

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

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IN THE MATTER OF: :
: :
De Amigo, LLC t/a Sesto Senso :
Andulo Spot Lupe MIA : Motion
1214 18th Street, NW : Hearing
Retailer CT - ANC-2B :
License No. 81092 :
Case #11-251-00372 :
: :
(Allowed the Establishment to :
be Used for an Unlawful or :
Disorderly Purpose, Failed to :
Follow Security Plan) :
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April 10, 2013

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

PRESENT:

RUTHANNE MILLER, Chairperson

NICK ALBERTI, Member
DONALD BROOKS, Member
HERMAN JONES, Member
MIKE SILVERSTEIN, Member
ALSO PRESENT:

LOUISE PHILLIPS, OAG

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

(3:19 p.m.)

CHAIRPERSON MILLER: Okay. I'm calling Case No. 11-251-00372, MIA located at 1214 18th Street, N.W., License No. 81092 in ANC-2B.

And would the parties identify themselves for the record?

MS. PHILLIPS: Louise Phillips, Assistant Attorney General for the District of Columbia.

MR. MPRAS: Emanuel Mpras for the respondent, De Amigo, LLC.

CHAIRPERSON MILLER: Okay. And what we are going to do here today is --

MEMBER ALBERTI: I think the licensee needs to --

CHAIRPERSON MILLER: I'm sorry. Hi.

MR. BENKHAYAT: Thank you, ma'am.

CHAIRPERSON MILLER: Go ahead. What's your name?

1 MR. BENKHAYAT: I'm El Mehdi
2 Benkhayat.

3 MEMBER SILVERSTEIN: I'm sorry?

4 MR. BENKHAYAT: El Mehdi
5 Benkhayat.

6 CHAIRPERSON MILLER: And are you
7 an owner or what?

8 MR. BENKHAYAT: I'm the manager/
9 partner.

10 CHAIRPERSON MILLER: Manager/
11 partner.

12 MR. BENKHAYAT: 5 percent partner.

13 MEMBER ALBERTI: 5 percent did you
14 say?

15 MR. BENKHAYAT: Yes, sir.

16 CHAIRPERSON MILLER: Okay. So
17 what I started to say was we are here to hear
18 oral argument this afternoon on MIA,
19 respondent's Motion to Discharge and Dismiss
20 Show Cause. And there is an opposition to
21 that motion and a reply to the opposition.

22 Okay. So we are going to start

1 with you will have up to five minutes to
2 present your argument, unless you have an
3 objection, starting with respondent, since
4 it's your motion. And then the Board will ask
5 questions. Okay.

6 MR. MPRAS: To start off, DC Code
7 25-823 states that the Board --

8 MEMBER ALBERTI: Could you speak
9 up, please?

10 CHAIRPERSON MILLER: Is your mike
11 on?

12 MR. MPRAS: I'll pull it closer.
13 DC Code Title 25-823 states "The Board may
14 upon a properly Notice to Show Cause Hearing
15 place certain conditions on the license if it
16 determines that the inclusion of the
17 conditions would be in the best interest of
18 the locality section or portion of the
19 District in which the establishment is
20 licensed."

21 Now, on November 29, 2012, 1900 M
22 Restaurant Association Incorporated vs.

1 Alcoholic Beverage Control Board of
2 Washington, D.C., which -- trading as Rumors,
3 which controls in this matter, narrowly
4 construed the definition of what comprises a
5 violation of the security plan and what is
6 allowing the establishment to be used for an
7 unlawful purpose.

8 Now, under the Rumors standard,
9 the District in this case fails to establish
10 a continuous course of action necessary to
11 establish a violation of the charges as
12 specified.

13 As recited in the initial charging
14 document, it solely alleges conduct
15 transpiring on November 24, 2011. This Show
16 Cause notice presents insufficient facts to
17 support a pattern or regular method of
18 operation that encouraged the endangerment of
19 patrons and/or employees after the creation of
20 an atmosphere conducive to violence.

21 Now, the Board isn't necessarily
22 confined to the factual allegations within

1 that charging document. Any allegations
2 outside those contained within the charging
3 document are improper and impermissible as
4 they fail to provide timely notice for the
5 basis of the allegations.

6 Now, the District's belated
7 attempt to rehabilitate the allegations in
8 light of the Rumors standard as recited by
9 respondent's Motion to Dismiss is improper for
10 this reason.

11 Now, yet it immediately undermines
12 the very proposition for which they offer it.
13 Those allegations that were cited by the
14 Government intend to improperly amend the Show
15 Cause Notice that demonstrates the respondent
16 to be responsive and circumspect after each
17 and all of the concerns previously brought to
18 their attention by ABRA and the Board. Thank
19 you.

20 CHAIRPERSON MILLER: Thank you.
21 Okay. Ms. Phillips?

22 MS. PHILLIPS: We're at the Motion

1 to Dismiss stage here, not at Show Cause
2 Hearing and not at the appellate level. The
3 Motion to Dismiss standard, as I know it from
4 my work in Superior Court, which I believe is
5 the standard used here since we don't have a
6 specific standard in the code, is that the
7 complaint must contain sufficient factual
8 matter, if accepted as true, state a claim for
9 plausible relief on its face.

10 The Board could look at this
11 notice and say that the facts stated in the
12 notice, as alleged in the District's
13 opposition, contain enough information to
14 provide, on its face, sort of like what I call
15 like an Am-Chi and Levelle argument, that is
16 that in this particular there was an assault
17 incident inside.

18 A security plan laid out a plan of
19 how they were to handle big large fights.
20 They did not follow that plan. Somebody was
21 injured, three somebodies were injured. And,
22 therefore, that alone, those facts alone,

1 which are in the opposition, could cause the
2 Board to conclude that we have more like an
3 Am-Chi or a Levelle situation.

4 Additionally, as stated by the
5 Levelle holdings that the club security did
6 not call the police. They were actually
7 requested by the victims to call the police.
8 Not only did they not call the police, they
9 sent them outside after a fight and as would
10 be expected, the assaulters from the inside
11 were waiting right outside, assaulted them
12 again in such a manner that they had to be
13 taken away in an ambulance.

14 The District does not believe that
15 the Court of Appeals in Rumors meant to stymie
16 the Board's duty to protect the citizens of
17 the District of Columbia that patronize
18 alcohol establishments.

19 Additionally, it seems to be the
20 entire argument of -- not the entire argument,
21 a large part of the argument that the notice
22 is insufficient in itself if we are looking

1 for a pattern and practice.

2 Given that we have Rumors, I would
3 say that if the Board chooses and the District
4 will move orally right now to amend the notice
5 to conclude the facts in the opposition.

6 There is actually no prejudice to the
7 respondent because we are at the Motion to
8 Dismiss stage.

9 And now when we have a Show Cause
10 Hearing, if we get that far, they will know,
11 not to mention the fact that I provided enough
12 information and the report for this
13 investigation contains an investigative
14 history that presents all the facts.

