

DISTRICT OF COLUMBIA

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ALCOHOLIC BEVERAGE CONTROL BOARD

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ROLL CALL HEARING

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IN THE MATTER OF: :

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Spo-dee-o-dee, LLC :

t/a The Showtime :

113 Rhode Island Ave. NW :

License #ABRA-089186 :

Retailer CT - New Application:

Case #12-PRO-00040 :

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TUESDAY, May 29, 2012

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The Alcoholic Beverage Control Board met in Alcoholic Beverage Control Hearing Room, 2000 14th Street, N.W., Suite 400S Washington, D.C., Ms. La Verne Fletcher, Agent, presiding.

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

10:12 a.m.

AGENT FLETCHER: Are the parties present in the matter of The Showtime? Is anyone present in the matter of The Showtime? The Showtime? Thank you. Where is the Protestant for the Showtime?

PARTICIPANT: Right here.

PARTICIPANT:

AGENT FLETCHER: Okay. You're in the right place. Okay. Thank you. This is Case Number 12-PRO-00040, Spo-dee-o-dee, LLC, trading as The Showtime, 113 Rhode Island Avenue NW, License Number ABRA-089186. This is a Retailer CT - New Application. The protest issues are adverse impact on peace, order, and quiet and residential parking and vehicular and pedestrian safety, and real property values.

Introductions, beginning with the Applicant. Your name, sir?

MR. VIVARI: My name is Paul

1 Vivari.

2 AGENT FLETCHER: Would you please
3 spell that for the court reporter?

4 MR. VIVARI: Yes. Paul Vivari,
5 P-A-U-L V-I-V-A-R-I.

6 AGENT FLETCHER: So that's Paul V-
7 I-V-A-R-I?

8 MR. VIVARI: Yes, ma'am.

9 AGENT FLETCHER: Okay. And what's
10 your role, Mr. Vivari? Are you the Applicant?

11 MR. VIVARI: Yes.

12 AGENT FLETCHER: And your name,
13 sir?

14 MR. BARLOW: Andre Barlow,
15 B-A-R-L-O-W.

16 AGENT FLETCHER: Is that A-N-D-R-
17 E?

18 MR. BARLOW: Correct.

19 AGENT FLETCHER: And your role,
20 Mr. Barlow?

21 MR. BARLOW: I'm Paul's lawyer.

22 AGENT FLETCHER: Thank you. And

1 Mr. Barlow, will you be entering your
2 appearance for the record?

3 MR. BARLOW: Yes. Or, I believe
4 we -- we filed the application.

5 AGENT FLETCHER: Yes. At this
6 point, our record doesn't indicate that.

7 MR. BARLOW: Okay. So we will
8 enter an appearance then.

9 AGENT FLETCHER: Yes, if you can.
10 And my card is on the table.

11 MR. BARLOW: Yes.

12 AGENT FLETCHER: You can e-mail
13 that to me.

14 MR. BARLOW: Sure.

15 AGENT FLETCHER: And we will just
16 place it in the record. You're on record
17 today as being counsel.

18 MR. BARLOW: Yes.

19 AGENT FLETCHER: But I will just
20 insert that document into the record when we
21 receive it. And, Mr. Barlow, if you would put
22 your name, daytime number, and e-mail address

1 on that sheet, that would be helpful.

2 MR. BARLOW: Okay.

3 AGENT FLETCHER: Thank you. And
4 present on behalf of the Protestants?

5 DR. COLLINS: Dr. Paul L. Collins.

6 AGENT FLETCHER: Dr. Collins,
7 would you please spell your name for the
8 record?

9 DR. COLLINS: P as in Paul, A as
10 in alpha, U as in --

11 AGENT FLETCHER: U Street?

12 DR. COLLINS: Yes. L as in Leon.
13 L. C-O-L-L-I-N-S.

14 AGENT FLETCHER: Thank you. And
15 your name, sir?

16 MR. GALLOWAY: Louis Galloway.

17 AGENT FLETCHER: And could you
18 spell it?

19 MR. GALLOWAY: L-O-U-I-S
20 G-A-L-L-O-W-A-Y.

21 AGENT FLETCHER: And Mr. Galloway,
22 are you a Protestant?

1 MR. GALLOWAY: Yes.

2 AGENT FLETCHER: You didn't file a
3 protest, though.

4 MR. GALLOWAY: I'm part of the
5 group from Nazarene.

6 AGENT FLETCHER: Okay. Just so
7 that you know, according to the record, Dr.
8 Collins, you're the only Protestant in this
9 matter. We received a protest letter only
10 from you. And Mr. Galloway, because we did
11 not receive a protest from you -- it's okay
12 that you're here, but you just can't be seated
13 at the table with Dr. Collins.

