

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

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IN THE MATTER OF: :
: :
TBM Holdings, LLC :
t/a TruOrleans :
400 H Street, N.E. : Show
Retailer CR : Cause
License No. 86210 : Hearing
ANC 6C :
Failed to Comply with the :
Terms of it's Offer in :
Compromise dated March 13, :
2013 :
Case No. 11-CMP-00372 :

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September 18, 2013
The Alcoholic Beverage Control
Board met in Alcoholic Beverage Control

Hearing Room, Reeves Building, 2000 14th
Street N.W., Washington, D.C., Chairperson
Ruthanne Miller presiding.

PRESENT:

RUTHANNE MILLER, Chairperson

- NICK ALBERTI, Member
- DONALD BROOKS, Member
- HERMAN JONES, Member
- MICHAEL SILVERSTEIN, Member

ALSO PRESENT:

CHRISSEY GEPHARDT, OAG

TABLE OF CONTENTS

Opening Statement - Ms. Gephardt.4

Closing Statement - Ms. Gephardt. 12

WITNESS DIRECT CROSS REDIRECT RECROSS

William Hager 5

EXHIBIT MARKED RECEIVED

Government

1 Alcoholic Beverage Control 8 12

Board Hearing Disposition

Form

2 Notice of District of 15 15

Columbia Tax Lien

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13
14
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P-R-O-C-E-E-D-I-N-G-S

2:36 p.m.

CHAIRPERSON MILLER: The next case on our calendar is Case Number 11-CMP-00372, TruOrleans located at 400 H Street, N.E., License Number 86210 in ANC 6C.

MS. GEPHARDT: Good afternoon. Chrissy Gephardt on behalf of the Office of the Attorney General.

CHAIRPERSON MILLER: Good afternoon.

And is anybody here for TruOrleans?

Okay. Not hearing anyone, I want to note that this hearing was called for 1:30. It's now 2:36 and that notice was served on the respondent according to my records on June 21st, 2013.

So, Ms. Gephardt, are you prepared to proceed ex parte?

MS. GEPHARDT: Yes, I'm prepared to proceed.

1 CHAIRPERSON MILLER: Okay.

2 MS. GEPHARDT: Okay. Board
3 Members, on March 13th, 2013, in this case,
4 the Licensee accepted an offer in compromise
5 in Case 11-CMP-00372 which included a \$500
6 fine to be paid within 30 days.

7 The establishment did not pay the
8 fine within 30 days and, therefore, the
9 Government will prove today that this fine has
10 not been paid to date.

11 Thank you.

12 CHAIRPERSON MILLER: I just want
13 to make sure. Someone's just come into the
14 hearing room. You're not here on TruOrleans.
15 Are you? Okay. All right.

16 So, ahead, Ms. Gephardt. Sorry
17 for that.

18 MS. GEPHARDT: And now the Board
19 would like to call -- or the Board. Here I
20 think I'm the Board now. The Government would
21 like to call Bill Hager to the stand.

22 CHAIRPERSON MILLER: Good

1 afternoon.

2 MR. HAGER: Good afternoon.

3 CHAIRPERSON MILLER: Would you
4 raise your right hand please?

5 Whereupon,

6 WILLIAM HAGER

7 was called as a witness by the Government
8 after having been first duly sworn, assumed
9 the witness stand and was examined and
10 testified as follows.

11 DIRECT EXAMINATION

12 MS. GEPHARDT: Good afternoon, Mr.
13 Hager. Can you please state your name and
14 spell it for the record?

15 MR. HAGER: Sure. William Hager
16 H-A-G-E-R.

17 MS. GEPHARDT: And, Mr. Hager,
18 where do you work?

19 MR. HAGER: The Alcoholic Beverage
20 Regulation Administration ABRA.

21 MS. GEPHARDT: And what is your
22 title?

1 MR. HAGER: Public information
2 officer.

3 MS. GEPHARDT: And what are your
4 duties and responsibilities in general as a
5 public information officer?

6 MR. HAGER: Educational Outreach
7 Program is one of the primary
8 responsibilities. Is the custodian of the
9 ABRA Record as well.