15 And the owners were present at
16 Fact-Finding Hearings which the counsel for
17 the establishment at the time and members of
18 the -- who are in the establishment's employ
19 recognized the importance of security plans
20 for keeping patrons safe within the
21 establishment and recognized the importance of
22 following the security plans in order to keep

1 patrons safe.

2 To say that this is not part of
3 the notice, this may -- this requirement, if
4 it indeed is a requirement, and the District
5 is not conceding that it is and that's why
6 they are moving orally to amend the opposition
7 facts to the notice, is it specifically now
8 narrowed on -- what was it November 29, 2012
9 this incident happened and this notice was
10 issued all before that time.

11 While the law is controlling, the
12 pleadings standard is not, that's why the
13 Court -- I mean the Board can take an oral
14 motion to amend the facts.

15 Another argument that the
16 respondent made was that Fact-Finding Hearings
17 are not testimony. Everybody agrees with
18 that. They are not under oath. However, I
19 cannot believe and I didn't specifically see
20 that the respondent was arguing that the
21 attorney for the establishment or the
22 employees of the establishment would speak

1 falsely because they were not under oath.

2 Fact-Finding Hearings are held to
3 get to the bottom of the facts, so that the
4 Board can protect the citizens of the District
5 of Columbia who patronize the establishment
6 and they can determine the notion about the
7 future cause of action necessary to take it.

8 So the District really has three
9 arguments. The notice is sufficient to
10 conclude that this was an empty Levelle-type
11 argument even though there are not underlying
12 felonies happening, which there were in both
13 Am-Chi and Levelle.

14 That the Motion to Amend is proper
15 because there is no pressure, no noticed
16 problems before November 29, 2012.

17 And the case is cited and, in I
18 believe the respondent's argument about this,
19 were not at the Motion to Dismiss stage. I
20 think they were at the hearing stage. We are
21 in a Motion to Dismiss stage.

22 In the normal course of

1 litigation, as I have practiced it, not before
2 this Board, but in the past, you know you have
3 a Motion to Dismiss is often immediately
4 followed by a Motion to Amend the Complaint or
5 the Notice.

6 In this case it wasn't because it
7 wasn't required until this motion -- if it
8 indeed is required, until this motion series
9 came forward. Thank you.

10 CHAIRPERSON MILLER: Okay. Do you
11 have a quick reply? Okay.

12 MR. MPRAS: Yes, ma'am. As I
13 said, the District concedes that the Show
14 Cause Notice fails to demonstrate a continuous
15 course of prompt conduct and now it is
16 improperly intending to rehabilitate the
17 notice -- the allegations not within the
18 notice.

19 Now, a notice under DC Code 25
20 must be served within 90 days after the
21 incident and that time has clearly passed,
22 thus the time to amend it also passed.

1 Now, as to -- now, the District's
2 new allegations fail to meet the -- again,
3 fail to meet the standard for a continuous
4 course of conduct. It's evidence of an
5 isolated incident and whether they are trying
6 to bring in unrelated incidents which even if
7 considered together, fail to establish a
8 continuous course of conduct.

9 The fact that they are unrelated
10 automatically prevents them from establishing
11 the requisite course of conduct as specified
12 in the Rumors case.

13 And then lastly, under oath as per
14 the Fact-Finding Hearing, it has nothing to do
15 with someone being untruthful or deceitful.
16 It simply means that it is not a matter of
17 official record and cannot be used in an
18 official proceeding. Thank you.

19 CHAIRPERSON MILLER: Okay. Thank
20 you. I'll just ask a few questions and then
21 turn it over to my Board Members.

22 Just while we are on the subject

1 of notice, Mr. Mpras, did you cite something
2 with respect to 90 days notice?

3 MR. MPRAS: It's 25- -- it's in
4 the 800 Series. I don't have the exact --

5 CHAIRPERSON MILLER: You were
6 citing -- okay, our statute?

7 MR. MPRAS: Yes.

8 CHAIRPERSON MILLER: Okay. And
9 did you also cite a time for amending? Is
10 there a time set forth in there?

11 MR. MPRAS: The notice must be
12 served 90 days -- within 90 days after the
13 alleged incident occurs. And that time has
14 thus elapsed. This allowing no information--

15 CHAIRPERSON MILLER: But did you
16 also cite a time period for amending the
17 notice?

18 MR. MPRAS: No, I did not.

19 CHAIRPERSON MILLER: Oh, you are
20 just saying it has to be amended within 90
21 days?

22 MR. MPRAS: It's just prohibited.

1 There is a new -- notice cannot be served. 90
2 days have elapsed since the incident.

3 CHAIRPERSON MILLER: Okay. So
4 your position is if they were to amend it, it
5 would have to be done in 90 days?

6 MR. MPRAS: The only time it could
7 be amended, if possible, would be within that
8 90 day period.

9 CHAIRPERSON MILLER: Okay. And
10 then --

11 MR. MPRAS: Assuming the hearing
12 had not been held prior to the expiration of
13 that time.

14 CHAIRPERSON MILLER: Okay. When
15 you say that the events are unrelated, to be
16 related to you mean that they have to have
17 occurred in the same incident?

18 MR. MPRAS: They have to be --
19 they have to show continuous course of
20 conduct. They do not have to occur within the
21 same incident, but they must be relevant to
22 one another. They must be of the same nature

1 and type. And the window for that is narrow.

2 CHAIRPERSON MILLER: In the Rumors
3 case that wasn't dealing at a Motion to
4 Dismiss stage was it?

5 MR. MPRAS: The Rumors case was a
6 D.C. Court of Appeals, that's where it came
7 out of. And it was -- they appealed the
8 decision of the Board.

9 CHAIRPERSON MILLER: They weren't
10 looking at a Motion to Dismiss below though?

11 MR. MPRAS: Not to my knowledge,
12 no, ma'am.

13 CHAIRPERSON MILLER: Okay. I'm
14 going to let others, my colleagues, ask
15 questions. Do you all have questions? Mr.
16 Alberti?

17 MEMBER ALBERTI: Mr. Mpras,
18 perhaps -- you have stated that the charging
19 document is insufficient. And I kind of
20 understand what you are trying to tell us, all
21 right? But I'm not sure because the charging
22 document certainly describes the incident,

1 clearly describes the incident that resulted
2 in the charge, the incident at hand.

3 All right. Now, I think the
4 argument is is that it's insufficient because
5 it fails to show a pattern with respect to
6 violation of the security plan, for example.
7 What do you believe that it's necessary for
8 the charging document? Explain to me.

9 What I often don't understand is
10 why it is necessary for the charging document
11 to include information to show that.

12 MR. MPRAS: Because of some
13 accusatory instrument and I give the
14 defendant's notice of the offense charge and
15 binds a prosecution to the allegations as
16 proof.

17 MEMBER ALBERTI: But wouldn't that
18 be something that would be taken up during the
19 Show Cause Hearing, evidence of that?

