

DISTRICT OF COLUMBIA

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ALCOHOLIC BEVERAGE CONTROL BOARD

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MEETING

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IN THE MATTER OF: :

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The Griffin Group, LLC, :

t/a Policy : Protest

1904 14th Street, N.W. : Hearing

Retailer CR :

License No. 76804 :

Renewal Application :

Case No. 13-PRO-00062 :

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September 25, 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

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

2 (4:31 p.m.)

3 CHAIRPERSON MILLER: Good

4 afternoon everybody. So okay, I'm going to
5 call the case that you are all here for, and
6 that is Case Number 13-PRO-00062, Policy,
7 located at 1904 14th Street, N.W., license
8 number 76804 in ANC 2B. And this is a protest
9 hearing for a renewal application.

10 Okay, why don't we start with
11 introductions.

12 MR. KLINE: Yes, good afternoon.
13 Andrew Kline on behalf of the licensee.

14 MR. MULTANI: Raj Multani, M-U-L-
15 T-A-N-I, Policy Restaurant and Lounge managing
16 partner.

17 MS. PENN: Tiffany Penn, P-E-N-N,
18 general manager at Policy.

19 CHAIRPERSON MILLER: Okay.

20 MS. JOHNSON: Aileen Johnson
21 representing the protestant group SDCA.

22 MR. FERRIS: Elwin Ferris

1 representing SDCA.

2 MR. PODGORNIK: And Guy Podgornik
3 also with SDCA.

4 CHAIRPERSON MILLER: I'm sorry,
5 what was your name?

6 MR. PODGORNIK: Guy Podgornik, P-
7 O-D-G-O-R-N-I-K.

8 CHAIRPERSON MILLER: Okay. Okay,
9 let's talk about preliminary issues first. We
10 did get PIFs from both groups of you. I would
11 like to ask SDCA, in your PIF, about the
12 action being requested, to assign duplicate SA
13 with same terms and conditions as current SA
14 with three other parties.

15 MS. JOHNSON: I'm sorry, what are
16 you looking at?

17 CHAIRPERSON MILLER: I'm looking
18 at the PIF for Shaw Dupont Citizens Alliance.

19 MS. JOHNSON: Yes.

20 CHAIRPERSON MILLER: And what I
21 think what the Board has said before about
22 PIFs is that they give the Board an idea of

1 the focus of the hearings and, you know, what
2 the issues are so that the hearing can be
3 conducted in a pretty focused way and we know
4 what's going to be happening.

5 And I want to make sure that
6 you're seeking the relief that this Board can
7 grant you, so it says action being requested,
8 sign duplicate SA with same terms and
9 conditions as current SA with three other
10 parties.

11 MS. JOHNSON: Yes, I do want to
12 address that. Let me just ask, since I have
13 not done a hearing here in a long time, is
14 this where I would raise the fact that
15 licensee did not send us a copy of the PIF?

16 CHAIRPERSON MILLER: Yes, those
17 are preliminary issues so --

18 MS. JOHNSON: Yes. Okay, I would
19 like to have that added as an issue for your
20 review. We received our copy of the PIF from
21 Ms. Jenkins, and that was five days before,
22 but we did not receive a copy of the PIF from

1 the licensee as required to be served on us no
2 later than seven days before the protest
3 hearing. And I know the Board has discretion
4 to dismiss the application if procedure has
5 not been followed. We did serve our PIF in a
6 timely manner.

7 CHAIRPERSON MILLER: Okay, so
8 let's just get back to, first, the question
9 that I am raising about the relief that you're
10 seeking.

11 MS. JOHNSON: Oh yes, ma'am. I
12 mean, Madam Chair.

13 CHAIRPERSON MILLER: Okay.

14 MS. JOHNSON: Yes, what we are
15 seeking is that the license be denied, and we
16 all along have been in a posture of trying to
17 negotiate a license settlement agreement and
18 that has been unsuccessful. But our action
19 being requested is the action that you can
20 grant which is to deny the renewal of the
21 license.

22 CHAIRPERSON MILLER: Okay, fine.

1 So just so we're clear that you put that in
2 your PIF but that's not what you're seeking in
3 this hearing.

4 MR. FERRIS: Can we have a moment
5 to confer?

6 CHAIRPERSON MILLER: Okay.

7 (Off the record discussion)

8 MS. JOHNSON: There's just
9 something else that's been brought to my
10 attention. The relief that we would welcome
11 would be to be made signatories to an existing
12 agreement. There is an existing agreement
13 between the licensee and other parties, and
14 SDCA would like to become a signatory to that
15 agreement.

16 CHAIRPERSON MILLER: Okay, this is
17 why I want to bring this up front, because the
18 focus of the hearing should be on any issues
19 that concern you geared toward relief that the
20 Board can grant, and the Board cannot grant
21 that relief. That's not within our
22 jurisdiction to force licensee's to enter into

1 settlement agreements.

2 MR. FERRIS: May I speak?

3 When it came to the attention of
4 the SDCA board that the members were concerned
5 that while the existing voluntary agreement
6 may not continue with renewal, we assured the
7 membership that when the renewal placards were
8 put up -- we received a number of calls, what
9 does this mean? We want that voluntary
10 agreement to stay with that licensee.

11 We said, it's fine. We don't have
12 to protest the renewal because the voluntary
13 agreement will remain with the license. They
14 said, we want your civic association, we're
15 members, you represent us, we want you to
16 protest the renewal so that the civic
17 association can become a party to that
18 agreement.

19 We contacted a Ms. Jenkins who
20 advised us that the way to do that is to file
21 a protest. That way you follow the protest
22 procedure to the point where hopefully the

1 licensee will allow the protestants to join
2 that voluntary agreement. So that's how we
3 got here.

4 CHAIRPERSON MILLER: Okay. And I
5 don't want to spend too much time with it, but
6 the last thing you said was can you get in the
7 process and then hopefully the licensee will
8 allow you to join. But the Board cannot force
9 the licensee to join, that is all I'm saying.
10 If the licensee wanted to allow you to join
11 that's what could happen. Okay.

12 MR. FERRIS: And short of that
13 wouldn't the Board have the authority to issue
14 a Board order? You would not be parties to
15 it, but the Board would issue a Board order
16 with conditions on it that hopefully we are
17 seeking?

18 CHAIRPERSON MILLER: That's what I
19 wanted to clarify. In this hearing you can
20 seek conditions from the Board.

21 MR. FERRIS: That would be the
22 best outcome for us would be a Board order

1 that included the provisions that we hope to
2 achieve, the goals we hope to achieve. Okay,
3 I think we're satisfied with that.

4 CHAIRPERSON MILLER: Okay, all
5 right.

6 MR. KLINE: Madam Chair, if I may?

7 CHAIRPERSON MILLER: Yes.

8 MR. KLINE: I think we're already
9 there. Under the statute, a settlement
10 agreement, previously known as a voluntary
11 agreement, is incorporated as conditions of
12 the license as part of the Board order.

13 So if the license is renewed, then
14 those conditions will remain unless the Board
15 in connection with the other pending
16 proceeding makes a determination that they
17 should be eliminated or relaxed.

18 And these issues, I know the Board
19 is aware, was raised in our motion to dismiss,
20 and I think that's exactly where we are at
21 this point.

22 CHAIRPERSON MILLER: I think what

1 Mr. Kline is saying is that the conditions
2 that are a part of the settlement agreement
3 are a part of the license, and so if you're
4 seeking conditions for the license that are
5 the same as what's in the settlement agreement
6 they're already on the license.

7 MR. KLINE: And if I may add, the
8 same organization is a party to the
9 termination proceeding, and it would be that
10 proceeding in which I think it would be proper
11 for them to argue, and their properly parties,
12 that there shouldn't be any changes to the
13 existing settlement or voluntary agreement.

14 That's exactly where that should
15 play out, and given that I haven't understood
16 and don't understand what it is that we would
17 accomplish by this hearing.

18 MS. JOHNSON: Well, may I speak?

19 CHAIRPERSON MILLER: Yes, do.

20 MS. JOHNSON: I know that the
21 Board has already stated at the status hearing
22 that determination is a separate issue and

1 it's not relevant to this protest, and I don't
2 want the distraction of continual reminders of
3 the termination because that's not on the
4 table right now.

