

DISTRICT OF COLUMBIA

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ALCOHOLIC BEVERAGE CONTROL BOARD

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MEETING

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IN THE MATTER OF: :

Case #11-PRO-00083 :

Young Hwa Corporation :

t/a Pennsylvania Ave. Market : Protest

1501 Pennsylvania Avenue SE : Hearing

License #79255 : (Status)

Retailer B :

ANC-6B :

Renewal Application :

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January 25, 2012

The Alcoholic Beverage Control

Board met in the Alcoholic Beverage Control  
Hearing Room, Reeves Building, 2000 14th  
Street, N.W., Washington, D.C., Ruthanne  
Miller, Chairperson, presiding.

PRESENT

- RUTHANNE MILLER, Chairperson
- CALVIN NOPHLIN, Member
- NICK ALBERTI, Member
- DONALD BROOKS, Member
- MIKE SILVERSTEIN, Member
- JEANNETTE MOBLEY, Member

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

9:43 a.m.

CHAIRPERSON MILLER: We'll call the next case which is Case #11-PRO-00083, Young Hwa Corporation, trading as Pennsylvania Avenue Market at 1501 Pennsylvania Avenue, S.E., License #79255, also in ANC-6B.

MEMBER ALBERTI: Commissioner Critchfield, feel free to pull up another chair if you need to.

CHAIRPERSON MILLER: Would the parties introduce themselves for the record, please?

MR. LEE: Good morning, Board Members. My name is Kevin Lee representing Young Hwa Corporation, trade name Pennsylvania Avenue Market. My partner will be here in a few minutes. He's on the street now.

CHAIRPERSON MILLER: Are you ready to go forward?

MR. LEE: Yes, it's okay.

CHAIRPERSON MILLER: Okay.

1 MS. GREEN: I'm Carol Green, ANC-  
2 6B.

3 MR. CRITCHFIELD: And I'm Jared  
4 Critchfield. It's in my SMD.

5 CHAIRPERSON MILLER: Okay.

6 MR. RICHARDSON: And I am T.C.  
7 Richardson, a protestant in which this Board  
8 had summarily dismissed without according me  
9 a hearing.

10 Therefore, I am here to establish  
11 the fact that, one, I am still a protestant;  
12 two, that this Board needs to reconsider its  
13 order of dismissal before we consider anything  
14 further on the particular matter.

15 MEMBER ALBERTI: Mr. Lee, could  
16 you make sure you don't put papers over the  
17 mic? Mr. Lee, there is a mic right in front  
18 of you. Make sure -- push it forward just a  
19 little bit.

20 MR. LEE: Oh, okay.

21 MR. RICHARDSON: I can explain  
22 what happened. This Board --

1 CHAIRPERSON MILLER: Okay --

2 MR. RICHARDSON: -- allowed me to  
3 be a protestant and then summarily without  
4 notifying me or giving me an opportunity to  
5 give any type of argument or opposition  
6 summarily dismissed. Therefore, I am still a  
7 protestant.

8 Under the Administrative Procedure  
9 Act it says that this Board cannot act unless  
10 it notifies the parties, give them an  
11 opportunity to be heard, and then makes its  
12 decision. Therefore, the order that this  
13 Board enters is void. Therefore, I am still  
14 a protestant in 83.

15 CHAIRPERSON MILLER: Okay. I  
16 understand that you filed a motion this  
17 morning. The Board hasn't had an opportunity  
18 to read the motion yet. I don't know if the  
19 parties have been served with the motion.

20 MR. RICHARDSON: Yes, they have.

21 CHAIRPERSON MILLER: Okay. It's  
22 not right for us to deal with the motion at

1 this point.

2 MR. RICHARDSON: But it's right  
3 for the Board to dismiss me as a protestant  
4 without hearing me but it's not right here to  
5 continue. I am a protestant and I demand to  
6 be heard by this Board now because the Board  
7 made a consideration that I was not a  
8 protestant and did not notify me.

9 Under your own rules the  
10 Administrative Procedure Act requires that in  
11 a contested proceeding, which these are, you  
12 must notify the party, give them an  
13 opportunity to be heard, and then make your  
14 decision. You did not do that and your order  
15 is void. This cannot be continued.