14 MR. GALLOWAY: Okay. Fine.

15 AGENT FLETCHER: It's fine that
16 you're here, though.

17 DR. COLLINS: Okay. Thanks.

18 AGENT FLETCHER: Okay. Thank you.
19 So Mr. Galloway is present today, but Mr.
20 Galloway is not a Protestant. Mr. Galloway
21 did not file a protest letter, but it is fine
22 that you are here today.

1 MR. GALLOWAY: Okay.

2 AGENT FLETCHER: This is a public
3 hearing. Dr. Collins, you filed your protest
4 as an abutting property owner?

5 DR. COLLINS: Yes, ma'am.

6 AGENT FLETCHER: And you are -- we
7 did determine that you are an abutting
8 property owner?

9 DR. COLLINS: Yes.

10 AGENT FLETCHER: We did agree you
11 are an abutting property owner; however, your
12 protest, based upon my review of the record,
13 was received untimely. Did you get an e-mail
14 from me, by any chance? Did you receive an
15 e-mail from me, regarding the untimeliness of
16 your protest? If you didn't, that's okay.
17 Because you had the right to appear. I'm just
18 checking to see.

19 DR. COLLINS: Yes, I did.

20 AGENT FLETCHER: Okay.

21 DR. COLLINS: I received it
22 yesterday.

1 AGENT FLETCHER: Okay. And so do
2 you have any other documentation to show that
3 you submitted your protest prior to the --

4 DR. COLLINS: Yes, I do. I have a
5 letter which was -- which was -- I received,
6 dated May 17th, indicating that my protest had
7 been timely filed.

8 AGENT FLETCHER: Yes, you did,
9 actually. And then my responsibility is to
10 review the protest file, prior to today. And
11 I noticed that your protest letter was
12 actually dated May 15. The day that we
13 actually received your protest letter was May
14 15. And so I spoke with our staff to see if
15 there was any other documentation from you to
16 show that your protest was received prior to
17 May 15, because sometimes you send in a
18 letter, and then we'll get a fax or an e-mail
19 prior to the 15th. Which we will accept as
20 timely filed, even though your actual letter
21 is late. And the Staff informed me that there
22 was no additional documentation, other than

1 your actual protest letter which, according to
2 the record, was received on May 15, and the
3 deadline by which to file a protest was May
4 14. So I just wanted to check and see if you
5 had anything additional, other than what I
6 have.

7 DR. COLLINS: Well, I -- no, I
8 don't. I filed it -- I filed it on the 11th,
9 which was on a Saturday. And -- but I
10 received the letter on the 17th -- I received
11 a letter dated the 17th --

12 AGENT FLETCHER:

13 PARTICIPANT: Yes, you did,
14 indicating that your protest was filed timely.

15 DR. COLLINS: Indicating that it
16 had been filed on time.

17 AGENT FLETCHER: Yes. You did.
18 Unfortunately, that's incorrect, unless there
19 was some additional documentation. And I
20 wanted to give you an opportunity to provide
21 any additional documentation that you may have
22 filed, which is also the reason that I sent

1 you that e-mail before today. So that, if you
2 had something additional, you could bring it
3 with you today.