10 MS. GEPHARDT: Okay. And, Mr.
11 Hager, are you familiar with a Licensee by the
12 name of TruOrleans?

13 MR. HAGER: I am.

14 MS. GEPHARDT: Okay. And how did
15 you become aware of them in this case?

16 MR. HAGER: Generally speaking or
17 in relation to this case?

18 MS. GEPHARDT: Did you become
19 aware of them with regard to a fine that was
20 outstanding as a result of a case?

21 MR. HAGER: I'm aware that they
22 entered into an OIC, Offer in Compromise, in

1 March of 2013 requiring them to pay \$500
2 within 30 days.

3 MS. GEPHARDT: Okay. And do you
4 keep a copy of the Offer in Compromise that's
5 been signed by the Licensee and by ABRA's
6 General Counsel?

7 MR. HAGER: Yes, there's a copy
8 within the ABRA record.

9 MS. GEPHARDT: Okay. And I'm
10 going to show the witness what I've marked as
11 Government's Exhibit Number 1.

12 CHAIRPERSON MILLER: Okay.

13 MR. HAGER: Thank you.

14 MS. GEPHARDT: I don't know if the
15 Board would like to see it.

16 CHAIRPERSON MILLER: You're going
17 to move it into evidence?

18 MS. GEPHARDT: I am. Yes. After
19 I --

20 CHAIRPERSON MILLER: Okay. Okay.
21 Sure.

22 MEMBER ALBERTI: There is no one

1 to take it. So, I'll take it from you. Thank
2 you.

3 CHAIRPERSON MILLER: Thank you.
4 Thank you.

5 MS. GEPHARDT: Mr. Hager, can you
6 tell me what this form is?

7 MR. HAGER: This is the Alcoholic
8 Beverage Control Board Hearing Disposition
9 Form.

10 (Whereupon, Government Exhibit 1
11 was identified for the record.)

12 MS. GEPHARDT: And for what case
13 number is this for?

14 MR. HAGER: Case Number 11-CMP-
15 00372.

16 MS. GEPHARDT: And does this form
17 indicate the amount of the fine and by which
18 date it should be paid?

19 MR. HAGER: The amount of the fine
20 is \$500 which was required to be paid by April
21 13, 2013.

22 MS. GEPHARDT: And are you

1 familiar with what is required at the bottom
2 in terms of signatures?

3 MR. HAGER: Yes, there is the
4 Licensee, Chairperson Miller and ABRA's
5 General Counsel Martha Jenkins.

6 MS. GEPHARDT: Okay. And is it
7 signed by the Licensee?

8 MR. HAGER: There is a signature
9 there. Yes.

10 MS. GEPHARDT: Okay. Thank you.
11 Mr. Hager, are you aware if that fine has been
12 paid by -- if it was paid by the 13th of
13 April?

14 MR. HAGER: The fine was not paid.

15 MS. GEPHARDT: And how do you know
16 that?

17 MR. HAGER: I confirmed with ABRA
18 staff earlier today that the fine is still
19 outstanding to date.

20 MS. GEPHARDT: Okay. And the ABRA
21 staff tracks that information how? Do you
22 know?

1 MR. HAGER: They have a
2 spreadsheet that essentially maintains or a
3 spreadsheet that details all fines that are
4 required. They're required payment dates and
5 whether or not they were made in a timely
6 fashion.

7 MS. GEPHARDT: Okay. All right.
8 And this Licensee has not paid even up to this
9 day?

10 MR. HAGER: Correct.

11 MS. GEPHARDT: Okay. Thank you.
12 That's all I have for this witness.

13 CHAIRPERSON MILLER: Thank you.
14 Are there Board questions?

15 I just have one I think. So, the
16 payment was due April 13th and has since been
17 paid according to ABRA's records. Are there
18 any follow-up calls that are made by ABRA
19 staff by any chance with respect to unpaid --

20 MR. HAGER: After it is determined
21 that the fine has not been paid by the date,
22 there is a delinquency notice sent out to the

1 Licensee basically reminding them of this
2 fine. That demand letter was sent and there
3 was no response received.

4 CHAIRPERSON MILLER: Okay. And do
5 you know when that was sent?

6 MR. HAGER: I do not know off the
7 top of my head. However, it was shortly after
8 the expiration of the April 13 deadline.