16 CHAIRPERSON MILLER: I know that  
17 our rules provide that a motion should be  
18 filed six days before this hearing and it  
19 hasn't been.

20 MR. RICHARDSON: No. You violated  
21 your rules.

22 MEMBER SILVERSTEIN: Sir, please.

1 CHAIRPERSON MILLER: We are going  
2 to follow procedure of our rules. Your motion  
3 will be taken under advisement but it's not  
4 right today for us to consider it.

5 MR. RICHARDSON: I protest one  
6 more time in the fact that this Board has  
7 dismissed me as a protestant to move forward  
8 without hearing what I have to say. If I must  
9 remain, I will remain just as a public person,  
10 as a person who is next door, and I will make  
11 the same objections as if I was a protestant  
12 because I participated --

13 CHAIRPERSON MILLER: Sir.

14 MR. RICHARDSON: -- in the  
15 proceeding I cannot see.

16 CHAIRPERSON MILLER: Sir, you  
17 don't have standing even to be making this  
18 argument.

19 MR. RICHARDSON: How do you mean I  
20 don't have standing? You have not even heard  
21 the legal arguments.

22 CHAIRPERSON MILLER: We will

1 considering them but this is not --

2 MR. RICHARDSON: Consider them now.

3 CHAIRPERSON MILLER: No, sir.

4 MR. RICHARDSON: I was a  
5 protestant which you dismissed wrongly. I  
6 have a right to be heard by this Board. I  
7 have a right to be heard. You did not hear  
8 me. You did not hear me and under your own  
9 rules the order you entered was void.

10 CHAIRPERSON MILLER: Sir.

11 MR. RICHARDSON: You can take a  
12 break and make the decision now.

13 CHAIRPERSON MILLER: Sir, we will  
14 look at the motion. If we need to schedule a  
15 hearing for oral argument, we'll do that.

16 MR. RICHARDSON: Under your own  
17 rules you can allow a person to participate.  
18 Under the Administrative Procedure Act you can  
19 allow a person to participate in limited  
20 circumstances. Why can't I participate? I  
21 live next door to the particular property.

22 CHAIRPERSON MILLER: Sir, we are

1       only scheduling a status hearing at this  
2       point. We are not arguing any of the merits  
3       so you do not need to argue the merits today.  
4       That is not even on the schedule for today.

5                   MR. RICHARDSON: Well, if there is  
6       anything about the status hearing that has  
7       anything relevant that I should be involved in  
8       because I have to make sure that my schedule  
9       is correct. Do you understand what I'm  
10      saying?

11                   CHAIRPERSON MILLER: I understand  
12      but --

13                   MR. RICHARDSON: You don't mind me  
14      sitting here listening in on a status  
15      conference. Right?

16                   CHAIRPERSON MILLER: No, you may  
17      sit down and listen.

18                   Now can the parties address any  
19      preliminary matters the parties want to  
20      address.

21                   MR. LEE: We went through a  
22      mediation and we changed some issues and

1 opinions. We tried to draft a Voluntary  
2 Agreement. I just received it from the ANC.  
3 After this status hearing we will review and  
4 meet again. If successfully we sign on this  
5 one, we will submit it to the Board for your  
6 approval.

7 MR. RICHARDSON: Objection.

8 CHAIRPERSON MILLER: Sir, you  
9 don't --

10 MR. RICHARDSON: As a  
11 protestant --

12 CHAIRPERSON MILLER: You're not a  
13 protestant at this point.

14 MR. RICHARDSON: As a protestant I  
15 did not participate in those proceedings and,  
16 therefore, this Board should basically stay  
17 its proceeding in consideration of anything  
18 until it has made a decision as to whether or  
19 not I am a protestant or not.

20 CHAIRPERSON MILLER: Okay, sir.

21 MR. RICHARDSON: I can take legal  
22 action against you --

1                   CHAIRPERSON MILLER: You should go  
2 sit in the audience because now you are being  
3 disruptive. I am going to tell you this one  
4 more time. We are not making decisions on the  
5 merits today.

