCHLOM: And that was violation
8 for no ABC manager on duty --

9 MS. PLEITEZ: Correct.

10 MR. SCHLOM: -- wasn't it? And they
11 received a \$500 fine for that citation --

12 MS. PLEITEZ: Yes.

13 MR. SCHLOM: -- didn't they? All
14 right. So, between March 21 of 2019 and August
15 13 of 2019 they received four \$500 fines,
16 correct?

17 MS. PLEITEZ: I'm sorry. Can you
18 repeat that?

19 MR. SCHLOM: So, between March 21 of
20 2019 --

21 MS. PLEITEZ: Okay.

22 MR. SCHLOM: -- and August 13 of

1 2019 --

2 MS. PLEITEZ: Yes.

3 MR. SCHLOM: -- Po Boy Jim's was
4 issued four \$500 fines, correct?

5 MS. PLEITEZ: Yes.

6 MR. SCHLOM: Thank you. All right.
7 So, going back to page eight of your report, I
8 want to talk about the seven monitoring visits
9 that ABRA investigators did as part of this
10 investigation.

11 ABRA -- you said that ABRA
12 investigators monitored the establishment seven
13 times between August 16 and September 17,
14 correct?

15 MS. PLEITEZ: Correct.

16 MR. SCHLOM: And which of these seven
17 visits did you personally conduct?

18 MS. PLEITEZ: I can't answer that
19 question truthful -- I don't remember.

20 MR. SCHLOM: You don't recall?

21 MS. PLEITEZ: I don't remember --

22 MR. SCHLOM: Okay.

1 MS. PLEITEZ: -- the specific days I
2 went.

3 MR. SCHLOM: All right. And when you
4 say investigators monitored, you write that in
5 your report, monitored Po Boy Jim's, what does
6 monitor mean?

7 MS. PLEITEZ: So we go in front of the
8 establishment and we walk the -- that strip to
9 see if there's any noise.

10 MR. SCHLOM: So, you're only outside?
11 You never go inside any buildings as part of
12 those monitoring visits. Is that right?

13 MS. PLEITEZ: Not for this protest.

14 MR. SCHLOM: Not for -- okay. So,
15 none -- on these seven visits, nobody went inside
16 any building as far as you're aware?

17 MS. PLEITEZ: I'm not sure because I
18 didn't visit all these times. I didn't visit the
19 establishment these seven times, so I don't know
20 what the other investigators did.

21 MR. SCHLOM: But didn't the
22 investigators report back to you for you to be

1 able to write this report?

2 MS. PLEITEZ: Yes, they did, and they
3 told me that there were no ABRA violations --

4 MR. SCHLOM: Okay. We'll get into --

5 MS. PLEITEZ: -- observed.

6 MR. SCHLOM: -- we'll get into that in
7 just a second. And when you do these monitoring
8 visits, are there checklists of things you would
9 have to look for or are you instructed to look
10 for specific items when you're conducting one of
11 these monitoring visits?

12 MS. PLEITEZ: Well, when it's in
13 reference to a protest, it's the protest issues.
14 So --

15 MR. SCHLOM: And --

16 MS. PLEITEZ: -- for mostly adverse
17 impact and peace, order, and quiet, in reference
18 to that specific establishment.

19 MR. SCHLOM: Got it. And again, you
20 did not -- strike that. ABRA investigators are
21 not instructed to evaluate each provision of the
22 settlement agreement every time they go to do a

1 monitoring check during a protest investigation,
2 are they?

3 MS. PLEITEZ: It depends --

4 MR. SCHLOM: But they weren't here.

5 MS. PLEITEZ: -- on the investigator.

6 I can't speak for the other -- are you talking
7 about the specific visits here?

8 MR. SCHLOM: I'm talking about the
9 seven visits listed here.

10 MS. PLEITEZ: Okay. Can you repeat
11 the question?

12 MR. SCHLOM: Sure. So, for these
13 seven visits --

14 MS. PLEITEZ: Okay.

15 MR. SCHLOM: -- were ABRA
16 investigators instructed to evaluate Po Boy Jim's
17 compliance with its settlement agreement?

18 MS. PLEITEZ: So, the requests to
19 monitor go through -- from -- our supervisors
20 give that and assign that to investigators. So,
21 I'm not sure exactly what was said in the emails
22 in reference to my turn.

1 For protests, we monitor -- we go --
2 so, for you it's peace, order, and quiet. We
3 make sure that the establishment noise isn't --
4 or we monitor what's happening on the date at
5 that time that we visit the establishment.

6 MR. SCHLOM: All right. And then it
7 says in the middle of the page, no ABRA
8 violations observed under the observation's
9 column.

10 MS. PLEITEZ: Correct.

11 MR. SCHLOM: When that says no ABRA
12 violations observed, when you wrote that, what
13 does that mean?

14 MS. PLEITEZ: That means there was no
15 ABRA violation observed on that specific date and
16 time.

17 MR. SCHLOM: And what are ABRA
18 violations? When you wrote ABRA violations, what
19 did you mean?

20 MS. PLEITEZ: There was no noise heard
21 from outside of the establishment. I mean,
22 there's a numerous amount of ABRA violations that

1 you can think of --

2 MR. SCHLOM: Sure. So, what were the
3 ones that they were looking for that they said
4 did not take place? Unless all of them. You
5 said no noise heard from the exterior of the
6 premises.

7 MS. PLEITEZ: Correct.

8 MR. SCHLOM: So, that's one.

9 MS. PLEITEZ: I can only reference the
10 -- my visits.

11 MR. SCHLOM: Right.

12 MS. PLEITEZ: I can't speak for the
13 other visits and I can't specifically tell you at
14 this moment, right now, which dates I attended.

15 MR. SCHLOM: We'll go through each of
16 the visits and maybe that'll refresh your
17 recollection.

18 MS. PLEITEZ: Well, I would have to go
19 through my notes in reference to which specific
20 days -- looking at the date and the times, I
21 couldn't tell you when I visited the
22 establishment.

1 MR. SCHLOM: All right.

2 MS. PLEITEZ: At this moment.

3 MR. SCHLOM: We'll see if you might
4 need to look at your notes later, but I'll move
5 on for now. And I have some questions about ABRA
6 enforcement procedure. To enforce a settlement
7 agreement violation, the investigator must
8 personally witness the violation. Is that
9 correct?

10 MS. PLEITEZ: Yes.

11 MR. SCHLOM: Okay. So, he or she, the
12 investigator, cannot rely solely on evidence
13 provided by third parties, can they?

14 MS. PLEITEZ: Correct.

15 MR. SCHLOM: Okay. And you talked
16 earlier about substantiating noise complaints.
17 What does it take to substantiate -- sorry,
18 strike that. What does it take to substantiate a
19 noise complaint under the statute?

20 MS. PLEITEZ: Okay. There's a
21 checklist, but a lot of the times, or most of the
22 time, if you call -- if the residents call the

1 ABRA hotline to file a noise complaint, and we're
2 allowed to enter the residence of the resident's
3 house, if we can hear the music without having to
4 open the windows, without having to stand and
5 listen through the window, and if we can have a
6 normal conversation and not hear the music, it
7 would not be substantiated.

8 MR. SCHLOM: Right. You used the
9 words, allowed to enter. Do you -- are you
10 required to ask each time you receive a noise
11 complaint to enter the establishment or does the
12 complainant need to affirmatively say, I would
13 like you to come and try to substantiate this
14 complaint?

15 MS. PLEITEZ: The hotline is managed
16 by the supervisors, so I personally don't receive
17 calls and I don't -- I'm not --

18 MR. SCHLOM: So, you don't know the
19 answer.

20 MS. PLEITEZ: I don't know the answer
21 to that question.

22 MR. SCHLOM: So, I want to go through

1 the seven monitoring sessions, and you can speak
2 -- I'm not asking you to speculate, but to the
3 best of your recollection and looking through the
4 notes that you have, if you have notes in front
5 of you --

6 MS. PLEITEZ: I don't.

7 MR. SCHLOM: You don't have your notes
8 in front of you? Did you look at them to prepare
9 for today's hearing?

10 MS. PLEITEZ: To the specific days
11 that I was there?

12 MR. SCHLOM: No. Did you look at the
13 notes to prepare for today's hearing?

14 MS. PLEITEZ: Not my notes in
15 reference to the dates that we visited -- that I
16 visited the establishment.

17 MR. SCHLOM: Okay. So, on Friday,
18 August 16, an investigator was at the
19 establishment for 20 minutes, from 11:30 p.m. to
20 11:50 p.m. Is that correct?

21 MS. PLEITEZ: Yes.

22 MR. SCHLOM: And during these

1 monitoring visits, do investigators identify
2 themselves to the establishment?

3 MS. PLEITEZ: Me, personally?

4 MR. SCHLOM: Yes, when you do your --

5 MS. PLEITEZ: I do not.

6 MR. SCHLOM: You do not. Are you
7 wearing an ABRA badge during these monitoring
8 visits?

9 MS. PLEITEZ: We're not required to
10 wear our badge over our necks unless we're
11 entering the establishment and we're identifying
12 ourselves, no.

13 MR. SCHLOM: When you conduct
14 monitoring visits, do you wear your badge visible
15 to the public?

16 MS. PLEITEZ: It depends on the
17 circumstance, sir. It's not something that I --

18 MR. SCHLOM: Well, sometimes you do.

19 MS. PLEITEZ: Sometimes I do,
20 sometimes I don't.

21 MR. SCHLOM: Okay. Do you recall
22 whether you conducted this August 16 visit?

1 MS. PLEITEZ: I can't -- I don't
2 recall any of these dates --

3 MR. SCHLOM: Okay.

4 MS. PLEITEZ: -- at this time.

5 MR. SCHLOM: All right. Let's move on
6 to the August 23 visit, the next one, Friday,
7 August 23, you mentioned just earlier when the
8 Board was asking you questions, that you
9 conducted -- you recall conducting this visit,
10 correct?

11 MS. PLEITEZ: I do recall conducting
12 this visit.

13 MR. SCHLOM: Okay. Did you recall
14 whether you identified yourself to the
15 establishment during this visit?

16 MS. PLEITEZ: I did not identify
17 myself to the establishment.

18 MR. SCHLOM: Do you --

19 MS. PLEITEZ: I recall this visit
20 because of the time.

21 MR. SCHLOM: Okay.

22 MS. PLEITEZ: I remember the time.

1 MR. SCHLOM: Okay. And on that visit,
2 did you ever go inside -- did you go inside Po
3 Boy Jim?

4 MS. PLEITEZ: No, I did not.

5 MR. SCHLOM: Did you go inside any
6 other building during that visit?

7 MS. PLEITEZ: I don't remember.

8 MR. SCHLOM: Do you recall going into
9 1932 9th Street during that visit?

10 MS. PLEITEZ: I'm sorry, what's that?

11 MR. SCHLOM: Do you recall going into
12 1932 9th Street, the building abutting Po Boy
13 Jim, during that visit?

14 MS. PLEITEZ: Is that a building that
15 you can go into?

16 MR. SCHLOM: That's the building that
17 I live in. Did you go inside that building?

18 MS. PLEITEZ: No.

19 MR. SCHLOM: Okay. So, you don't know
20 whether noise could be heard inside 1932 9th
21 Street during that visit, do you?

22 MS. PLEITEZ: That's not what I was

1 monitoring. What I was monitoring on that date
2 was if I could hear the noise from outside. The
3 only way we go into that building, and I think
4 that your building, you have to have a keycard to
5 go in, so, I did not enter your residence on that
6 date.

7 MR. SCHLOM: Got it. Thank you.

8 MS. PLEITEZ: However, we do -- we
9 listen from outside into the alley if we are
10 monitoring.

11 MR. SCHLOM: Understood.

12 MS. PLEITEZ: Okay.

13 MR. SCHLOM: So, let's move on to the
14 next visit, that's Saturday, October 25 an
15 investigator was there for one hour and 17
16 minutes. Do you recall whether you conducted
17 that visit?

18 MS. PLEITEZ: August 25 or October.

19 MR. SCHLOM: Yes, the third visit.
20 August 25, I apologize if I said October.
21 Saturday, August 25.

22 MS. PLEITEZ: I do not recall.

1 MR. SCHLOM: You don't recall whether
2 you did it?

3 MS. PLEITEZ: No.

4 MR. SCHLOM: Okay. Do you know
5 whether an investigator entered 1932 9th Street
6 during that visit?

7 MS. PLEITEZ: No, sir.

8 MR. SCHLOM: Okay. So, let's move
9 onto the next visit, September 4, that's a
10 Wednesday. An investigator was there for 35
11 minutes. Now, this is the visit that you made to
12 the establishment to interview Mr. Reid, correct?

13 MS. PLEITEZ: Correct.

14 MR. SCHLOM: Okay. So, this visit was
15 at 3:05 p.m. on a Wednesday --

16 MS. PLEITEZ: Yes.

17 MR. SCHLOM: -- correct? And did you
18 tell Mr. Reid in advance that you were coming?

19 MS. PLEITEZ: Yes, I did.

20 MR. SCHLOM: Okay. So, he had notice
21 that you were coming?

22 MS. PLEITEZ: Yes. The establishment

1 is closed at that time.

2 MR. SCHLOM: Sure. So, he met you
3 there during closed -- during the hours that it
4 was closed?

5 MS. PLEITEZ: Yes.

6 MR. SCHLOM: Okay. So, I want to
7 direct you to Exhibit 2, which is your regulatory
8 inspection report that you prepared of this
9 visit, this is Exhibit 2 of your report.

10 MS. PLEITEZ: Okay.

11 MR. SCHLOM: And you regularly fill
12 out these reports for these types of visits?

13 MS. PLEITEZ: Yes.

14 MR. SCHLOM: Okay.

15 MS. PLEITEZ: This is a regulatory
16 inspection.

17 MR. SCHLOM: Okay. And were these
18 regulatory inspections filled out by
19 investigators at all seven of the monitoring
20 visits?

21 MS. PLEITEZ: No. This is the
22 regulatory inspection I conducted when I

1 interviewed Mr. Reid.

2 MR. SCHLOM: Now, is compliance with
3 the settlement agreement one of the criteria for
4 a regulatory inspection?

5 MS. PLEITEZ: No. So, on the top
6 right-hand side of this document, I would note if
7 there is a settlement agreement present.

8 MR. SCHLOM: So, you don't look at
9 whether they're complying with any of the
10 provisions of the agreement when you're
11 conducting these regulatory inspections?

12 MS. PLEITEZ: For this specific
13 regulatory inspection?

14 MR. SCHLOM: Correct.

15 MS. PLEITEZ: I was visiting the
16 establishment to interview Mr. Reid in reference
17 to this protest.

18 MR. SCHLOM: Got it. So, of the
19 issues, you listed a number of other issues in
20 here, you did not look at their compliance with
21 the settlement agreement on this visit?

22 MS. PLEITEZ: The establishment was

1 closed. So, no. I was there strictly to
2 interview him in reference to this protest.

3 MR. SCHLOM: Is the settlement
4 agreement only valid when the establishment is
5 open?

6 MS. PLEITEZ: No, but on this visit,
7 I only visited the establishment to interview him
8 in reference to this protest.

9 MR. SCHLOM: Okay. And as part of
10 that visit, you did not go inside 1932 9th
11 Street, did you?

12 MS. PLEITEZ: Yes, I did.

13 MR. SCHLOM: 1932 9th Street?

14 MS. PLEITEZ: Oh, no I didn't.

15 MR. SCHLOM: Okay. So, as part of
16 that visit, did you investigate whether the
17 establishment was power washing outdoor areas
18 where trash was stored twice per month?

19 MS. PLEITEZ: On that visit, I only
20 entered the establish to one, conduct a
21 regulatory inspection and, two, to interview Mr.
22 Reid in reference to this protest which is on the

1 second and third page of this report. That's
2 what I did that day. That day, I interviewed
3 him.

4 MR. SCHLOM: Okay. So, we can agree
5 you didn't look at any of the provisions of the
6 settlement report and whether they were complying
7 with them during this visit. We can agree on
8 that?

9 MS. PLEITEZ: I'm not understanding
10 the question.

11 MR. SCHLOM: You didn't conduct any
12 inspection to see whether the establishment was
13 complying with the settlement agreement when you
14 visited at 3:05 p.m. on September 4th?

15 MS. PLEITEZ: I conducted a regulatory
16 inspection, I checked their license, I checked
17 their certificate of occupancy, we talked about
18 trash, we talked about his hours, I reviewed his
19 books and records.

20 MR. SCHLOM: So, you said you talked
21 about trash. Did you investigate whether -- how
22 often they had trash pickup?

1 MS. PLEITEZ: Yes. On that document,
2 it says trash, name of company is KMG, and the
3 days of removal are four times a week.

4 MR. SCHLOM: Can you direct me to
5 where --

6 MS. PLEITEZ: It's in the middle.
7 Right above the hours.

8 MR. SCHLOM: Oh, I see. KMG four
9 times per week. All right. Did you look into
10 how often they had grease removal?

11 MS. PLEITEZ: No. That's not part of
12 our regulatory inspection document.

13 MR. SCHLOM: And did you look into
14 whether they had vermin and pest control?

15 MS. PLEITEZ: Are you asking if that's
16 part of this regulatory inspection?

17 MR. SCHLOM: I'm asking whether you
18 did that on this visit as part of --

19 MS. PLEITEZ: I did not.

20 MR. SCHLOM: -- the regulatory
21 inspection. All right. Directing your attention
22 to Exhibits 7 and 8 of your protest report, these

1 are photographs of the alleyway behind the
2 establishment. You took these photographs
3 yourself, correct?

4 MS. PLEITEZ: Correct.

5 MR. SCHLOM: Okay. And when you were
6 in the back, you found -- these pictures show the
7 trash bins closed, don't they?

8 MS. PLEITEZ: Yes.

9 MR. SCHLOM: Okay. But you don't know
10 whether the bins were open before you arrived, do
11 you?

12 MS. PLEITEZ: I can only speak on the
13 pictures and the time that I was there.

14 MR. SCHLOM: So, you don't know.

15 MS. PLEITEZ: I don't.

16 MR. SCHLOM: Okay. And you don't know
17 whether they were open after you arrived, do you?

18 MS. PLEITEZ: I don't.

19 MR. SCHLOM: Okay. And again, the
20 establishment had notice you were coming,
21 correct?

22 MS. PLEITEZ: Yes.

1 MR. SCHLOM: Okay.

2 MS. PLEITEZ: I called him that
3 morning.

4 MR. SCHLOM: All right. And going
5 back to the enforcement issue, if a settlement
6 agreement has a provision that trash bins must be
7 kept closed, you could not write a citation for a
8 violation of that provision unless you,
9 personally, see the bins open, correct?