9 CHAIRPERSON MILLER: Okay. Thank
10 you. Okay.

11 (Whereupon, the witness was
12 excused.)

13 MS. GEPHARDT: All right. So, you
14 have heard -- can I make my closing statement?

15 CHAIRPERSON MILLER: Sure. Well,
16 do you want to move any exhibits into
17 evidence?

18 MS. GEPHARDT: Oh, I'm sorry.
19 Yes. The Government would like to move
20 Exhibit Number 1 into evidence.

21 CHAIRPERSON MILLER: Okay.
22 Government's Exhibit Number 1 is admitted.

1 Okay.

2 (Whereupon, Government Exhibit 1
3 previously identified was received
4 into evidence.)

5 MS. GEPHARDT: All right. Ladies
6 and gentlemen of the Board, you have heard
7 today through the testimony of Bill Hager that
8 on March 13th in Case Number 11-CMP-00372 the
9 Licensee, named TruOrleans, agreed to an Offer
10 in Compromise which was accepted by the Board
11 which was to remit a fine in the amount of
12 \$500 by no later than April the 13th, 2013.
13 You heard Mr. Hager state that according to
14 ABRA's records that fine was not paid by April
15 the 13th and, in fact, it remains outstanding
16 today.

17 And, therefore, the Government
18 would recommend in this case for a penalty.
19 In fact, the Government would recommend
20 revocation of the license and there are
21 several reasons for this.

22 This Licensee has had a pretty

1 long road of violations with ABRA. There are
2 several fines that have not been paid that are
3 still outstanding not just this one.

4 In addition, this Licensee was
5 recently shut down by the Office of Tax and
6 Revenue for having an outstanding tax lien of,
7 I believe, \$101,000.

8 There is also information that was
9 actually released today. Let me -- give me a
10 second here. I'm going to locate it. All
11 right. I don't know where it is.

12 But, one of the co-owners of
13 TruOrleans notified one of the local
14 newspapers, I believe it was something
15 Cuisine, I'm going to find it, I have it, that
16 they do not plan on reopening the
17 establishment and so, the Government would
18 request and recommend that in this case in
19 looking at the different possible forms of
20 punishment that we could come up with, we see
21 that a fine would be of no consequence because
22 this Licensee has established a pattern of not

1 paying their fines.

2 Furthermore, any kind of days of
3 suspension would not be effective in this case
4 because they are closed and obviously, it
5 seems to me that they will be closed for some
6 time if not forever based on the comments of
7 the co-owner.

8 And, therefore, we believe that
9 revocation is only solution to bring this
10 Licensee into compliance with ABRA's
11 regulations.

12 And I'm going to find that
13 document I was just talking about.

14 CHAIRPERSON MILLER: Okay.

15 MS. GEPHARDT: I do have a copy of
16 the official notice of the District of
17 Columbia Tax Lien in this case. I don't know
18 if you'd want me to admit this into evidence.

19 CHAIRPERSON MILLER: It's your
20 choice.

21 MS. GEPHARDT: Okay. I will go
22 ahead and admit this --

1 CHAIRPERSON MILLER: Okay.

2 MS. GEPHARDT: -- into evidence as
3 Government's Exhibit Number 1.

4 CHAIRPERSON MILLER: Two.

5 MS. GEPHARDT: Oh, excuse me.
6 Two. I only have one copy at this time.

7 CHAIRPERSON MILLER: Okay. But,
8 that's a copy you can leave with us for our
9 record?

10 MS. GEPHARDT: Yes.

11 CHAIRPERSON MILLER: Okay.

12 MS. GEPHARDT: Yes.

13 CHAIRPERSON MILLER: Okay. So,
14 you've move to admit the Notice of District of
15 Columbia Tax Lien?

16 MS. GEPHARDT: That's correct.

17 CHAIRPERSON MILLER: Okay. Then
18 that's admitted as Government Exhibit Number
19 2.

20 (Whereupon, Government Exhibit 2
21 was identified and received into
22 evidence.)