20 MR. MPRAS: I would -- it's -- how
21 would that give the respondent in this matter
22 time to prepare for the --

1 MEMBER ALBERTI: Pardon?

2 MR. MPRAS: - case? How would
3 that provide the respondent in this matter
4 adequate notice as to what they are being
5 charged with? It doesn't. I mean, it's
6 necessary to correlate the rights of due
7 process for a fair trial confrontation.

8 So, I mean, absent of a properly
9 filed and legally sufficient accusatory
10 statement, it sets a violation of basic
11 rights, Constitutional rights.

12 MEMBER ALBERTI: Well, the
13 statement is that you violated the security
14 plan. And what is vague about that statement?

15 MR. MPRAS: A single -- there is
16 nothing vague about it being a single instance
17 of a security plan violation or being accused
18 of a single instance of that. Nothing vague
19 to that at all.

20 MEMBER ALBERTI: No. I think what
21 the Court said is, my understanding of what
22 the Court said, to prove a violation of the

1 security agreement, you have to show a pattern
2 of like violations.

3 All right? But it is not --

4 MR. MPRAS: But it --

5 MEMBER ALBERTI: It speaks to what
6 you need to show. The charge itself is very
7 clear. You have violated the security plan.

8 MR. MPRAS: It's a force of
9 conduct that must be shown, according to the
10 Rumors case.

11 MEMBER ALBERTI: Which means? Be
12 more specific. It must be shown.

13 MR. MPRAS: Well, it's a force of
14 conduct must be shown.

15 MEMBER ALBERTI: Does it say that
16 it must be -- right. During the trial phase,
17 it must be shown.

18 MR. MPRAS: But not only that, is
19 it specifically continuous force of conduct to
20 sustain the finding. The licensee has adopted
21 a method of operation, which encouraged such
22 violations.

1 MEMBER ALBERTI: All right. You
2 are failing to convince me that the charging
3 document is very clear in what is the charge
4 being brought. I understand that the burden
5 of proof during Show Cause Hearing would be
6 that the Government would have to show a
7 pattern of conduct to prove the charge, but
8 the charge, I think, is very clear.

9 And you also mentioned that -- I
10 think Ms. Phillips mentioned that we have
11 investigative history. So the Board in
12 looking at some history has some idea of
13 whether it is plausible or not for the
14 Government to make its case. I mean, that's--
15 before we move forward, if it could be, the
16 Board would have the right to say in
17 considering this motion whether or not it is
18 plausible that the Government could make its
19 case, based on the information we have.

20 And we have the investigative
21 history.

22 MR. MPRAS: No, I understand.

1 MEMBER ALBERTI: But again, I
2 think it is the Government's -- the onus is on
3 the Government to show whether or not, and we
4 can't decide at this phase, whether or not
5 what is in the investigative history are
6 unrelated incidents. We are not at that
7 phase. We are only at the phase of whether we
8 should move forward to a Show Cause Hearing.

9 MR. MPRAS: Well, and part of the
10 Government's argument was that those instances
11 do and they put that in their motion. And our
12 rebuttal was that they don't.

13 MEMBER ALBERTI: Okay.

14 MR. MPRAS: So they don't because
15 they don't -- I mean, even just taken as a
16 whole, one of them should not have even been
17 brought up because there was no further action
18 taken by the Board. And the other two are
19 totally, wholly unrelated to what happened in
20 this matter.

21 MEMBER ALBERTI: Again, but we are
22 not here, at this point, at this point in the

1 stage of the process, to make the judgment on
2 whether they are related or unrelated.

3 MR. MPRAS: Well, they were --

4 MEMBER ALBERTI: We haven't heard
5 arguments either way. And the motion stage is
6 not the place to hear those arguments.

7 MR. MPRAS: Well, those arguments
8 were accepted as part of the Government's
9 response. And we did respond to that in a
10 timely fashion.

11 MEMBER ALBERTI: The Government
12 made those statements, that's all that has
13 happened, at this point. I don't know what
14 you mean by they were accepted.

15 MR. MPRAS: They were accepted by
16 the Board. They are in the response brief.

17 MEMBER ALBERTI: We have that
18 before us, okay. Fine.

19 MR. MPRAS: I mean, aside from all
20 that, I mean, those allegations still don't
21 show any substantial evidence or a course of
22 conduct continued over time that reflects the

1 licensee's adoption of a pattern or regular
2 method of operation --

3 MEMBER ALBERTI: Well, I will tell
4 you, Mr. Mpras --

5 MR. MPRAS: -- that caused or
6 contributed to the unlawful or disorderly
7 conduct issue.

8 MEMBER ALBERTI: All right. I
9 will just tell you in closing that I have made
10 no judgment on whether those incidents are
11 related or unrelated, regardless of what the
12 Government has in their motion or you have in
13 your motion. Thank you.

14 CHAIRPERSON MILLER: Others? Ms.
15 Phillips, I would like to ask you about the
16 amendment process, because I haven't really
17 seen it I don't think.

18 Where is the authority for
19 amending the notice?

20 MS. PHILLIPS: I don't see any
21 authority in the rules and, therefore, you go
22 to the Superior Court Rules is what I say.

1 CHAIRPERSON MILLER: Okay.

2 MS. PHILLIPS: And I think that is
3 said somewhere in the ABRA Rules. And since
4 I happen to know the Superior Court Rules
5 better than most of the other rules for
6 administrative hearings, you know, the
7 standard is that if there is no prejudice, if
8 it -- I mean, if it's basically prejudicial
9 and -- so that's what I'm saying is that
10 because there is no prejudice, because the
11 pleading standard that Mr. Mpras, the
12 respondent's counsel, is stating is a pleading
13 standard that he is deriving from Rumors.

14 Heretofore and even now, the
15 District contends that it is not what -- I
16 mean, Rumors did not intend for it to be pled
17 a certain way. But if he construes and you,
18 as the fact finder in the decision or law
19 decider, that it is narrow, it only occurred
20 November 29, 2012.

21 So whatever -- I mean, and I'm not
22 -- my recollection of this 90 day thing that

1 Mr. -- this 90 day rule, I think it is a
2 regulation, that Mr. Mpras talks about is not
3 related to notice. I thought it was related
4 to reports, but I don't know, because I didn't
5 argue that and I didn't look it up.

6 What I'm saying here is that could
7 not be applicable here because if there is a
8 narrower pleading standard, it came about on
9 November 29, 2012, significantly after this
10 incident and pretty long after it was signed,
11 the notice was signed and served.

12 So if there is a contention based
13 on whatever regulation Mr. Mpras is citing, I
14 think that the Board could say that that's not
15 applicable here because he is citing a new
16 case for a narrower pleading standard. And I
17 think the Board would be upheld on that, but
18 that's, of course, as Mr. Alberti said just
19 the Government's position.