5 The SDCA is not a party to the
6 agreement that exists in that matter that I'm
7 saying is for a later date, and that is why
8 the SDCA filed a protest, so that they would
9 have party status to any agreement whether it
10 was going to flow from this or not.

11 CHAIRPERSON MILLER: This is why
12 I'm asking you what relief you want, because
13 if you want -- we can't make the licensee make
14 you a party to the settlement agreement, okay.
15 But the settlement agreement is a part of the
16 license that's being renewed.

17 So if you are happy with
18 conditions that are in that settlement
19 agreement, they are a part that that is part
20 of the license. So what would you be
21 challenging?

22 MS. JOHNSON: Well, the SDCA is

1 not a party to that settlement agreement.

2 CHAIRPERSON MILLER: Okay, that
3 doesn't matter here because the settlement
4 agreement that's in place right now, it would
5 be renewed with the license. The Board
6 ordered license that contains those
7 conditions. You don't have to be a party to
8 it. It applies to everybody. It's a
9 condition of the license. That's the way it
10 has to operate.

11 MS. JOHNSON: I follow you.

12 MEMBER JONES: Just to make sure.
13 No matter what happens today in this hearing,
14 you will not be a party any more than you are
15 a party now. Do you understand that? Do you
16 understand that's what the chairman is saying?

17 You're not going to be any more a
18 party to any SAs than you are right now after
19 the conclusion of this hearing than you are at
20 the beginning of this hearing. You're not
21 going to be any more of a party to any SA or
22 OVA, whatever you want to call it, than you

1 are right now. Do you understand that?

2 MS. JOHNSON: I hear you.

3 MEMBER JONES: Okay.

4 CHAIRPERSON MILLER: The point is,
5 what would you like to see happen with
6 conditions for this establishment? I think
7 what Mr. Kline was saying, if you like the
8 conditions that are on the license right now,
9 then you're saying the next hearing where
10 they're seeking termination is when you would
11 go and protest because you want the conditions
12 to stay, they want them to go.

13 But this hearing is about renewing
14 the license with the conditions that are on it
15 right now. So if you didn't like those
16 conditions you could say to us, oh, we want a
17 different condition. But if you don't want a
18 different condition then there's nothing to do
19 here.

20 MEMBER ALBERTI: May I speak?

21 CHAIRPERSON MILLER: Yes.

22 MEMBER ALBERTI: Ms. Johnson?

1 MS. JOHNSON: Yes, sir.

2 MEMBER ALBERTI: Having heard what
3 you've heard from the chair and from Mr.
4 Jones, do you want to go forward with a
5 hearing from which, after you present your
6 case and the licensee presents his case, the
7 Board would, on its own, decide what remedies
8 it can implement?

9 MS. JOHNSON: Yes.

10 MEMBER ALBERTI: Would that be
11 satisfactory to you?

12 MS. JOHNSON: Yes.

13 MEMBER ALBERTI: On that basis
14 would you want to go forward with a hearing?

15 MS. JOHNSON: Yes.

16 MEMBER ALBERTI: Thank you.

17 CHAIRPERSON MILLER: So could you
18 articulate then that it's different from the
19 PIF, what would you be seeking?

20 MS. JOHNSON: Any and all
21 appropriate remedies that the Board may grant.

22 CHAIRPERSON MILLER: To what?

1 What would you like remedied?

2 MS. JOHNSON: We are here because
3 we are protesting on the grounds that are
4 noted -- peace, order, quiet, adverse impact
5 on residential parking, overconcentration.
6 And so those are the issues that our testimony
7 will be about.

8 CHAIRPERSON MILLER: Will you be
9 seeking different conditions than exist in the
10 settlement agreement?

11 (Crosstalk)

12 CHAIRPERSON MILLER: Can she
13 answer the question?

14 MALE PARTICIPANT: With all due
15 respect, it's not for them to seek.

16 MEMBER ALBERTI: As an individual
17 Board member I'll listen to what remedies they
18 want. But I, as an individual Board member,
19 will decide what remedies are appropriate
20 based on their testimony.

21 MR. KLINE: Madam Chair, if I may
22 have a point of information on a point of

1 order. I'd like some clarity as to, we have
2 one protestant which is an organization, we
3 have three people that are speaking for the
4 organization.

5 I'm not clear as I sit here which
6 person has authority to bind the organization,
7 because the Board is asking questions as to
8 what this organization wants, and I want to
9 make sure that what's being asked is that the
10 response is on behalf of the organization and
11 not on behalf of a particular individual.

12 MS. JOHNSON: Well, Mr. Alberti
13 and Ms. Miller asked questions, I responded.
14 It was amplified by the individuals who are
15 here with me. I've already indicated to the
16 reporter that I'm the representative.

17 And at this point this is a
18 preliminary matter. We are not in an
19 evidentiary mode. I don't think we have to
20 worry about who's binding the parties.

21 CHAIRPERSON MILLER: Wait. I
22 assume that whoever is representing the

1 organization has authorization by the
2 organization to represent the organization.
3 Is that you, Ms. Johnson, or who is that?

4 MS. JOHNSON: Yes, it is.

5 CHAIRPERSON MILLER: Okay.

6 Do you doubt that Ms. Johnson is
7 the representative?

8 MR. KLINE: No, if the other two
9 people at the table concur I'm not here to
10 dispute that. I just want to make sure,
11 having heard three voices speak and having
12 taken slightly different positions, that I'm
13 clear as to who it is that has authority to
14 speak for the organization. That's all.

15 MS. JOHNSON: Well, those members
16 asked permission to speak, and the Board --

17 CHAIRPERSON MILLER: Okay.

18 MEMBER ALBERTI: Okay, fine.

19 CHAIRPERSON MILLER: All right.

20 Okay, so Ms. Johnson, I just want to be clear.
21 Then you here today on behalf of Shaw Dupont
22 Citizens Association to challenge the renewal

1 because it's your position that operating
2 under the license that they have been
3 operating under you have concerns about peace,
4 order, quiet, residential parking and
5 pedestrian safety and overconcentration, is
6 that correct?

7 MS. JOHNSON: Yes. Yes, Madam
8 Chair.

9 MEMBER SILVERSTEIN: Madam Chair,
10 overconcentration is not appropriate in a
11 renewal hearing. The license has been
12 granted. We cannot take it away because other
13 licenses have been granted. Overconcentration
14 does not apply here.

15 CHAIRPERSON MILLER: I don't want
16 to beat a dead horse, but I do want to get
17 clarification here. Another thing you say in
18 your PIF is that your members would like the
19 same protections as current signatories with
20 the same terms and conditions.

21 So I just want to say for the
22 record that you do get the same protections

1 when the settlement agreement's conditions are
2 part of the license.

3 MS. JOHNSON: I'm really glad to
4 have you affirm that. We certainly don't want
5 fewer protections, and I have no idea what
6 kind of case is going to be put on by the
7 licensee.

8 CHAIRPERSON MILLER: Okay, I
9 assume you would want more protections than
10 exist, but my colleagues don't necessarily see
11 it that way. So --

12 MS. JOHNSON: I just don't want
13 fewer.

14 CHAIRPERSON MILLER: Okay, there
15 isn't a risk of fewer. Well, maybe there is.
16 I guess when we open it up we'll see what we
17 hear. Okay.

18 (Crosstalk)

19 MALE PARTICIPANT: Risk of fewer
20 as part of the license, and the SA is part of
21 the license.

22 MALE PARTICIPANT: Yes.

1 CHAIRPERSON MILLER: I'm sorry.
2 I'm having a hearing. We'll look at the
3 conditions.

4 MR. KLINE: Madam Chairperson,
5 based upon the PIF filing, based upon the
6 transcript before the Board or what was
7 presented before the Board on July 31st of
8 2013, based upon what's been said here today,
9 we would renew our motion to dismiss the
10 protest.

11 The PIF does not give us any
12 direction in terms of what the protestants are
13 seeking in terms of relief, and even today the
14 protestants do not seem to be clear in terms
15 of what relief they are seeking.