1 MS. GEPHARDT: Oh, here it is. I
2 just found it. This is from the publication
3 called District Cuisine and they did an
4 interview with the co-owner. His name is Brad
5 Howard and they confirmed -- this article
6 actually was issued I believe today. Let's
7 see.

8 He says that -- he confirmed with
9 them that TruOrleans is now closed for good.
10 Which he confirmed with District Cuisine
11 today.

12 Granted this is a magazine
13 article, but nonetheless, the Government finds
14 it instructive of the intentions of the
15 establishment to continue operating.

16 CHAIRPERSON MILLER: District
17 Cuisine is a magazine? Is it online? What is
18 it?

19 MS. GEPHARDT: You know, I don't
20 know. What is it?

21 CHAIRPERSON MILLER: Okay. We'll
22 take it for what it's worth then.

1 MS. GEPHARDT: I don't know. You
2 guys should know. You're the Board. Right?

3 CHAIRPERSON MILLER: We should
4 know what District Cuisine is? Okay.

5 MS. GEPHARDT: Okay.

6 CHAIRPERSON MILLER: We'll find
7 out. All right. Anything else? So, you're
8 not like moving that into evidence. You just
9 read from it.

10 MS. GEPHARDT: No, I'm not moving
11 that into evidence.

12 CHAIRPERSON MILLER: Okay.

13 MS. GEPHARDT: It's actually
14 districtcuisine.com.

15 CHAIRPERSON MILLER: Um-hum.
16 There you go. Okay. Do you rest your case?

17 MS. GEPHARDT: I do rest my case.

18 CHAIRPERSON MILLER: Then I'm
19 going to close the record at this time.

20 MS. GEPHARDT: I would like to
21 close the record. Thank you.

22 CHAIRPERSON MILLER: And do you

1 want to file proposed findings of facts and
2 conclusions of law?

3 MS. GEPHARDT: No thank you.

4 CHAIRPERSON MILLER: Okay. All
5 right. Then I will read the instructions for
6 the Board to vote on for deliberating on this
7 case in closed session.

8 As Chairperson of the Alcoholic
9 Beverage Control Board for the District of
10 Columbia and in accordance with Section 405 of
11 the Open Meetings Amendment Act of 2010, I
12 move that the ABC Board hold a closed meeting
13 for the purpose of seeking legal advice from
14 our counsel on Case Number 11-CMP-00372,
15 TruOrleans per Section 405(b) of the Open
16 Meetings Amendment Act of 2010 and
17 deliberating upon this case for the reasons
18 cited in Section 405(b)(13) of the Open
19 Meetings Amendment Act of 2010.

20 Is there a second?

21 MEMBER BROOKS: Second.

22 CHAIRPERSON MILLER: Mr. Brooks

1 has seconded the motion. I'll now take a roll
2 case. Mr. Brooks?

3 MEMBER BROOKS: I agree.

4 CHAIRPERSON MILLER: Mr. Alberti?

5 MEMBER ALBERTI: I agree.

6 CHAIRPERSON MILLER: Ms. Miller
7 agrees. Mr. Silverstein?

8 MEMBER SILVERSTEIN: I agree.

9 CHAIRPERSON MILLER: Mr. Jones?

10 MEMBER JONES: I agree.

11 CHAIRPERSON MILLER: It appears
12 that the motion has passed by a vote of 5-0-0.
13 I hereby give notice that the ABC Board will
14 hold a closed meeting in the ABC Board
15 conference room today pursuant to the Open
16 Meetings Amendment Act of 2010 and issue an
17 order within 90 days.