20 So I don't think the regulation,
21 whatever it is, and I haven't looked at it
22 recently, Madam Chair, is relevant in this

1 case because of what I said.

2 CHAIRPERSON MILLER: Well, let me
3 just ask about is it relevant in the instance
4 that if you were allowed to amend your motion
5 -- amend your Show Cause pleading, your
6 charge, your notice, then would the respondent
7 be entitled to a certain amount of days in
8 order to respond in order to have had due
9 process to be on notice?

10 MS. PHILLIPS: We haven't even
11 gotten to due process yet. As far as I'm
12 concerned, he has got notice of everything as
13 of the filing of these motions.

14 CHAIRPERSON MILLER: Okay.

15 MS. PHILLIPS: Actually, I think
16 he has notice as of requesting a copy of the
17 report, because by gosh, there is the
18 legislative -- not legislative, I'm always
19 saying this, the investigative history right
20 there. And it is there in every single
21 investigative report that is done.

22 There is this history of pre -- in

1 fact, this one is an updated one, not the one
2 attached which has even more, which are, of
3 course, not relevant. I wouldn't even argue
4 if he said things that occurred afterwards
5 would be relevant. We wouldn't even go there.

6 CHAIRPERSON MILLER: Yes.

7 MS. PHILLIPS: So to argue
8 surprise is less than genuine with the news of
9 the case that he is citing for the narrowing
10 and the other things that I have stated.

11 I have to say that I -- the
12 District strongly believes that the Court of
13 Appeals was not trying to stymie, you know,
14 our job.

15 MR. MPRAS: Madam Chair?

16 CHAIRPERSON MILLER: Wait, you
17 will get your turn. Go ahead.

18 MS. PHILLIPS: Because otherwise,
19 how would you -- if you look at Levelle,
20 Levelle was a long time ago before MPD was
21 regularly and reliably reporting events to
22 ABRA, so that we could have hearings based on

1 them.

2 As I recall Levelle, which I call
3 Club U, I'm very familiar with Club U, because
4 I had the case in the civil side against the
5 District for a civil matter, so this is a case
6 in front of ABRA citing OPM, Office of
7 Property Management. There was a criminal
8 action and there was an OAG action. So there
9 is a lot of hearings on Levelle.

10 It was a notice that had many,
11 many events, none of which I think have been
12 adjudicated by ABRA and they were all in one
13 notice and I understand that. That was
14 decided in 2007. We have had a sea of change
15 in MPD reports to ABRA and adjudication of MPD
16 reports since that time.

17 Since I have been on board in
18 2007, the number of complaints has increased
19 geometrically, based on MPD reported to ABRA
20 complaints.

21 So the pleading standard, I think
22 based on the cases that are heretofore, is not

1 as clear from those older cases. It's a
2 little more clear in Rumors, but Rumors was a
3 case where there were three incidents that
4 occurred and I marked down in January, April
5 and August of 2009 and they were heard
6 together at Show Cause.

7 Did the Court of Appeals in Rumors
8 intend for us to have to wait or wait until we
9 got violent incidents close together before we
10 pled them? Did the Court of Appeals intend
11 for us to wait and have nothing adjudicated
12 like in Levelle, violent cases?

13 The only way that we, as ABRA, can
14 protect the citizens and maybe we can plead
15 these cases is by looking at the investigative
16 history. And if we can't use past events to
17 show a custom and practice, then we can only
18 adjudicate instances where it is so egregious
19 an act that we would have to assume it was an
20 Am-Chi or it's not Smarter Broadway, you know,
21 single incident type thing.

22 So Rumors must be interpreted in

1 light of what is happening now, how the case
2 was brought and what ABRA must do as a Board
3 to protect the citizens of the District of
4 Columbia as they visit alcohol establishments.
5 And I think that that has been presented in
6 argument and presented in the opposition.

7 But even if we disagree, which
8 clearly we do, at the Motion to Dismiss stage
9 the Board can decide that there is enough
10 evidence to go forward.

11 CHAIRPERSON MILLER: Ah, yes.

12 MR. MPRAS: The -- are we -- the
13 entry -- I'm sorry. The entry in the case was
14 mentioned by the Government. Now, the entry
15 case applies specifically when there are
16 egregious types of violations, which is
17 clearly not the case here.

18 The -- in the Matter of Levelle,
19 which was also mentioned by the Government,
20 the -- it has to do with types of evictions
21 that are conducted to unlawful or disorderly
22 environments and they require more than a

1 single instance of violence to apply.

2 Now, this would be again under
3 Levelle would not apply, because no evidence
4 was introduced that the indicated petitioner
5 had adopted a pattern or regular method of
6 operation that encouraged an atmosphere
7 conducive to violence.

8 And as far as amending the
9 charging document, we concur with the
10 Government. There is no authority for
11 amending the charging document. The Board
12 does not necessarily have to -- the Board is
13 prescribed to follow the rules of the Superior
14 Court.

15 Now granted that the ABC Board is
16 a legislative creation, it only has the
17 authority that's specifically vested in it
18 for --

19 MEMBER SILVERSTEIN: Say again,
20 please.

21 MR. MPRAS: I'm sorry?

22 MEMBER SILVERSTEIN: Say again,

1 please.

2 MR. MPRAS: Oh, the Board is a
3 legislative creation of the D.C. Government.
4 And as a legislative creation, it only has the
5 authority that is specifically vested in it by
6 that legislation.

7 So once again, according to the
8 Government, there is no authority for amending
9 the charging document.

10 CHAIRPERSON MILLER: Yes, Mr.
11 Alberti?

12 MEMBER ALBERTI: Ms. Phillips,
13 there has been lots of discussion about
14 whether there is the authority, if the Board
15 has the authority to allow the charging
16 document to be amended. But there is also I
17 think the statement by you that the charging
18 document -- the original charging document is
19 sufficient. Am I correct?

20 MS. PHILLIPS: I said that it is
21 sufficient unto itself because now under
22 Rumors, it is sufficient to do an Am-Chi-like

1 event, because it -- the breach that they did
2 was not as egregious as Am-Chi. It wasn't.

3 Am-Chi had to do with soliciting
4 prostitution, but it is such a specific
5 violation of the specific words of a security
6 plan that if it is continually done, i.e.,
7 forcing crowds of people who are having fights
8 out together, so that the assault can go on
9 outside again. I mean, that's a specific
10 violation of a security plan that has
11 specifically stated that they are not supposed
12 to do that.

13 And three people were injured such
14 that they had to be taken away in ambulances,
15 so we can say that even though it is not as
16 severe as Am-Chi, it is sufficient unto
17 itself.

18 I mean violations are along a
19 continuum. They are along a continuum. I
20 mean, you have the terribly egregious ones
21 like Am-Chi, which was egregious only because
22 it promoted prostitution and that's against

1 the law.

2 And then you have Levelle where
3 Terrence Brown was stabbed inside an
4 establishment, carried out by a security guard
5 who had blood all over his uniform, left in
6 the lobby of the Reeves Center and died.