16 And under the circumstances and in
17 the interest of administrative efficiency and
18 economy, we would submit that these issues are
19 appropriately addressed at the termination
20 hearing based on everything that's been said
21 by the sole protestant, and we would renew the
22 motion to dismiss that we previously made in

1 writing which as far as I know was never
2 opposed.

3 CHAIRPERSON MILLER: Okay, at this
4 point --

5 MS. JOHNSON: May I respond?

6 CHAIRPERSON MILLER: Yes.

7 MS. JOHNSON: I think it's
8 appropriate for the Board to determine whether
9 or not we are clear on what we are seeking,
10 and I would renew my procedural objection to
11 the licensees going forward with the renewal
12 without having followed procedural
13 requirements that we receive the PIF seven
14 days beforehand.

15 MR. KLINE: Madam Chairperson, we
16 filed the PIF. It was served on Ms. Joan
17 Sterling by email. I've requested a copy of
18 that email from my office, and I will produce
19 it as soon as I have it. That's what my
20 assistant has represented to me.

21 In any event, the protestants had
22 the PIF as early as last Friday. It was

1 provided to them by the Board's counsel. I
2 fail to see how there's any prejudice at this
3 point given that they've had the PIF for
4 several days, even if for some reason they did
5 not see it a week ago when it was served.

6 CHAIRPERSON MILLER: Okay. I
7 guess it would be my position that there isn't
8 prejudice and I'm not even sure that it
9 wasn't, not that it's been served on you, so
10 I wouldn't go to the point of dismissing the
11 application for that reason. I don't know if
12 others feel differently.

13 MEMBER ALBERTI: Well, I'd like to
14 hear Ms. Johnson's response to --

15 CHAIRPERSON MILLER: She did.

16 MEMBER ALBERTI: No.

17 CHAIRPERSON MILLER: Oh.

18 MEMBER ALBERTI: Mr. Kline just
19 spoke. She hasn't responded. If she has a
20 response then now's the opportunity and I'd
21 like to afford her that opportunity.

22 MS. JOHNSON: All right. I do

1 have a response. Having not received the PIF
2 from the applicant, we believed that this
3 matter was likely to be dismissed because
4 procedure was not followed.

5 And we even contacted Ms. Jenkins
6 to say and let her know we had not received
7 it, but there is prejudice to getting it the
8 Friday before. That's a Friday. The weekend
9 is the weekend and I was unable to begin
10 preparing for this as early as I had hoped
11 because of not receiving it until I did from
12 the Board, or rather from the office.

13 I have many other things that I'm
14 responsible for in terms of knowing what
15 witnesses to prepare for and how this case
16 should be handled, and I was prejudiced
17 because I was not able to begin doing it until
18 the Friday afternoon before the weekend.

19 And as it turned out my son was
20 sick all weekend and that prevented me from
21 focusing on this until Monday.

22 CHAIRPERSON MILLER: I think that

1 was smart of you to contact Ms. Jenkins. Did
2 you contact Ms. Jenkins?

3 MS. JOHNSON: Ms. Jenkins sent
4 emails to the parties.

5 CHAIRPERSON MILLER: Oh, I see.
6 Okay. Mr. Jones?

7 MEMBER JONES: So this is a matter
8 of procedure and precedence, so I'm just
9 trying to make sure I'm clear in this
10 instance. So Mr. Kline?

11 MR. KLINE: Yes?

12 MEMBER JONES: I know you spoke on
13 this so I apologize if I missed the details
14 associated with this, but did you or are you
15 aware of whether or not your client provided
16 notice to the protestants?

17 MR. KLINE: My assistant advises
18 that she sent an email out on Wednesday when
19 the PIF was due. I'm attempting to get that
20 email right now.

21 MEMBER JONES: Okay, so you're
22 working to produce verification.

1 MR. KLINE: But in any event, as I
2 stated earlier, the PIF was provided on Friday
3 by Ms. Jenkins, so, you know, they've had it
4 for five days at this point. I fail to see,
5 given the nature of these proceedings, how
6 that would severely impact their ability to
7 prepare.

8 MEMBER JONES: Understood. I hear
9 your position on that. Don't disagree
10 necessarily, but I just wanted to make sure I
11 understood what your position was on it.
12 Thank you.

13 Thank you Madam Chair.

14 MEMBER SILVERSTEIN: Question.

15 CHAIRPERSON MILLER: Okay, Mr.
16 Silverstein?

17 MEMBER SILVERSTEIN: Mr. Kline,
18 did you send out the two emails or did your
19 office send out the two emails
20 contemporaneously? The two PIFs. The PIF to
21 us and the PIF to --

22 MR. KLINE: I'm trying to

1 ascertain that right now. I believe so, but
2 I didn't send them out. My assistant would
3 have done that.

4 MS. JOHNSON: If I may, I would
5 also just like to add that this is a community
6 organization. I am not paid counsel. I do
7 not have a staff of individuals whose job
8 depends on sending things out in a timely
9 fashion.

10 But the rules are there for a
11 reason. The rules don't say five days, the
12 rules say seven days. The rules say serve it
13 on the party, and I know that if our PIF had
14 not been served on Mr. Kline, Mr. Kline would
15 be making the very same arguments I'm making
16 now about not having received them.

17 CHAIRPERSON MILLER: Okay. All
18 right, we've --

19 MR. KLINE: Madam Chair, I would
20 note we're missing one thing. Joan Sterling
21 was the representative of record. That's who
22 we would have served. I don't see her here

1 today saying that she didn't receive the PIF.
2 So whether these individuals retrieved it from
3 Ms. Sterling or not, I don't have any way of
4 knowing. But our --

5 MS. JOHNSON: Well, I have emails
6 from Ms. Sterling.

7 MR. KLINE: Excuse me.

8 MS. JOHNSON: I have emails from
9 Ms. Sterling.

10 CHAIRPERSON MILLER: Okay, you
11 know we have a he said-she said situation here
12 anyway, and I think that also is a reasonable
13 point that maybe it went to here and she
14 didn't get it to you right away. I don't
15 know, but I don't think it rises to the level
16 of dismissing the application. Do other Board
17 members feel that way?

18 MEMBER ALBERTI: I'd like to wait.
19 I mean, before we consider this I'd like to
20 wait to see what the email, what evidence Mr.
21 Kline -- I mean, I think it would behoove us
22 to get the email that Mr. Kline says is coming

1 to him, and then it would be very clear and
2 there wouldn't be any ambiguity. So I would
3 like to proceed, but delay our decision onto
4 whether to dismiss this based on the evidence
5 that Mr. Kline says he will produce for us.

6 CHAIRPERSON MILLER: Okay, so Mr.
7 Alberti, you would like us to, okay, set this
8 question off and we can go to, then, the other
9 preliminary matter which Mr. Kline has said he
10 wants to renew his motion to dismiss.

11 The Board voted on this. I
12 abstained at that point because I wanted to
13 get more information at this hearing, which I
14 have gotten. But I think if it's going to be
15 renewed, I think the only way it would be
16 renewed is if any Board member wants to move
17 to reconsider their vote on that motion to
18 dismiss based on --

19 MEMBER SILVERSTEIN: Madam Chair?

20 CHAIRPERSON MILLER: Yes?

21 MEMBER SILVERSTEIN: It is
22 entirely possible that through the possibility

1 of the administrative efficiency we can
2 dismiss the application. As is the case, they
3 are offered the opportunity to reply. They
4 could reapply and we could combine the two
5 hearings, the termination hearing and this.
6 That is an option.

7 CHAIRPERSON MILLER: Okay. But I
8 actually have raised the issue on the motion
9 to dismiss too, does anybody want to move to
10 reconsider who voted to deny the motion?

11 (Crosstalk)

12 MEMBER ALBERTI: Wait a second.
13 Madam Chair, I think we're getting ahead of
14 ourselves, because we have a preliminary issue
15 from Ms. Johnson --

16 CHAIRPERSON MILLER: You want us
17 to wait on that?

18 MEMBER ALBERTI: May I finish?
19 That issue was brought before us before Mr.
20 Kline's request to reconsider his motion. I
21 think if we're not going to take them in that
22 order we ought to talk about why we're not

1 taking them in that order rather than just
2 saying we're not.