10 MS. PLEITEZ: Correct.

11 MR. SCHLOM: Got it. Now, the
12 establishment settlement agreement -- are you
13 aware that the establishment settlement agreement
14 requires it to keep the areas around the trash
15 cans free of litter, bottles, chewing gum, trash,
16 and other debris?

17 MS. PLEITEZ: At this --

18 MR. SCHLOM: Are you aware of that?

19 MS. PLEITEZ: At this moment, I can't
20 recall what the settlement agreement states.

21 MR. SCHLOM: Okay.

22 MS. PLEITEZ: Is that what it states?

1 MR. SCHLOM: I'm asking if you know.
2 If you don't know --

3 MS. PLEITEZ: Oh, I don't.

4 MR. SCHLOM: -- you don't know.

5 MS. PLEITEZ: No, I don't.

6 MR. SCHLOM: So, you didn't look at
7 whether they were complying with that provision
8 when you were in this back alley, did you?

9 MS. PLEITEZ: On that date --

10 MR. SCHLOM: Correct.

11 MS. PLEITEZ: -- I visited the
12 establishment to conduct a regulatory inspection
13 and to interview him in reference to this
14 protest.

15 MR. SCHLOM: So, that's a no to my
16 question. You did not look at whether they were
17 complying with that provision of the settlement
18 agreement when you were in the back alley on that
19 day?

20 MS. PLEITEZ: No.

21 MR. SCHLOM: Okay. And you didn't
22 issue a citation for a settlement agreement

1 violation during that visit, did you?

2 MS. PLEITEZ: No.

3 MR. SCHLOM: Okay. And in your
4 experience as an ABRA investigator, I'm during
5 you to Exhibit 8 of your report. The trash bin
6 in the middle of the photo, that belongs to the
7 establishment, right? The large trash bin in the
8 middle of the photo.

9 MS. PLEITEZ: The one directly behind
10 the building?

11 MR. SCHLOM: No. There's two behind
12 the building, one is face on and then one is kind
13 of on a profile. The one right next to the
14 fence.

15 MS. PLEITEZ: Okay.

16 MR. SCHLOM: Do you see which one I'm
17 talking about?

18 MS. PLEITEZ: Yes.

19 MR. SCHLOM: That belongs to the
20 establishment, to Po Boy Jim, right?

21 MS. PLEITEZ: I'm not sure.

22 MR. SCHLOM: You didn't investigate

1 that as part of your report?

2 MS. PLEITEZ: I was taking pictures of
3 the alley at that moment.

4 MR. SCHLOM: Okay. All right. I will
5 move on.

6 MS. PLEITEZ: But --

7 MR. SCHLOM: Oh, sorry.

8 MS. PLEITEZ: I was going to say, to
9 my recollection, I'm not sure if that's a trash
10 can or the grease because the grease was -- it's
11 on that side as well.

12 MR. SCHLOM: The grease is on the
13 other side, but I'll move on.

14 MS. PLEITEZ: Oh, okay.

15 MR. SCHLOM: I'll move on. On Sunday,
16 September 8, I'm directing you back to page eight
17 of your report, the next visit, the next
18 monitoring visit was Sunday, September 8th, the
19 investigator was there for 56 minutes, correct?

20 MS. PLEITEZ: Correct.

21 MR. SCHLOM: Do you recall whether you
22 conducted that visit?

1 MS. PLEITEZ: No.

2 MR. SCHLOM: Is that a no you don't
3 recall or a no you didn't conduct it?

4 MS. PLEITEZ: No, I don't recall.

5 MR. SCHLOM: You don't recall. Okay.

6 And on Thursday, September 12, an investigator
7 was at the establishment for 15 minutes, correct?

8 MS. PLEITEZ: Correct.

9 MR. SCHLOM: And do you recall whether
10 you conducted that visit?

11 MS. PLEITEZ: Give me one second,
12 please. No.

13 MR. SCHLOM: That's a no you don't
14 recall or no you did not conduct it?

15 MS. PLEITEZ: No, I don't recall.

16 MR. SCHLOM: You don't recall. All
17 right. And then the last one is September 17,
18 2019, an investigator visited the establishment
19 for one hour. Now, you conducted this visit,
20 right?

21 MS. PLEITEZ: Correct.

22 MR. SCHLOM: And this was the visit

1 referenced on page three of your report when you
2 went to go take photos of the inside of the
3 establishment.

4 MS. PLEITEZ: Correct.

5 MR. SCHLOM: Correct? And Mr. Reid
6 had notice you were coming that day, didn't he?

7 MS. PLEITEZ: No. I went to take --

8 MR. SCHLOM: So, you just showed up at
9 the front door?

10 MS. PLEITEZ: Yes, I went to take
11 pictures. They were closed, actually. I had to
12 wait.

13 MR. SCHLOM: Sure. And did another
14 ABRA investigator accompany you on that visit or
15 were you alone?

16 MS. PLEITEZ: It was -- I was by
17 myself.

18 MR. SCHLOM: Okay. And then on page
19 three of your report, you said you spoke to Mr.
20 Reid during that visit, correct?

21 MS. PLEITEZ: Correct.

22 MR. SCHLOM: Now, you didn't go inside

1 1932 9th Street NW, the abutting building, during
2 that visit, did you?

3 MS. PLEITEZ: No.

4 MR. SCHLOM: Okay. So, I want to
5 direct your attention to Exhibit 20 of your
6 report. You took this photograph, correct?

7 MS. PLEITEZ: Yes.

8 MR. SCHLOM: And this is the bar on
9 the second floor of Po Boy Jim's?

10 MS. PLEITEZ: Yes.

11 MR. SCHLOM: Okay. Now, in the middle
12 of the photograph, kind of below, there's, like,
13 a green box, right above that, there's a speaker
14 mounted to that wall, isn't there?

15 MS. PLEITEZ: Unfortunately, I can't
16 see that in my exhibit. It's very dark.

17 MR. SCHLOM: Okay. I'll move on. Are
18 you aware that this establishment, as part of the
19 ABRA order approving a settlement agreement, was
20 required to submit a security plan within 30 days
21 of the order?

22 MS. PLEITEZ: Was I aware of that

1 right now?

2 MR. SCHLOM: Are you aware of that
3 now?

4 MS. PLEITEZ: No.

5 MR. SCHLOM: Okay. And are you aware
6 that they were required to install security
7 cameras within 30 days of the order? Are you
8 aware of that now?

9 MS. PLEITEZ: Now?

10 MR. SCHLOM: Yes.

11 MS. PLEITEZ: No, I wasn't aware.

12 MR. SCHLOM: So, as part of your
13 investigation, you didn't look into whether the
14 establishment had a security camera, did you?

15 MS. PLEITEZ: I did not. Not for this
16 protest.

17 MR. SCHLOM: And as part of this
18 investigation, did you examine whether the
19 establishment had security cameras on the
20 exterior of the building?

21 MS. PLEITEZ: Am I aware that they do
22 or did --

1 MR. SCHLOM: I'm asking, as part of
2 your investigation, did you look at that?

3 MS. PLEITEZ: No.

4 MR. SCHLOM: Okay. So, I want to talk
5 about trash now. Are you aware that the
6 establishment settlement agreement has --
7 requires the establishment to pick up trash a
8 certain number of days?

9 MS. PLEITEZ: Can you repeat that
10 question?

11 MR. SCHLOM: Sure. So, in your
12 regulatory --

13 MS. PLEITEZ: Inspection?

14 MR. SCHLOM: -- regulatory inspection.
15 Thank you. You noted that the establishment has
16 trash pickup four days a week, correct?

17 MS. PLEITEZ: Correct.

18 MR. SCHLOM: Okay. And how would an
19 investigator determine, without conducting a
20 regulatory inspection, whether an establishment
21 was in compliance with the requirement to have
22 trash picked up a certain number of days a week?

1 MS. PLEITEZ: Can you repeat that
2 question?

3 MR. SCHLOM: Sure. So, if I file a
4 complaint with ABRA and say that I don't think
5 the establishment is picking up trash the
6 required number of times, how do you investigate
7 that?

8 MS. PLEITEZ: We would go to the
9 establishment and see if -- so, a lot of times,
10 when there is complaints about trash, the
11 investigator that's assigned to that specific
12 trash complaint will visit the establishment
13 throughout a certain number of times and monitor
14 the trash.

15 MR. SCHLOM: And how would you, as an
16 ABRA investigator, determine purely through the
17 monitoring whether or not the establishment was
18 indeed having their trash picked up a certain
19 number of days?

20 MS. PLEITEZ: I'm not understanding
21 the question.

22 MR. SCHLOM: How would you know

1 whether they were complying with that provision
2 without looking at the contract itself?

3 MS. PLEITEZ: Which contract?

4 MR. SCHLOM: The trash collection
5 contract?

6 MS. PLEITEZ: I don't understand.

7 MR. SCHLOM: How would you know how
8 many days a week an establishment is having trash
9 picked up without looking at their trash pickup
10 contract?

11 MS. PLEITEZ: We would ask the
12 establishment.

13 MR. SCHLOM: So, if you receive a
14 complaint about trash, is it the normal course to
15 ask the establishment for a copy of the contract?

16 MS. PLEITEZ: We'd speak to the
17 establishment in reference to how many times the
18 trash is picked up.

19 MR. SCHLOM: And when you say speak to
20 the establishment, you mean ask the establishment
21 how many times his trash is --

22 MS. PLEITEZ: Yeah, the owner or the

1 ABC manager.

2 MR. SCHLOM: So, you don't necessarily
3 look at the contract, do you?

4 MS. PLEITEZ: Specific to trash?

5 MR. SCHLOM: Yes.

6 MS. PLEITEZ: In reference to this
7 establishment, in reference to this protest --

8 MR. SCHLOM: I'm asking about --

9 MS. PLEITEZ: -- or are you saying in
10 general?

11 MR. SCHLOM: I'm asking about you're
12 experience as an ABRA investigator over three and
13 a half years.

14 MS. PLEITEZ: I would ask for the
15 contract and if it's a specific trash issue that
16 I'm assigned, I specifically ask the
17 establishment, ABC manager or owner how many
18 times the trash is picked up.

19 A lot of the times, the contract --
20 there aren't a contract, it's an invoice that
21 they receive from the trash company that states
22 an amount and how many days and sometimes it's

1 not on there.

2 MR. SCHLOM: Sure. I'm -- what I'm
3 trying to get at is, do you take the owner's word
4 for it or do you look at the invoice?

5 MS. PLEITEZ: We usually take the
6 owner's word for it.

7 MR. SCHLOM: Okay.

8 MS. PLEITEZ: And if the invoice is
9 available, and accessible, and they have a
10 specific date on there, then we also take that
11 into consideration.

12 MR. SCHLOM: Okay. Are you aware that
13 this establishment settlement agreement requires
14 it to power wash the area around their trash cans
15 twice per month?

16 MS. PLEITEZ: No, sir.

17 MR. SCHLOM: So, you did not
18 investigate that as part of preparing this
19 report, did you?

20 MS. PLEITEZ: In reference to their
21 settlement agreement?

22 MR. SCHLOM: Correct.

1 MS. PLEITEZ: Did I look at their
2 settlement agreement?

3 MR. SCHLOM: Did you investigate
4 whether or not they were power washing the areas
5 around their trash cans twice per month?

6 MS. PLEITEZ: No.

7 MR. SCHLOM: Okay. So, you don't know
8 whether they're doing that are you?

9 MS. PLEITEZ: I do not.

10 MR. SCHLOM: Okay. So, I finally want
11 to turn to noise. So, I want to discuss the
12 noise complaint law that you referenced on page
13 nine of your protest report.

14 MS. PLEITEZ: Okay.

15 MR. SCHLOM: I know you didn't include
16 the noise complaint log, but you do reference it.
17 Do you know whether this -- whether the 11
18 complaints listed is indeed an exhaustive list of
19 all noise complaints received about Po Boy Jim
20 between September 20 of '18 and September of '19?

21 MS. PLEITEZ: The list that was
22 provided to me by the supervisor that takes --

1 that keeps the record for the noise violations,
2 that's what he provided.

3 MR. SCHLOM: Sure. And this log only
4 includes complaints related to noise, correct?

5 MS. PLEITEZ: Correct.

6 MR. SCHLOM: Okay. Now, I want to
7 direct to you -- you mentioned earlier, I guess
8 you don't have it in front of you -- Mr.
9 Chairman, I have copies of this which I'm happy
10 to provide the witness, but I don't --

11 CHAIRPERSON ANDERSON: What is that?

12 MR. SCHLOM: This is the noise
13 complaint log that she references in her --

14 CHAIRPERSON ANDERSON: Right.

15 MR. SCHLOM: -- report, but did not
16 attach --

17 CHAIRPERSON ANDERSON: Okay.

18 MR. SCHLOM: -- to the report.

19 CHAIRPERSON ANDERSON: So, are --

20 MR. SCHLOM: I'm happy to enter it as
21 one of exhibits if that's a -- if that's the
22 only way to receive.

1 CHAIRPERSON ANDERSON: Was that
2 document disclosed?

3 MR. SCHLOM: Yes, it was.

4 (Simultaneous speaking.)

5 CHAIRPERSON ANDERSON: I don't know
6 because I don't have --

7 MR. SCHLOM: Sure. I have plenty of
8 copies. I'm happy to --

9 CHAIRPERSON ANDERSON: No. I'm saying
10 -- the reason why I -- because I have not -- hold
11 on. You can go ahead. I mean, if you have an
12 extra copy, I can look at it, but --

13 MR. SCHLOM: I have ten copies.

14 CHAIRPERSON ANDERSON: All right. So,
15 give a copy to him, please.

16 MR. SCHLOM: Of course. So, I'm happy
17 to mark this as Protestant's Exhibit 1.

18 (Whereupon, the above-referred to
19 document was marked as Protestant's
20 Exhibit 1 for identification.)

21 MR. SCHLOM: Did you look at this --
22 do you recognize this document?

1 MS. PLEITEZ: Yes.

2 MR. SCHLOM: Okay. And did you --
3 this is the noise complaint log that you looked
4 at as part of your investigation, correct?

5 MS. PLEITEZ: Yes.

6 CHAIRPERSON ANDERSON: Let me ask --
7 I just want to ask -- I'm sorry to interrupt.

8 MR. SCHLOM: Of course.

9 CHAIRPERSON ANDERSON: You're the only
10 witness who's going to testify, right?

11 MR. SCHLOM: Correct.

12 CHAIRPERSON ANDERSON: And
13 approximately how long do you believe that it's
14 going to take for you to present your case?

15 MR. SCHLOM: Sure. So, I was
16 anticipating -- I have a very short cross-
17 examination of Mr. Reid. Again, I wasn't -- I
18 didn't know who the witnesses would be because I
19 didn't receive the form.

20 CHAIRPERSON ANDERSON: Right.

21 MR. SCHLOM: So, the vast majority of
22 my time was going to be spent on the investigator

1 and on my --

2 CHAIRPERSON ANDERSON: No, that's
3 fine.

4 MR. SCHLOM: I'm fully prepared for
5 that.

6 CHAIRPERSON ANDERSON: As I remember,
7 you have 90 minutes, so.

8 MR. SCHLOM: Correct. And you have
9 spent a lot of time cross-examining.

10 MR. SCHLOM: Yes.

11 CHAIRPERSON ANDERSON: So, I don't
12 want to get to the point where you haven't
13 presented your cases yet and then -- all right.
14 Go ahead.

15 MR. SCHLOM: Sure. I'll move quickly,
16 but --

17 CHAIRPERSON ANDERSON: No, I am just
18 pointing it out to you.

19 MR. SCHLOM: I appreciate that. Thank
20 you.

21 So, I want to direct your attention to
22 the March 21st complaint listed on there. This

1 is the one that you referenced earlier in which
2 the establishment received -- of where the
3 complaint substantiated.

4 MS. PLEITEZ: So, there was a noise
5 complaint on March 21st, 2019, and as a result of
6 that noise complaint, there was a settlement
7 agreement violation.

8 MR. SCHLOM: So, you're saying that --
9 when it says settlement agreement violation
10 there, that does not mean that it was the noise
11 provisions of the settlement agreement?

12 MS. PLEITEZ: It could have been.

13 MR. SCHLOM: But you don't know?

14 MS. PLEITEZ: But I don't know.

15 MR. SCHLOM: Okay. That's all I
16 wanted to get at. Now, again, I want to direct
17 your -- are you aware of the noise provisions in
18 the establishment settlement agreement?

19 MS. PLEITEZ: I have not committed
20 that to memory.

21 MR. SCHLOM: Okay. Would it help if
22 I refreshed your recollection?

1 MS. PLEITEZ: With the settlement
2 agreement?

3 MR. SCHLOM: Yes.

4 MS. PLEITEZ: Sure.

5 MR. SCHLOM: Mr. Chairman?

6 CHAIRPERSON ANDERSON: Yes.

7 MR. SCHLOM: This is the copy that I'm
8 showing to the witness, but if you would like I
9 can show one to the other side as well. I'm
10 happy to give you a copy if you --

11 CHAIRPERSON ANDERSON: If you're going
12 to make reference to it, then -- and it's
13 disclosed?

14 MR. SCHLOM: Yes.

15 CHAIRPERSON ANDERSON: All right. All
16 right. I'm trying to -- because there was a lot
17 of copies, to be green, the Board did not print
18 the copies. So, we have it electronically, so.

19 MR. SCHLOM: Of course, of course,
20 absolutely.

21 CHAIRPERSON ANDERSON: We're trying
22 to --

1 MR. SCHLOM: I'm happy to mark this --
2 well, actually, no, this is already in evidence
3 you said, so it didn't need to be --

4 CHAIRPERSON ANDERSON: It is. Right,
5 so --

6 MR. SCHLOM: It doesn't need to be
7 marked. All right.

8 So, I'm going to direct your attention
9 -- do you recognize this document as the
10 establishment's -- as the order approving the
11 establishment settlement agreement and the
12 settlement agreement itself, correct?