7 Now, it was brought up, Levelle
8 was brought up, for that incident and it just
9 so happened that on the very day that that
10 incident occurred, there were three other
11 violent incidents right around the same time.

12 I am not nor is the Government
13 ever going to equate this case to that. There
14 is no death here.

15 Now, the violations of the
16 security plan are so specific and could lead,
17 if they continue to be carried on this way, to
18 severe violence and lead to patrons being very
19 injured as opposed to sort of injured. You
20 know, there are always continuums. I'm not
21 comparing this with Levelle and a death case.

22 Levelle also had a huge number of

1 violations. I believe none of them had been
2 prosecuted by ABRA, but the Summary Suspension
3 Hearing Notice and the Notice for Show Cause
4 and Status had a huge number of violations.
5 I think they went from 2006 or '05 or whenever
6 it was a couple of years back.

7 I don't think they have been
8 adjudicated. We just are not going to see
9 hopefully nor have we seen recently those
10 kinds of cases any more.

11 First of all, we are -- MPD is
12 reporting to us on a regular basis. We are
13 adjudicating those cases, OAG and the Board
14 is. So we are not going to see that.

15 So what could the Court of Appeals
16 possibly have meant in Rumors if they did
17 indeed narrow it, then that we would have to
18 look at past performance. And if we have to
19 look at past performance, do they mean that we
20 have to plead them when they have already been
21 adjudicated? Do they mean that we have to do
22 that? Is that what they mean?

1 And if they don't mean that, then
2 I am right. If they do mean that, then my
3 motion, my oral Motion to Amend could be
4 granted, because there is no prejudice. If
5 the rules are silent, for example, it could be
6 my favorite example recently, is that the
7 rules of the Superior Court are silent with
8 regard to apply. Therefore, you have move to
9 give a reply and the Court can deny you.

10 I am moving orally to reply. I
11 mean to amend the notice. I mean, perhaps if
12 this matter is going to go further, it might
13 be wise to amend the notice, even though I
14 don't believe it should be done in the
15 alternative. I believe we should do it just
16 to protect the record because of the arguments
17 of the respondent. And I believe we can do
18 that because of the Motion to Dismiss
19 standard.

20 MEMBER ALBERTI: Thank you. Mr.
21 Mprase wants to respond?

22 MR. MPRAS: Well, simply, you

1 can't compare the powers of Federal Court with
2 an administrative agency. The Court is given
3 broad Constitutional powers while the
4 administrative agency is narrowly construed by
5 the powers given to it by legislative act.

6 So while the Court has the
7 authority to establish its -- it has leeway in
8 granting -- in establishing its own procedure
9 as to filing motions, it has -- amending a
10 document such as a charging document is
11 something that is specified in the Court. And
12 it's specified as to how and when it can be
13 amended.

14 And in this case, there is no
15 amendment authority granted to the Board nor
16 is it appropriate under the Court standard to
17 amend this document.

18 We have talked about a few other
19 cases which are not controlling here, but the
20 controlling case here is the Rumors case and
21 it does require a continuous course of conduct
22 to establish that a licensee allowed the

1 establishment to be used for unlawful and
2 disorderly purpose.

3 So as well as requiring evidence
4 of the continuous course of conduct to
5 establish that a licensee fails to follow it's
6 security plan. And that is the -- not our
7 only argument, but that is the focus of our
8 Motion to Dismiss, which has not been refuted
9 in any way by the Government.

10 CHAIRPERSON MILLER: Mr. Mpras,
11 may I ask you a couple of questions on that?

12 MR. MPRAS: Yes, ma'am.

13 CHAIRPERSON MILLER: Okay. When
14 is -- again, I guess I would like to look at
15 again the rule on the notice. So if you know
16 what that is? We're talking about the
17 charging document and you are saying, you
18 know, we can or cannot do things with respect
19 to the charging document.

20 MR. MPRAS: Yes, ma'am.

21 CHAIRPERSON MILLER: So, yes, I
22 would like to, if you know the rule, take

1 another look at that specifically.

2 MR. MPRAS: I don't have the D.C.
3 Code with me. It is 90 days. It is Title 25-
4 800 series.

5 CHAIRPERSON MILLER: 800.

6 MR. MPRAS: Yes.

7 CHAIRPERSON MILLER: Okay. And
8 did you say that -- what did you say with
9 respect to failure to follow the security
10 plan? That the Government alleged that or
11 didn't substantiate that as a continuous
12 course of conduct?

13 MR. MPRAS: Did not allege or
14 substantiate.

15 CHAIRPERSON MILLER: Did not
16 allege or substantiate. Okay.

17 MR. MPRAS: We are -- our
18 contention is that each of the alleged
19 violations of the security plan are distinct
20 and unrelated as they differ in nature and
21 quality from one another. Standing alone,
22 they can't establish continuous course of

1 conduct.

2 CHAIRPERSON MILLER: Ms. Phillips,
3 can you just address that? Did you -- how
4 your facts show a prima facie case at least
5 for a continuous course of conduct?

6 MS. PHILLIPS: That's all I have
7 been arguing.

8 CHAIRPERSON MILLER: He would say
9 one thing and --

10 MS. PHILLIPS: Yes. And you know
11 what, that's what we are doing. He is saying
12 one thing, I'm saying something else and, you
13 know, I could keep repeating myself, but the
14 continuous course of conduct is what is in the
15 investigative history.

16 What Mr. Mpras is saying is that
17 now Rumors decided on November 29, 2012 now
18 requires a narrowing. Now, I don't see it as
19 requiring a pleading standard or elevating the
20 pleading standard. But if you believe him on
21 that, then I have moved to amend.

22 Now, what he is saying is, all

1 right, even if Ms. Phillips says, on behalf of
2 the Government, that moving to amend and
3 adding all these facts in from these other
4 cases, even they don't do it, meet the
5 standard.

6 I'm not exactly sure I have to
7 meet that standard now. I have to meet the
8 Motion to Dismiss standard on behalf of the
9 Government. And I believe I have done that.
10 I believe if the rules are silent about
11 something that a Board can do if the Board has
12 a reasonable -- and outline why they did it,
13 under these circumstances, you can grant the
14 Motion to Amend to protect the record.

15 CHAIRPERSON MILLER: Okay. But my
16 question is -- I got that part. By looking at
17 the investigative history --

18 MS. PHILLIPS: Right.

19 CHAIRPERSON MILLER: -- on it's
20 own and you can say assault, destruction of
21 property, whatever, they are just one-liners,
22 that that's enough to show a continuous course

1 of conduct?

2 MS. PHILLIPS: I'm not sure
3 whether that is enough or not.

4 CHAIRPERSON MILLER: I mean, for
5 this stage, for Motion to Dismiss stage.

6 MS. PHILLIPS: For this stage?
7 But you see, I didn't just say here look at
8 the investigative history. I went on for
9 quite a few pages about what was in the
10 investigation and I attached the fact-finding,
11 which was just facts. Just facts. They
12 weren't under oath, but as I say, you know,
13 everybody is here to report honestly about
14 what they found in an investigation and their
15 counsel are not allowed to do less.