3 So I think what we need to
4 address, Ms. Johnson's preliminary issue of
5 whether we dismiss the licensee or we put that
6 on hold. We need to make a decision on that
7 matter before we move to Mr. Kline's motion.

8 CHAIRPERSON MILLER: Okay, then do
9 you just want us to sit here and wait until we
10 get an email from Mr. Kline? That's why I was
11 moving on to another --

12 (Crosstalk)

13 MEMBER ALBERTI: Okay, I will make
14 a motion that we consider the motion to
15 dismiss, all right, as part of our general --
16 at a later time in this hearing as appropriate
17 when Mr. Kline produces the email. If he
18 doesn't produce the email then the matter to
19 dismiss will just, I think, become moot at
20 that point. However --

21 MEMBER SILVERSTEIN: A point of
22 clarification.

1 MEMBER ALBERTI: -- because I'm
2 not sure where I'm going on this, but I think
3 we're just moving from one issue to the other
4 and it's not clear to me what we've decided on
5 the motion to dismiss on the licensee.

6 MEMBER SILVERSTEIN: Mr. Alberti,
7 a question. I'm confused, Mr. Alberti. Are
8 you saying to dismiss the application or just
9 to dismiss the protest?

10 MEMBER ALBERTI: That is the
11 motion. As I understand, on the floor right
12 now is a motion to dismiss the application.
13 That is the first motion before us. And I
14 think that matter should be addressed before
15 we move on to some subsequent matter.

16 CHAIRPERSON MILLER: We have two
17 motions to dismiss on the floor. I mean, not
18 totally on the floor, but if we wanted to take
19 it up which we haven't taken it up yet.

20 MR. KLINE: May I respond to the
21 suggestion that the application would be
22 dismissed? Because that seems to be something

1 that's now arisen as a result of this
2 conversation. If I understand it, if the
3 application were dismissed then this licensee
4 would have to cease serving alcohol until this
5 matter was addressed, I believe, which would
6 obviously be great prejudice to the licensee.

7 I don't believe in my history of
8 doing this the Board has taken such an
9 extraordinary action except in a situation
10 where the applicants really didn't appear.

11 If it is true that my office did
12 not serve the PIF as required and there was a
13 two-day delay in receipt by the protestant, it
14 would seem to me contrary to what the Board
15 has done in any other case to take the drastic
16 step of dismissing an application for such a
17 procedural misstep.

18 MS. JOHNSON: May I respond?

19 MEMBER ALBERTI: Wait. I'm a
20 little confused. Before we move forward,
21 Madam Chair, what issue are we addressing at
22 this moment? Because people are talking all

1 over the place. I'd like to know what issue
2 we're addressing as we're hearing arguments.
3 Otherwise we just devolve into chaos.

4 CHAIRPERSON MILLER: That's right.
5 We are discussing, I think you've given the
6 indication that you or the Board might dismiss
7 this application if it was served two days
8 late on the protestants.

9 MEMBER ALBERTI: I haven't made a
10 decision.

11 MS. JOHNSON: We have never
12 received it. Our copy came from Ms. Jenkins.
13 We have never received the PIF, let me be
14 clear about that. It's not that we got it on
15 the 5th from him, he has never served it on us
16 at all.

17 MR. KLINE: If we didn't serve it
18 on them it's a misstep and it's a mistake, and
19 we would certainly apologize for that. But
20 the point is they got it on the 5th. So
21 whether they got it from us or they got it
22 from the Board's counsel, the effect is the

1 same. They have it at that point.

2 MS. JOHNSON: I would be upset too
3 if I was responsible, possibly, for my client
4 losing their license.

5 (Crosstalk)

6 CHAIRPERSON MILLER: You need to
7 be recognized before you speak, and I think
8 we've spent, really, too much time on this
9 issue. I don't believe that, I've said this
10 before, that the protestants were prejudiced
11 if they got the PIF from Ms. Jenkins within
12 five days of the hearing to the point that we
13 would dismiss the application.

14 So that's what the issue is. Is a
15 majority of the Board ready to dismiss the
16 application on grounds that they may not have
17 been served by the licensee even though they
18 got the PIF five days ahead of the hearing?

19 We do speak strictly with respect
20 to not filing a PIF we would dismiss the
21 application, but I'm not aware of a case where
22 we've dismissed an application where there's

1 been this kind of an issue over service.

2 So it's up to the other Board
3 members. Are there Board members that want to
4 just dismiss the application?

5 MEMBER JONES: So someone raised
6 this because there was a motion on the floor
7 that I do not believe was seconded.

8 MEMBER ALBERTI: It was not.

9 CHAIRPERSON MILLER: There wasn't
10 a motion on the floor.

11 MEMBER ALBERTI: I made a motion
12 but it wasn't seconded.

13 MEMBER BROOKS: With all due
14 respect, Madam Chair, Member Alberti made a
15 motion.

16 CHAIRPERSON MILLER: I didn't even
17 hear it.

18 MEMBER ALBERTI: I did make a
19 motion and it wasn't seconded, and I will
20 withdraw the motion for the moment.

21 MEMBER JONES: Thank you.

22 CHAIRPERSON MILLER: Okay. Is

1 there a motion by someone --

2 MEMBER ALBERTI: Thank you, Mr.
3 Jones.

4 MEMBER JONES: You're very
5 welcome.

6 CHAIRPERSON MILLER: -- to dismiss
7 this application?

8 MEMBER ALBERTI: I've already
9 spoken on this, and I will repeat myself. I
10 think that we ought to delay that decision
11 until we see what Mr. Kline has to offer in
12 way of evidence. Because it may be very easy
13 then for us to make that decision, and I don't
14 have to deliberate as to whether there's harm
15 or not. And I'd rather make an unambiguous
16 decision if that's possible.

17 MR. KLINE: If the Board wants to
18 take a three-minute recess I'll call my office
19 and clarify this mystery once and for all,
20 because I've been unsuccessful doing it via
21 email.

22 MEMBER SILVERSTEIN: Well, we'll

1 need it. We'll need copies of it.

2 MR. KLINE: Understood. But Mr.
3 Alberti, I'm not representing to you that I
4 served it. I'm trying to get to the --

5 MEMBER ALBERTI: I know. But I
6 just want to make it very clear what I would
7 expect. So we're on the same page.

8 CHAIRPERSON MILLER: Is there
9 others? Unless we want to hear from Mr.
10 Kline, then we can go out and --

11 MEMBER JONES: I would like to
12 give him an opportunity to exercise the option
13 that he indicated.

14 CHAIRPERSON MILLER: Okay, so why
15 don't we take a five-minute recess.

16 (Whereupon, the foregoing matter
17 went off the record at 5:06 p.m. and went back
18 on the record at 5:23 p.m.)

19 CHAIRPERSON MILLER: Okay, we're
20 back on the record, and we are considering the
21 question of whether service was made on
22 protestants.

1 MR. KLINE: If I may. Sadly, I
2 must report to the Board I apparently miss my
3 assistant of 11 years more than I realized,
4 because it did not get served on protestants
5 even though I had inquired of my assistant
6 after the fact whether it had, and it had not,
7 according to the best evidence I see at this
8 point.

9 CHAIRPERSON MILLER: Okay. The
10 protestants, did you make a motion that the
11 application be dismissed because the applicant
12 did not serve the PIF on you?

13 MS. JOHNSON: Yes, I did, Madam
14 Chair.

15 CHAIRPERSON MILLER: Okay, is
16 there anything more then you want to add to
17 that? I don't think so, but I just want to
18 make sure. Based on what Mr. Kline just said
19 to you.

20 MS. JOHNSON: May I just inquire
21 -- and also I do want to apologize for
22 speaking out of turn before. I do apologize

1 to the parties. May I ask what would be the
2 repercussions of my motion being granted would
3 be, what would that mean?

4 CHAIRPERSON MILLER: Renewal of
5 their application would be dismissed. They
6 would need to reapply. We would not have this
7 hearing.