18 MS. GEPHARDT: Thank you.

19 CHAIRPERSON MILLER: Thank you.

20 (Whereupon, at 2:51 p.m., the
21 hearing was adjourned.)

22

A	B			
ABC 18:12 19:13 19:14	based 14:6	Chrissy 1:25 3:8	18:17	fact 12:15,19
ABRA 5:20 6:9 7:8 9:17,20 10:18 13:1	basically 11:1	cited 18:18	delinquency 10:22	facts 18:1
ABRA's 7:5 9:4 10:17 12:14 14:10	behalf 3:8	close 17:19,21	demand 11:2	Failed 1:10
accepted 4:4 12:10	believe 13:7,14 14:8 16:6	closed 14:4,5 16:9 18:7,12 19:14	details 10:3	familiar 6:11 9:1
Act 18:11,16,19 19:16	Beverage 1:2,15,15 2:16 5:19 8:8 18:9	closing 2:3 11:14	determined 10:20	fashion 10:6
addition 13:4	Bill 4:21 12:7	Columbia 1:1 2:22 14:17 15:15 18:10	different 13:19	file 18:1
adjourned 19:21	Board 1:2,15 2:17 4:2,18,19,20 7:15 8:8 10:14 12:6,10 17:2 18:6,9,12 19:13,14	come 4:13 13:20	DIRECT 2:7 5:11	find 13:15 14:12 17:6
Administration 5:20	Brad 16:4	comments 14:6	Disposition 2:17 8:8	findings 18:1
admit 14:18,22 15:14	bring 14:9	compliance 14:10	District 1:1 2:20 14:16 15:14 16:3 16:10,16 17:4 18:9	finds 16:13
admitted 11:22 15:18	Brooks 1:21 18:21 18:22 19:2,3	Comply 1:10	districtcuisine.com 17:14	fine 4:6,8,9 6:19 8:17,19 9:11,14 9:18 10:21 11:2 12:11,14 13:21
advice 18:13	bottom 9:1	compromise 1:11 4:4 6:22 7:4 12:10	document 14:13	finer 10:3 13:2 14:1
afternoon 3:7,11 5:1,2,12	Building 1:16	conclusions 18:2	DONALD 1:21	first 5:8
agree 19:3,5,8,10	C	conference 19:15	due 10:16	follows 5:10
agreed 12:9	calendar 3:4	confirmed 9:17 16:5,8,10	duly 5:8	follow-up 10:18
agrees 19:7	call 4:19,21	consequence 13:21	duties 6:4	forever 14:6
ahead 4:16 14:22	called 3:15 5:7 16:3	CONTENTS 2:1	D.C 1:17	form 2:18 8:6,9,16
Alberti 1:20 7:22 19:4,5	calls 10:18	continue 16:15	E	forms 13:19
Alcoholic 1:2,15,15 2:16 5:19 8:7 18:8	case 1:12 3:3,4 4:3 4:5 6:15,17,20 8:12,14 12:8,18 13:18 14:3,17 17:16,17 18:7,14 18:17 19:2	Control 1:2,15,15 2:16 8:8 18:9	earlier 9:18	found 16:2
Amendment 18:11 18:16,19 19:16	Chairperson 1:17 1:19 3:3,10 4:1,12 4:22 5:3 7:12,16 7:20 8:3 9:4 10:13 11:4,9,15 11:21 14:14,19 15:1,4,7,11,13,17 16:16,21 17:3,6 17:12,15,18,22 18:4,8,22 19:4,6,9 19:11,19	copy 7:4,7 14:15 15:6,8	Educational 6:6	Furthermore 14:2
amount 8:17,19 12:11	Cause 1:8	correct 10:10 15:16	effective 14:3	G