16 So no, I am not saying that the
17 investigative history as stated. However, if
18 I, for example, pled to that, to this notice
19 as it was, for example, and the investigation
20 of history was there like this, that should be
21 sufficient if we go to Show Cause if I, on
22 behalf of the Government, put more into the

1 record about those instances.

2 In this case, we have Motions to
3 Dismiss, which are often seen as how to
4 understand the opposition's strategy. And so
5 most often when you get a Motion to Dismiss,
6 unless it is on, you know, jurisdictional
7 grounds or it's on Statute of Limitations
8 grounds or it's on you can't do this any more,
9 because you missed something, they are
10 followed immediately by a Motion to Amend.
11 That's just the way it is.

12 So have I answered sufficiently?

13 CHAIRPERSON MILLER: Yes. I just
14 was --

15 MS. PHILLIPS: Was I just going on
16 and you --

17 CHAIRPERSON MILLER: No, you have.
18 I was just trying to figure out, you know,
19 where the different thresholds were for, in
20 your opinion, showing enough facts for the
21 Motion to Dismiss with respect to a continuing
22 course of conduct.

1 MS. PHILLIPS: So did I --

2 CHAIRPERSON MILLER: Yes, I think
3 you did.

4 MS. PHILLIPS: Okay.

5 CHAIRPERSON MILLER: I think you
6 did. Okay. Other questions?

7 MEMBER SILVERSTEIN: Yes.

8 CHAIRPERSON MILLER: Yes, Mr.
9 Silverstein?

10 MEMBER SILVERSTEIN: Mr. Mpras,
11 are you saying that the Court's decision in
12 Rumors took what had been an acceptable
13 complaint and made it unacceptable because it
14 did not have the proper information?

15 MR. MPRAS: Not necessarily the
16 proper information, Mr. Silverstein, that it
17 just didn't meet the standard of the course it
18 took.

19 MEMBER SILVERSTEIN: Prior to
20 Rumors, did it meet the standard?

21 MR. MPRAS: Prior to Rumors?

22 MEMBER SILVERSTEIN: Had Rumors

1 not occurred, would this have been -- had the
2 Court not ruled in Rumors, had that case not
3 occurred, would this have been appropriate
4 information?

5 MR. MPRAS: It would have been an
6 appropriate charging document had it not -- I
7 concur with that.

8 MEMBER SILVERSTEIN: Now, in a
9 case like that, would the Court then
10 necessarily have been required to say the
11 District may or may not amend in order to make
12 pending documents, pending charging documents
13 comply with Rumors or do you believe that it
14 was the Court's intention to wipe the slate
15 and allow everything that had not been done
16 according to this new standard to let it all
17 go away?

18 MR. MPRAS: Well, Mr. Silverstein,
19 an analogy that I have dealt with before
20 that's in front of me is a simple one.
21 Someone is charged with a criminal offense.
22 Before his hearing, the law is changed and/or

1 amended benefitting the respondent, in a case
2 like that.

3 The charge cannot be amended. And
4 the respondent in a case like that necessarily
5 benefits from it.

6 MEMBER SILVERSTEIN: Ms. Phillips?

7 MS. PHILLIPS: Well, Mr.
8 Silverstein, Mr. Mpras has me at a staged
9 disadvantage because I never did criminal
10 work. However, if the law changes and it's a
11 law not a case, like the statute changes,
12 often the statute must say it can be
13 retroactive or it's not retroactive and then
14 you can't charge it retroactively.

15 So having not done criminal work,
16 I can't speak to that analogy, but I know if
17 the test changes, often the pleading document
18 will have to change, because they can't meet
19 the evidentiary requirement for the new test.
20 That's all I can say and I'm saying that from
21 a civil context, not a criminal context.

22 I just can't answer it in the

1 context that he gave us, because I don't do
2 criminal work.

3 MEMBER SILVERSTEIN: Mr. Mpras,
4 the difficulty here is that you are saying one
5 thing and it's true, but also how does the
6 state in this case know in advance, without
7 having ESP or being able to tell the future,
8 what would be required in such a document that
9 is filed prior to a Court decision?

10 MR. MPRAS: Sir, to answer your
11 question, it can't know in advance and not
12 only in this matter, but in many other matters
13 because we are on a common law system. Not
14 only do legislative changes affect our laws,
15 but also case law in precedent.

16 MEMBER SILVERSTEIN: So --

17 MR. MPRAS: Which is the case
18 here.

19 MEMBER SILVERSTEIN: -- when a
20 Court issues an order, issues a ruling and
21 says this has to change and in the future we
22 are going to require that you put additional

1 things in a charging document, does that mean
2 that all charging documents prior to that
3 point have to go away or does that mean that
4 they could be amended to conform to the
5 Court's new ruling?

6 MR. MPRAS: Well, it could be
7 either/or. There is no provision and there is
8 no specification by the Court in this matter.
9 So --

10 MEMBER SILVERSTEIN: The Court is
11 silent, you say?

12 MR. MPRAS: The Court is silent
13 and -- but they have not granted -- excuse me,
14 they have not advised or opined as to how this
15 subject should be handled.

16 MEMBER SILVERSTEIN: Ms. Phillips,
17 how do you read the Court's silence?

18 MS. PHILLIPS: If he is talking
19 about Rumors, it is silent and I believe that
20 the notice would not have to be amended,
21 because it is not specifically stated. It is
22 just required. I don't even think it is

1 really narrowed the standard.

2 I think what it has done is said
3 that these three things aren't meeting what
4 should be a continuous course of conduct if
5 you don't have an Am-Chi, Smarter Broadway,
6 single incident, really egregious-type thing.
7 That's what I think Rumors is saying.

8 But I'm willing to say that if the
9 Board reads it to narrow the standards so that
10 the pleading is insufficient, which was pled
11 before hand, that the Court, this Board has
12 the discretion to allow an amendment, which
13 perhaps in this case it should just so that if
14 this goes anywhere else outside the Board,
15 everything is in there, because otherwise what
16 we are saying is that every single thing that
17 on an investigative history has already been
18 litigated, but is known -- that has an 8.23.2
19 incident, we just have to throw them in the
20 wastepaper bin, as you have suggested, Mr.
21 Silverstein.

22 I mean, the Board -- the Court

1 could not have meant that. Could not have
2 meant that. So now what the District would
3 need to prove is either that this is egregious
4 enough to be a single incident or that based
5 on the three cases cited in this opposition
6 and in the investigative history, that deal
7 with security plans and also egregious
8 violations of D.C. Code, that it is enough to
9 show a pattern and practice of lax security
10 and a lack of management style that promotes
11 a potential for violent incidents as it did in
12 this case.