8 MEMBER ALBERTI: Can I elaborate
9 on that?

10 MS. JOHNSON: Yes, please.

11 MEMBER ALBERTI: We would not have
12 this hearing. Their application would be
13 dismissed but they would be allowed to
14 continue operation. They would go through
15 another placarding period at which time anyone
16 could mount a protest during that placarding
17 period.

18 And it would run its usual course,
19 which would be a roll call in 45 days and, you
20 know, you know the schedule. But it would run
21 the course, the time frame. Just to give you
22 an idea, if a protest was mounted, if we

1 dismissed the application and we replacarded,
2 a protest probably wouldn't be, if a protest
3 was mounted or was submitted we probably would
4 not hear that until February of next year as
5 an estimate. Just to give you an idea.

6 CHAIRPERSON MILLER: Ms. Johnson,
7 let me just ask you. I mean, one reason that
8 the Board would do it, if the Board did do it,
9 would be if you were so prejudiced that that
10 would affect, you know, your participation in
11 this hearing. So can you just address that?

12 MS. JOHNSON: Yes, I'd be happy to
13 address that. Ms. Sterling had to go on
14 travel and I had agreed to be the
15 representative for the organization, and so I
16 have been busy in communication of her,
17 obtaining copies of everything.

18 And when we did not get that form,
19 I really did think, oh, maybe this means they
20 are going to sign the agreement. Because our
21 form was served on Mr. Kline on the 18th which
22 is notice, hey, the forms are being exchanged.

1 And so getting nothing back and
2 two days later her letting Ms. Jenkins know we
3 got nothing back, I did think, wow, that means
4 they are going to go ahead and sign a
5 settlement agreement with our organization.
6 However, I am not paid counsel. I have to do
7 this all on my own.

8 And if I had received that form on
9 the 18th, then I would have started prepping
10 on the 18th, thinking we are going forward and
11 looking at the form and identifying what is it
12 I have to prepare for the witnesses that they
13 are going to have. I mean obviously I know I
14 have to prepare for the applicant being a
15 witness, but any other witnesses that they
16 might have.

17 And today I was at Kinkos
18 downloading and printing off a copy of the ABC
19 regs. These are all things I'm trying to do
20 just thinking, well, I still have to show up,
21 but I have not had the proper time to prepare
22 for this hearing.

1 We are a citizens' organization
2 and, you know, there's no money to pay for an
3 attorney. And I am an attorney, but this is
4 all at great prejudice. I had to hire a
5 babysitter for my son today.

6 CHAIRPERSON MILLER: All right.

7 MS. JOHNSON: To be here.

8 CHAIRPERSON MILLER: Okay.

9 MEMBER ALBERTI: May I ask a
10 question, Madam Chair? Ms. Johnson, now that
11 you've seen the PIF, is there information in
12 the PIF that you think is potentially helpful
13 in preparing a case for your clients? I'm not
14 asking you what information, just yes or no.

15 MS. JOHNSON: Yes.

16 MEMBER ALBERTI: Thank you.

17 CHAIRPERSON MILLER: Mr. Kline, do
18 you want to respond?

19 MR. KLINE: Madam Chair, if I may.
20 First of all, the notion that this applicant
21 was going to sign an agreement with these
22 parties, if that was the expectation, that is

1 contrary to all of the communications that we
2 have had throughout this proceeding.

3 So I mean, I hate to call it
4 disingenuous, but based upon what's occurred
5 the fact that the PIF was not filed, if the
6 protestants are saying, oh gee, we thought we
7 were going to sign an agreement, I mean, that
8 is completely inconsistent with everything
9 that has occurred to date. That's number one.

10 Number two, with respect to
11 prejudice, there are no surprise witnesses on
12 here. I mean the witnesses that we intended
13 to call based upon the status of the case as
14 we understood it, based upon what they
15 represented to the Board at the status
16 conference, were the managing individuals of
17 the establishment. That can't be any great
18 surprise.

19 With respect to the exhibits, it's
20 the standard what one would expect. There are
21 no great surprises here. In terms of
22 preparing the case, the representative

1 attorney for the protestants would have had to
2 do that anyway.

3 In terms of getting copies of the
4 ABC regulations, they're not saying oh gee, we
5 thought it was dismissed. They're saying, we
6 thought it might be dismissed. Well, you roll
7 the dice.

8 I mean, you know, I thought their
9 protest might be dismissed. But I wouldn't
10 walk in here and pretend like you wouldn't
11 proceed with the protest hearing because their
12 protest might be dismissed.

13 So for all of those reasons we
14 would submit that there's no prejudice to the
15 protestants. If the Board believes that they
16 are prejudiced then we would suggest that
17 perhaps the hearing be continued for a week or
18 a short period of time so that they have the
19 ample opportunity.

20 We see no reason in the world,
21 given the posture of this case, why this
22 application should be dismissed simply because

1 the protestants did not have the benefit of
2 the PIF for less than 48 hours, and received
3 it 48 hours later than they were required to
4 receive it under the rules.

5 CHAIRPERSON MILLER: Okay, thank
6 you. Ms. Johnson, can I ask you, when you
7 didn't receive the PIF the seven days ahead of
8 the hearing did you contact Mr. Kline or Ms.
9 Jenkins?

10 MS. JOHNSON: Yes. I did not, Ms.
11 Sterling contacted Ms. Jenkins and said we
12 received no PIF from them. And that was
13 Friday afternoon and there was no response to
14 we received no PIF from them.

15 CHAIRPERSON MILLER: I thought it
16 was Friday afternoon Ms. Sterling called Ms.
17 Jenkins and then Ms. Jenkins sent her the PIF?

18 MS. JOHNSON: No.

19 MR. KLINE: The PIF went out
20 Friday afternoon.

21 CHAIRPERSON MILLER: Oh, the PIF
22 went out Friday. So not until Monday, is that

1 what --

2 MR. KLINE: No, it went out Friday
3 afternoon.

4 MS. JOHNSON: It went out Friday
5 afternoon.

6 MR. KLINE: From Ms. Jenkins.

7 CHAIRPERSON MILLER: Oh, it went
8 out Friday. Okay. The same day that you
9 called Ms. Jenkins she sent you the PIF.

10 MS. JOHNSON: Yes. I just want to
11 be clear I did not call Ms. Jenkins.

12 CHAIRPERSON MILLER: Oh, okay.
13 Ms. Sterling. All right.

14 MS. JOHNSON: Ms. Sterling was in
15 communication. But I don't want to belabor
16 this point more because I know that everyone's
17 time is very valuable.

18 But I will say with respect to the
19 exhibits, looking at this exhibit list I do
20 feel prejudiced. Because I'm wondering about
21 letters of support and I'm thinking, well,
22 who, and neighborhood maps and drawings of

1 premises. Unless these are things that are
2 already in the report, then I'm at a
3 disadvantage to respond to today.

4 MR. KLINE: Madam Chair, no more
5 than a disadvantage that I am with a PIF that
6 says "List witnesses and a summary of their
7 testimony," and we have a list of names with
8 no idea as to what their testimony is.

9 So two can play this game. If we
10 want to examine each other's PIFs and examine
11 compliance with rules we can certainly do
12 that. This is an administrative hearing and
13 certainly of technical rules of pleadings
14 typically are not so carefully enforced as is
15 being suggested.

16 CHAIRPERSON MILLER: Okay, any
17 other questions? All right, I think we spent
18 an awful long time on this issue.

19 MR. KLINE: And I'll also note
20 that the rules require service by certain
21 means. So I could argue we weren't served
22 either, because it's supposed to be by

1 personal delivery, a process server,
2 registered or certified mail, telegram or
3 otherwise as authorized by law.

4 MEMBER ALBERTI: So are you making
5 a motion, Mr. Kline?

6 MR. KLINE: I beg your pardon?

7 MEMBER ALBERTI: Are you making a
8 motion?

9 MR. KLINE: No, I'm not making a
10 motion. I'm just making the point that I
11 think this has gone far afield from what the
12 issues are.