ANC 1:9 3:6	Chairperson 1:17 1:19 3:3,10 4:1,12 4:22 5:3 7:12,16 7:20 8:3 9:4 10:13 11:4,9,15 11:21 14:14,19 15:1,4,7,11,13,17 16:16,21 17:3,6 17:12,15,18,22 18:4,8,22 19:4,6,9 19:11,19	counsel 7:6 9:5 18:14	entered 6:22	general 3:9 6:4 7:6 9:5
anybody 3:12	Chairperson 1:17 1:19 3:3,10 4:1,12 4:22 5:3 7:12,16 7:20 8:3 9:4 10:13 11:4,9,15 11:21 14:14,19 15:1,4,7,11,13,17 16:16,21 17:3,6 17:12,15,18,22 18:4,8,22 19:4,6,9 19:11,19	co-owner 14:7 16:4	essentially 10:2	Generally 6:16
appears 19:11	Chairperson 1:17 1:19 3:3,10 4:1,12 4:22 5:3 7:12,16 7:20 8:3 9:4 10:13 11:4,9,15 11:21 14:14,19 15:1,4,7,11,13,17 16:16,21 17:3,6 17:12,15,18,22 18:4,8,22 19:4,6,9 19:11,19	co-owners 13:12	established 13:22	gentlemen 12:6
April 8:20 9:13 10:16 11:8 12:12 12:14	Chairperson 1:17 1:19 3:3,10 4:1,12 4:22 5:3 7:12,16 7:20 8:3 9:4 10:13 11:4,9,15 11:21 14:14,19 15:1,4,7,11,13,17 16:16,21 17:3,6 17:12,15,18,22 18:4,8,22 19:4,6,9 19:11,19	CR 1:8	establishment 4:7 13:17 16:15	Gephardt 1:25 2:2 2:3 3:7,8,19,21 4:2,16,18 5:12,17 5:21 6:3,10,14,18 7:3,9,14,18 8:5,12 8:16,22 9:6,10,15 9:20 10:7,11 11:13,18 12:5 14:15,21 15:2,5 15:10,12,16 16:1 16:19 17:1,5,10 17:13,17,20 18:3 19:18
article 16:5,13	Chairperson 1:17 1:19 3:3,10 4:1,12 4:22 5:3 7:12,16 7:20 8:3 9:4 10:13 11:4,9,15 11:21 14:14,19 15:1,4,7,11,13,17 16:16,21 17:3,6 17:12,15,18,22 18:4,8,22 19:4,6,9 19:11,19	CROSS 2:7	evidence 7:17 11:17,20 12:4 14:18 15:2,22 17:8,11	give 13:9 19:13
assumed 5:8	Chairperson 1:17 1:19 3:3,10 4:1,12 4:22 5:3 7:12,16 7:20 8:3 9:4 10:13 11:4,9,15 11:21 14:14,19 15:1,4,7,11,13,17 16:16,21 17:3,6 17:12,15,18,22 18:4,8,22 19:4,6,9 19:11,19	Cuisine 13:15 16:3 16:10,17 17:4	EXAMINATION 5:11	go 14:21 17:16
Attorney 3:9	Chairperson 1:17 1:19 3:3,10 4:1,12 4:22 5:3 7:12,16 7:20 8:3 9:4 10:13 11:4,9,15 11:21 14:14,19 15:1,4,7,11,13,17 16:16,21 17:3,6 17:12,15,18,22 18:4,8,22 19:4,6,9 19:11,19	custodian 6:8	examined 5:9	going 7:10,16 13:10 13:15 14:12 17:19
aware 6:15,19,21 9:11	chance 10:19	D	excuse 15:5	good 3:7,10 4:22
	choice 14:20	date 4:10 8:18 9:19 10:21	excused 11:12	
		dated 1:11	Exhibit 2:11 7:11 8:10 11:20,22 12:2 15:3,18,20	
		dates 10:4	exhibits 11:16	
		day 10:9	expiration 11:8	
		days 4:6,8 7:2 14:2 19:17	F	
		deadline 11:8		
		deliberating 18:6		