4 DR. COLLINS: I don't -- the only
5 thing I have is the envelope that was --

6 AGENT FLETCHER: That's fine.

7 DR. COLLINS: -- filed from your
8 office.

9 AGENT FLETCHER: Okay. Thank you,
10 very much. I will have to consider your
11 protest to be untimely filed, Dr. Collins.
12 But what you can do is you can seek
13 reinstatement of the -- of your protest by
14 making a request to the ABC Board to reinstate
15 your protest. And I suppose your explanation
16 would be that you received a letter telling
17 you that it was timely. It actually was not.
18 I suppose that would be one -- one case that
19 you could make. And the ABC Board would
20 determine whether or not to consider your
21 protest timely. But, for the purpose of Roll
22 Call, today, I have to consider your protest

1 letter to be untimely because of the date
2 stamp on it of May 15, which is one day after
3 the petition deadline. And any statement you
4 would like to make --

5 DR. COLLINS: Well, the only --
6 the only statement I would have -- I would
7 like to make is the fact that I filed it with
8 the Post Office on the 11th, which was four
9 days before the -- it should have been
10 registered. And when I received the letter
11 stating that it had been timely filed, I had
12 nothing other to go on, nor any reason to call
13 Ms. Sarah Fashbaugh, who -- who indicated to
14 me that, if I had any questions, to call her.
15 I merely prepared myself to be here on today,
16 based on the fact that I had received the
17 letter from the ABRA, stating that my request
18 had been timely filed.

19 AGENT FLETCHER: Okay. And you did
20 receive my e-mail, as well?

21 DR. COLLINS: I received your
22 e-mail. I received your e-mail, which was --

1 which was sent to me at -- at 1:09 p.m. on
2 Friday, the 25th.

3 AGENT FLETCHER: That's about
4 right. But it's fine that you're here. What
5 I'm going to suggest you do is -- well, let me
6 just say this. You have the right to seek
7 reinstatement of your protest. You just need
8 to do it within ten days of the date that you
9 receive an order from the ABC Board. And you
10 will receive an order from the ABC Board,
11 dismissing your protest because it was
12 untimely filed. And, if you want the Board to
13 reconsider that, then you would say in your
14 petition for reinstatement what you said
15 today.

16 Any questions?

17 DR. COLLINS: Only -- only that
18 we'll just seek reinstatement. And we need to
19 wait until we receive something from the Board
20 before we --

21 AGENT FLETCHER: Yes. You should
22 receive something -- the Board meets on

1 Wednesdays, but they won't be meeting
2 tomorrow, the 30th. But they will meet the
3 following Wednesday. And you can wait to
4 receive your order, because you will have ten
5 days from receipt of that order to seek
6 reinstatement. And the Board, most likely,
7 will sign the order when they're here next
8 Wednesday. And so it will be mailed out to
9 you right away. From the point that you
10 receive that, you will have ten days to seek
11 reinstatement. So that's what I would suggest
12 that you do. And if you --

13 DR. COLLINS: So I don't trust --
14 I should not trust the Post Office to deliver?

15 AGENT FLETCHER: Yes. You would
16 think that that was enough time, though, if
17 you mailed it on the 11th. I mean, you had
18 every reason to think that when you got our
19 letter on the 17th. And then it said it was
20 timely. Our letter said that it was timely.

21 DR. COLLINS: Right.

22 AGENT FLETCHER: Yes. And the

1 date stamp on the letter itself, which is the
2 date that I have to go by officially, has May
3 15th. So, if we received it before May 15th,
4 I don't know. But make that case for the
5 Board and perhaps they will reinstate your
6 protest. And, when you -- Dr. Collins, when
7 you seek reinstatement of your protest, can
8 you send a copy of that to Mr. Barlow?

9 Mr. Barlow, do you have any
10 contact information for Dr. Collins?

11 MR. BARLOW: Yes.

12 AGENT FLETCHER: Because we would
13 -- when you send a request to us for
14 reinstatement, if you could e-mail a copy to
15 Mr. Barlow, so that the Applicant knows that
16 you are seeking reinstatement. And then, Mr.
17 Barlow, you have an opportunity to respond to
18 the request for reinstatement.

19 MR. BARLOW: Okay.

20 AGENT FLETCHER: And the ABC Board
21 will make a decision about that. And, Dr.
22 Collins, do you have a daytime phone number

1 that you could add to that sheet on the table?
2 The sign-in sheet.