13 CHAIRPERSON MILLER: I have one
14 other question then I want to stop. Ms.
15 Johnson, do you have an opinion with respect
16 to having like a case continued versus
17 dismissed?

18 MS. JOHNSON: May I have a moment
19 to talk to my colleagues?

20 CHAIRPERSON MILLER: Okay.

21 MS. JOHNSON: Thank you.

22 (Pause)

1 MR. KLINE: Madam Chair, I would
2 inquire of the Board --

3 MR. FERRIS: I thought we had the
4 floor.

5 CHAIRPERSON MILLER: No, you're --
6 (Off microphone comments)

7 MR. FERRIS: Oh okay.

8 MR. KLINE: I would inquire of the
9 Board as to whether, and I don't find that
10 there's a specific rule requiring the service
11 of protest information forms, whether there's
12 a Board rule. Yes.

13 CHAIRPERSON MILLER: If there's a
14 rule or regulation requiring the filing of
15 this?

16 MR. KLINE: Yes.

17 CHAIRPERSON MILLER: I don't
18 believe so.

19 MR. KLINE: Well, then under the
20 circumstances I would submit with all due
21 respect that the Board would not have
22 authority to dismiss the application if there

1 is not a specific rule or regulation which
2 requires the filing of a protest information
3 form.

4 CHAIRPERSON MILLER: Okay, are you
5 ready?

6 MR. FERRIS: I believe --

7 MS. JOHNSON: Yes, I was going to
8 look through the regulations, but yes, I am
9 ready. We are seeking dismissal.

10 CHAIRPERSON MILLER: Okay. So Mr.
11 Kline has also asked that we just take up the
12 motion to dismiss as well, and then we will
13 consider a vote. I'm sorry. To dismiss the
14 protest, right, that Mr. Kline has brought a
15 motion to dismiss the protest of renewal. The
16 Board had denied the motion on a 4-0-1 vote,
17 and the question is then, do any Board members
18 who voted in favor of denying the motion wish
19 to reconsider this motion?

20 MEMBER ALBERTI: Madam Chair, I'm
21 a little confused. Are we entertaining a
22 motion for Mr. Kline or aren't we?

1 CHAIRPERSON MILLER: I'm asking if
2 you want to reconsider his motion to dismiss.

3 MEMBER ALBERTI: I don't know.
4 Are we considering a motion for Mr. Kline or
5 aren't we? Madam Chair.

6 CHAIRPERSON MILLER: Okay.

7 MEMBER ALBERTI: I just need to
8 know that before I move forward.

9 MEMBER SILVERSTEIN: I think the
10 point is, Mr. Kline is, as counsel, is allowed
11 to bring up a motion any time he wishes, and
12 then we can decide whether --

13 CHAIRPERSON MILLER: Okay, let's
14 do it another way. Would you like to renew
15 your motion to dismiss?

16 MR. KLINE: Yes, I did that, I
17 think, previously. I renewed my motion to
18 dismiss the protest on the grounds that the
19 relief sought by the protestants is not relief
20 that the Board can grant, which was spelled
21 out on a pleadings.

22 MEMBER ALBERTI: Madam Chair, I

1 have a suggestion. Can we allow Mr. Kline two
2 minutes to speak to his motion, allow Ms.
3 Johnson two minutes to respond, or less
4 because we're here a long time already, and
5 then go back and turn to consider both of
6 these motions? That would be my suggestion.

7 CHAIRPERSON MILLER: Yes, we can.
8 If the Board wants to entertain the motion,
9 yes. Go ahead then.

10 MR. KLINE: Yes, briefly, on the
11 motion to dismiss, we previously briefed this
12 issue to the Board and I note there was no
13 response to the motion to dismiss. We didn't
14 presume that that meant that the protestants
15 were conceding it.

16 Nonetheless, what was presented at
17 the status hearing and exchanged at the status
18 hearing between the Board, the applicant and
19 the protestant, it was very clear that what
20 the protestant seeks is to be made party to a
21 settlement agreement.

22 As the Board has correctly

1 previously pointed out, the Board does not
2 have that authority. Again, in the protest
3 information form that was served and filed by
4 the protestants, they indicate that the action
5 that they are requesting is to "sign duplicate
6 SA with same terms and conditions as current
7 SA with three other parties."

8 That is not relief that the Board
9 can grant. Given that that's what the
10 protestants seek, that's what they've given
11 notice that they seek, we would ask that the
12 protest be dismissed.

13 MS. JOHNSON: My turn?

14 CHAIRPERSON MILLER: Yes.

15 MS. JOHNSON: I was not present at
16 that hearing, notwithstanding the fact I do
17 believe I very clearly stated in response to
18 questions from the Board that we were seeking
19 any and all relief that the Board has the
20 authority to order.

21 If the Board does not have the
22 power to order a particular relief that we

1 requested the Board will not order it. But
2 the Board does have the power to deny the
3 license, to modify any terms of the license as
4 it may see fit.

5 And we believe that, and I believe
6 that my statement amplifying what we want
7 should suffice as representing to the Board
8 the relief that the protestants are seeking.
9 We are not just seeking to be a party to this
10 agreement. We are seeking any and all
11 appropriate relief that the Board may find is
12 suitable after hearing the evidence in the
13 matter.

14 CHAIRPERSON MILLER: Ms. Johnson,
15 do you have anything more specific than any
16 and all relief that the Board may deem
17 appropriate?

18 MS. JOHNSON: I could turn to the
19 portion of the statute which enumerates --

20 CHAIRPERSON MILLER: No, no. I
21 just wanted to know if you had anything
22 specific to this license, you know, that you

1 wanted this establishment to do. Change a
2 condition or anything like that.

3 MS. JOHNSON: Are you asking me if
4 I want any terms enlarged? We would like the
5 term of the current agreement enlarged. Does
6 the Board have the authority to enlarge the
7 conditions on this license? That would be
8 something we could ask for.

9 CHAIRPERSON MILLER: I don't want
10 to belabor it because I think everyone is
11 antsy here, but I just mean if you had in mind
12 like, oh, I would like the establishment to
13 close earlier or something, whether you had
14 something in mind specific.

15 But if you don't, you don't. I
16 mean, I just --

17 MS. JOHNSON: No.

18 CHAIRPERSON MILLER: Okay. All
19 right, so we have a motion to dismiss the
20 application and a motion to dismiss the
21 protest to consider. Is there any other
22 questions of Board members?

1 MEMBER SILVERSTEIN: Madam Chair,
2 I'd like to move that we recess to seek legal
3 advice.

4 CHAIRPERSON MILLER: Okay.

5 (Off microphone comments)

6 CHAIRPERSON MILLER: As
7 chairperson of the Alcoholic Beverage Control
8 Board for the District of Columbia and in
9 accordance with Section 405 of the Open
10 Meetings Amendment Act of 2010, I move that
11 the ABC Board hold a closed meeting for the
12 purpose of seeking legal advice from our
13 counsel on Case No. 13-PRO-00062, Policy, for
14 Section 405 of the Open Meetings Amendment Act
15 of 2010, and deliberating upon this case for
16 the reasons cited in Section 405(b)(13) of the
17 Open Meetings Amendment Act of 2010. Is there
18 a second?

19 MEMBER SILVERSTEIN: Second.

20 CHAIRPERSON MILLER: Mr.
21 Silverstein has seconded the motion. I'll now
22 take a roll call.

1 Mr. Brooks?

2 MEMBER BROOKS: I agree.

3 CHAIRPERSON MILLER: Mr. Alberti?

4 MEMBER ALBERTI: I agree.

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

7 MEMBER SILVERSTEIN: I agree.

8 CHAIRPERSON MILLER: Mr. Jones?

9 MEMBER JONES: I agree.

10 CHAIRPERSON MILLER: The motion's
11 passed 5-0-0. I hereby give notice that the
12 ABC Board will hold a closed meeting in the
13 ABC Board conference room, now, pursuant to
14 the Open Meetings Amendment Act of 2010. And
15 we will return shortly to vote on those two
16 motions.

17 (Whereupon, the foregoing matter
18 went off the record at 5:44 p.m. and went back
19 on the record at 6:08 p.m.)