5:2,12 16:9 Government 2:14 4:9,20 5:7 8:10 11:19 12:2,17,19 13:17 15:18,20 16:13 Government's 7:11 11:22 15:3 Granted 16:12 guys 17:2	<hr/> J <hr/> Jenkins 9:5 Jones 1:21 19:9,10 June 3:17 <hr/> K <hr/> keep 7:4 kind 14:2 know 7:14 9:15,22 11:5,6 13:11 14:17 16:19,20 17:1,2,4 <hr/> L <hr/> Ladies 12:5 law 18:2 leave 15:8 legal 18:13 letter 11:2 Let's 16:6 license 1:9 3:6 12:20 Licensee 4:4 6:11 7:5 9:4,7 10:8 11:1 12:9,22 13:4 13:22 14:10 lien 2:22 13:6 14:17 15:15 LLC 1:6 local 13:13 locate 13:10 located 3:5 long 13:1 looking 13:19 <hr/> M <hr/> magazine 16:12,17 maintains 10:2 March 1:11 4:3 7:1 12:8 marked 2:11 7:10 Martha 9:5 MATTER 1:5 meeting 1:3 18:12 19:14 Meetings 18:11,16 18:19 19:16	Member 1:20,21 1:21,22 7:22 18:21 19:3,5,8,10 Members 4:3 met 1:15 MICHAEL 1:22 Miller 1:17,19 3:3 3:10 4:1,12,22 5:3 7:12,16,20 8:3 9:4 10:13 11:4,9,15 11:21 14:14,19 15:1,4,7,11,13,17 16:16,21 17:3,6 17:12,15,18,22 18:4,22 19:4,6,6,9 19:11,19 motion 19:1,12 move 7:17 11:16,19 15:14 18:12 moving 17:8,10 <hr/> N <hr/> name 5:13 6:12 16:4 named 12:9 newspapers 13:14 NICK 1:20 note 3:15 notice 2:20 3:16 10:22 14:16 15:14 19:13 notified 13:13 number 3:4,6 7:11 8:13,14 11:20,22 12:8 15:3,18 18:14 N.E 1:8 3:5 N.W 1:17 <hr/> O <hr/> OAG 1:25 obviously 14:4 offer 1:10 4:4 6:22 7:4 12:9 Office 3:8 13:5 officer 6:2,5 official 14:16 Oh 11:18 15:5 16:1	OIC 6:22 Okay 3:14 4:1,2,15 6:10,14 7:3,9,12 7:20,20 9:6,10,20 10:7,11 11:4,9,10 11:21 12:1 14:14 14:21 15:1,7,11 15:13,17 16:21 17:4,5,12,16 18:4 online 16:17 Open 18:11,15,18 19:15 Opening 2:2 operating 16:15 order 19:17 Outreach 6:6 outstanding 6:20 9:19 12:15 13:3,6 <hr/> P <hr/> paid 4:6,10 8:18,20 9:12,12,14 10:8 10:17,21 12:14 13:2 parte 3:20 passed 19:12 pattern 13:22 pay 4:7 7:1 paying 14:1 payment 10:4,16 penalty 12:18 plan 13:16 please 5:4,13 possible 13:19 prepared 3:19,21 PRESENT 1:18,23 presiding 1:17 pretty 12:22 previously 12:3 primary 6:7 proceed 3:20,22 Program 6:7 proposed 18:1 prove 4:9 public 6:1,5 publication 16:2 punishment 13:20	purpose 18:13 pursuant 19:15 P-R-O-C-E-E-D-... 3:1 p.m 3:2 19:20 <hr/> Q <hr/> questions 10:14 <hr/> R <hr/> raise 5:4 read 17:9 18:5 reasons 12:21 18:17 received 2:11 11:3 12:3 15:21 recommend 12:18 12:19 13:18 record 5:14 6:9 7:8 8:11 15:9 17:19 17:21 records 3:17 10:17 12:14 RECROSS 2:7 REDIRECT 2:7 Reeves 1:16 regard 6:19 Regulation 5:20 regulations 14:11 relation 6:17 released 13:9 remains 12:15 reminding 11:1 remit 12:11 reopening 13:16 request 13:18 required 8:20 9:1 10:4,4 requiring 7:1 respect 10:19 respondent 3:17 response 11:3 responsibilities 6:4 6:8 rest 17:16,17 result 6:20 Retailer 1:8 Revenue 13:6
---	---	---	---	--