6                   We are just hearing from the  
7 parties the preliminary matters, the status of  
8 the case, and setting it for a hearing if  
9 necessary. Please do not make any more  
10 comments. Otherwise, I'm going to have to ask  
11 you to leave.

12                  Okay, Ms. Green.

13                  MS. GREEN: We think that we have  
14 an agreement and we should hopefully have it  
15 signed and executed before -- approved by the  
16 Board before the protest date.

17                  CHAIRPERSON MILLER: Okay.  
18 Anything else? All right. Let me say this.  
19 As of now there isn't an agreement signed so  
20 we will have a date set for the protest  
21 hearing which is March 14 at 5:00 p.m. I'm  
22 sorry. Am I at the wrong one? I'm sorry.

1 MS. GREEN: I have the 21st at  
2 1:30 p.m.

3 CHAIRPERSON MILLER: Wow, we have  
4 different ones.

5 MEMBER ALBERTI: We have different  
6 ones here. What dates do the parties have?

7 MS. GREEN: Pennsylvania Avenue.

8 MEMBER ALBERTI: My bad. Excuse  
9 me. I'm sorry.

10 CHAIRPERSON MILLER: Okay. To  
11 confirm then, I believe the date is March 21,  
12 2012 at 1:30 p.m.

13 MR. LEE: You said 1:30?

14 CHAIRPERSON MILLER: 1:30. Now,  
15 if there is a Voluntary Agreement that comes  
16 in and is approved by the Board, then there  
17 won't be this hearing but as of now, the  
18 hearing is set for that time.

19 MR. RICHARDSON: Excuse me, Madam  
20 Chairman.

21 CHAIRPERSON MILLER: Sir, you are  
22 out of line.

1 MR. RICHARDSON: Excuse me, Madam  
2 Chairman. The only thing that I would like to  
3 state for the Board is that how can they  
4 proceed on a Voluntary Agreement when I have  
5 not been given an opportunity to participate  
6 in that?

7 It seems to me -- I really look  
8 upon the Board in its fairness that the Board  
9 ought to instruct them not to take any action  
10 further in terms of any Voluntary Agreement  
11 until this Board has ruled on my motion.  
12 Thank you, ma'am.

13 CHAIRPERSON MILLER: I will say I  
14 am not going to instruct the parties that way.  
15 However, the Board will not take action on  
16 approving the Voluntary Agreement before it  
17 looks at your motion.

18 I think that's it for preliminary  
19 motions but I want to just read the  
20 instructions about a protest hearing in the  
21 event that it does go to protest hearing.

22 Since it's been scheduled for a

1 protesting hearing, there are a few things I  
2 want to instruct the applicant and the  
3 protestants about so that the protest hearing  
4 is focused and addresses only those issues  
5 that are being protested.

6 The Board does not intend to hear  
7 testimony on matters that are not relevant to  
8 the case. You should have received a mailing  
9 from Adjudication Assistant Sarah Fashbaugh,  
10 a letter explaining the protest process, and  
11 a copy of the protesting information form. If  
12 you do not have these documents, see Ms.  
13 Fashbaugh at the conclusion of this hearing.

14 It is imperative that you review  
15 the rules closely and adhere to them before  
16 and during the protest hearing. You are also  
17 required to complete and submit the protest  
18 information form seven days before the date of  
19 the hearing. This document needs to be  
20 submitted to ABRA and to the opposing parties  
21 in this matter.

22 If you do not receive a copy of

1 your PIF, your application, or your protest,  
2 whichever side you are representing, may be  
3 subject to dismissal. This is not a frivolous  
4 exercise on your part.

5 This form greatly assist the Board  
6 in narrowing the protest issues, facilitating  
7 the process, and keeping the parties on point  
8 during the hearing. Thank you for your  
9 cooperation. If you have any questions today  
10 or at any time leading up to the hearing,  
11 please do not hesitate to contact Ms.  
12 Fashbaugh at (202) 397-3971.