13 They violated their security plan
14 which specifically said how they were supposed
15 to do it. Specifically said how they were
16 supposed to do it and they didn't do it. And
17 people were injured. Did the Court mean for
18 that to go unattended?

19 It is also security. I mean, it's
20 just bottom line security as we have heard
21 testified -- well, probably you heard
22 testified in this case that that is something

1 that people do to keep people safe.

2 There was an assault inside. They
3 separated the parties. They put them out at
4 different times. They are responsible for
5 1,000 feet outside their establishment. They
6 are supposed to try to see that there is no
7 harm coming outside their establishment to the
8 people that were assaulted inside the
9 establishment.

10 So I am not sure you are stating
11 that you believe that they would be -- all
12 have to be thrown away and therefore you are
13 not going to do it, but I believe that the
14 Court couldn't possibly have meant for those
15 to be thrown away.

16 MR. MPRAS: Obviously, we don't
17 agree with the -- share the interpretation of
18 the Government. This case came about -- on
19 November 29, 2012 was when the opinion was
20 released, the case was decided.

21 Now, the Government had ample time
22 since then to attempt A Motion to Amend and

1 they did not. And at this time, we would
2 object to any amendment as untimely. Not only
3 based on that, but based on precedent, on
4 current case law.

5 So -- and the Government is also
6 attempting to argue facts that are not in
7 evidence, which basically have to do with the
8 allegations, which have not been proven.

9 MEMBER SILVERSTEIN: No further
10 questions, Madam Chair.

11 CHAIRPERSON MILLER: Okay.
12 Others? Okay. What we are going to do, I
13 think, is take a quick break, because I think
14 that we are going to be able to come out and
15 give you an answer, but we are just going to
16 take a short time to consult with our legal
17 counsel, if we need to.

18 Okay. So I'll have to close the
19 meeting and so hold on, I'll get my script.

20 As Chairperson of the Alcoholic
21 Beverage Control Board for the District of
22 Columbia and in accordance with Section 405 of

1 the Open Meetings Amendment Act of 2010, I
2 move that the ABC Board hold a closed meeting
3 for the purpose of seeking legal advice from
4 our counsel on Case No. 11-251-00372, MIA, per
5 Section 405(b)(4) of the Open Meetings
6 Amendment Act of 2010, and deliberating upon
7 this case for the reasons cited in Section
8 405(b)(13) of the Open Meetings Amendment Act
9 of 2010.

10 So do I have a second?

11 MEMBER SILVERSTEIN: Second.

12 CHAIRPERSON MILLER: Okay. Mr.
13 Silverstein seconded the motion. I'll now
14 take a roll call.

15 Mr. Brooks?

16 MEMBER BROOKS: I agree.

17 CHAIRPERSON MILLER: Mr. Alberti?

18 MEMBER ALBERTI: I agree.

19 CHAIRPERSON MILLER: Ms. Miller
20 agrees.

21 Mr. Silverstein?

22 MEMBER SILVERSTEIN: I agree.

1 CHAIRPERSON MILLER: And, Mr.

2 Jones?

3 MEMBER JONES: I agree.

4 CHAIRPERSON MILLER: It appears
5 that the motion has passed by a 5-0-0 vote.

6 I hereby give notice that we will
7 hold a short closed meeting in the ABC Board
8 conference room now pursuant to the Open
9 Meetings Amendment Act of 2010.

10 So as I was saying, if you want to
11 hang in a little bit, I expect that we will be
12 coming back and then making a ruling. Okay.

13 (Whereupon, at 4:13 p.m. a recess
14 until 4:26 p.m.)

15 CHAIRPERSON MILLER: Okay. We are
16 back on the record. And we are ready to
17 address the motion before us.

18 And I want to start by moving to
19 deny respondent's Motion to Discharge and
20 Dismiss Show Cause and ask for a second.

21 MEMBER SILVERSTEIN: Second.

22 MEMBER BROOKS: Second.

1 CHAIRPERSON MILLER: Okay. Mr.
2 Silverstein has, I guess, seconded the motion.
3 I just want to start off with my reasons and
4 then other Board Members can feel free to
5 chime in.

6 I think that the notice is
7 sufficient in the Notice of Status Hearing and
8 Show Cause. The statute under which the case
9 was brought was not changed by Rumors and it
10 is the same statute. And I think that Rumors
11 really addressed the question of proof and
12 raised the burden.

13 And in this case, the Government
14 has identified facts that it would look to to
15 address that rumors requires which is this
16 continuous course of conduct. And I don't
17 think, at this stage, the Government is
18 required to prove its case. It is just
19 required to meet a certain threshold of
20 identifying facts to support its motion or to
21 defeat the Motion to Dismiss.

22 And I think that it did that in

1 this case. And I think what Rumors did was
2 just make it harder for the Government to make
3 its case. And so the Government has
4 identified how it plans to meet its case and
5 I think in that respect, it has also given the
6 licensee notice of that aspect.

7 I note that -- well, let me let
8 others speak, if they would like, to this, to
9 the Motion to Discharge and Dismiss before we
10 get into the Motion to Amend.

11 Does anybody else have any other
12 comments or basically in agreement with what
13 I said?

14 MEMBER ALBERTI: I will.

15 CHAIRPERSON MILLER: Yes.

16 MEMBER ALBERTI: I agree with the
17 Chair's recommendation here and her reasoning.
18 I mean, I do not believe that the Court in the
19 Rumors case intended that say that in reading
20 charges and presenting a notice or Status and
21 Show Cause that the Government would be
22 required to plead past cases in order to bring

1 the charges.

2 As Ms. Phillips pointed out that
3 attached to the investigative history, the
4 report -- attached to the report, which is
5 given to the licensee, there is an
6 investigative history and the Board can look
7 to those facts to see if there is sufficient
8 evidence to believe that the Government could
9 argue a pattern.

10 So for that reason, I believe that
11 the Notice to Show Cause Status, Notice of
12 Status and Show Cause is sufficient.

13 CHAIRPERSON MILLER: Any others?
14 Okay. Then there is a Motion to Deny
15 respondent's Motion to Discharge and Dismiss
16 Show Cause that has been seconded.

17 All those in favor of denying
18 respondent's motion say aye.

19 ALL: Aye.

20 CHAIRPERSON MILLER: All those
21 opposed? All those abstaining? Then the vote
22 is 5-0-0.

1 And then the second issue that was
2 raised was whether the Government needs to
3 amend their motion. And I do want to turn
4 back to the Government after we discuss it,
5 but I think it's the Board's view that the
6 Government has provided sufficient notice in
7 conjunction with these pleadings that
8 respondent is on notice and there wouldn't be
9 a need to amend that notice.

10 But do others have any other
11 comments about that?

12 MEMBER ALBERTI: Yes.

13 CHAIRPERSON MILLER: Okay.

14 MEMBER ALBERTI: I think just in
15 my view, my understanding of the Board's view
16 is that we -- while we don't believe that
17 there is a need to amend the motion, that we
18 believe that the Government has every right to
19 amend.