13 MS. PLEITEZ: Yes.

14 MR. SCHLOM: And did you look at this
15 document as part of your investigate -- your
16 protest investigation?

17 MS. PLEITEZ: I did not.

18 MR. SCHLOM: You did not. Okay. Then
19 I will move on. Let's talk about soundproofing.

20 MS. PLEITEZ: Okay.

21 MR. SCHLOM: You determined as part of
22 your investigation that Po Boy Jim installed

1 soundproofing in July 2019, correct?

2 MS. PLEITEZ: Yes.

3 MR. SCHLOM: Okay. Now, I want to go
4 to Exhibit 9 of your report, that the Chairman
5 already discussed with you. You, in your report,
6 described that as an invoice from Karma Home
7 Designs, LLC which is the company that installed
8 the soundproofing, correct?

9 MS. PLEITEZ: Correct.

10 MR. SCHLOM: Okay. But this isn't an
11 invoice, is it?

12 MS. PLEITEZ: This is -- this was
13 given to me as the invoice.

14 MR. SCHLOM: I'll ask the question --
15 but this is not an invoice, is it? It says
16 estimate across the top, does it not?

17 MS. PLEITEZ: It does say estimate
18 across the top.

19 MR. SCHLOM: And did you see that when
20 you were preparing this report?

21 MS. PLEITEZ: I did see that.

22 MR. SCHLOM: Okay. And the estimate

1 is dated March 26, 2019, correct?

2 MS. PLEITEZ: Correct.

3 MR. SCHLOM: Okay. All right. Thank
4 you. Now, this is the only document that Mr.
5 Reid gave to you, correct?

6 MS. PLEITEZ: Yes.

7 MR. SCHLOM: Okay. So, you don't
8 know whether any of these line items listed here
9 were actually installed, do you?

10 MS. PLEITEZ: Personally, no I do not.

11 MR. SCHLOM: Okay. I want to direct
12 your attention to Exhibit 3 of your report. You
13 titled this exhibit, Soundproofing First Floor.

14 MS. PLEITEZ: Yes.

15 MR. SCHLOM: Was Exhibit 3 a
16 photograph you took?

17 MS. PLEITEZ: Yes.

18 MR. SCHLOM: Now, you describe this as
19 soundproofing. How do you know it's
20 soundproofing?

21 MS. PLEITEZ: That's what Mr. Reid
22 stated.

1 MR. SCHLOM: So, you didn't do any
2 investigation into whether this is actually
3 soundproofing other than Mr. Reid's statement?

4 MS. PLEITEZ: Hold on a second. I'm
5 not qualified to answer that question.

6 MR. SCHLOM: But you called it
7 soundproofing in your report.

8 MS. PLEITEZ: Because that's what Mr.
9 Reid stated.

10 MR. SCHLOM: Got it. Okay. On
11 Exhibit 4 of your report, you call that, Photo of
12 Soundproofing Second Floor. You took this
13 photograph as well, correct?

14 MS. PLEITEZ: Correct.

15 MR. SCHLOM: And the same question,
16 you call this soundproofing based purely on the
17 statement of Mr. Reid?

18 MS. PLEITEZ: Correct.

19 MR. SCHLOM: You don't know when this
20 was installed, do you?

21 MS. PLEITEZ: I do not.

22 MR. SCHLOM: Okay. And you don't know

1 whether this, what you're looking at here is
2 effective in any way in reducing noise?

3 MS. PLEITEZ: According to Mr. Reid,
4 it was installed in July of 2019.

5 MR. SCHLOM: Okay. And did you -- you
6 didn't contact Karma Home Designs as part of your
7 investigation?

8 MS. PLEITEZ: I did not.

9 MR. SCHLOM: Okay. So, I just want to
10 finally turn to noise. Now, I just want to -- on
11 page eight of your report, I want to go back to
12 the beginning where you used the term, excessive
13 noise. Page eight. That in none of the visits
14 did any of the investigators hear excessive
15 noise.

16 Is there a standard definition from
17 ABRA of what excessive noise is?

18 MS. PLEITEZ: If we can hear noise
19 outside of the establishment -- standing in front
20 of the establishment.

21 MR. SCHLOM: So, if you can hear any
22 noise from the establishment standing on the

1 street, that is defined as excessive?

2 MS. PLEITEZ: In front of the
3 establishment, yes.

4 MR. SCHLOM: Correct. Okay. So, it's
5 not whether you can hear noise in another
6 building it's only whether you can hear it in
7 front of the establishment standing on the
8 street?

9 MS. PLEITEZ: In reference to -- I'm
10 sorry. You said page eight, right?

11 MR. SCHLOM: Correct. You said that
12 no -- at no time did ABRA investigators hear
13 excessive noise. I want to understand what a
14 definition of excessive noise is and what does
15 that mean?

16 MS. PLEITEZ: Yes.

17 MR. SCHLOM: Okay. So --

18 MS. PLEITEZ: Outside of the
19 establishment.

20 MR. SCHLOM: So, it did not include
21 whether one can hear noise inside of any other
22 building?

1 MS. PLEITEZ: No.

2 MR. SCHLOM: Okay. Now, going back to
3 the settlement agreement in front of you, you are
4 aware that it requires -- section three says
5 that, sound, noise or music emanating from the
6 establishment shall not be heard beyond the
7 property boundary of the establishment.

8 MS. PLEITEZ: Correct.

9 MR. SCHLOM: Correct? Now, that
10 doesn't use the term excessive noise, does it?

11 MS. PLEITEZ: No, it doesn't.

12 MR. SCHLOM: Okay. So, as part of
13 your investigation, you never went inside 1932
14 9th Street, the abutting property, did you?

15 MS. PLEITEZ: I'm not allowed to enter
16 a residence unless the resident wants us to enter
17 the house.

18 MR. SCHLOM: For purposes of this
19 investigative report, did you ever ask to enter
20 1932 9th Street?

21 MS. PLEITEZ: No, I did not.

22 MR. SCHLOM: So, you did not enter

1 1932 9th Street at any time for purposes of this
2 report?

3 MS. PLEITEZ: I did not.

4 MR. SCHLOM: Okay. Nothing further of
5 this witness. Thank you.

6 CHAIRPERSON ANDERSON: Thank you. Any
7 questions for the witness?

8 MEMBER SHORT: Yes.

9 CHAIRPERSON ANDERSON: Yes, Mr. Short.

10 MEMBER SHORT: Again, good afternoon,
11 investigator.

12 MS. PLEITEZ: Hello.

13 MEMBER SHORT: Thank you for an
14 excellent report and I do see where you put in
15 your report the estimate should have been
16 soundproofing and ceilings and walls and paint, I
17 see where the contract was quite extensive --

18 MS. PLEITEZ: Right.

19 MEMBER SHORT: -- but you're not an
20 expert at that, so --

21 MS. PLEITEZ: I'm not.

22 MEMBER SHORT: -- you look at the

1 contract as best you can and then as an
2 investigator you take the ABRA obligations.

3 MS. PLEITEZ: Yes.

4 MEMBER SHORT: Again, I just want to
5 get that on the record. Looking at these
6 pictures, I'll just simply say this, and I'm an
7 expert in some of this, so you wouldn't see what
8 I see, but the bottom line is what I'm going to
9 do is talk to you about this once this hearing's
10 over with. And thank you again for an excellent
11 report.

12 MS. PLEITEZ: Thank you.

13 CHAIRPERSON ANDERSON: All right. Any
14 questions from other Board members? All right.
15 Ms. Pleitez, thank you very much for your
16 testimony. You can step down.

17 MS. PLEITEZ: Thank you.

18 CHAIRPERSON ANDERSON: All right, Mr.
19 Reid. This is your opportunity to -- how do you
20 plan to present your case?

21 MR. REID: I mean --

22 CHAIRPERSON ANDERSON: You mean what,

1 sir? This is a protest hearing. Your license
2 has been protested, so how do you plan to present
3 a case.

4 MR. REID: With the same exhibit that
5 she showed you. For the soundproofing and
6 everything.

7 CHAIRPERSON ANDERSON: All right. So,
8 okay. Raise your right hand, please.

9 Do you swear or affirm to tell the
10 truth and nothing but the truth?

11 MR. REID: Yes.

12 CHAIRPERSON ANDERSON: Okay. So, go
13 ahead. Tell me what you want to tell me and what
14 you want to rely on.

15 MR. REID: So, basically, I thought
16 why we're here today was mainly for the sound.
17 Of course, the trash was mentioned in part of it
18 --

19 CHAIRPERSON ANDERSON: All right.
20 Hold on. Your license is protested --

21 MR. REID: Right.

22 CHAIRPERSON ANDERSON: -- under

1 noise --

2 MR. REID: Noise, trash, and parking.

3 CHAIRPERSON ANDERSON: Right. So, go
4 ahead.

5 MR. REID: All right. So, I thought
6 that we addressed the problem.

7 CHAIRPERSON ANDERSON: What problem
8 are you addressing?

9 MR. REID: The noise problem.

10 CHAIRPERSON ANDERSON: How did you
11 address the noise problem, sir?

12 MR. REID: We soundproofed with the
13 funding that we got through the Mayor's office.

14 CHAIRPERSON ANDERSON: So, can you
15 explain -- you said soundproof. What are you
16 talking about? I don't know --

17 MR. REID: So, basically, we had
18 somebody come in from Karma Home Designs and we
19 told them that we had an issue with noise. We
20 explained to them that the neighbor that was,
21 like, on the other side of that wall would hear
22 music from time to time. So, we asked them what

1 we could do to fix it.

2 So, their solution was, I guess,
3 putting up a wall outside of our brick wall and
4 using a type of soundproofing insulation and
5 running that wall all the way to the roof of the
6 building.

7 He gave us a quote for that. We
8 actually won a grant issue by the City and we
9 used that money to soundproof the wall.

10 With the trash --

11 CHAIRPERSON ANDERSON: Can you -- what
12 do you mean -- I need you to explain to me, sir.
13 I'm going to ask you a question.

14 MR. REID: Right.

15 CHAIRPERSON ANDERSON: You said that
16 you won a grant -- you won --

17 (Simultaneous speaking.)

18 CHAIRPERSON ANDERSON: Hold on. Hold
19 on. Can you, in detail, tell me what you're
20 talking about, sir? I don't know anything --

21 MR. REID: It was a Robust Retail
22 Grant that was going on in the City. Soundproof

1 --

2 CHAIRPERSON ANDERSON: All you said is
3 soundproof, sir. Just tell me what that entails.
4 If you're saying to me that it as soundproofed,
5 tell me what it is that was done. I don't know.
6 You're the one -- this is your case, sir.

7 MR. REID: I'm not a contractor
8 either, but --

9 CHAIRPERSON ANDERSON: Wait. Hold on.
10 I'm not a contractor. I don't know what you're
11 talking about.

12 MR. REID: Right.

13 CHAIRPERSON ANDERSON: So, you need to
14 -- all I'm doing, sir, is to --

15 MR. REID: Right.

16 CHAIRPERSON ANDERSON: -- say, you
17 tell me what you did, sir. That's all I'm asking
18 you to do. Just tell me what you did. That's
19 all.

20 MR. REID: We basically put up a
21 soundproof wall, which is a combination of
22 insulation, studs, it's basically putting a wall

1 -- built a separate wall from the wall that's
2 abutting the property, basically, as a sound
3 barrier so sound won't transfer to the neighbor's
4 apartment building which --

5 CHAIRPERSON ANDERSON: And when was
6 this done?

7 MR. REID: In July it was completed.

8 CHAIRPERSON ANDERSON: So, did you
9 have a conversation with the neighbor to see --

10 MR. REID: All the time.

11 CHAIRPERSON ANDERSON: -- if the
12 neighbor could still --

13 MR. REID: All the time.

14 CHAIRPERSON ANDERSON: -- hear noise
15 after this soundproofing was put up?

16 MR. REID: Right. That's why she's
17 not here today. She doesn't want to be a part of
18 this. There was no more noise after that day.

19 CHAIRPERSON ANDERSON: Okay. So,
20 where does this gentleman live?

21 MR. REID: Not by the wall.

22 CHAIRPERSON ANDERSON: Where does he

1 live in compared to your business?

2 MR. REID: On the roof to the back
3 somewhere. That's why I'm --

4 CHAIRPERSON ANDERSON: I'm sorry. He
5 lives where?

6 MR. REID: Above our roof, all the way
7 to the back of the property. Nowhere around that
8 wall or where the sound goes. That's why I
9 couldn't prepare for today because I don't even
10 know why he's even here. That's my whole point.

11 He doesn't -- when I asked him to
12 conduct a sound test between us and him, he
13 denied it and said that even if I don't hear the
14 sound, he's not dropping the protest.

15 So, I was willing to do a sound test,
16 you know, while we turn the music up double than
17 what we normally play and I guarantee that he
18 could not hear our music from where he is in his
19 apartment building and he said, no, he doesn't
20 want to do it.

21 CHAIRPERSON ANDERSON: All right, sir.
22 What else do you want to say?

1 MR. REID: The trash. It was a
2 complaint about plastic lids being on the trash
3 bins. We told KMG come pick them up, put metal
4 bash bins down.

5 There was a problem about pressure
6 washing the alley way. I used to pay my staff to
7 do it. It wasn't good enough, so now I hired a
8 company. I sent you the invoice, but he doesn't
9 want -- I guess he said that I sent it too late,
10 so he doesn't want you to see that.

11 So, we pressure washed the driveway
12 and we pressure washed everybody's trash. As a
13 matter of fact, we don't pay all the business on
14 that alley, we split the bill.

15 So, twice a month now, we all share a
16 bill, we all pay for the alley to get cleaned. A
17 lot of times when ABRA came out there for trash,
18 it wasn't on the trash, but we always took the
19 hit because of where we are in the alley.

20 You know, we got complaints about
21 puddles of water made in the alley after rain,
22 like we could control puddles of water, you know.

1 I look at this call log and I know
2 this is not even a fraction of the -- he calls
3 way more than this. This is nothing. You know,
4 he calls every single day, every single day he
5 calls ABRA on us. This is nothing.

6 So, I don't -- you know, I can't
7 prepare for this because I don't even know what
8 to prepare for. I don't even know why he's here
9 right now. He can't hear the sound. I guarantee
10 he can't hear the sound that comes from my
11 building.

12 If anybody should be here right now,
13 it should be Ms. Caroline, the lady who actually
14 abuts the property. She could actually hear the
15 sound. That was why the first thing we did with
16 that money was soundproof that wall and more.

17 After we did the sound test -- as a
18 matter of fact, while we were doing the sound
19 test, we notified her and let her know that the
20 contractor's going to be beating up on her wall,
21 so don't think it's coming from us. We're
22 actually putting up soundproof insulation, so

1 that's where the noise was coming from and she
2 was happy that we did that.

3 You know, I talk to Ms. Caroline on a
4 daily basis and she herself told me she didn't
5 want to come here. He writes letters to all the
6 residents and get them to sign up on papers and
7 he's bugging the residents to come out here and
8 protest. That's why he's here by himself.
9 Nobody wants to entertain this.

10 This is him getting a kick out of
11 this. This is -- he likes -- he beat up on the
12 investigator. He always talks about how he's a
13 great lawyer and you need to agree.

14 MR. SCHLOM: Mr. Chairman, I'm going
15 to object to this. This is -- I gave him some
16 latitude, but he's kind of far field here in
17 relevance.

18 CHAIRPERSON ANDERSON: This is his
19 case, sir. You have an opportunity to cross-
20 examine him when he's done. This is his
21 presenting his case, so when he's done, you can
22 cross-examine him based on the testimony that

1 he's giving.

2 Go ahead, sir.

3 MR. REID: All right. When the Mayor
4 came out to us to elaborate on things about a
5 settlement agreement, he was upset actually why
6 the Mayor needed to get involved. He was mad
7 that he explained the settlement agreement to us.
8 He didn't like the simple fact that we got the
9 grant to do the soundproofing work.

10 That I -- you know, I don't know, this
11 is just a big game to him. This is a game, man.
12 Honestly. And I don't mean to sound ignorant,
13 but I see him every single day. I see the way he
14 walks in his apartment. I tried to flag him down
15 when we were at the mediation, when he was
16 walking his dog, and he ignored me.

17 I tried to flag him down to do the
18 sound test. He ignored me and then ran back
19 upstairs to the computer and wrote how I was not
20 trying to come to an agreement with him and all
21 this other stuff.

22 I tried to flag him down numerous

1 times. This is all a big game, honestly. It's
2 just a game. I don't know what to do. There's
3 no pleasing him. There's no way I'm able to.

4 I mean, if I'm fortunate, there's no
5 way I would even want to sign a settlement
6 agreement between me and him because he's got
7 nothing but time on his hands. He's going to
8 call every day. You know, he's going to come
9 over there every single day. It's what he does.

10 We get complaints from 3 o'clock in
11 the morning to all through the -- I mean, I'm
12 sorry -- 3 o'clock in the afternoon. This is
13 something we've been living with for a long time.

14 I don't know what else to do. I had
15 my staff pressure wash the alley, then we had a
16 contractor. I soundproofed, he doesn't even hear
17 the sound, I guarantee it, and he's here
18 complaining about sound.

19 He complains about parking, I don't
20 think he owns a car. There's only two cars back
21 there, so how does he complain about parking and
22 he doesn't even have a car. I know the two guys

1 that have cars back there.

2 You know, so I don't even know, like
3 I said, I don't even know, I'm just confused.
4 I'm just here because I had to be here. You
5 know, we did everything. He said that we didn't
6 try to come to an agreement. I think we did. I
7 think we -- you know, we hired the contractor.
8 We fixed the problem with the trash. We put
9 locks on the trash, somebody cut it. We pressure
10 washed the alley. The alley is red again. We
11 pressure washed everybody else's mess.

12 You know, I don't know what else. I
13 don't know. I don't know how to fix this.

14 CHAIRPERSON ANDERSON: Is there
15 anything else you want to say?

16 MR. REID: No.

17 CHAIRPERSON ANDERSON: That's it?

18 MR. REID: That's it.

19 CHAIRPERSON ANDERSON: Your
20 opportunity, sir, to cross-examine him.

21 MR. SCHLOM: All right. Thank you,
22 Mr. Chairman. Mr. Reid, you're one of three

1 owners --

2 MR. REID: Yes.

3 MR. SCHLOM: -- at Po Boy Jim,

4 correct?