13 We do have an outstanding motion  
14 if any of the parties want to respond to that  
15 motion. As of now I understand we are making  
16 progress to the Voluntary Agreement. We have  
17 a protest hearing scheduled in the event that  
18 doesn't come to fruition.

19 Thank you very much.

20 MR. LEE: Thank you very much.

21 (Whereupon, at 9:55 a.m. the  
22 hearing was adjourned.)

<b>A</b>	<b>Beverage</b> 1:3,15,16 <b>bit</b> 3:19 <b>Board</b> 1:3,16 2:14 3:7,12,22 4:9,13 4:17 5:3,6,6 6:6 7:6 9:5,16 10:16 11:16 12:3,8,8,11 12:15 13:6 14:5 <b>break</b> 7:12 <b>BROOKS</b> 1:22 <b>Building</b> 1:17	<b>contested</b> 5:11 <b>continue</b> 5:5 <b>continued</b> 5:15 <b>Control</b> 1:3,15,16 <b>cooperation</b> 14:9 <b>copy</b> 13:11,22 <b>Corporation</b> 1:9 2:5,16 <b>correct</b> 8:9 <b>Critchfield</b> 2:9 3:3 3:4	<b>F</b>	<b>I</b>
<b>ABRA</b> 13:20 <b>act</b> 4:9,9 5:10 7:18 <b>action</b> 9:22 12:9,15 <b>address</b> 8:18,20 <b>addresses</b> 13:4 <b>adhere</b> 13:15 <b>adjourned</b> 14:22 <b>Adjudication</b> 13:9 <b>Administrative</b> 4:8 5:10 7:18 <b>advisement</b> 6:3 <b>agreement</b> 9:2 10:14,19 11:15 12:4,10,16 14:16 <b>ALBERTI</b> 1:21 2:8 3:15 11:5,8 <b>Alcoholic</b> 1:3,15,16 <b>allow</b> 7:17,19 <b>allowed</b> 4:2 <b>ANC</b> 3:1 9:2 <b>ANC-6B</b> 1:12 2:7 <b>applicant</b> 13:2 <b>application</b> 1:13 14:1 <b>approval</b> 9:6 <b>approved</b> 10:15 11:16 <b>approving</b> 12:16 <b>argue</b> 8:3 <b>arguing</b> 8:2 <b>argument</b> 4:5 6:18 7:15 <b>arguments</b> 6:21 <b>assist</b> 14:5 <b>Assistant</b> 13:9 <b>audience</b> 10:2 <b>Ave</b> 1:10 <b>Avenue</b> 1:10 2:6,6 2:17 11:7 <b>a.m</b> 2:2 14:21	<b>C</b>	<b>D</b>	<b>facilitating</b> 14:6 <b>fact</b> 3:11 6:6 <b>fairness</b> 12:8 <b>Fashbaugh</b> 13:9,13 14:12 <b>feel</b> 2:9 <b>filed</b> 4:16 5:18 <b>focused</b> 13:4 <b>follow</b> 6:2 <b>form</b> 13:11,18 14:5 <b>forward</b> 2:20 3:18 6:7 <b>free</b> 2:9 <b>frivolous</b> 14:3 <b>front</b> 3:17 <b>fruition</b> 14:18 <b>further</b> 3:14 12:10	<b>imperative</b> 13:14 <b>information</b> 13:11 13:18 <b>instruct</b> 12:9,14 13:2 <b>instructions</b> 12:20 <b>intend</b> 13:6 <b>introduce</b> 2:12 <b>involved</b> 8:7 <b>issues</b> 8:22 13:4 14:6