3 DR. COLLINS: Yes, I do.

4 AGENT FLETCHER: You have a
5 daytime phone number? Okay. Thank you. And
6 Dr. Collins, I'd like just -- Mr. Galloway has
7 been trying to tell us something. Would you
8 like to consult with Mr. Galloway before you
9 leave? Okay. Well, you can leave that right
10 there, Dr. Collins. Thank you. Okay. Well,
11 thank you very much for coming. The Roll Call
12 Hearing is concluded. Thank you.

13 (Whereupon, the Roll Call Hearing
14 was concluded at 10:25 a.m.)

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<p style="text-align: center;">A</p> <p>ABC 10:14,19 12:9 12:10 14:20</p> <p>ABRA 11:17</p> <p>ABRA-089186 1:12 2:14</p> <p>abutting 7:4,7,11</p> <p>accept 8:19</p> <p>actual 8:20 9:1</p> <p>add 15:1</p> <p>additional 8:22 9:5 9:19,21 10:2</p> <p>address 4:22</p> <p>adverse 2:16</p> <p>Agent 1:22 2:3,10 3:2,6,9,12,16,19 3:22 4:5,9,12,15 4:19 5:3,6,11,14 5:17,21 6:2,6,15 6:18 7:2,6,10,20 8:1,8 9:12,17 10:6 10:9 11:19 12:3 12:21 13:15,22 14:12,20 15:4</p> <p>agree 7:10</p> <p>Alcoholic 1:3,18,19</p> <p>alpha 5:10</p> <p>Andre 3:14</p> <p>appear 7:17</p> <p>appearance 4:2,8</p> <p>Applicant 2:21 3:10 14:15</p> <p>application 1:12 2:15 4:4</p> <p>Ave 1:11</p> <p>Avenue 2:14</p> <p>A-N-D-R 3:16</p> <p>a.m 2:2 15:14</p> <hr/> <p style="text-align: center;">B</p> <p>Barlow 3:14,14,18 3:20,21 4:1,3,7,11 4:14,18,21 5:2 14:8,9,11,15,17 14:19</p> <p>based 7:12 11:16</p> <p>beginning 2:20</p>	<p>behalf 5:4</p> <p>believe 4:3</p> <p>Beverage 1:3,18,19</p> <p>Board 1:3,19 10:14 10:19 12:9,10,12 12:19,22 13:6 14:5,20</p> <p>bring 10:2</p> <p>B-A-R-L-O-W 3:15</p> <hr/> <p style="text-align: center;">C</p> <p>call 1:5 10:22 11:12 11:14 15:11,13</p> <p>card 4:10</p> <p>case 1:13 2:12 10:18 14:4</p> <p>chance 7:14</p> <p>check 9:4</p> <p>checking 7:18</p> <p>Collins 5:5,5,6,9,12 6:8,13,17 7:3,5,9 7:19,21 8:4 9:7,15 10:4,7,11 11:5,21 12:17 13:13,21 14:6,10,22 15:3,6 15:10</p> <p>COLUMBIA 1:1</p> <p>coming 15:11</p> <p>concluded 15:12,14</p> <p>consider 10:10,20 10:22</p> <p>consult 15:8</p> <p>contact 14:10</p> <p>Control 1:3,18,19</p> <p>copy 14:8,14</p> <p>Correct 3:18</p> <p>counsel 4:17</p> <p>court 3:3</p> <p>CT 1:12 2:15</p> <p>C-O-L-L-I-N-S 5:13</p> <hr/> <p style="text-align: center;">D</p> <p>date 11:1 12:8 14:1 14:2</p> <p>dated 8:6,12 9:11</p> <p>day 8:12 11:2</p>	<p>days 11:9 12:8 13:5 13:10</p> <p>daytime 4:22 14:22 15:5</p> <p>deadline 9:3 11:3</p> <p>decision 14:21</p> <p>deliver 13:14</p> <p>determine 7:7 10:20</p> <p>dismissing 12:11</p> <p>DISTRICT 1:1</p> <p>document 4:20</p> <p>documentation 8:2 8:15,22 