5 MR. REID: Yes.

6 MR. SCHLOM: And the other -- one of

7 the other ones is Jeff Miskiri --

8 MR. REID: Yes.

9 MR. SCHLOM: -- and the other one is
10 Rebecca Antoine, right?

11 MR. REID: Yes.

12 MR. SCHLOM: And --

13 CHAIRPERSON ANDERSON: I need you to
14 speak up --

15 MR. REID: Yes.

16 CHAIRPERSON ANDERSON: -- because

17 you're being -- remember there is a court

18 reporter who is transcribing, so you have to

19 respond to all the questions that are being

20 asked, okay?

21 MR. REID: Yes.

22 CHAIRPERSON ANDERSON: And I know that

1 this is emotional, but we have to listen to his
2 questions and please answer to the best of your
3 ability.

4 MR. REID: Okay.

5 CHAIRPERSON ANDERSON: Okay? Go
6 ahead.

7 MR. SCHLOM: And Mr. Reid, you're
8 aware that Ms. Antoine and Mr. Miskiri also own
9 another restaurant, correct?

10 MR. REID: What restaurant is that?
11 Po Boy Jim?

12 MR. SCHLOM: Po Boy Jim at 709 H
13 Street NE.

14 MR. REID: Yes, I'm an owner of that
15 one, too.

16 MR. SCHLOM: Oh, so you own that
17 restaurant and you used to be a manager there,
18 correct?

19 MR. REID: I still am an owner.

20 MR. SCHLOM: And do you still work at
21 that establishment?

22 MR. REID: I work at both stores.

1 MR. SCHLOM: When did you start
2 working at Po Boy Jim on 709 Street -- 709 H
3 Street NE?

4 MR. REID: From the start to right
5 now. From construction in 2012 until now.

6 MR. SCHLOM: All right. And when did
7 that establishment open to the public, do you
8 recall?

9 MR. REID: 2014.

10 MR. SCHLOM: 2014. All right. And
11 you're aware that that establishment has a
12 settlement agreement --

13 MR. REID: Yes.

14 MR. SCHLOM: -- correct? And that
15 settlement agreement was signed in 2014 for that
16 establishment, correct?

17 MR. REID: Right.

18 MR. SCHLOM: Okay. That's all. So,
19 I think you have in front of you -- I'd like to
20 direct your attention to section 4F of the
21 settlement agreement -- if you need another copy,
22 I can give one to you.

1 So, for the members of the Board, this
2 is 4F, it's page three of six of the settlement
3 agreement.

4 Can you please read section 4F out
5 loud?

6 MR. REID: Applicant shall keep the
7 exterior of the establishment free of litter,
8 bottles, chewing gum, trash, and other debris and
9 shall power wash all the areas with trash,
10 recyclable material and grease that's stored a
11 minimum of two times per month.

12 MR. SCHLOM: Thank you. When did Po
13 Boy Jim's on 9th Street open to the public?

14 MR. REID: 2018, July.

15 MR. SCHLOM: Sorry?

16 MR. REID: Yeah, 2018.

17 MR. SCHLOM: On or around July 4th,
18 some date around there?

19 MR. REID: Some -- yeah.

20 MR. SCHLOM: Okay. So, the first
21 month that you were open -- the first full month
22 you were open to the public was August 2018,

1 correct?

2 MR. REID: We opened in July.

3 MR. SCHLOM: So, you opened in July,
4 but the first full month.

5 MR. REID: Yeah, that's right.

6 MR. SCHLOM: Okay. So, what was the
7 first date in August 2018 that you power washed
8 the alley?

9 MR. REID: I don't know. I had my
10 staff do it.

11 CHAIRPERSON ANDERSON: Please just
12 answer the question.

13 MR. REID: I don't know who --

14 CHAIRPERSON ANDERSON: If you don't
15 know, say you don't know. Just --

16 MR. REID: I don't know.

17 CHAIRPERSON ANDERSON: -- answer the
18 questions, sir. And that's all I'm saying. If
19 you don't have answer, you answer to the best of
20 your ability. Okay. Go ahead.

21 MR. SCHLOM: I'll ask the question
22 again. Do you know what dates the alley was

1 power washed in August of 2018?

2 MR. REID: No, I don't know the exact
3 dates.

4 MR. SCHLOM: So, because you say you
5 hire -- you had your staff do it, rather than
6 hiring a third-party contractor.

7 MR. REID: Right.

8 MR. SCHLOM: And you didn't keep
9 records of when your staff was doing it?

10 MR. REID: No. I pay them same
11 amount, no.

12 MR. SCHLOM: How did you monitor
13 whether your staff was indeed doing it twice per
14 month?

15 MR. REID: They've got to do what I
16 tell them to do. I'm their boss.

17 MR. SCHLOM: Do you have them take
18 photographs of them doing it?

19 MR. REID: No.

20 MR. SCHLOM: Do you watch them do it?

21 MR. REID: No.

22 MR. SCHLOM: Do they keep a log that

1 they did it?

2 MR. REID: No.

3 MR. SCHLOM: Okay. And I won't waste
4 time -- I'll go through a few more. In September
5 of 2018, do you know what days it was power
6 washed in September of 2018?

7 MR. REID: No.

8 MR. SCHLOM: What's the first date
9 that you can recall, the specific date that the
10 alley was power washed?

11 MR. REID: The first time I started
12 recording --

13 MR. SCHLOM: Correct.

14 MR. REID: -- I'm going to tell you
15 right now --

16 MR. SCHLOM: Sure.

17 MR. REID: -- because you made the
18 issue. After you stepped up, you started
19 complaining about that stuff to make sure, after
20 mediation, that's when I started keeping a record
21 of it. Hold on.

22 You can go on to the next question

1 while I'm looking for it, so we don't kill time
2 if you want.

3 MR. SCHLOM: Sure. So, you don't have
4 any invoices today showing any power washing, do
5 you?

6 MR. REID: No, but you got it, but you
7 don't want me to show it to the Board.

8 MR. SCHLOM: Mr. Chairman, I'd object
9 and ask that that be stricken from the record.
10 He's referencing items not in evidence.

11 CHAIRPERSON ANDERSON: Well, you asked
12 a question. You said -- you asked a question, he
13 answered the question and said you have it and so
14 I get it -- although it's not -- you made a
15 motion that we can't look at the documents and he
16 said that you have them, so --

17 MR. SCHLOM: But you're not presenting
18 any invoices to the Board today --

19 MR. REID: I can't.

20 MR. SCHLOM: -- for evidence? So,
21 that's a no?

22 MR. REID: No.

1 MR. SCHLOM: Okay. Now, I want to
2 direct your attention now to section three of
3 your settlement agreement, that's on page --
4 starting on page two of six, can you please read
5 section 3A out loud?

6 MR. REID: Which one?

7 MR. SCHLOM: It says page two of six
8 at the bottom. Section 3A under noise.

9 MR. REID: Applicant shall comply with
10 applicable noise control regulations, including
11 but not limited to those of the District of
12 Columbia municipal regulations. Title 20 and
13 title 25, sound, noise or music emanating from
14 the establishment should not be heard beyond the
15 property boundary of the establishment.

16 MR. SCHLOM: All right. And can you
17 please read section 3B out loud?

18 MR. REID: Applicant shall take
19 necessary actions to ensure the music, noise, and
20 vibrations from the establishment is not audible
21 to any resident's premises, including but not
22 limited to making architectural modifications to

1 the establishment.

2 MR. SCHLOM: Okay. Thank you. Now,
3 you've spoken directly with some residents of
4 1932 9th Street, including me, regarding noise
5 and vibration coming from your establishment,
6 right?

7 MR. REID: Right. Mostly Ms.
8 Caroline, yes.

9 MR. SCHLOM: Okay. Now, in the
10 investigator -- you gave the investigator a
11 document from Karma Home Designs --

12 MR. REID: Right.

13 MR. SCHLOM: -- correct? Now, that
14 document is an estimate --

15 MR. REID: Right.

16 MR. SCHLOM: -- isn't it?

17 MR. REID: Right. It's an estimate.
18 That's what we paid.

19 MR. SCHLOM: But you don't have an
20 invoice to submit as evidence today.

21 MR. REID: No. Are you trying to say
22 we're lying about the wall we put up?

1 MR. SCHLOM: I'm just asking, do you
2 have an invoice to submit to the Board today?

3 MR. REID: No, but it's common sense.
4 You can look at the wall.

5 MR. SCHLOM: Okay. Now, you told
6 Investigator Pleitez that the work -- the sound -
7 -

8 CHAIRPERSON ANDERSON: All right. The
9 microphone -- I don't know if someone is hitting
10 it.

11 MR. SCHLOM: I wasn't sure if that was
12 a gavel, I apologize.

13 CHAIRPERSON ANDERSON: No, no.
14 There's a microphone -- well, okay. There's your
15 microphone there, and there's your microphone.
16 So, make sure that you don't have anything
17 hitting the microphone, please. Okay. All
18 right.

19 MR. SCHLOM: So, you told Investigator
20 Pleitez that Karma Home Designs did soundproofing
21 work in July of 2019, correct?

22 MR. REID: Yes.

1 MR. SCHLOM: Do you know -- do you
2 recall what date the construction began?

3 MR. REID: No. Because before that
4 they did other work in there as well.

5 MR. SCHLOM: Okay. Do you recall what
6 date the construction ended?

7 MR. REID: It would be sometime in
8 July.

9 MR. SCHLOM: Okay. But you don't have
10 that invoice to present to the Board today?

11 MR. REID: No.

12 MR. SCHLOM: Okay. So, I want to move
13 on to the specific work that you say that Karma
14 did. Now, you don't have any photographs of what
15 the wall looked like before the work was done, do
16 you?

17 MR. REID: Probably on social media.

18 MR. SCHLOM: To submit to the Board
19 today. You have not submitted any documents
20 showing the wall before the work was done?

21 MR. REID: No.

22 MR. SCHLOM: And you haven't submitted

1 any documents -- any photographs showing the work
2 in progress being done?

3 MR. REID: No.

4 MR. SCHLOM: Okay. And you don't have
5 anybody from Karma Home Designs to testify as to
6 the work that they did today?

7 MR. REID: No.

8 MR. SCHLOM: Okay. And finally, very
9 quickly, so, as far as you're aware, Karma Home
10 Designs did not conduct any tests inside 1932 9th
11 Street, my building, before creating their
12 estimate for you, right?

13 MR. REID: We didn't need them to.
14 All we had to was ask the person who was right
15 next to us --

16 CHAIRPERSON ANDERSON: We need to get
17 off the record for a minute.

18 MR. SCHLOM: Sure.

19 CHAIRPERSON ANDERSON: All right. So,
20 we're off the record.

21 (Whereupon, the above-entitled matter
22 went off the record from 3:32 p.m. and resumed

1 at 3:33 p.m.)

2 CHAIRPERSON ANDERSON: Okay. We're
3 back on the record.

4 MR. SCHLOM: May I ask where the
5 technical --

6 (Simultaneous speaking.)

7 MR. SCHLOM: So, I can start --

8 (Simultaneous speaking.)

9 CHAIRPERSON ANDERSON: I don't know
10 but you can move forward. I mean, it's like --
11 that's on the record, but I'm hearing everything.

12 MR. SCHLOM: Sure.

13 CHAIRPERSON ANDERSON: So, for my
14 purposes. So, we're fine.

15 MR. SCHLOM: All right. I'm going to
16 ask that question because I'm not sure --

17 MR. REID: Okay.

18 MR. SCHLOM: -- if you answered it.

19 CHAIRPERSON ANDERSON: That's fine.

20 MR. SCHLOM: So, as far you're aware,
21 Mr. Reid, Karma Home Designs did not conduct any
22 tests inside of 1932 9th Street before preparing

1 their work estimate for you?

2 MR. REID: No. They didn't go in
3 there.

4 MR. SCHLOM: Okay. And as far as
5 you're aware, they have not conducted any tests
6 inside 1932 9th Street since they installed the
7 items.

8 MR. REID: No. Just ask Ms. Caroline
9 who is right next to me.

10 MR. SCHLOM: All right. Thank you
11 very much. I have nothing further.

12 MR. REID: Okay.

13 CHAIRPERSON ANDERSON: All right. Any
14 questions of Mr. Reid based on -- any question of
15 Mr. Reid by the members of the Board?

16 MEMBER SHORT: I have one more.

17 CHAIRPERSON ANDERSON: Go ahead, Mr.
18 Short.

19 MEMBER SHORT: Mr. Reid, did you
20 acquire building permits from the City before you
21 did that extensive work inside of your --

22 MR. REID: No. They said they didn't

1 need one for that work. They didn't need one.
2 That's what they told me.

3 MEMBER SHORT: You're a
4 businessperson, correct?

5 MR. REID: Right.

6 MEMBER SHORT: I would say to you,
7 again, I was in the business for a lot of years,
8 everybody who does any building inside,
9 especially businesses, even private owners, you
10 do extensive work with the contract you showed us
11 from that company --

12 MR. REID: Okay.

13 MEMBER SHORT: -- there should have
14 been some building permits.

15 MR. REID: Okay. Well, I don't think
16 they pulled one.

17 MEMBER SHORT: That's the only way
18 that you are assured that it meets City code.

19 MR. REID: Okay.

20 MEMBER SHORT: You're a
21 businessperson, so just take that --

22 MR. REID: Right, right.

1 MEMBER SHORT: Thank you, Mr. Chair.
2 That's all I have.

3 CHAIRPERSON ANDERSON: All right. I
4 don't have any questions. Do you rest at this
5 junction? You don't have nothing else to say in
6 preparing your case, sir?

7 MR. REID: I can ask some questions
8 now or no?

9 CHAIRPERSON ANDERSON: Not yet.

10 MR. REID: Okay.

11 CHAIRPERSON ANDERSON: I'm saying,
12 this is you presenting your case. You don't have
13 anything else that you want to bring to our
14 attention?

15 MR. REID: No.

16 CHAIRPERSON ANDERSON: No? All right.
17 Okay, sir. You are welcome to --

18 MR. SCHLOM: Mr. Chair, can I ask for
19 a two minute recess, so I can get some water --

20 CHAIRPERSON ANDERSON: Sure.

21 MR. SCHLOM: -- before I testify?

22 CHAIRPERSON ANDERSON: All right, so.

1 MR. SCHLOM: And I also can set up the
2 exhibits.

3 CHAIRPERSON ANDERSON: It's 3:37 and
4 we'll be back on the record at 3:45.

5 (Whereupon, the above-entitled matter
6 went off the record at 3:37 p.m. and resumed at
7 3:42 p.m.)

8 CHAIRPERSON ANDERSON: All right.
9 We're back on the record. All right.

10 So, this is where we're at the stage
11 where the protestant is going to protest -- I'm
12 sorry, is going to provide his -- his -- so I
13 guess, go ahead, sir.

14 MR. SCHLOM: Yes. Thank you very much
15 Mr. Chairman.

16 CHAIRPERSON ANDERSON: Oh, I'm sorry.
17 You're the only witness. Is that correct?

18 MR. SCHLOM: That is correct Mr.
19 Chairman.

20 CHAIRPERSON ANDERSON: Okay. So, can
21 you raise your right hand, please? Do you swear
22 or affirm to tell the truth but nothing but the

1 truth?

2 MR. SCHLOM: I do.

3 CHAIRPERSON ANDERSON: Thank you. Go
4 ahead.

5 MR. SCHLOM: So good afternoon Mr.
6 Chairman, Members of the Board. My name is Evan
7 Schlom. I live at 1932 9th Street, Northwest,
8 otherwise known as the Art View Condominium
9 Building.

10 This is -- it's at square 361, Lot
11 134. My condominium building abuts Po Boy Jim,
12 which is located at 1934 9th Street, Northwest.
13 We are just to the south, and share a wall.

14 I purchased my condominium unit, which
15 is Unit 302 on June 29, 2017. And have lived
16 there since June 30, 2017.

17 All condominium units in the building
18 abut both sides of our lot, both in north and the
19 south. As I live in Unit 302, which runs all the
20 way from Lot 824 in the north to Lot 116 in the
21 south.

22 As the ABRA Board previously ruled, my

1 condominium unit does abut Po Boy Jim, even
2 though I'm on the third floor and it's the second
3 floor, their second floor rises up a little bit,
4 and the ABRA Board ruled that I was an abutting
5 property owner, and I'm here protesting as an
6 abutting property owner.

7 Po Boy Jim opened to the public on or
8 around July 4, 2018, just over one year after I
9 moved in.

10 So, first I'll start talking about
11 live entertainment and cover charges. Section 2B
12 of the Establishment Settlement Agreement allows
13 live entertainment only on Wednesdays, Thursdays,
14 Fridays, and Saturdays. So live entertainment is
15 not permitted on Sundays.

16 Section 1D of the Establishment
17 Settlement Agreement states that the
18 establishment quote, shall not charge a cover
19 charge.

20 However the establishment has
21 repeatedly advertised and held live entertainment
22 on Sundays, and has advertised a cover charge on

1 at least one occasion.

2 This is going to be a little bit
3 clunky because I have a number of Exhibits here.
4 I'm happy to share all -- I'll just give you
5 copies, Mr. Chairman, and all --

6 CHAIRPERSON ANDERSON: If you tell me
7 -- if you tell me the number, I have access to
8 it.

9 MR. SCHLOM: Sure. So, I'll give all
10 of them to --

11 CHAIRPERSON ANDERSON: Well, just let
12 me know which number you're using here.

13 MR. SCHLOM: Absolutely I will do
14 that. So the file that was marked in my proposed
15 Exhibit P10, but what I'm happy to mark now as
16 Protestant's Exhibit 2.

17 (Whereupon, the above-referred to
18 document was marked as Protestant's
19 Exhibit No. 2 for identification.)

20 CHAIRPERSON ANDERSON: All right, you
21 know what --

22 MR. SCHLOM: Oh, do you want it now?

1 Sorry, I apologize.

2 CHAIRPERSON ANDERSON: Yeah, give me
3 a copy so I can --

4 MR. SCHLOM: Sure.

5 CHAIRPERSON ANDERSON: Give me a copy.
6 How do I -- yeah.

7 MEMBER SHORT: I'll take a copy also.

8 MR. SCHLOM: Sure.

9 CHAIRPERSON ANDERSON: No, we -- oh,
10 okay. Oh, you all got it? Yeah. All right. I
11 saw him mark it for the record.

12 MR. SCHLOM: Yeah.

13 CHAIRPERSON ANDERSON: I guess I
14 haven't figured out how to open --

15 MR. SCHLOM: I'm trying to be as
16 efficient as possible, because I have, I think,
17 over 70 Exhibits. So that's going to be a lot of
18 documents.