<b>B</b>	<b>call</b> 2:3 <b>CALVIN</b> 1:21 <b>Carol</b> 3:1 <b>case</b> 1:9 2:4,4 10:8 13:8 <b>chair</b> 2:10 <b>Chairman</b> 11:20 12:2 <b>Chairperson</b> 1:18 1:20 2:3,11,19,22 3:5 4:1,15,21 5:16 6:1,13,16,22 7:3 7:10,13,22 8:11 8:16 9:8,12,20 10:1,17 11:3,10 11:14,21 12:13 <b>changed</b> 8:22 <b>circumstances</b> 7:20 <b>closely</b> 13:15 <b>COLUMBIA</b> 1:1 <b>come</b> 14:18 <b>comes</b> 11:15 <b>comments</b> 10:10 <b>Commissioner</b> 2:8 <b>complete</b> 13:17 <b>conclusion</b> 13:13 <b>conference</b> 8:15 <b>confirm</b> 11:11 <b>consider</b> 3:13 6:4 7:2 <b>consideration</b> 5:7 9:17 <b>considering</b> 7:1 <b>contact</b> 14:11	<b>date</b> 10:16,20 11:11 13:18 <b>dates</b> 11:6 <b>days</b> 5:18 13:18 <b>deal</b> 4:22 <b>decision</b> 4:12 5:14 7:12 9:18 <b>decisions</b> 10:4 <b>demand</b> 5:5 <b>different</b> 11:4,5 <b>dismiss</b> 5:3 <b>dismissal</b> 3:13 14:3 <b>dismissed</b> 3:8 4:6 6:7 7:5 <b>disruptive</b> 10:3 <b>DISTRICT</b> 1:1 <b>document</b> 13:19 <b>documents</b> 13:12 <b>DONALD</b> 1:22 <b>door</b> 6:10 7:21 <b>draft</b> 9:1 <b>D.C</b> 1:17	<b>G</b>	<b>J</b>
<b>B</b> 1:12 <b>bad</b> 11:8 <b>basically</b> 9:16 <b>believe</b> 11:11	<b>E</b>	<b>H</b>	<b>January</b> 1:14 <b>Jared</b> 3:3 <b>JEANNETTE</b> 1:23	
		<b>give</b> 4:5,10 5:12 <b>given</b> 12:5 <b>giving</b> 4:4 <b>go</b> 2:20 10:1 12:21 <b>going</b> 6:1 10:3,10 12:14 <b>Good</b> 2:14 <b>greatly</b> 14:5 <b>Green</b> 3:1,1 10:12 10:13 11:1,7	<b>K</b>	
		<b>happened</b> 3:22 <b>hear</b> 7:7,8 13:6 <b>heard</b> 4:11 5:6,13 6:20 7:6,7 <b>hearing</b> 1:10,17 3:9 5:4,18 6:8 7:15 8:1,6 9:3 10:6,8 10:21 11:17,18 12:20,21 13:1,3 13:13,16,19 14:8 14:10,17,22 <b>hesitate</b> 14:11 <b>hopefully</b> 10:14 <b>Hwa</b> 1:9 2:5,16	<b>keeping</b> 14:7 <b>Kevin</b> 2:15 <b>know</b> 4:18 5:16	
		<b>entered</b> 7:9 <b>enters</b> 4:13 <b>establish</b> 3:10 <b>event</b> 12:21 14:17 <b>Excuse</b> 11:8,19 12:1 <b>executed</b> 10:15 <b>exercise</b> 14:4 <b>explain</b> 3:21 <b>explaining</b> 13:10	<b>L</b>	
		<b>leading</b> 14:10 <b>leave</b> 10:11 <b>Lee</b> 2:14,15,21 3:15 3:17,20 8:21 11:13 14:20 <b>legal</b> 6:21 9:21 <b>letter</b> 13:10 <b>License</b> 1:11 2:7 <b>limited</b> 7:19 <b>line</b> 11:22 <b>listen</b> 8:17 <b>listening</b> 8:14 <b>little</b> 3:19 <b>live</b> 7:21 <b>look</b> 7:14 12:7 <b>looks</b> 12:17	<b>M</b>	
		<b>March</b> 10:21 11:11 <b>Market</b> 1:10 2:6,17		