20 Let me restate this. That we
21 don't -- while we don't believe that there is
22 a necessity -- there is -- it's necessary to

1 amend the Notice of Status and Show Cause,
2 that the Government has the right to amend the
3 notice if they so choose.

4 CHAIRPERSON MILLER: I think Ms.
5 Phillips we would really like to ask you, we
6 don't think that you need to, given, for our
7 purposes, the notice that we see in the record
8 at this point.

9 So I'm going to ask you do you
10 want to proceed with that motion in any event
11 or would you want to withdraw it?

12 MS. PHILLIPS: Well, I --

13 CHAIRPERSON MILLER: Do you see a
14 need that you want to articulate for us to
15 consider the motion?

16 MS. PHILLIPS: Well, I think you
17 have actually said what I asked for in the
18 motion, so I'm a little confused, because I
19 think what I heard you say is, and let me
20 state it so we will know if we are thinking
21 the same way or hearing the same thing, that
22 you do not, as a Board, believe that the

1 District needs to amend the notice.

2 And you believe that with the
3 motions opposition and reply that are in
4 place, the District has given sufficient
5 notice of what it intends to do, that there is
6 no need to write an amended notice.

7 That's what I heard.

8 CHAIRPERSON MILLER: That's
9 correct.

10 MS. PHILLIPS: And that I asked
11 for was just to amend the notice to contain
12 the information in the opposition, not that I
13 do a new one. So did you do that?

14 CHAIRPERSON MILLER: Okay. No, I
15 didn't --

16 MS. PHILLIPS: Because that's what
17 I --

18 CHAIRPERSON MILLER: -- totally --

19 MS. PHILLIPS: -- am hearing that
20 you did do.

21 CHAIRPERSON MILLER: Well, we just
22 discussed --

1 MS. PHILLIPS: So I --

2 CHAIRPERSON MILLER: -- the fact--

3 MS. PHILLIPS: Okay.

4 CHAIRPERSON MILLER: -- that -- we
5 haven't ruled on any motion yet.

6 MS. PHILLIPS: All right.

7 CHAIRPERSON MILLER: We didn't
8 know whether a motion was necessary, because
9 we find that the notice that has been provided
10 in the record so far with respect to this
11 pleading provides sufficient notice.

12 However, we wanted to ask you, in
13 any event, did you still request that the
14 Board grant a Motion to Amend? And if so, I
15 wasn't sure how you were amending it now or
16 whether you are making just reference to
17 amend. How would that notice be?

18 MS. PHILLIPS: I just said that
19 while I don't believe it is necessary --

20 CHAIRPERSON MILLER: Okay.

21 MS. PHILLIPS: -- what I'm asking
22 you is to amend the notice by including the

1 information, facts stated in the opposition.
2 Not -- I wasn't moving to at a future date
3 hand in a new notice alleging those things.
4 I was moving just to have the notice include
5 the facts in the opposition.

6 MEMBER ALBERTI: In your
7 opposition?

8 CHAIRPERSON MILLER: There is only
9 one opposition.

10 MEMBER ALBERTI: Yes.

11 MS. PHILLIPS: That would be my
12 opposition, the Government's opposition.

13 MEMBER ALBERTI: Yes. The
14 Government's opposition to the motion. I
15 understand.

16 MR. MPRAS: I do not, because
17 there are facts not in evidence. It's
18 contested facts in the motion as to what has
19 transpired in -- the response states what the
20 allegations are and they are not assuming that
21 the -- assuming that they are true, which is
22 not the case, because they haven't been proven

1 yet.

2 MS. PHILLIPS: A notice is always
3 issued.

4 CHAIRPERSON MILLER: Right.

5 MS. PHILLIPS: Assuming that the
6 investigative report -- I mean, I issue
7 notices as we all do. The Government issues
8 notices approved by the Board of things that
9 are contained in the investigative report and
10 none of them have been proven until we go to
11 a Show Cause Hearing.

12 So all I'm saying is amend the
13 notice with the facts in the opposition and we
14 will go to a Show Cause Hearing if that's
15 where we are going, which we seem to be since
16 you have denied the motion, original motion.

17 MEMBER ALBERTI: I agree.

18 MS. PHILLIPS: Do I have it right?
19 Is that what you told me?

20 CHAIRPERSON MILLER: I just want
21 to know what we are -- what the notice is
22 going to be. So it's going to be the notice

1 as is plus your opposition as part of the
2 notice? Your whole opposition?

3 MS. PHILLIPS: No, just the whole
4 -- all the facts contained therein, because
5 that's all I put in the notice.

6 CHAIRPERSON MILLER: Facts
7 contained --

8 MS. PHILLIPS: So they are already
9 here.

10 CHAIRPERSON MILLER: -- in the
11 opposition.

12 MS. PHILLIPS: Right.

13 CHAIRPERSON MILLER: And the
14 investigative history?

15 MS. PHILLIPS: And investigative
16 history and everything I cited in the three
17 cases. There is a section that deals with the
18 three cases that I believe, if necessary, show
19 the continuum and that's what I wanted. And
20 that's all I put in the notice.

21 If you said Ms. Phillips go back
22 to your office and write a new notice --

1 CHAIRPERSON MILLER: Okay.

2 MS. PHILLIPS: -- that's all I
3 would be able to put in. So why do that when
4 it is already here?

5 CHAIRPERSON MILLER: Okay. Okay.
6 So this is what I understand, since we don't
7 see your amendment.

8 It would be amended to include the
9 facts in your opposition and in the
10 investigative history.

11 MS. PHILLIPS: I didn't hear the
12 last part. I'm sorry.

13 CHAIRPERSON MILLER: And the
14 investigative history. Your facts in the
15 opposition and in the investigative history or
16 to reference or to include or something to
17 that effect. Okay. All right.

18 Is there opposition to that?

19 MR. MPRAS: No, ma'am.

20 CHAIRPERSON MILLER: Okay. Then I
21 would move that we grant that Motion to Amend,
22 as I indicated.

1 Is there a second?

2 MEMBER BROOKS: Second.

3 CHAIRPERSON MILLER: Any other
4 comments or questions on this? Okay.

5 All those in favor then say aye.

6 ALL: Aye.

7 CHAIRPERSON MILLER: All those
8 opposed? All those abstaining? The vote is
9 5-0-0 to grant the Motion to Amend.

10 Okay. Finally, we do have a
11 hearing date for you all and that is May 15th
12 at 1:30.

13 MS. PHILLIPS: I'm sorry?

14 CHAIRPERSON MILLER: May 15th at
15 1:30 p.m. Okay. All right. I think that
16 concludes this hearing. Thank you very much.

17 MS. PHILLIPS: Thank you.

18 (Whereupon, the Motion Hearing in
19 the above-entitled matter was concluded at
20 4:38 p.m.)

21

22

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