9:19,21</p> <p>Dr 5:5,5,6,9,12 6:7 6:13,17 7:3,5,9,19 7:21 8:4 9:7,15 10:4,7,11 11:5,21 12:17 13:13,21 14:6,10,21 15:3,6 15:10</p> <p>D.C 1:21</p> <hr/> <p style="text-align: center;">E</p> <p>E 3:17</p> <p>enter 4:8</p> <p>entering 4:1</p> <p>envelope 10:5</p> <p>explanation 10:15</p> <p>e-mail 4:12,22 7:13 7:15 8:18 10:1 11:20,22,22 14:14</p> <hr/> <p style="text-align: center;">F</p> <p>fact 11:7,16</p> <p>Fashbaugh 11:13</p> <p>fax 8:18</p> <p>file 6:2,21 8:10 9:3</p> <p>filed 4:4 7:3 8:7,20 9:8,8,14,16,22 10:7,11 11:7,11 11:18 12:12</p> <p>fine 6:14,15,21 10:6 12:4</p> <p>Fletcher 1:22 2:3 2:10 3:2,6,9,12,16 3:19,22 4:5,9,12 4:15,19 5:3,6,11</p>	<p>5:14,17,21 6:2,6 6:15,18 7:2,6,10 7:20 8:1,8 9:12,17 10:6,9 11:19 12:3 12:21 13:15,22 14:12,20 15:4</p> <p>following 13:3</p> <p>four 11:8</p> <p>Friday 12:2</p> <hr/> <p style="text-align: center;">G</p> <p>Galloway 5:16,16 5:19,21 6:1,4,10 6:14,19,20,20 7:1 15:6,8</p> <p>give 9:20</p> <p>go 11:12 14:2</p> <p>going 12:5</p> <p>group 6:5</p> <p>G-A-L-L-O-W-A... 5:20</p> <hr/> <p style="text-align: center;">H</p> <p>hearing 1:5,20 7:3 15:12,13</p> <p>helpful 5:1</p> <hr/> <p style="text-align: center;">I</p> <p>impact 2:16</p> <p>incorrect 9:18</p> <p>indicate 4:6</p> <p>indicated 11:13</p> <p>indicating 8:6 9:14 9:15</p> <p>information 14:10</p> <p>informed 8:21</p> <p>insert 4:20</p> <p>Introductions 2:20</p> <p>Island 1:11 2:13</p> <p>issues 2:16</p> <p>I-V-A-R-I 3:7</p> <hr/> <p style="text-align: center;">K</p> <p>know 6:7 14:4</p> <p>knows 14:15</p> <hr/> <p style="text-align: center;">L</p> <p>L 5:5,12,13</p>	<p>La 1:21</p> <p>late 8:21</p> <p>lawyer 3:21</p> <p>leave 15:9,9</p> <p>Leon 5:12</p> <p>letter 6:9,21 8:5,11 8:13,18,20 9:1,10 9:11 10:16 11:1 11:10,17 13:19,20 14:1</p> <p>License 1:12 2:14</p> <p>LLC 1:10 2:12</p> <p>Louis 5:16</p> <p>L-O-U-I-S 5:19</p> <hr/> <p style="text-align: center;">M</p> <p>mailed 13:8,17</p> <p>making 10:14</p> <p>matter 1:9 2:4,5 6:9</p> <p>ma'am 3:8 7:5</p> <p>mean 13:17</p> <p>meet 13:2</p> <p>meeting 13:1</p> <p>meets 12:22</p> <p>merely 11:15</p> <p>met 1:19</p> <hr/> <p style="text-align: center;">N</p> <p>name 2:21,22 3:12 4:22 5:7,15</p> <p>Nazarene 6:5</p> <p>need 12:7,18</p> <p>New 1:12 2:15</p> <p>noticed 8:11</p> <p>number 2:12,14 4:22 14:22 15:5</p> <p>NW 1:11 2:14</p> <p>N.W 1:20</p> <hr/> <p style="text-align: center;">O</p> <p>office 10:8 11:8 13:14</p> <p>officially 14:2</p> <p>okay 2:10,11 3:9 4:7 5:2 6:6,11,14 6:17,18 7:1,16,20 8:1 10:9 11:19</p>