<b>matter</b> 1:8 3:14 13:21	<b>N.W</b> 1:17	<b>procedure</b> 4:8 5:10 6:2 7:18	<b>respond</b> 14:14	<b>status</b> 1:11 8:1,6,14 9:3 10:7
<b>matters</b> 8:19 10:7 13:7	<b>O</b>	<b>proceed</b> 12:4	<b>Retailer</b> 1:12	<b>stay</b> 9:16
<b>ma'am</b> 12:12	<b>Objection</b> 9:7	<b>proceeding</b> 5:11 6:15 9:17	<b>review</b> 9:3 13:14	<b>street</b> 1:17 2:18
<b>mean</b> 6:19	<b>objections</b> 6:11	<b>proceedings</b> 9:15	<b>Richardson</b> 3:6,7 3:21 4:2,20 5:2,20	<b>subject</b> 14:3
<b>mediation</b> 8:22	<b>Oh</b> 3:20	<b>process</b> 13:10 14:7	6:5,14,19 7:2,4,11	<b>submit</b> 9:5 13:17
<b>meet</b> 9:4	<b>okay</b> 2:21,22 3:5,20 4:1,15,21 9:20 10:12,17 11:10	<b>progress</b> 14:16	7:16 8:5,13 9:7,10	<b>submitted</b> 13:20
<b>MEETING</b> 1:5	<b>ones</b> 11:4,6	<b>property</b> 7:21	9:14,21 11:19	<b>successfully</b> 9:4
<b>Member</b> 1:21,21 1:22,22,23 2:8 3:15 5:22 11:5,8	<b>opinions</b> 9:1	<b>protest</b> 1:10 6:5 10:16,20 12:20,21	12:1	<b>summarily</b> 3:8 4:3 4:6
<b>Members</b> 2:15	<b>opportunity</b> 4:4,11 4:17 5:13 12:5	13:3,10,16,17	<b>right</b> 3:17 4:22 5:2 5:4 6:4 7:6,7 8:15	<b>sure</b> 3:16,18 8:8
<b>merits</b> 8:2,3 10:5	<b>opposing</b> 13:20	14:1,6,17	10:18	<b>S.E</b> 2:7
<b>met</b> 1:16	<b>opposition</b> 4:5	<b>protestant</b> 3:7,11 4:3,7,14 5:3,5,8	<b>Room</b> 1:17	<b>T</b>
<b>mic</b> 3:17,17	<b>oral</b> 7:15	6:7,11 7:5 9:11,13	<b>ruled</b> 12:11	<b>take</b> 7:11 9:21 12:9 12:15
<b>MIKE</b> 1:22	<b>order</b> 3:13 4:12 5:14 7:9	9:14,19	<b>rules</b> 5:9,17,21 6:2 7:9,17 13:15	<b>taken</b> 6:3
<b>Miller</b> 1:18,20 2:3 2:11,19,22 3:5 4:1 4:15,21 5:16 6:1 6:13,16,22 7:3,10 7:13,22 8:11,16 9:8,12,20 10:1,17 11:3,10,14,21 12:13	<b>ought</b> 12:9	<b>protestants</b> 13:3	<b>Ruthanne</b> 1:17,20	<b>tell</b> 10:3
2:11,19,22 3:5 4:1 4:15,21 5:16 6:1 6:13,16,22 7:3,10 7:13,22 8:11,16 9:8,12,20 10:1,17 11:3,10,14,21 12:13	<b>outstanding</b> 14:13	<b>protested</b> 13:5	<b>S</b>	<b>terms</b> 12:10
<b>mind</b> 8:13	<b>P</b>	<b>protesting</b> 13:1,11	<b>Sarah</b> 13:9	<b>testimony</b> 13:7
<b>minutes</b> 2:18	<b>papers</b> 3:16	<b>provide</b> 5:17	<b>saying</b> 8:10	<b>Thank</b> 12:12 14:8 14:19,20
<b>MOBLEY</b> 1:23	<b>part</b> 14:4	<b>public</b> 6:9	<b>says</b> 4:9	<b>thing</b> 12:2
<b>morning</b> 2:14 4:17	<b>participate</b> 7:17,19 7:20 9:15 12:5	<b>pull</b> 2:9	<b>schedule</b> 7:14 8:4,8	<b>things</b> 13:1