20 CHAIRPERSON MILLER: Okay, we are
21 back on the record, the Board having
22 considered two motions to dismiss. And what

1 I'd like to do is deal with each motion
2 separately and then discuss how we're going to
3 proceed.

4 So the first motion I want to
5 bring up is the motion to dismiss the
6 application that the protestants have asked us
7 to do based on failure to be served by the
8 applicant. I would move that we deny this
9 motion. Do I have a second?

10 MEMBER BROOKS: Second.

11 CHAIRPERSON MILLER: Okay, Mr.
12 Brooks seconded the motion. I think that a
13 continuance is the better remedy. I don't
14 think that the applicant acted in bad faith in
15 any way, and the protestants did get a copy of
16 the PIF. And I wasn't that sure about the
17 degree of prejudice but there might have been
18 some.

19 So I think that because of that I
20 would be favor of a continuance as a remedy
21 and not dismissal. Does anybody else want to
22 speak to that? Do you have a question?

1 MEMBER ALBERTI: Well, I'm
2 confused, Ms. Miller. I mean --

3 CHAIRPERSON MILLER: I keep
4 confusing you today, okay.

5 MEMBER ALBERTI: Yes, because
6 continuance isn't even a matter to consider
7 because we have another motion on the table
8 which we haven't decided.

9 CHAIRPERSON MILLER: That's right.

10 MEMBER ALBERTI: So we vote in
11 favor of that motion then there would be no
12 continuance. So I'm confused by the
13 discussion of continuance.

14 CHAIRPERSON MILLER: Well, we're
15 not voting for a continuance. I was just
16 saying that in my mind that the proper relief
17 for the failure to serve in this case would
18 not be, in my mind, a dismissal of the
19 application, and if any relief were
20 appropriate it would be a continuance.

21 And that's just my own rationale.
22 I don't have a motion here for a continuance.

1 The motion on the table is to deny the motion
2 to dismiss the application.

3 MEMBER ALBERTI: I will say that
4 given the nature of PIFs in general and the
5 time that the applicants did have the PIF, I
6 don't think that I can conclude that there was
7 sufficient prejudice to dismiss the
8 application. So I will be voting in favor of
9 the motion.

10 CHAIRPERSON MILLER: Others?
11 Okay, there's a motion that's been seconded to
12 deny the motion to dismiss the application.
13 All those in favor of the motion say aye.

14 (Chorus of ayes)

15 CHAIRPERSON MILLER: All those
16 opposed? All those abstaining? Okay, the
17 motion passes then, 5-0-0.

18 The other motion before us is a
19 motion to dismiss the protest. Would someone
20 like to move that motion?

21 MEMBER ALBERTI: I'll move that we
22 deny the motion to dismiss the protest that

1 was made by Mr. Kline.

2 CHAIRPERSON MILLER: Is there a
3 second?

4 MEMBER SILVERSTEIN: Second.

5 CHAIRPERSON MILLER: Okay. Would
6 you like to speak to the motion or --

7 MEMBER ALBERTI: Yes. Well, I
8 will. I mean, I think that it was clear from
9 our discussion earlier that the protestants
10 demonstrated that they are seeking whatever
11 relief the Board deems appropriate. So I
12 think it's necessary that we hear their case.
13 So on those grounds I don't think that we
14 should be dismissing their protest.

15 CHAIRPERSON MILLER: Okay. And I
16 abstained before on the motion that was filed
17 because I wanted to hear more information.
18 But at this point I actually am going to vote
19 to grant the motion to dismiss, because what
20 I heard today was that the protestants, they
21 didn't articulate any remedy, any conditions,
22 anything that they were seeking, and I think

1 it's too vague to come into a protest just to
2 say whatever relief the Board wants to give
3 us.

4 I think that they have concerns
5 about the operations at that establishment
6 that, you know, are real and legitimate and
7 valid, and it just sounded to me as if those
8 concerns really do belong in the other case
9 that involves this license regarding the
10 termination of the settlement agreement.

11 So I do think they should have a
12 forum, I just don't see it in this case.

13 MEMBER ALBERTI: May I speak
14 again? I just think it's necessary to point
15 out that it is not the burden of the
16 protestant to suggest remedies to the Board.
17 It is up to the Board to decide what remedies
18 are to be implemented based on the testimony,
19 first, from the applicant and then from the
20 protestants. And it's the applicant's burden
21 to prove that the renewal should occur.

22 So to say that the protestants

1 were seeking remedies that, you know, or
2 didn't articulate remedies that we could
3 implement, I wasn't expecting them to ever
4 suggest remedies.

5 They can only present arguments
6 about why remedies are needed, and we can
7 conclude from those arguments and concerns
8 about why remedies are needed, what is
9 appropriate.

10 CHAIRPERSON MILLER: And if I can
11 respond, I would just say that -- oh, and then
12 Mr. Silverstein -- that it wasn't just
13 remedies it was an articulation about
14 concerns. And if you just say peace, order,
15 quiet or cite the statute, I just don't think
16 that's, personally, I don't think that's
17 enough.

18 Mr. Silverstein?

19 MEMBER SILVERSTEIN: Madam Chair,
20 I would say that I'll probably be voting with
21 my colleague Mr. Alberti on this, to deny, but
22 I would point out that we are backed up. That

1 there is enormous workload that we have.

2 And I would hope that the parties
3 find a way to work with us to streamline this
4 process so that this not be delayed
5 interminably, and also that other people are
6 not forced to wait a month or a week longer
7 because we spend more time than necessary so
8 that people have two bites in an apple when
9 perhaps they can all join together
10 cooperatively and have one.

11 We cannot force this necessarily
12 on you, but we would hope that you work with
13 us to streamline this process of the two
14 hearings.

15 MEMBER ALBERTI: Mr. Silverstein,
16 is that a we or a you? Because I certainly
17 have no opinion as to that regards.

18 (Crosstalk)

19 CHAIRPERSON MILLER: Okay, there's
20 a motion on the table that's been seconded.
21 Any other comments on the motion?

22 Okay, then this is a motion to

1 deny the motion to dismiss the protest. All
2 those in favor say aye.

3 (Chorus of ayes)

4 All those opposed? Opposed. All
5 those abstaining? Then the motion passes 4-1-
6 0. Okay, so we have denied both motions to
7 dismiss. And the choice again on that was the
8 Board was either to continue to have a hearing
9 tonight or to continue this.

10 And so what I had stated earlier
11 was that I would be in favor of continuing
12 this hearing, recognizing that there may be a
13 disadvantage but didn't rise to dismissal. So
14 I think is the Board of the view that we
15 should continue this case? Is there any
16 consensus of that?

17 MEMBER ALBERTI: Is there a
18 motion? Is that the motion?

19 CHAIRPERSON MILLER: No, do I need
20 a motion?

21 (Crosstalk)

22 CHAIRPERSON MILLER: Okay, I move

1 to continue this case to a date to be
2 determined.

3 MR. KLINE: Madam Chair, if I may?

4 CHAIRPERSON MILLER: Yes.

5 MR. KLINE: Can we hear from the
6 protestants if that's their desire? We're
7 ready to go forward if they're ready to go
8 forward.

9 CHAIRPERSON MILLER: I thought
10 that was their desire.

11 MR. KLINE: Okay, I'm sorry.

12 CHAIRPERSON MILLER: Am I correct?

13 MS. JOHNSON: We welcome a
14 continuance.

15 CHAIRPERSON MILLER: Okay.

16 MR. KLINE: That's fine.

17 CHAIRPERSON MILLER: Okay.

18 MR. KLINE: There were thought to
19 babysitters and what have you, I certainly did
20 not want to prejudice with that if that was an
21 issue, but I understand.

22 CHAIRPERSON MILLER: Okay, so I

1 move to continue this hearing to a date to be
2 determined. Do I have a second?

3 MEMBER SILVERSTEIN: Second.

4 CHAIRPERSON MILLER: All those in
5 favor say aye.

6 (Chorus of ayes)

7 CHAIRPERSON MILLER: All those
8 opposed? All those abstaining? Okay, the
9 motion passes 5-0-0. So we don't know, we
10 don't have a date yet. But we are aware that
11 there is the other hearing. And I would just,
12 I think our counsel will be in touch with you
13 with respect to coordinating what would be an
14 appropriate date for all concerned.