19 (Off mic comments)

20 CHAIRPERSON ANDERSON: All right, so
21 this is Exhibit what?

22 MR. SCHLOM: I think I've already had

1 one, so I'll call this Protestant's Exhibit 2.

2 CHAIRPERSON ANDERSON: Thank you.

3 MR. SCHLOM: This is a screenshot I
4 took on December 6, 2018 at 4:18 p.m. It shows a
5 public Eventbrite website listing for an event
6 called Whiskey Wonderland.

7 Eventbrite is a website on which one
8 can RSVP for events and buy tickets to events.
9 If you look in the upper left hand corner, it
10 lists the event date as Sunday, 12/16, December
11 16.

12 You'll see the location in the
13 description and also in the advertisement as Po
14 Boy Jim, 1932 9th Street. And it says, in the
15 description, music by DJ Shindig.

16 P-11, I don't want to make you -- I
17 have a lot of Exhibits. I don't want to make you
18 -- I'm happy to give you a whole bunch of them
19 and you can hand them out at once.

20 And you have all these Mr. Reid.

21 MR. REID: Okay.

22 CHAIRPERSON ANDERSON: So this is

1 Exhibit 3?

2 MR. SCHLOM: Protestant's Exhibit 3,
3 correct. This is a screenshot that I took on
4 January 27, 2019.

5 (Whereupon, the above-referred to
6 document was marked as Protestant's
7 Exhibit No. 3 for identification.)

8 CHAIRPERSON ANDERSON: So, what are
9 these Exhibits?

10 MR. SCHLOM: Sorry, so these are all
11 -- that's a -- so these are all Exhibits that
12 show advertisements for -- first that show
13 advertisements for live entertainment on Sundays.

14 And then later there are screenshots
15 from the -- from the -- screenshots showing
16 photographs of live entertainers, DJs and live
17 entertainers in the establishment on a Sunday.

18 CHAIRPERSON ANDERSON: All right. So
19 where --

20 MR. SCHLOM: So sorry, I think I
21 misstated the time.

22 CHAIRPERSON ANDERSON: All right.

1 MR. SCHLOM: It was --

2 CHAIRPERSON ANDERSON: All right. Go
3 ahead.

4 MR. SCHLOM: Yes, so this was -- yes,
5 this is at 10:33. And it shows a posting on Po
6 Boy Jim's Instagram account for Creative Juices,
7 REL O'Neal Producing, live on Sunday, January 27.
8 So that's P-11.

9 What was previously P-12, but what
10 I'll call Protestant's 4, is a screenshot taken
11 at 4:12 p.m. on January 27. It shows a posting
12 on Po Boy Jim's own Instagram account.

13 You can see in the upper left, Sunday,
14 January 27. It's again for this Creative Juice's
15 event.

16 And it says features live -- in the
17 description down at the bottom, featuring live
18 production by, I don't want to even attempt to
19 say those, because I'm sure I'll butcher it.
20 But, live production.

21 (Whereupon, the above-referred to
22 document was marked as Protestant's

1 Exhibit No. 4 for identification.)

2 MR. SCHLOM: What was previously P-13,
3 but is now Protestant's 5, was a screenshot taken
4 at -- on January 27 at 5:13 p.m., that I took.

5 It shows a posting on an Instagram
6 account, on an Instagram story from a third
7 party. The location is tagged as Po Boy Jim.

8 It contains the hashtag Creative
9 Juices, which is the same as the event that was
10 previously advertised for Sunday, January 27.
11 And you can see clearly a DJ in the middle of the
12 photo.

13 (Whereupon, the above-referred to
14 document was marked as Protestant's
15 Exhibit No. 5 for identification.)

16 MR. SCHLOM: P-14, which is now
17 Protestant 6, is a screenshot I took on Sunday,
18 January 27 at 11:44. It shows a story, and
19 Instagram story from six hours prior.

20 Again, same event at Po Boy Jim's with
21 a live entertainer.

22 (Whereupon, the above-referred to

1 document was marked as Protestant's
2 Exhibit No. 6 for identification.)

3 CHAIRPERSON ANDERSON: All right.

4 Okay, what's the purpose -- so you're saying that
5 -- okay, you're giving us a whole bunch of
6 Exhibits to say that they've had live
7 entertainment on Sundays.

8 MR. SCHLOM: Live entertainment on
9 Sundays and contravention of their agreement,
10 correct. I'm trying to back up my testimony with
11 evidence.

12 If Mr. Reid is willing to stipulate
13 that they've done this in the past, we can save
14 this testimony and this evidence. If not, I'll
15 keep introducing the evidence.

16 I'll offer the next --

17 CHAIRPERSON ANDERSON: I mean, I know
18 -- I think it's redundant and repetitive --

19 MR. SCHLOM: Okay.

20 CHAIRPERSON ANDERSON: If you're going
21 to give me 20. I think I've gotten --

22 MR. SCHLOM: Then I'm happy to skip

1 ahead, Mr. Chairman. I appreciate it.

2 CHAIRPERSON ANDERSON: All right.

3 Because I think I've gotten the gist.

4 MR. SCHLOM: Sure.

5 CHAIRPERSON ANDERSON: So your basis

6 then that they have live entertainment on

7 Sundays.

8 MR. SCHLOM: Correct. So I'll skip

9 ahead. Thank you.

10 So the next issue is security cameras.

11 Section Six of the Establishment Settlement

12 Agreement requires that the establishment submit

13 a security plan to the ABRA Board that identifies

14 quote, security personnel, security camera

15 locations, and measures to mag -- sorry, measures

16 to mitigate exterior queuing and loitering.

17 It also requires the establishment to

18 install and maintain security cameras on the

19 exterior of the establishment.

20 ABRA Order 1017-391, which is the

21 order in which they approved the current

22 settlement agreement, mandates that the

1 establishment install the cameras within 30 days
2 from the date of the order. The Order was issued
3 on July 19, 2017.

4 However, the security cameras were not
5 installed until sometime between December 4, 2018
6 and February 25, 20 -- sorry, February 25, 2019.
7 I have photographs there. Sorry.

8 (Whereupon, the above-referred to
9 document was marked as Protestant's
10 Exhibit No. 7 for identification.)

11 CHAIRPERSON ANDERSON: But are you
12 saying that there are -- the security camera is
13 not up, so you're saying that -- so you're saying
14 that for -- it was -- so it's your position that
15 they did not immediately install the security
16 cameras.

17 But however, there are security
18 cameras there now, is that correct?

19 MR. SCHLOM: Correct. I have
20 photographs showing from December 4, 2018 with no
21 security camera, and February 5 -- sorry,
22 February 25, 2019 with a security camera.

1 CHAIRPERSON ANDERSON: So why don't
2 you only need one if that's what you want to
3 provide? If you want to provide a document, I
4 don't need a series of documents.

5 MR. SCHLOM: Okay.

6 CHAIRPERSON ANDERSON: One would be
7 sufficient.

8 MR. SCHLOM: Well, just to show the
9 photograph that shows it without it and then with
10 it.

11 CHAIRPERSON ANDERSON: That's what I'm
12 saying.

13 MR. SCHLOM: Okay.

14 CHAIRPERSON ANDERSON: I don't need
15 back and forth --

16 MR. SCHLOM: No, no. I'll only
17 produce two. That's fine. All right.

18 MR. REID: Can I look at that real
19 quick too?

20 MR. SCHLOM: Yes, of course.
21 Absolutely. I have copies for you. Of course.

22 CHAIRPERSON ANDERSON: And what

1 Exhibits are these?

2 MR. SCHLOM: So this will be
3 Protestant's Exhibit 7.

4 CHAIRPERSON ANDERSON: Which is 7?

5 MR. SCHLOM: Sorry?

6 CHAIRPERSON ANDERSON: Which one is 7?

7 MR. SCHLOM: Seven is the first
8 photograph that you see there. The one that
9 appears to have been -- you can tell it was taken
10 at night.

11 CHAIRPERSON ANDERSON: Okay.

12 MR. SCHLOM: I just want to make sure
13 I'm marking these for my own.

14 CHAIRPERSON ANDERSON: Okay. And the
15 one with the security camera is P-8?

16 MR. SCHLOM: P-8, correct. Exactly.
17 So if you look above the door, this is just the
18 rear of the establishment, above the door.

19 And the one from December 4, you don't
20 see the security camera. But then the one from
21 the next time, from February 25, 2019, you do see
22 the security camera.

1 So it was clearly installed some time
2 between those dates. I don't know when.

3 (Whereupon, the above-referred to
4 document was marked as Protestant's
5 Exhibit No. 8 for identification.)

6 CHAIRPERSON ANDERSON: But there's no
7 time stamp on any of these documents. So how do
8 I --

9 MR. SCHLOM: How do I know when they
10 were taken?

11 CHAIRPERSON ANDERSON: I'm saying
12 there's no time stamp on any -- did you take
13 these documents?

14 MR. SCHLOM: I took all of these
15 photos -- every photograph I present to you today
16 are ones that I took. And I know when they were
17 taken from looking at the time stamp on my phone.
18 It does not print out with a time stamp.

19 I am testifying under oath that that's
20 when they were taken.

21 CHAIRPERSON ANDERSON: Okay.

22 MR. SCHLOM: And I took all of them

1 myself. And I have had custody of them.

2 CHAIRPERSON ANDERSON: All right.

3 Okay.

4 MR. SCHLOM: All right. Next is
5 trash. So Section 4A of the Settlement Agreement
6 requires the establishment to keep all trash,
7 recyclables, and grease in containers that are
8 quote, impervious to vermin, leaks, and odors.

9 Section 4B requires that all outdoor
10 containers be kept closed at all times. And no
11 waste or other materials shall be stored outdoors
12 except in such containers.

13 I can tell you, I walk through that
14 alley, as Mr. Reid has already said, multiple
15 times per day on average. My condominium unit
16 has multiple windows that look out onto the
17 alley.

18 I look at the alleyway multiples a
19 day. I'm very familiar with its characteristics.
20 My fiancé, who lives with me, also walks through
21 the alley multiples a day.

22 I have seen the establishment's trash

1 bin -- trash bins open and overflowing for hours
2 at a time. I've also witnessed trash stored
3 outside in bins without lids.

4 These incidents have occurred
5 throughout the time that the establishment has
6 been operating, starting in July 2018 and
7 continuing through September 2019.

8 Rats are a major problem in our
9 neighborhood. Ward One has the most rats of
10 anywhere in D.C., but particularly our
11 neighborhood.

12 The mayor has talked about it. I've
13 often seen rats climbing on the establishment's
14 trash bins.

15 And when the bins are open, the rats
16 climb inside. Having an open trash bin is an
17 attraction for rats based on my experience living
18 there for the last two plus years.

19 Again Mr. Chairman, I have a number of
20 photographs showing the trash bins. I won't
21 present all of them.

22 But I'm happy to give you some

1 examples of them again, to try to back up my
2 testimony that this has happened.

3 (Off mic comments)

4 MR. SCHLOM: Here's one. This is the
5 first one. So this was previously P-28, the file
6 P-28, I'm marking it now Protestant's 9.

7 It shows the establishment's trash
8 bin. That photograph was taken by me on October
9 28 at 12:27 a.m.

10 And you can see it -- you can see it
11 open and overflowing with trash.

12 (Whereupon, the above-referred to
13 document was marked as Protestant's
14 Exhibit No. 9 for identification.)

15 MR. SCHLOM: Here's another one. So
16 this was previously P-29. I'll now call it
17 Protestant's 10.

18 This was a photograph that I took on
19 October 29, 2018 at 12:55 a.m. You can see the
20 open top trash bin there, not the -- sorry, I'll
21 wait until you see this photograph.

22 (Whereupon, the above-referred to

1 document was marked as Protestant's
2 Exhibit No. 10 for identification.)

3 MR. SCHLOM: So you can see the open
4 top trash bin. Which is again, not permitted by
5 the Settlement Agreement.

6 You can see the overflowing trash
7 there.

8 MR. REID: At what time?

9 MR. SCHLOM: Sorry, this was taken on
10 October 29, 2018 at 12:55 a.m.

11 MR. REID: What day was the 29th?

12 MR. SCHLOM: I don't know --

13 MR. REID: What day of the week?

14 MR. SCHLOM: Off the top of my head.

15 MEMBER SHORT: What was the question?

16 CHAIRPERSON ANDERSON: What day of the
17 week that was. What year?

18 MR. SCHLOM: Sire, 10/29/18. And then
19 this was taken 10/29 -- that was at 12:55 a.m.
20 So the night.

21 And then this next one was taken, this
22 was previously P-30.

1 MR. REID: It's the same picture.

2 MR. SCHLOM: No, it's not. It's a --
3 so that was taken, that's to show you, this was
4 the exact same location.

5 This was taken at 9:09 a.m. So, eight
6 hours and a bit later, showing the trash was
7 still there. Still in the open top bin.

8 So this was not done purely for a
9 moment to keep the trash outside. It was kept
10 like that all night long on that particular
11 occasion.

12 (Whereupon, the above-referred to
13 document was marked as Protestant's
14 Exhibit No. 11 for identification.)

15 (Off mic comments)

16 MR. SCHLOM: So this was previously
17 P-35. It will now be Protestant's 12. This was
18 taken on February 25, 2019.

19 (Whereupon, the above-referred to
20 document was marked as Protestant's
21 Exhibit No. 12 for identification.)

22 CHAIRPERSON ANDERSON: What number was

1 that again?

2 MR. SCHLOM: It was previously P-35.
3 And it will now be Protestant's 12. So, this
4 picture was taken on February 25, 2019 at 8:26
5 a.m.

6 (Off mic comments)

7 MR. SCHLOM: This is on -- so, I
8 apologize.

9 CHAIRPERSON ANDERSON: Yeah, which --
10 so go ahead.

11 MR. SCHLOM: So that was marked on --
12 in my email exhibits as P-35. But it's not
13 Protestant's 12.

14 CHAIRPERSON ANDERSON: All right.

15 MR. SCHLOM: This next one was P-37 in
16 my electronic files. But it's now Protestant's
17 13. This is a photograph I took on April 7, 2019
18 at 12:46 a.m.

19 (Whereupon, the above-referred to
20 document was marked as Protestant's
21 Exhibit No. 13 for identification.)

22 MR. SCHLOM: So you can see there,

1 overflowing trash and that placed on top of the
2 trash bin. And then wait, one more.

3 And then I'll just do one more to show
4 you that this is still going on.

5 CHAIRPERSON ANDERSON: And what number
6 was this before in that case?

7 MR. SCHLOM: The last one that I just
8 gave you?

9 CHAIRPERSON: No, the number.

10 MR. SCHLOM: Oh, sorry. This one I'm
11 giving you now was marked as P-44. But it is now
12 going to be Protestant's 14.

13 This was taken on September 16, 2019
14 at 8:35 a.m. So, just last week.

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

18 MR. REID: Hey, that's not our trash
19 bags.

20 MR. SCHLOM: So as you can see, these
21 issues have not ceased. It's continued
22 throughout the time that they've been opened.

1 CHAIRPERSON ANDERSON: Okay.

2 MR. SCHLOM: That's all on trash.

3 CHAIRPERSON ANDERSON: Okay.

4 MR. SCHLOM: All right. And next is
5 power washing. Section 4F of the Settlement
6 Agreement says that the establishment has to keep
7 its exterior free of litter bottles, chewing gum,
8 trash and other debris.

9 And shall powerwash outdoor areas
10 where trash, recyclable materials, and grease are
11 stored, a minimum of two times a month.

12 So, the rear of the establishment is
13 constantly filthy. Covered with debris. And has
14 consistently been so since Po Boy Jim opened in
15 July 2018.

16 Mr. Reid is correct that they are not
17 the only cause of this. But it's their
18 responsibility to keep it clean.

19 And I can tell you that I have
20 personally witnessed the alley power washed only
21 twice in the time that I have lived there, once
22 on August 12, 2019 and once on September 20,

1 2019. Before August 12, I never saw the alley
2 power washed.

3 Now, I have a lot of photographs here.
4 I took photographs every few days between July 9,
5 2019 and September 16, 2019. Because without
6 seeing the contracts and seeing the invoices, I
7 have no way to know whether they're actually
8 doing it.

9 I hesitate to test the patience of the
10 Board to have all these photographs. But, they
11 try to provide evidence that the alley looks
12 basically the same the entire time until it was
13 power washed on August 12.

14 Mr. Chairman, would you like me to go
15 through the photo -- I don't want to test the
16 Board's patience here.

17 CHAIRPERSON ANDERSON: I mean, if you
18 want to.

19 MEMBER CROCKETT: Can I get one before
20 and one after?

21 MR. SCHLOM: Yes, sure. So, yeah I'm
22 happy to --

1 CHAIRPERSON ANDERSON: So actually you
2 can provide more than one.

3 MR. SCHLOM: Sure. Absolutely. I
4 will do a photograph from right before the August
5 12 and right after August 12. Yeah.

6 If you can just give me one moment to
7 find the correct photographs. So that's P-75.
8 All right.

9 CHAIRPERSON ANDERSON: So while you're
10 waiting, what number -- do you recall what --

11 MR. SCHLOM: So these will be what
12 were previously marked as P-75, P-76 and P-77.
13 But will be now Protestant's 15, 16 and 17.

14 CHAIRPERSON ANDERSON: Can you give
15 that -- give it to me in order, please. So I can
16 --

17 MR. SCHLOM: Sure. So they were --

18 CHAIRPERSON ANDERSON: No. No, I'm
19 saying when you provide me a copy of this --

20 MR. SCHLOM: Oh yes. Of course. Of
21 course.

22 CHAIRPERSON ANDERSON: Provide them in

1 order so I can label them accordingly.

2 MR. SCHLOM: Absolutely. So the first
3 one was P-75 and is now P-15.

4 (Whereupon, the above-referred to
5 document was marked as Protestant's
6 Exhibit No. 15 for identification.)

7 MR. REID: What day was this?

8 MR. SCHLOM: So, I'm waiting until
9 they -- so I will say, just let me know.

10 So this photograph I took on August 7,
11 2019 at 8:56 a.m. And you can see, you can see
12 the state of the alley if you look at that kind
13 of black grime.

14 And if you look underneath, that's
15 their trash bin and the debris that's underneath.
16 You can generally what it would look like if it's
17 not been power washed.

18 The next one is P-76. I'm sorry,
19 P-76. This photograph shows the power washing
20 itself on August 12.

21 It was P-76. It's now Protestant's
22 16, taken on August 12 at 8:21 a.m. And it shows

1 the power washing in the alley.