<b>motion</b> 4:16,18,19 4:22 5:17 6:2 7:14 12:11,17 14:13,15	<b>participated</b> 6:12	<b>put</b> 3:16	<b>scheduled</b> 12:22 14:17	<b>think</b> 10:13 12:18
<b>motions</b> 12:19	<b>particular</b> 3:14 7:21	<b>P-R-O-C-E-E-D-...</b> 2:1	<b>scheduling</b> 8:1	<b>time</b> 6:6 10:4 11:18 14:10
<b>move</b> 6:7	<b>parties</b> 2:12 4:10 4:19 8:18,19 10:7 11:6 12:14 13:20 14:7,14	<b>p.m</b> 10:21 11:2,12	<b>SE</b> 1:10	<b>today</b> 6:4 8:3,4 10:5 14:9
<b>N</b>	<b>Q</b>	<b>R</b>	<b>served</b> 4:19	<b>trade</b> 2:16
<b>name</b> 2:15,16	<b>questions</b> 14:9	<b>read</b> 4:18 12:19	<b>set</b> 10:20 11:18	<b>trading</b> 2:5
<b>narrowing</b> 14:6	<b>R</b>	<b>ready</b> 2:19	<b>setting</b> 10:8	<b>tried</b> 9:1
<b>necessary</b> 10:9	<b>read</b> 4:18 12:19	<b>really</b> 12:7	<b>seven</b> 13:18	<b>two</b> 3:12
<b>need</b> 2:10 7:14 8:3	<b>reconsider</b> 3:12	<b>receive</b> 13:22	<b>side</b> 14:2	<b>type</b> 4:5
<b>needs</b> 3:12 13:19	<b>record</b> 2:12	<b>received</b> 9:2 13:8	<b>sign</b> 9:4	<b>T.C</b> 3:6
<b>NICK</b> 1:21	<b>Reeves</b> 1:17	<b>reconsider</b> 3:12	<b>signed</b> 10:15,19	<b>t/a</b> 1:10
<b>NOPHLIN</b> 1:21	<b>relevant</b> 8:7 13:7	<b>record</b> 2:12	<b>SILVERSTEIN</b> 1:22 5:22	<b>U</b>
<b>notifies</b> 4:10	<b>remain</b> 6:9,9	<b>Reeves</b> 1:17	<b>sir</b> 5:22 6:13,16 7:3 7:10,13,22 9:8,20 11:21	<b>understand</b> 4:16 8:9,11 14:15
<b>notify</b> 5:8,12	<b>Renewal</b> 1:13	<b>relevant</b> 8:7 13:7	11:21	<b>V</b>
<b>notifying</b> 4:4	<b>representing</b> 2:15 14:2	<b>remain</b> 6:9,9	<b>sit</b> 8:17 10:2	<b>violated</b> 5:20
	<b>required</b> 13:17	<b>Renewal</b> 1:13	<b>sitting</b> 8:14	<b>void</b> 4:13 5:15 7:9
	<b>requires</b> 5:10	<b>representing</b> 2:15 14:2	<b>six</b> 5:18	<b>Voluntary</b> 9:1 11:15 12:4,10,16 14:16
		<b>representing</b> 2:15 14:2	<b>SMD</b> 3:4	
		<b>required</b> 13:17	<b>sorry</b> 10:22,22 11:9	
		<b>requires</b> 5:10	<b>standing</b> 6:17,20	
			<b>state</b> 12:3	

<b>W</b>	<b>9</b>			
want 8:19 12:19 13:2 14:14 Washington 1:17 way 12:14 went 8:21 we'll 2:3 7:15 whichever 14:2 Wow 11:3 wrong 10:22 wrongly 7:5	9:43 2:2 9:55 14:21			
<b>Y</b>				
Young 1:9 2:5,16				
<b>P</b>				
p 1:7,13				
<b>#</b>				
#11-PRO-00083 1:9 2:4 #79255 1:11 2:7				
<b>1</b>				
1:30 11:2,12,13,14 14 10:21 14th 1:17 1501 1:10 2:6				
<b>2</b>				
2000 1:17 2012 1:14 11:12 202 14:12 21 11:11 21st 11:1 25 1:14				
<b>3</b>				
397-3971 14:12				
<b>5</b>				
5:00 10:21				
<b>6</b>				
6B 3:2				
<b>8</b>				
83 4:14				