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14:19 15:5,9,10 opportunity 9:20 14:17 order 2:17 12:9,10 13:4,5,7 owner 7:4,8,11	2:1 p.m 12:1	15:11,13 Room 1:20	time 9:16 13:16 timely 8:7,20 9:14 10:17,21 11:11,18 13:20,20 today 4:17 6:19,22 8:10 10:1,3,22 11:15 12:15 tomorrow 13:2 trading 2:13 trust 13:13,14 trying 15:7 TUESDAY 1:15 t/a 1:10	1 1:09 12:1 10:12 2:2 10:25 15:14 11th 9:8 11:8 13:17 113 1:11 2:13 12-PRO-00040 2:12 14 9:4 14th 1:20 15 8:12,14,17 9:2 11:2 15th 8:19 14:3,3 17th 8:6 9:10,11 13:19
P P 5:9 parking 2:17 part 6:4 PARTICIPANT 2:8,9 9:13 parties 2:3 Paul 2:22 3:4,6 5:5 5:9 Paul's 3:21 peace 2:16 pedestrian 2:18 petition 11:3 12:14 phone 14:22 15:5 place 2:11 4:16 please 3:2 5:7 point 4:6 13:9 Post 11:8 13:14 prepared 11:15 present 2:4,5 5:4 6:19 presiding 1:22 prior 8:3,10,16,19 property 2:19 7:4,8 7:11 protest 2:16 6:3,9 6:11,21 7:3,12,16 8:3,6,10,11,13,16 9:1,3,14 10:11,13 10:15,21,22 12:7 12:11 14:6,7 Protestant 2:7 5:22 6:8,20 Protestants 5:4 provide 9:20 public 7:2 purpose 10:21 put 4:21 P-A-U-L 3:5 P-R-O-C-E-E-D-...	Q questions 11:14 12:16 quiet 2:17	S safety 2:18 Sarah 11:13 Saturday 9:9 seated 6:12 see 7:18 8:14 9:4 seek 10:12 12:6,18 13:5,10 14:7 seeking 14:16 send 8:17 14:8,13 sent 9:22 12:1 sheet 5:1 15:1,2 show 8:2,16 Showtime 1:10 2:4 2:5,6,7,13 sign 13:7 sign-in 15:2 sir 2:21 3:13 5:15 spell 3:3 5:7,18 spoke 8:14 Spo-dee-o-dee 1:10 2:12 staff 8:14,21 stamp 11:2 14:1 statement 11:3,6 stating 11:11,17 Street 1:20 5:11 submitted 8:3 suggest 12:5 13:11 Suite 1:20 suppose 10:15,18 Sure 4:14	U U 5:10,11 Unfortunately 9:18 untimeliness 7:15 untimely 7:13 10:11 11:1 12:12	2 2000 1:20 2012 1:15 25th 12:2 29 1:15
	R real 2:18 reason 9:22 11:12 13:18 receipt 13:5 receive 4:21 6:11 7:14 11:20 12:9 12:10,19,22 13:4 13:10 received 6:9 7:13 7:21 8:5,13,16 9:2 9:10,10 10:16 11:10,16,21,22 14:3 reconsider 12:13 record 4:2,6,16,16 4:20 5:8 6:7 7:12 9:2 regarding 7:15 registered 11:10 reinstate 10:14 14:5 reinstatement 10:13 12:7,14,18 13:6,11 14:7,14 14:16,18 reporter 3:3 request 10:14 11:17 14:13,18 residential 2:17 respond 14:17 responsibility 8:9 Retailer 1:12 2:15 review 7:12 8:10 Rhode 1:11 2:13 right 2:8,11 7:17 12:4,6 13:9,21 15:9 role 3:10,19 Roll 1:5 10:21	T table 4:10 6:13 15:1 tell 15:7 telling 10:16 ten 12:8 13:4,10 thank 2:6,11 3:22 5:3,14 6:18 10:9 15:5,10,11,12 Thanks 6:17 thing 10:5 think 13:16,18	V V 3:6 values 2:19 vehicular 2:18 Verne 1:21 Vivari 2:22 3:1,4,4 3:8,10,11 V-I-V-A-R-I 3:5	3 30th 13:2
			W wait 12:19 13:3 want 12:12 wanted 9:4,20 Washington 1:21 Wednesday 13:3,8 Wednesdays 13:1 we'll 8:18 12:18	4 400S 1:21
			Y yesterday 7:22	
			P p 1:8,13	
			# #12-PRO-00040 1:13	