2 (Whereupon, the above-referred to
3 document was marked as Protestant's
4 Exhibit No. 16 for identification.)

5 MR. SCHLOM: And then before you sit
6 down. And then the next one is P- -- was P-77.
7 Is now Protestant 17.

8 I took that photograph two days later
9 on August 14, 2019 at 8:59 a.m. And you can see
10 that -- you can see that the bricks are much
11 redder.

12 And a lot of the -- I know it's not
13 exactly the same angle. You can see it's got --
14 it's still got a little bit of black.

15 It shows you how quickly that that
16 grime and grease and dirt accumulate there.
17 Which is why the community wanted twice a month
18 power -- or twice a month power washing in the
19 first instance.

20 But you can still see that the bricks,
21 particularly in the sunny area, are much redder.
22 That's what -- that's how I would know that it's

1 been power washed. You can see.

2 And I can tell you that it did not
3 look like that at any time from the time I lived
4 there until this photograph was taken on August
5 14, 2019.

6 (Whereupon, the above-referred to
7 document was marked as Protestant's
8 Exhibit No. 17 for identification.)

9 CHAIRPERSON ANDERSON: Can I ask you
10 a question?

11 MR. SCHLOM: Sure.

12 CHAIRPERSON ANDERSON: What's the
13 white building in the background?

14 MR. SCHLOM: So that is, I believe
15 it's a vacant building. It was a design -- it's
16 on U Street. It's I forget the address on U
17 Street.

18 CHAIRPERSON ANDERSON: All right.

19 MR. SCHLOM: You can see, so 9 1/2
20 Street is the gray street that runs there.

21 MEMBER SHORT: That's it. That's
22 information.

1 MR. SCHLOM: It's in the back. I
2 apologize for not setting that stage.

3 MEMBER SHORT: All right.

4 MR. SCHLOM: Thank you, Member Short.
5 All right. So that's the power washing. And
6 now we turn to noise. Which is obviously the
7 largest issue here.

8 Section 3A of the Establishment
9 Settlement Agreement states that sound, noise, or
10 music emanating from the establishment shall not
11 be heard beyond the property boundary of the
12 establishment, period.

13 Section 3E states, the Applicant shall
14 take all necessary actions to ensure that music,
15 noise, and vibration from the establishment are
16 not audible in any residential premises.

17 Including but not limited to, making
18 architectural modifications to the establishment.

19 Despite these provisions, sound and
20 vibration from Po Boy Jim is heard and felt
21 regularly, if not on a nightly basis, in various
22 areas of the 1932 9th Street, Northwest building.

1 Based on my personal knowledge, this
2 includes my condominium unit, other condominium
3 units, and our common areas. This has been the
4 case from the time they opened in July 2019 until
5 today. And it has not systemically improved over
6 that time.

7 How am I confident that at least some
8 of the noise and vibration I continue -- I and my
9 neighbors continue to hear is from the
10 establishment?

11 First I regularly trace the noise
12 starting at the bottom of our north stairwell,
13 which abuts Po Boy Jim all the way up. And I can
14 track the vibration patterns and the sound and
15 things like that.

16 I always attempt to do that, because
17 as the investigator noted, this is a noisy area.

18 There are a lot of businesses that create noise
19 there.

20 And I, actually contrary to Mr. Reid's
21 assertion, I haven't called ABRA on Po Boy Jim in
22 many months.

1 MR. REID: You have. Every day.

2 MR. SCHLOM: I -- that's --

3 CHAIRPERSON ANDERSON: Sir, can it.

4 MR. SCHLOM: That's -- I have called
5 about many other establishments. First of all, I
6 don't call every day. I don't even call every
7 week sometimes.

8 But, I have not called on Po Boy Jim
9 in many months. Many months. But I always
10 attempt to trace the source wherever it's coming
11 from.

12 Sometimes I'll go out the back to try
13 to hear where it's coming from, because I don't
14 want somebody to come and then it's not their
15 fault. That's not what I'm trying to do. I try
16 to do the diligence before doing that.

17 Second, on numerous occasions
18 neighbors of mine have communicated directly with
19 Mr. Reid as he's mentioned in his testimony,
20 asked him to turn down the music.

21 And then immediately noticed an
22 improvement. That's effectively a real live

1 noise test.

2 The most recent example of this was in
3 the early morning hours of Saturday, September 7.
4 My downstairs neighbor, Caroline Renzulli, who
5 was mentioned earlier, she was on my witness
6 list, was prepared to testify, but is unable to
7 attend today due to her husband's grandmother's
8 funeral in Kansas, which was yesterday.

9 My understanding is, she's literally
10 traveling back to D.C. right now. And was not
11 able to testify, but she was prepared to testify.

12 On the early morning hours at 1:37
13 a.m. And I'll say, I've seen the text message
14 conversation.

15 At 1:37 a.m. on Saturday, September 7
16 she texted Mr. Reid. Said that the music was
17 loud and asked him to quote, adjust the music a
18 little.

19 One or two minutes later, almost
20 immediately, Mr. Reid texted her back asking
21 quote, good, question mark, implying that he had
22 turned the music down. And Ms. Renzulli

1 responded, so much better, three exclamation
2 points.

3 Now, I should say, this type of
4 interaction is exactly what we as neighbors would
5 hope and expect to have with business owners in
6 our community. That's a model of what we would
7 expect.

8 But, at the same time, it proves that
9 the music, at least some of it, was coming from
10 Po Boy Jim. He turned it down. The music got
11 better.

12 There's no artificial noise test
13 required. That's a real live noise test. This
14 was done just a few weeks ago, well after the
15 sound proofing that Mr. Reid says that he
16 installed.

17 MR. REID: May I ask a question?

18 CHAIRPERSON ANDERSON: Uh-uh. No. Go
19 ahead.

20 MR. SCHLOM: Third, we've also been
21 able to hear exceptionally loud music and strong
22 vibrations from that side of the building that

1 coincides with advertised events that we see
2 through social media and other sources at Po Boy
3 Jim.

4 So, I have no personal knowledge of
5 any architectural modifications to their space or
6 sound mitigation materials installed since the
7 day they opened on July 2018. I have no idea
8 other than Mr. Reid's statements.

9 On September 7, 2019, I visited the
10 establishment to meet with Mr. Reid and a
11 representative of the Nightlife Mayor's Office.

12 And on that visit, I personally viewed
13 a speaker mounted to a shared wall with 1932 9th
14 Street, behind the ground floor bar of the
15 establishment. That was a few weeks ago on
16 September 9, 2019, I personally witnessed it.

17 Finally, or I should say, I'm working.
18 So my neighbors and I have attempted to get ABRA
19 to enforce all the various provisions in the
20 Settlement Agreement. But investigators have
21 often been unwilling or unable to do so.

22 First, many of the provisions to the

1 Establishment Settlement Agreement are
2 effectively unenforceable by ABRA investigators.
3 As the investigator testified earlier, and as
4 I've been told by multiple ABRA supervisors, an
5 ABRA investigator must personally observe a
6 violation in order to witness -- in order to
7 issue a citation.

8 So for example, if a trash bin had
9 been opened for six days before they arrive, but
10 it's closed one minute before they get there,
11 they can't issue a citation. It's like it never
12 happened.

13 It doesn't matter how many photos I
14 send to ABRA. None of that matters. If they do
15 not witness it, they cannot issue a citation.
16 Which renders that provision effectively
17 unenforceable.

18 Power washing. These provisions that
19 require a certain number of actions a certain
20 times a week, yes the investigator testified that
21 they might be able to do basically gather
22 circumstantial evidence, come every day or so.

1 Effectively, in my experience over the
2 last two plus years with ABRA, that almost never
3 happens. And again, they can witness a dirty
4 alley, but by observing that, they don't know how
5 often it's been power washed.

6 Again, rendering these provisions
7 effectively unenforceable. Also, ABRA does not
8 enforce on weekends prior to 7:00 p.m. The
9 hotline is closed and the email and the normal
10 number here is closed on the weekends.

11 So there's no way for residents to
12 file a complaint about ongoing activity on
13 weekends prior to 7:00 p.m. The hotline is only
14 open 7:00 p.m. to 3:00 a.m. on the weekends.

15 So, if there's really loud music, that
16 particular corridor is a very popular corridor
17 for daytime weekend activity. There's a few in
18 the District like that, similar to Connecticut
19 Avenue downtown.

20 There's nothing we can do. We cannot,
21 the hotline is literally closed. We cannot file
22 a complaint.

1 The noise provisions of Po Boy Jim's
2 Settlement Agreement on the other hand, are not
3 limited to only ABRA enforcement hours. And the
4 establishment regularly holds Saturday daytime
5 events.

6 So, noise provisions on the weekends
7 during the day are effectively unenforceable by
8 ABRA. To enforce the noise provision of the
9 settlement agreement, it requires, as the
10 investigator testified, investigators to come
11 inside a home.

12 This is a burdensome procedure for
13 resident. Particularly given the amount of noise
14 issues we have to have ABRA investigators often
15 very late at night having to wait for
16 investigators.

17 We sometimes have to wait hours for an
18 investigator depending on their availability. So
19 you end up, you know you can all at one in the
20 morning, but you might have to stay up until 2:30
21 or 3:00 in the morning for an ABRA investigator
22 to come.

1 My neighbors and I have had multiple
2 experiences with calls to the hotline going
3 unanswered. Either just ringing forever or you
4 leave a voice mail and you don't hear back.

5 Or you leave a voice mail and you
6 might hear back hours later. This has happened
7 on more than one occasion.

8 And also, ABRA investigators have been
9 at time, unable or unwilling to come into
10 establishments or to visit our building to, it to
11 investigate a noise violation.

12 On very few occasions has an ABRA
13 investigator ever asked me to come inside my
14 home. There are times I will invite them to do
15 so. But they almost never ask.

16 So, the burden is effectively on us to
17 try to get an ABRA investigator to come into our
18 home to try to investigate the noise.

19 But the other problem that we've
20 experienced in that area. Again, as the
21 investigator testified, it's a very noisy area.

22 So we've had investigators that have

1 effectively refused to enforce the noise
2 provisions, because they say they can't isolate
3 the noise. And they won't run a necessary test
4 to tell where the noise is coming from.

5 So it effectively means that while
6 everybody is doing it, so nobody's doing it. It
7 renders these provisions extremely, extremely
8 difficult to enforce.

9 So while on its face the settlement
10 agreement might seem very clear about what the
11 noise provisions are, it's just -- they've become
12 extremely difficult, if not impossible, to
13 enforce.

14 One example I'll give you is that on
15 a holiday Monday, I forget which holiday,
16 Investigator Fiorentine, Supervisor Fiorentine,
17 told me he literally did not have an investigator
18 to send to my -- to my place.

19 One was literally not available. He
20 could not do it. So, regardless of how long I
21 waited, it didn't matter. It's a holiday.

22 Monday, or holidays tend to be very

1 big in our areas for these establishments, could
2 not send anybody. He was literally not able to
3 enforce it.

4 As I said earlier, I have not filed a
5 complaint each time I've witnessed or seen
6 evidence of a violation of the Establishment
7 Settlement Agreement in part because of the lack
8 of enforcement and the lack of change that it
9 makes, the lack of impact that it makes.

10 I file it a very small percentage of
11 the time. Indeed, I haven't filed complaints
12 about the vast majority of those photos that are
13 in here.

14 I've been collecting them mostly for
15 purposes of today. Have not filed complaints at
16 all.

17 I try to only file complaints when the
18 noise is truly disruptive. Not just when I hear
19 noise. One, because it's exhausting to try to do
20 that.

21 And two, we try to respect the
22 investigators' time and not overburden them. We

1 understand they have to monitor the entire city.

2 So, I think my neighbors and I are
3 extremely judicious in when we call ABRA. And
4 it's a shame that we have to throttle these
5 complaints, but we do.

6 And I will note that at no time did
7 any ABRA investigator come into my home to
8 investigate Po Boy Jim as part of this protest.
9 No one ever asked to come into my home.

10 My only conversation with the
11 investigator was over the phone. I never spoke
12 to any other investigators. And from speaking to
13 my neighbors, nobody came inside 1932 9th Street,
14 Northwest.

15 So, nobody from ABRA, no investigator
16 as part of this investigation knows whether noise
17 or vibration can be heard, or what level of noise
18 or vibration can be heard. They've never been
19 inside.

20 And then also, as far as I know, I've
21 never been contacted by anybody from Karma Home
22 Designs to run a rest. Nor has anybody else in

1 my building.

2 And finally, again because Mr. Reid
3 mentioned it, I think my neighbors and I are
4 extremely dismayed at how our interactions with
5 Po Boy Jim have been. They, the owners and the
6 staff have been extremely dismissive, and
7 sometimes outright hostile to concerns raised by
8 us.

9 A good example of this is how they
10 responded to our concerns regarding their
11 employees and owners illegally parking their cars
12 in the alleyway behind the establishment. That's
13 a public alleyway. It's not private property.

14 And our parking area, you have to
15 drive through there to get into our parking area.
16 I will say that thankfully this practice has
17 decreased in recent months.

18 But early on, this was happening
19 multiple times a week. One time I knocked on the
20 establishment's rear door to ask an employee to
21 move their car so I could get my car in. And the
22 employee literally slammed the door in my face.

1 I also have reason to believe that the
2 restaurant has blocked cell phone numbers of Ms.
3 Caroline Renzulli. She has two cell phones, each
4 of which has a different number.

5 When she calls the establishment on
6 one of the phones, it rings once and then
7 disconnects. To test it she then hid the number
8 on one of her phones, and is now able to get
9 through.

10 I'll also note that sometime in the
11 last two weeks, I have no idea what prompted
12 this, you saw earlier the Exhibits from their
13 social media, their Instagram accounts, I have
14 realized yesterday I've been blocked by Po Boy
15 Jim's Instagram account.

16 MR. REID: Yeah. I blocked -- I
17 blocked him.

18 CHAIRPERSON ANDERSON: Please.

19 MR. SCHLOM: So, I think -- I
20 certainly take exception to the things Mr. Reid
21 said about why I am here. I'm an attorney. I
22 have a job with a lot of hours. I don't want to

1 do this.

2 This has been an incredible burden on
3 me. And on my neighbors as well. It's been an
4 incredible burden. I have spent countless hours,
5 as you can see from what I've got here, on this
6 protest.

7 I wanted to settle this case.
8 Settling, I completely agree with what the
9 Chairman said, settlements are much better.

10 However, the establishment was not
11 willing, as is their right, to engage in a
12 constructive, substantive negotiation about an
13 agreement that would address my issues.

14 Therefore, I'm here because my
15 neighbors and I, not because I want to show how
16 good of a lawyer I am. I don't even do this
17 stuff on a daily basis.

18 I don't want to be here. I'm here
19 because we feel like we have to be here. We have
20 no other choice.

21 If we don't -- if I drop the protest,
22 we'd have the same status quo. I feel I have,

1 other than the time and the effort here, very
2 little to lose.

3 But we have, hopefully, a potential
4 amount to gain both to hopefully bring Po Boy Jim
5 into compliance.

6 But again, I continue to stress, their
7 existing obligations that they themselves agreed
8 to in 2017, as well as to aid ABRA investigators
9 in enforcing some of the provisions that are
10 either effectively or actually unenforceable by
11 ABRA.

12 So, that's the end of my statement.

13 CHAIRPERSON ANDERSON: Okay. Mr.
14 Reid, your opportunity to ask him questions based
15 on the representation that he's just made here.

16 CROSS EXAMINATION

17 MR. REID: All right. So these
18 pictures you took --

19 CHAIRPERSON ANDERSON: Mr. -- please?
20 In the form of a question, okay?

21 MR. REID: Okay. So you took these
22 pictures between the end of last year and this

1 year --

2 CHAIRPERSON ANDERSON: Now what
3 picture, the --

4 MR. REID: Of the trash -- of the
5 trash.

6 CHAIRPERSON ANDERSON: All right. Did
7 you label them with the numbers?

8 MR. REID: I can describe these. It's
9 the same pictures, trash and cameras.

10 CHAIRPERSON ANDERSON: All right. I
11 just want to keep the record so we'll know what
12 you're referencing. That's all.

13 So, just in asking the question, be
14 specific of what you're asking the question of,
15 sir.

16 MR. REID: So you took these pictures
17 with the cameras to what, that was last year,
18 2018?

19 MR. SCHLOM: Yes. So, the P-7,
20 Protestant's Exhibit 7 was taken on December 4,
21 2018 at 7:38 p.m.

22 That's the one that shows no camera.

1 Protestant's Exhibit 8, the one that shows the
2 camera, was taken -- I took it, on February 25,
3 2019 at 8:26 a.m.

4 MR. REID: So why didn't you take
5 pictures of the other cameras that we have? Not
6 only the one in the back alley that we put up?

7 Why didn't you take pictures of the
8 inside, the cameras that we had on the inside
9 from day one?

10 MR. SCHLOM: I -- it's private
11 property. I don't have access.

12 MR. REID: Most people -- you can come
13 inside there.

14 MR. SCHLOM: I --

15 MR. REID: It's open to the public.

16 MR. SCHLOM: I don't have access to
17 the property. I can tell you, I wasn't looking
18 to take pictures.

19 I'm not even sure I took these
20 photographs with the intent to photograph the
21 cameras. There had been some security issues on
22 9th Street, as there are with many

1 establishments.

2 And it prompted me to go back and look
3 at the Settlement Agreement. I think, looking at
4 the requirement, the Settlement Agreement
5 specifically says cameras on the exterior of the
6 premises, where I can go. It's public property.

7 So, I -- that's why I took those
8 photographs when and where I did.

9 MR. REID: All right. Earlier you
10 asked investigators how do -- how does she know
11 that I didn't close the cans, the trash cans
12 before she got there, right?

13 MR. SCHLOM: That's correct. I asked
14 whether -- I asked whether she could know,
15 correct.

16 MR. REID: So how do we know you
17 didn't open these trash cans before you took the
18 pictures?

19 MR. SCHLOM: I can testify under oath
20 today that I didn't. I don't know --

21 MR. REID: I'm not saying you did.

22 MR. SCHLOM: I don't know -- well, she

1 testified that she didn't know whether they were
2 open or not. I don't know what incentive I would
3 have to open the trash cans.

4 Given our rat issues, I would much
5 rather all the trash cans be closed and the bins
6 sealed. Then we would have no problems.