<p>revocation 12:20 14:9 right 4:15 5:4 10:7 11:13 12:5 13:11 17:2,7 18:5 road 13:1 roll 19:1 room 1:16 4:14 19:15 Ruthanne 1:17,19</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>says 16:8 second 13:10 18:20 18:21 seconded 19:1 Section 18:10,15,18 see 7:15 13:20 16:7 seeking 18:13 sent 10:22 11:2,5 September 1:14 served 3:16 session 18:7 shortly 11:7 show 1:8 7:10 shut 13:5 signature 9:8 signatures 9:2 signed 7:5 9:7 Silverstein 1:22 19:7,8 solution 14:9 Someone's 4:13 sorry 4:16 11:18 speaking 6:16 spell 5:14 spreadsheet 10:2,3 staff 9:18,21 10:19 stand 4:21 5:9 state 5:13 12:13 statement 2:2,3 11:14 Street 1:8,17 3:5 sure 4:13 5:15 7:21 11:15 suspension 14:3 sworn 5:8</p>	<hr/> <p style="text-align: center;">T</p> <hr/> <p>TABLE 2:1 take 8:1,1 16:22 19:1 talking 14:13 tax 2:22 13:5,6 14:17 15:15 TBM 1:6 tell 8:6 terms 1:10 9:2 testified 5:10 testimony 12:7 thank 4:11 7:13 8:1 8:3,4 9:10 10:11 10:13 11:9 17:21 18:3 19:18,19 think 4:20 10:15 time 14:6 15:6 17:19 timely 10:5 title 5:22 today 4:9 9:18 12:7 12:16 13:9 16:6 16:11 19:15 top 11:7 tracks 9:21 TruOrleans 1:7 3:5 3:13 4:14 6:12 12:9 13:13 16:9 18:15 Two 15:4,6 t/a 1:7</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>Um-hum 17:15 unpaid 10:19</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>violations 13:1 vote 18:6 19:12</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>want 3:14 4:12 11:16 14:18 18:1 Washington 1:17 We'll 16:21 17:6 William 2:9 5:6,15</p>	<p>witness 2:7 5:7,9 7:10 10:12 11:11 work 5:18 worth 16:22</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>p 1:5,13</p> <hr/> <p style="text-align: center;">\$</p> <hr/> <p>\$101,000 13:7 \$500 4:5 7:1 8:20 12:12</p> <hr/> <p style="text-align: center;">0</p> <hr/> <p>00372 8:15</p> <hr/> <p style="text-align: center;">1</p> <hr/> <p>1 2:16 7:11 8:10 11:20,22 12:2 15:3 1:30 3:15 11-CMP 8:14 11-CMP-00372 1:12 3:4 4:5 12:8 18:14 12 2:3,16 13 1:11 8:21 11:8 13th 4:3 9:12 10:16 12:8,12,15 14th 1:16 15 2:20,20 18 1:14</p> <hr/> <p style="text-align: center;">2</p> <hr/> <p>2 2:20 15:19,20 2:36 3:2,16 2:51 19:20 2000 1:16 2010 18:11,16,19 19:16 2013 1:12,14 3:18 4:3 7:1 8:21 12:12 21st 3:18</p> <hr/> <p style="text-align: center;">3</p> <hr/> <p>30 4:6,8 7:2</p>	<hr/> <p style="text-align: center;">4</p> <hr/> <p>4 2:2 400 1:8 3:5 405 18:10 405(b) 18:15 405(b)(13) 18:18</p> <hr/> <p style="text-align: center;">5</p> <hr/> <p>5 2:9 5-0-0 19:12</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p>6C 1:9 3:6</p> <hr/> <p style="text-align: center;">8</p> <hr/> <p>8 2:16 86210 1:9 3:6</p> <hr/> <p style="text-align: center;">9</p> <hr/> <p>90 19:17</p>
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