7 MR. REID: And were these -- with you
8 stalking the social media accounts, how do we
9 know what days these pictures were taken on?

10 MR. SCHLOM: Other -- I know when they
11 were taken, because I went back and looked at my
12 phone records.

13 And I'm testifying today under oath of
14 when they were taken.

15 MR. REID: All right. Yeah. But I
16 told you we got the contractor to do that work.
17 But you don't believe me, right?

18 MR. SCHLOM: I have no idea when it
19 was done. You haven't shown me an invoice. I
20 have no idea.

21 I have no reason to disbelieve it was.

22 MR. REID: You can show me a date.

1 MR. SCHLOM: I've seen an estimate.
2 I see the photographs, but the photographs don't
3 show anything before it was done, while it was
4 done, after it's done.

5 I have no idea. But what I do know,
6 is that it has not been effective at eliminating
7 the noise.

8 MR. REID: These photos don't show
9 anything either. And they should have to.

10 CHAIRPERSON ANDERSON: Are you asking
11 him a question, sir?

12 MR. REID: Hold on. Right. And you
13 said you traced the noise coming from Po Boy Jim,
14 right? You said you walked --

15 MR. SCHLOM: I --

16 MR. REID: You said you walked -- you
17 traced the noise, you tracked the noise coming
18 from us, right?

19 MR. SCHLOM: Correct. When I hear
20 noise coming from somewhere, and I'm trying to
21 figure out where it's coming from, I'll try to
22 figure out where it's coming from.

1 For times when we hear it coming from
2 our north side, what I will do first of all, is
3 I'll put my hand against the wall in our unit.
4 You can -- the closer establishments, you can
5 feel the vibration.

6 And then I'll go in our north
7 stairwell, start all the way at the bottom, which
8 is right where it is. And try to see if you can
9 trace it from the top.

10 Sometimes I'll go outside to hear
11 whether it's coming from them, from Unity Lounge,
12 which is next door. I try to -- I try the best I
13 can to isolate where the noise that we are
14 hearing, is coming from.

15 MR. REID: But you know vibration --
16 vibration, it will be a one said vibration
17 anywhere. So how can you single out where the
18 vibration starts from?

19 MR. SCHLOM: I do the best I can to
20 try to figure out where the vibration is coming
21 from.

22 MR. REID: And what's to the other

1 side -- what is to the other side of your
2 building? I know Po Boy Jim is on one side.
3 What's the other side?

4 MR. SCHLOM: The south side?

5 MR. REID: I don't know north, south,
6 what. The other side.

7 MR. SCHLOM: So yes, so the south of
8 our building abuts MK Lounge.

9 MR. REID: All right. So how do you
10 know the music's not coming -- we're a
11 restaurant. So, we don't have that big old sound
12 system that other restaurants have.

13 So how do you know that sound is
14 coming from our little 90 dollar speakers that we
15 have in our restaurant?

16 MR. SCHLOM: Because through our
17 investigation, we can tell whether the music is
18 coming, the vibration is coming from the north or
19 from the south.

20 MR. REID: By that section of wall?

21 MR. SCHLOM: Sure. Touching the wall,
22 going outside, going in the stairwell. All of

1 that.

2 MR. REID: And you do know that we
3 don't have like a club stereo. You do know that
4 we are a restaurant? And we continue to be a
5 restaurant.

6 We don't have a club system. You know
7 we have a cheesy speaker system that's not even
8 capable of making sound, the sounds that you're
9 talking about. It's impossible.

10 MR. SCHLOM: The only sounds -- the
11 only evide -- or my only knowledge, my only
12 personal knowledge of your sound system, is
13 through looking at the photographs on social
14 media.

15 Again, I'm not inside. And then from
16 my visit inside the establishment when I met with
17 you on September 7.

18 MR. REID: So why not the outside?

19 MR. SCHLOM: That's my only personal
20 knowledge.

21 MR. REID: Why don't you come inside
22 the restaurant and take pictures? When you came

1 and met me the other -- in the nighttime that
2 other day, why didn't you go look at the sound
3 proofing?

4 MR. SCHLOM: I --

5 MR. REID: We welcomed you in. Why
6 you couldn't come look at the, all and look at
7 the sound proofing work that we did?

8 You looked at everything else that
9 worked against us, why didn't you want -- why
10 didn't you want to come look at the wall we put
11 in because you complained so much?

12 MR. SCHLOM: I'm not sure what that --
13 what purpose that would have served. Our meeting
14 was designed to have a negotiation.

15 MR. REID: All right. You could bring
16 everything when you come.

17 MR. SCHLOM: But you're correct, I've
18 never asked you to come take photos inside your
19 establishment. That's true.

20 MR. REID: You don't have to ask. You
21 can come do it. I don't know, at this point
22 there's not anyone that's --

1 CHAIRPERSON ANDERSON: Sir, if you
2 have a question sir, you ask the question.

3 MR. REID: Okay.

4 CHAIRPERSON ANDERSON: If you're done
5 asking questions, then you're done asking
6 questions.

7 MR. REID: Fine.

8 CHAIRPERSON ANDERSON: Do you have any
9 other questions you want to ask him?

10 MR. REID: No. No, sir.

11 CHAIRPERSON ANDERSON: All right. I
12 have a question to ask, about your -- it's clear
13 that you've called ABRA regarding noise
14 violations. Is that correct?

15 MR. SCHLOM: Yes. I have called ABRA
16 regarding noise violations and Settlement
17 Agreement violations related to noise, correct.

18 CHAIRPERSON ANDERSON: So when you
19 called the hotline regarding noise violations,
20 what is it that the caller tells you about how
21 they need to prove it?

22 MR. SCHLOM: Sure. So, it depends on

1 which -- I can actually say it depends greatly on
2 which supervisor I talk to.

3 CHAIRPERSON ANDERSON: Right.

4 MR. SCHLOM: Investigator Fiorentine
5 is normally the most cooperative. He's the most
6 -- he tends to be very flexible in what we want.

7 So he's often willing to just go to
8 the establishment, ask them to turn it down.
9 That's minimal burden on us. It's actually
10 minimal burden on the establishment. It's
11 minimal burden on him.

12 Or he'll -- he's very good about
13 asking, do you want me to come inside to
14 substantiate the noise complaint?

15 I can tell you that Investigator Parou
16 (phonetic) at least early on was not very
17 receptive to our noise complaints.

18 He was under the impression, which I
19 believe has been corrected through training, that
20 noise violations for abutting properties cannot
21 be established. Which doesn't make any sense
22 either in logic or under the law.

1 CHAIRPERSON ANDERSON: I'm not
2 following here.

3 MR. SCHLOM: So he kept telling us
4 that, for example, we -- we can't establish a
5 noise violation for an abutting property.

6 So, he can't establish a noise
7 violation against Po Boy Jim or MK Lounge in our
8 1932 9th Street building. I agree. It doesn't
9 make sense based on the law or on logic.

10 But, he was under that impression at
11 least through the beginning of 2019. But, that
12 seems to have been corrected now.

13 But I can tell you that certain
14 investigators do not uniformly ask, as a rule,
15 would you like me to come inside to attempt to
16 establish the complaint?

17 CHAIRPERSON ANDERSON: So you're
18 saying that when the investigator comes, or you
19 call, they do not tell you that they have to come
20 inside your unit to substantiate that you can
21 hear the noise in your unit?

22 MR. SCHLOM: They don't tell me that

1 every time. They have all told me that in the
2 past, I think, because they know all of us in our
3 building so well.

4 In fact, they probably recognize us by
5 voice by now, all of us. That they understand
6 that we understand the rules.

7 And honestly, sometimes for a lot of
8 us in our building, it's a judgement call. Do I
9 want to wait for them to come? Do I want to have
10 them come inside? We just got into bed.

11 Do I want to invite the investigator
12 in, or would I rather just ask, hey, can you go
13 ask Po Boy Jim, MK Lounge, Secret Lounge,
14 whatever it might be, to turn it down?

15 CHAIRPERSON ANDERSON: Well, I guess
16 the question I'm asking is, how can the
17 investigator -- I'm asking from your per --
18 because your quest -- how can they state that
19 you're actually hearing noise if they're not
20 coming into your establishment to find out?

21 MR. SCHLOM: I agree with you in that
22 statement. And that's why the -- even enforcing

1 that threshold question for enforcement is such a
2 great burden, because it requires them to come
3 inside.

4 And so as many -- as the other
5 witnesses here today have shown, isolating the
6 noise is a completely separate question.

7 Because sure, they can say noise is
8 coming from the north, you can hear vibration,
9 but where is it coming from?

10 That often according to what I've been
11 told by investigators, can require -- it actually
12 requires multiple investigators.

13 One has to be in your unit. One has
14 to be in the establishment. Then they have to be
15 there while the establishment turns down the
16 music. Can the investigator in the home notice a
17 difference?

18 That that's -- that's what I've been
19 told is required of me -- for some investigators
20 to establish a noise violation, because they need
21 to isolate, of all of the businesses around
22 there, where is it coming from.

1 CHAIRPERSON ANDERSON: Right. That's
2 how at least -- you're a lawyer, so you need to
3 -- how can -- that's why I'm asking. You have to
4 substantiate that the music is coming from Po Boy
5 Jim.

6 MR. SCHLOM: Sure. Sure.

7 CHAIRPERSON ANDERSON: That makes
8 sense. You live in an area that it appears that
9 there are a lot of establishments.

10 MR. SCHLOM: So the way that we have
11 asked ABRA investigators to do it, but again,
12 they are not always able to do this, is to run
13 their required nosie test.

14 But that requires two investigators at
15 least. Sometimes investigators, I've bene told
16 this, although sometimes it doesn't happen.

17 I've had this with supervisors, so
18 Investigator Fiorentine has come alone into my --
19 into my unit.

20 But some seem hesitant to come by
21 themselves. They want to come in a team of two,
22 which I can understand to some extent.

1 So then you'd need at least three
2 investigators, if not four, to have in your unit,
3 and in the establishment. Then the establishment
4 would have to alter the noise. And then the one
5 in your home, has to tell the difference.

6 I think Mr. Chairman, you've hit on
7 exactly the challenge in, you know, the
8 Settlement Agreement terms itself can be
9 extremely straightforward. It's a vibration.

10 But actually enforcing that is
11 extremely challenging, which requires a
12 tremendous amount of effort and good faith on the
13 part of the establishment. And that's why we're
14 here.

15 CHAIRPERSON ANDERSON: No, sir. It's
16 not your time. I'm asking questions. I'm not
17 trying to be --

18 MR. REID: I know that.

19 CHAIRPERSON ANDERSON: I've given you
20 an opportunity to ask questions. And I said to
21 you, are you sure you have all your questions?

22 MR. REID: The last question made me

1 think of one question.

2 CHAIRPERSON ANDERSON: And then I ask
3 questions. And then I -- the Board will ask
4 questions. And we might give opportunities to
5 ask.

6 MR. REID: All right.

7 CHAIRPERSON ANDERSON: But that's
8 something that I will decide if I'm going to
9 allow --

10 MR. REID: All right. That's cool.

11 CHAIRPERSON ANDERSON: This back and
12 forth moving forward.

13 Now, do you know the purpose of the --
14 you testified earlier, well, you know, let me --
15 are you aware that as far as noise violation that
16 it's regarding a specific hour in the evening
17 that it's not necessarily applicable during the
18 day?

19 MR. SCHLOM: So, I am aware of that,
20 that under the statute. What we complain about,
21 and what we complain under, we try to be very
22 clear with the investigators, is not the noise

1 statute regarding decibels and other things.

2 It is regarding the Settlement
3 Agreement noise provisions. Which are more
4 restrictive than what is in the statute.

5 CHAIRPERSON ANDERSON: So, but it's
6 not --

7 MR. SCHLOM: So, that's important.

8 CHAIRPERSON ANDERSON: But the
9 agreement is based on the statute. So there --
10 sorry. The agreement is based on the statute, so
11 therefore I don't believe that the agreement
12 would state that at three o'clock in the
13 afternoon there's a lot of noise next door, and
14 then you can -- you're going to complain to say
15 there's noise.

16 Then my understanding of that, you
17 have an agreement to ensure that you have peace
18 and quiet at certain periods of time in the day,
19 or in the night.

20 So therefore, it's what -- but I hear
21 what you're saying. But I think your
22 interpretation is incorrect.

1 MR. SCHLOM: Mr. Chairman, I
2 respectfully disagree with your reading of the
3 Settlement Agreement. Settlement agreements
4 often are more restrictive than the statutes
5 themselves.

6 For example, requiring power washing
7 twice a week. That's not in the statute. There
8 are general rules about having to keep an area
9 clean.

10 The noise provisions in here, and
11 they're in -- I should say they're in many other,
12 similar provisions are in many other businesses
13 complaints -- or many other businesses'
14 settlement agreements rather. It is
15 intentionally more restrictive, partially because
16 we are residents living in this area.

17 So, I disagree with your reading that
18 nothing relating to noise in here can be read as
19 more restrictive than what the noise ordinance
20 and noise statues say.

21 CHAIRPERSON ANDERSON: That's not what
22 I'm saying, sir. What I'm saying, sir, noise --

1 one of the reasons why we close establishments
2 that -- or we have ending periods, is that
3 there's a reasonable expectation that okay, you
4 have young children, you need to go to bed at a
5 reasonable period of time.

6 So therefore, we'll say that you
7 cannot operate past ten o'clock. Because people
8 need to go to bed.

9 We're not going to -- we're not going
10 to say that you cannot make noise in a sense that
11 we do not regulate noise during the day, because
12 it's expected that folks are not sleeping.
13 There's no expectation.

14 So, I'm -- this is not back and forth.
15 But, I do not believe that the Settlement
16 Agreement states that at three o'clock in the
17 afternoon that you're not going to have that
18 noise, because it's not the same expectation in
19 the sense that at 12, one, two, or three o'clock
20 in the morning.

21 But I digress. I -- does any other
22 Board Member have any questions? Go ahead Mr.

1 Short.

2 MEMBER SHORT: Yes. This is actually
3 my question here is to the abutting property
4 owner.

5 You say that the nightlife person from
6 the city came out and talked with you?

7 MR. SCHLOM: Yes. So, --

8 MEMBER SHORT: Do you remember his
9 name?

10 MR. SCHLOM: So it was Jen -- so the
11 Mayor, the Nightlife Mayor, the office is Shawn
12 Townsend, I believe.

13 MEMBER SHORT: Okay. All right. Go
14 ahead.

15 MR. SCHLOM: And he's, I don't know
16 her title, Deputy, it was Jen something. I've
17 actually spoken to both of them on the phone.

18 I actually had a long conversation
19 with Sean Townsend on the phone months ago about
20 a meeting that he had with, I believe that was in
21 March 2019, about a meeting he had with the
22 owners.

1 And then as part of this protest
2 process, Jen, I'm forgetting her last name.
3 Perhaps Mr. Reid knows who it is.

4 MEMBER SHORT: I know Jen.

5 MR. SCHLOM: He works -- she works for
6 Mr. Townsend. I met with -- they were, in her
7 words, assisting Po Boy Jim.

8 MEMBER SHORT: Okay. Let me make a
9 suggestion. I know Mr. Townsend quite well. He
10 use to be a part of this organization before he
11 got that job.

12 I would think that if you would have
13 him to come out and you and Po Boy Jim or anybody
14 else, he's a guy who gets things done. That's
15 the reason why the Mayor gave him that job.

16 Yeah, I'm going to lay a little
17 foundation before I ask you my next question. I
18 worked for the city for 33 years. Seven of those
19 years I spent in the 900 block of R Street, right
20 around the corner from you.

21 And then we moved that fire station to
22 the 2531 Sherman Avenue. So, I was, for seven

1 years, all up and down 9th Street.

2 Where your building is now, that used
3 to be a parking lot. Did you know that?

4 MR. SCHLOM: Yes. I do.

5 MEMBER SHORT: And that was the way to
6 get to 9 1/2 Street, which you mentioned earlier.
7 So once your building went up, it just, it
8 compromised some of public safety, whatever, but
9 I won't go there.

10 But the bottom line in that, and I
11 just wanted to make a statement, I think you need
12 to call Mr. Townsend. And I would suggest that
13 you and the owner sit down with him.

14 I'd be willing to bet you a dollar to
15 a donut that once you sit down with Mr. Townsend,
16 a lot of your problems will go away. Because Mr.
17 Townsend has a way of explaining things to
18 business owners and to citizens.

19 We've had this problem all over town.
20 Mainly, when I first got on the board, it was
21 Connecticut Avenue.

22 And the neighbors finally got to

1 working with the business owners. And they
2 worked out a lot of problems with noise
3 mitigation.

4 They went through it. They used
5 professionals. And obviously Mr. Townsend knows
6 all about that too.

7 So the bottom line is, I would think
8 you have been compelling in your testimony today.
9 And but realize were Po Boy Jim's now is, there's
10 been a nightclub there ever since I can remember.

11 And I was born and raised in this
12 town. I'm a little north of 70 years old.
13 There's always been a nightclub there.

14 9th Street has always been a nightlife
15 type of place. It's always been that way. So
16 you've been there for two years, right?

17 MR. SCHLOM: Just over.

18 MEMBER SHORT: And so when you -- when
19 you -- before you bought that property, did you
20 realize that you were moving into a commercial
21 nightlife area?

22 MR. SCHLOM: So, I knew I was moving

1 into an ARTS-2 mixed use zone.

2 MEMBER SHORT: Okay. All right. All
3 right, well, I'll just say this --

4 MR. SCHLOM: So yes, I did.

5 MEMBER SHORT: Okay.

6 MR. SCHLOM: I knew the zoning of that
7 area. And I knew the character of that area.

8 MEMBER SHORT: Okay. Good.

9 MR. SCHLOM: But I also knew that
10 these agreements were in place with the
11 establishments before we moved in.

12 MEMBER SHORT: Not to hold on any
13 longer, because we've got another hearing coming.
14 But, will you please take my suggestion and call
15 Mr. Townsend.

16 And try to get with him. Just bear
17 with me for a minute. And I'd be willing to bet
18 you, you two guys both will call me back in about
19 a month after you meet with Mr. Townsend.

20 And I'd be willing to bet you a lot of
21 your problems will go away. Just try it. That's
22 all I have Mr. Chair. Thank you.

1 MR. SCHLOM: I will absolutely take
2 your suggestion under advisement.

3 MEMBER SHORT: Please tell him -- just
4 tell him Mr. Short said that.

5 MR. SCHLOM: I will give him your
6 name.

7 MEMBER SHORT: Yes, please do. Please
8 do.

9 MR. SCHLOM: Okay.

10 CHAIRPERSON ANDERSON: All right. Any
11 other questions by any other Board Members?

12 (No response)

13 CHAIRPERSON ANDERSON: All right,
14 sir?

15 MR. REID: You don't like Mr.
16 Townsend?

17 CHAIRPERSON ANDERSON: All right, I --
18 all right, okay. I'm going to -- all right. All
19 right, so we were doing cross.

20 All right. So, we're going to do
21 closing. Do you need a break? Or are you ready
22 to -- closing is to wrap up, to tell me, okay,

1 this is what we've proved, and this is what you
2 want to occur.

3 So, you go first Mr. Reid.

4 MR. REID: And so basically closing --

5 CHAIRPERSON ANDERSON: No. Your
6 closing is like, basically you tell me what is it
7 that you have provided and what is it that you
8 want the Board to do?

9 MR. REID: So basically to close I want
10 to say that you know, we had a, I think what's
11 call mediation for this. And Mr. Evan, he
12 addressed his concern.

13 And I admit, maybe in the beginning
14 that you know, when we first opened up, there
15 were a few mistakes here and there. But nothing
16 that requires all this.

17 And since mediation, we have addressed
18 everything. Even before mediation we have
19 addressed every last one of these concerns. From
20 the parking, to the trash, to the sound proofing.

21 You know, and it seems like, I don't
22 know, we still can't satisfy them. I don't know

1 why we should be penalized and because Mr. Evan
2 is bring up, bringing up once upon a time slip
3 ups of a year ago.

4 But we've been in compliance of the
5 Settlement Agreement, you know, recently. He
6 keeps saying that he wants to, I guess, make up
7 his own settlement agreement to bring us in
8 compliance with the existing one.

9 But the truth is, we are in
10 compliance. And we have slipped up, you know,
11 before a long time ago. But, that's not
12 occurring anymore.

13 And this whole thing with sound, I
14 don't even know why we keep talking about sound.
15 And he cannot hear our music.

16 You know, you suggested that we meet
17 with Mr. Townsend, and try to come to an
18 agreement. But, if you read the emails, I think
19 you might have a copy of them, he didn't want to
20 -- he didn't want to do this.

21 MEMBER SHORT: Just try it. Try it.

22 MR. REID: Right. I know.

1 MEMBER SHORT: Why don't you just try
2 it.

3 MR. REID: Wait, no. I'm telling you,
4 he didn't want to. He denied in the email. He
5 didn't want to meet with Mr. Townsend.

6 He even wrote it in the email that he
7 didn't --

8 MEMBER SHORT: Are you willing?

9 MR. SCHLOM: Mr. Chairman, I mean,
10 this is not testifying --

11 MEMBER SHORT: Are you willing?

12 MR. SCHLOM: To evidence that came in
13 during the testimony.

14 MR. REID: Of course. Of course.

15 MEMBER SHORT: Do that. Just do that.

16 MR. REID: Yeah.

17 MEMBER SHORT: Do that. Do that.

18 MR. REID: But even after conducting
19 the sound test, he said that he would not drop
20 his new protest.

21 He said even if he doesn't hear the
22 noise, he's not dropping his protest. And he

1 wrote up a protest agreement of his own, and I
2 don't know.

3 It seems like Mr. Evan is just trying
4 to restrict our business. We're not a club.
5 We're a restaurant. We have a kid's menu.

6 We don't do -- we are different from
7 every other thing on that block. You know, we
8 get our money through food.

9 You know, liquor is an incentive. But
10 we predominantly sell more food. You know,
11 restricting us to the second floor, I mean,
12 restricting operations to the second floor, you
13 know, we pay 16 thousand dollars a month in rent.

14 You know what I'm saying? He knows
15 it's expensive. But, I still feel like his
16 intentions are malicious. It's like he's trying
17 to run us out of business and creating problems
18 that don't exist.

19 You know, but -- you know, I did sound
20 proofing, and pressure washing. I have a good
21 relationship with Ms. Caroline, but not him.

22 I did block him from social media,

1 because he stalks our page and then he calls ABRA
2 when he sees certain things before the event even
3 occurs. So, I did block him.

4 You know, but like I don't know how to
5 fix this. We address all his concerns, you know,
6 parking, trash, and sound. And I don't know
7 what's next.

8 You know, I think he even demonstrated
9 that to you. He even said that, you know, we
10 pressure washed now. Parking's gotten better.

11 I notice he doesn't drive a car. I
12 know he doesn't park in the alley. He doesn't
13 have a space back there, so I don't know how
14 there's a complaint about parking.

15 And you know, sound proof and all. I
16 don't know. That's my closing.

17 CHAIRPERSON ANDERSON: All right.

18 Yes, sir?

19 MR. SCHLOM: So thank you, Mr.
20 Chairman and Members of the Board. I appreciate
21 your diligence and our time today.

22 And I apologize that we've gone

1 slightly over. But, hopefully we'll -- including
2 a break, so it will be about three hours.

3 So in this hearing, as in any protest
4 hearing, the Applicant bears the burden. As the
5 Chairman's mentioned today, the Applicant bears
6 the burden of establishing its appropriateness by
7 substantial evidence.

8 And when considering a renewal
9 application, the statute states that the Board
10 shall, not may, shall consider the licensee's
11 record of compliance with the ABC laws, the ABC
12 regulations, and its settlement agreement, as
13 well as other factors, including harm on peace,
14 order, and quiet.

15 And when you go back and look at the
16 evidence introduced today, you'll see Mr. Reid
17 introduced no evidence other than his own
18 testimony.

19 And I've introduced a lot of evidence,
20 with the Board's indulgence. You won't find much
21 put forward by Po Boy Jim in establishing its
22 appropriateness today.

1 And when you look at the record, what
2 you will find, is a mountain of evidence that the
3 establishment has harmed peace, order, and quiet
4 in the neighborhood.

5 And is repeatedly and is still
6 ignoring the very clear requirements in the
7 Settlement Agreement that it agreed to itself
8 over two years ago.

9 You saw evidence of how they've
10 offered live entertainment on Sundays. You saw
11 the advertisements for it.

12 You saw the social media posts doing
13 it. I think Mr. Reid might have even admitted
14 that in the past, they have done it.

15 You saw how they failed to install
16 security cameras until months after the deadline.
17 I mean, this is very clear stuff in the
18 agreement.

19 There is no ambiguity. Nobody raised
20 a hand and said, I'm not sure about that. They
21 didn't do it until we raised an issue.

22 You saw how they've allowed their

1 trash to remain open. I didn't submit all the
2 photos, but their trash remained open for hours
3 and hours at a time, time and time again,
4 attracting rats.

5 This is not a one off issue. The
6 point of showing the photos was not to show that
7 it's happened, but to show that it happens
8 repeatedly over and over again. And is indeed, I
9 think the most recent photo I showed was from
10 September of this year.

11 You saw the failure to power wash.
12 Mr. Reid, and I will concede that they did power
13 wash on August 12.

14 But he has no evidence of power
15 washing prior to August 12 other than his own
16 testimony that he paid his staff to do it. No
17 records, no photos, nothing.

18 I would posit to you that it was not
19 done on a regular basis if at all. And even
20 since then, from his own testimony, he only did
21 it once in August and once in September.

22 So even by his own testimony, he's

1 still violating the requirements of having to do
2 it twice per month.

3 And most importantly, about noise.
4 You've seen evidence and heard testimony about
5 how they fail to take -- and all necessary action
6 is required in their agreement, to eliminate
7 noise from being heard in residential premises.

8 Mr. Reid provided no invoice of the
9 sound proofing. No proof, no evidence of when it
10 was installed. No photos before, none after.

11 We don't even know if what was in the
12 photos is sound proofing. The investigator
13 testified, she's not an expert. As Member Short
14 pointed out, she's not an expert.

15 She's just looking at a wall. Mr.
16 Reid said it was sound proofing. Nobody knows.
17 But again, it's the Applicant that bears the
18 burden to show it.

19 And this wouldn't be that difficult to
20 show. He could have presented photographs, an
21 invoice. All he presented was an estimate.

22 But even if you believe everything he

1 said about the sound proofing and when it was
2 installed, first of all, it wasn't installed
3 until about a year after they began operations.

4 Well after most of the noise
5 complaints -- many of the noise complaints in the
6 log were filed. I think most of the noise
7 complaints in the log were filed and well after
8 he was aware of the noise issues.

9 It took over a year -- it took a year
10 even if you believe him, to install the sound
11 proofing. And there's no evidence it was
12 effective.

13 Nobody did a test before. Nobody's
14 done a test after. And the testimony you've
15 heard from me today, from talking -- from me and
16 from talking to my -- my neighbors, one of whom
17 was going to testify, but was unavailable to be
18 here today, it can still be heard now.

19 So I have no idea. Maybe the --
20 whatever was installed helped. Maybe it isn't.
21 Nobody knows.

22 But again, it's the Applicant that

1 bears the burden to show what they've done. And
2 this is evidence that they have not shown today.

3 You also heard how difficult it is to
4 enforce some of the provisions. And importantly
5 you heard from the investigator today. She did
6 not investigate the Applicant's record of
7 compliance with the Settlement Agreement.

8 Which is one of the protest grounds in
9 my letter. It's one of the statutory grounds
10 that are allowed for renewal applications.

11 She didn't even know what was in the
12 pro -- in the Settlement Agreement while she was
13 doing the protest investigation.

14 And but even despite all of that, she
15 did walk you through their record of compliance.
16 What it says in the statute. Two warnings and
17 four fines in a 13-month period. Three fines
18 just in August 2019 during this protest process.

19 Now given this mountain of evidence,
20 I think that my neighbors and I would be
21 justified in asking for very severe restrictions.
22 Or even potentially denial of the renewal

1 application.

2 The Applicant has not met its burden
3 under the regulations today, to show by
4 substantial evidence that it's appropriate. But
5 I am not doing that.

6 I am not asking the Board to deny the
7 application. I am not. And I'm not asking the
8 Board, I don't think, to impose onerous
9 restrictions that go beyond what's already in the
10 agreement.

11 My neighbors and I would like to ask
12 the Board to take -- to mandate that the
13 Applicant take certain targeted actions that will
14 achieve two goals.

15 Bring Po Boy Jim into compliance with
16 its existing Settlement Agreement obligations.
17 And aid ABRA in enforcing the existing
18 obligations in the Agreement.

19 So first, we would ask that you
20 mandate that no speakers be mounted on the wall
21 abutting 1932 9th Street, Northwest. That's the
22 south wall of Po Boy Jim's.

1 And that all other speakers be either
2 placed on the floor or mounted use in string
3 suspension mounts. This hopefully will help
4 control noise and vibration.

5 Even though again, they're already
6 required to prevent noise and vibration from
7 being heard in any residence. That's already a
8 requirement.

9 Second, we would ask that you require
10 Po Boy Jim to provide proof upon the Board's
11 request of its trash pick up, grease control, and
12 pest control contracts, and photographic evidence
13 of its power washing when the Board requests it.

14 This will hopefully help ABRA enforce
15 these requirements that are already in the
16 Settlement Agreement.

17 I would posit that if Po Boy Jim were
18 already taking all of these actions, there's no
19 burden at all. Nobody would complain.

20 And even if they did, if they could
21 easily show the invoices, and that would be the
22 end of it. This is not burdensome. But it aids

1 ABRA's enforcement.

2 Third, we would ask that you require
3 the establishment to set up a complaint process.
4 To respond promptly to all complaints, and
5 maintain a log of complaints, and when remedial
6 actions were taken.

7 I think something that's been missed
8 here today is, we -- my neighbors and I would
9 much rather deal directly with Po Boy Jim then
10 with ABRA.

11 The ABRA enforcement process, even
12 when working perfectly, can be slow, can be
13 burdensome. We would much rather deal directly
14 with the establishment.

15 So, we would rather have a process
16 whereby we can call the establishment, without
17 being, you know, blocked from communicating on
18 social media, having phone numbers blocked,
19 having doors slammed in our faces.

20 Have a number that's posted online
21 that has to be functioning. They take the
22 complaints. They log the complaints. And they

1 show what they do about it.

2 When we've actually communicated well,
3 as I testified today with Ms. Renzulli, Mr. Reid
4 can be very effective at responding to the
5 complaints.

6 Unfortunately, that has been the
7 exception and not the rule. I would love it if
8 he would respond to all of our issues the way he
9 did at 1:30 in the morning a few weeks ago with
10 Ms. Renzulli.

11 That is a model. And we wouldn't be
12 here. My neighbors and I would not be here if
13 that were happening every time.

14 Indeed, we have that relationship with
15 other businesses on 9th Street. I'll text them.
16 They'll take care of it. We have no problems.

17 But requiring them to maintain this
18 log will help them keep them honest in responding
19 to our complaints. Keep them accountable. And
20 it makes it easier for ABRA to enforce.

21 Now, if the Board is unwilling to
22 mandate these actions, as I said during my

1 opening, we would ask that the Board prohibit
2 operations on the second floor after 11:00 p.m.
3 That's the part that abuts the residences the
4 most in our building. And prohibit live
5 entertainment after 10:00 p.m.

6 These measures will be intended to
7 limit noise given the Applicant's fail to take
8 the measures required by its existing agreement.

9 Now, just in closing, I'll say it's
10 often said that settlement agreements are
11 contracts. But they're really not.

12 Because a contract can be enforced by
13 the parties. If one side is in breach, the other
14 side can go to some neutral fact finder, some
15 court, provide evidence, and say you're in
16 breach.

17 Settlement agreements don't work like
18 that. Settlement agreements can only be enforced
19 by ABRA. Not by the parties.

20 And the Chairman is a big proponent of
21 settlement agreements. And I completely agree
22 with that. Because in theory, they help

1 neighborhoods, people in neighborhoods determine
2 what's best for them.

3 But, the problem there is that it
4 requires a tremendous amount of good faith and
5 effort on the part of licensees to comply with
6 them because of the enforcement limitations.

7 It requires a lot of effort and a lot
8 of good faith. And I'm not discounting that
9 that's work on the licensee's part.

10 But that's the deal of a settlement
11 agreement. What the evidence has shown clearly
12 today is that Po Boy Jim has not exhibited the
13 requisite good faith and effort to comply with
14 their settlement agreement that they signed in
15 2017.

16 It hasn't met the burden established
17 by substantial evidence that the renewal of its
18 license is appropriate.

19 And the Board should impose additional
20 obligations on it to ensure it comes into, and
21 remains in compliance with its existing
22 obligations.

1 Thank you very much to all the Board
2 Members for your time today.

3 CHAIRPERSON ANDERSON: Thank you. All
4 right. Thank you for your presentations today.

5 All right, does the Board -- do the
6 parties wish to file proposed Findings of Fact
7 and Conclusions of Law?

8 Or waive their right to do so?
9 Meaning that you can write to say this is what
10 the evidence showed.

11 You write a proposed Findings of Fact
12 or you going to waive your ri -- want to waive
13 your right and the Board will issue a decision
14 based on the testimony.

15 That was, and again, it's not new
16 information. It's basically what was argued
17 today.

18 So you can't say oh, I forgot. I
19 didn't argue this before. So, in my proposed
20 Findings of Fact and Conclusions of Law, I'm
21 going to argue this.

22 MR. SCHLOM: So, I would like to do

1 that. I do not want to waive that right.

2 CHAIRPERSON ANDERSON: All right. All
3 right, so if the parties choose to file proposed
4 Findings of Fact and Conclusions of Law, then 90
5 days from when the Board receives proposed
6 Findings of Fact and Conclusions of Law.

7 Therefore, the -- you have 30 days
8 after the transcript is provided. So the
9 transcript will be emailed to the parties in
10 approximately three weeks.

11 And once it's provided, then you have
12 30 days if you want to file the proposed Findings
13 of Fact and Conclusions of Law.

14 The Protestant is going to do that.
15 You don't have to do that. If you want, that's
16 your right. If you don't know what it is, you
17 can figure it to ask for when the transcripts --
18 if when the transcript, you can ask for
19 assistance in doing that.

20 If you change your mind, you can let
21 us know that you changed your mind. And if you
22 change your mind, you can let us know that you

1 changed your mind and you are not going to file
2 that. Okay.

3 All right, so. As Chairperson of the
4 Alcoholic Beverage Control Board for the District
5 of Columbia, in accordance with D.C. Official
6 Code Section 2574(b) of the Open Meetings Act, I
7 move that ABC Board hold a closed meeting for the
8 purpose of seeking legal advice from our counsel
9 on Case Number 19-PRO-00064, Po Boy Jim 2,
10 pursuant to D.C. Official Code Section 2574(b)(4)
11 of the Open Meetings Act and deliberating upon
12 Case Number 19-PRO-00064, Po Boy Jim 2 for the
13 reasons cited in D.C. Official Code Section
14 2574(b)(13) of the Open Meetings Act.

15 Is there a second?

16 MEMBER SHORT: Second.

17 CHAIRPERSON ANDERSON: Mr. Short has
18 seconded the motion. I will now take a roll call
19 vote to the motion before us now that it has been
20 seconded.

21 Mr. Short?

22 MEMBER SHORT: I agree.

1 CHAIRPERSON ANDERSON: Mr. Cato?

2 MEMBER CATO: I agree.

3 CHAIRPERSON ANDERSON: Mr. Anderson?

4 I agree. It appears that the Motion has passed.

5 I hereby give notice that ABC Board
6 will recess these proceedings to hold a closed
7 meeting in the ABC Board Conference Room pursuant
8 to Section 2574(b) of the Open Meetings Act.

9 Again, thank you very much for your
10 presentations today. We will provide the
11 transcript to you in approximately three weeks.

12 And your proposed Findings and
13 Conclusions of Law is due to the Board within 30
14 days. And 90 days after that we will issue our
15 decision.

16 So, I guess we're talking about
17 another 120 days, we'll issue a decision on the
18 renewal of the license. All right. Thank you.
19 Have a great day.

20 MR. SCHLOM: Thank you very much.

21 CHAIRPERSON ANDERSON: All right. The
22 Board is in recess.

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(Whereupon, the above-entitled matter
went off the record at 4:57 p.m.)

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This is to certify that the foregoing transcript

In the matter of: Po Boy Jim 2

Before: DCABRA

Date: 09-25-19

Place: Washington, DC

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Court Reporter

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