15 MR. KLINE: Madam Chair, I would
16 just point out to the Board that I will be out
17 of the country for two weeks beginning Sunday,
18 so that would put me out the following two
19 Wednesdays and/or Thursdays, if the Board
20 decided that they wanted to vote on it.

21 CHAIRPERSON MILLER: Okay, so I
22 know Ms. Jenkins will be in touch with us.

1 MEMBER ALBERTI: And Mr. Kline, we
2 thank you for that.

3 CHAIRPERSON MILLER: Anything
4 else? Yes?

5 MR. FERRIS: I don't know how
6 appropriate this is, but our president Joan
7 Sterling is going to be in India during a
8 period of October. I would be happy to email
9 you those dates. I do have them but I don't
10 know what they are. So just as a way of
11 advising the Board, I will be happy to email
12 you the dates that Ms. Sterling is going to be
13 out of town.

14 CHAIRPERSON MILLER: Okay, so let
15 me say this. I don't know if everybody heard
16 me say this. Ms. Jenkins is going to
17 coordinate with all of you, so you would, you
18 know, email to her. But I think that she will
19 be getting in touch with you very shortly,
20 because our calendar gets crowded, and see
21 where we can fit this case.

22 Well, I'm sorry that this, it was

1 a long time and we didn't get to the case, but
2 we will. So thank you very much. Unless
3 anybody else has any questions, that's it for
4 today.

5 MR. KLINE: We don't. Thank you
6 very much.

7 MS. JOHNSON: Thank you.

8 CHAIRPERSON MILLER: Thank you.

9 (Pause)

10 CHAIRPERSON MILLER: Okay. As
11 chairperson of the Alcoholic Beverage Control
12 Board for the District of Columbia, and in
13 accordance with Section 405 of the Open
14 Meetings Amendment Act of 2010, I move that
15 the ABC Board hold a closed meeting on October
16 2nd, 2013 for the purpose of seeking legal
17 advice from our counsel on the matters
18 identified on the Board's agenda for October
19 2nd, 2013, as published in the D.C. Register
20 on September 30th, 2013. Is there a second?

21 MEMBER JONES: Second.

22 CHAIRPERSON MILLER: I'll take a

1 roll call vote on the motion before us now
2 that it's been seconded. Mr. Jones?

3 MEMBER JONES: I agree.

4 CHAIRPERSON MILLER: Mr.
5 Silverstein?

6 MEMBER SILVERSTEIN: I agree.

7 CHAIRPERSON MILLER: Ms. Miller
8 agrees. It appears that the motion has passed
9 by a vote of 3-0-0. I hereby give notice that
10 the ABC Board will hold this aforementioned
11 closed meeting pursuant to the Open Meetings
12 Amendment Act of 2010.

13 Notice will also be posted on the
14 ABC Board hearing room bulletin Board, placed
15 on the electronic calendar and at this website
16 and published in the D.C. Register in as
17 timely a manner as practical.

18 As chairperson of the Alcoholic
19 Beverage Control Board for the District of
20 Columbia and in accordance with Section 405 of
21 the Open Meetings Amendment Act of 2010, I
22 move that the ABC Board hold a closed meeting

1 on October 2nd, 2013 for the purpose of
2 discussing and hearing reports concerning
3 ongoing or planned investigations of alleged
4 criminal or civil misconduct or violations of
5 law or regulations and seeking legal advice
6 from our counsel on the Board's investigative
7 agenda for October 2nd, 2013 as published in
8 the D.C. Register on September 30th, 2013. Is
9 there a second?

10 MEMBER SILVERSTEIN: Second.

11 CHAIRPERSON MILLER: I'll take a
12 roll call vote on the motion before us now
13 that it's been seconded. Mr. Jones?

14 MEMBER JONES: I agree.

15 CHAIRPERSON MILLER: Mr.
16 Silverstein?

17 MEMBER SILVERSTEIN: I agree.

18 CHAIRPERSON MILLER: Ms. Miller
19 agrees. As it appears that the motion has
20 passed, I hereby give notice that the ABC
21 Board will hold this aforementioned closed
22 meeting pursuant to the Open Meetings

1 Amendment Act of 2010.

2 Notice will also be posted on the
3 ABC Board hearing room bulletin Board, placed
4 on the electronic calendar and at this website
5 and published in the D.C. Register in a timely
6 manner as practicable.

7 And that concludes the Board
8 matters for September 25th, 2013, and we are
9 adjourned.

10 (Whereupon, the foregoing matter
11 went off the record at 6:23 p.m.)

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A				
ABC 41:18 44:4 56:11 57:12,13 69:15 70:10,14,22 71:20 72:3	ago 22:5	56:14,17 57:14 69:14 70:12,21 72:1	arguments 26:15 33:2 63:5,7	basis 14:13
ability 25:6	agree 57:2,4,7,9 70:3,6 71:14,17	ample 44:19	arisen 32:1	beat 18:16
able 23:17	agreed 40:14	amplified 16:14	articulate 14:18 61:21 63:2	beg 48:6
abstained 28:12 61:16	agreement 5:17 6:12,12,15 7:5,10 7:13,18 8:2 9:10 9:11 10:2,5,13 11:6,9,14,15,19 12:1,4 15:10 40:20 41:5 42:21 43:7 52:21 54:10 55:5 62:10	ANC 2:8	articulation 63:13	beginning 12:20 67:17
abstaining 60:16 65:5 67:8	agreement's 19:1	and/or 67:19	ascertain 26:1	behalf 2:13 16:10 16:11 17:21
accomplish 10:17	agreements 7:1	Andrew 2:13	asked 16:9,13 17:16 50:11 58:6	behoove 27:21
achieve 9:2,2	agrees 57:6 70:8 71:19	answer 15:13	asking 11:12 16:7 42:14 51:1 55:3	belabor 46:15 55:10
Act 56:10,14,17 57:14 69:14 70:12 70:21 72:1	ahead 29:13 34:18 41:4 45:7 52:9	antsy 55:11	assign 3:12	believe 26:1 32:5,7 34:9 35:7 49:18 50:6 53:17 54:5,5
acted 58:14	Aileen 2:20	anybody 29:9 58:21 69:3	assistant 21:20 24:17 26:2 38:3,5	believed 23:2
action 3:12 4:7 5:18,19 32:9 53:4	Alberti 1:19 13:20 13:22 14:2,10,13 14:16 15:16 16:12 17:18 22:13,16,18 27:18 28:7 29:12 29:18 30:13 31:1 31:6,7,10 32:19 33:9 35:8,11,14 35:18 36:2,8 37:3 37:5 39:8,11 42:9 42:16 48:4,7 50:20 51:3,7,22 57:3,4 59:1,5,10 60:3,21 61:7 62:13 63:21 64:15 65:17 68:1	anyway 27:12 44:2	associated 24:14	believes 44:15
add 10:7 26:5 38:16	Alcohol 32:4	apologize 24:13 33:19 38:21,22	association 7:14,17 17:22	belong 62:8
added 4:19	Alcoholic 1:2,13,13 56:7 69:11 70:18	apparently 38:2	assume 16:22 19:9	benefit 45:1
address 4:12 30:4 40:11,13	alleged 71:3	appear 32:10	assured 7:6	best 8:22 38:7
addressed 20:19 31:14 32:5	Alliance 3:18	appears 70:8 71:19	attempting 24:19	better 58:13
addressing 32:21 33:2	allow 8:1,8,10 52:1 52:2	apple 64:8	attention 6:10 7:3	Beverage 1:2,13,13 56:7 69:11 70:19
adjourned 72:9	allowed 39:13 51:10	applicant 23:2 38:11 41:14 42:20 52:18 58:8,14 62:19	attorney 42:3,3 44:1	bind 16:6
administrative 20:17 29:1 47:12	ambiguity 28:2	applicant's 62:20	authority 8:13 16:6 17:13 49:22 53:2 53:20 55:6	binding 16:20
adverse 15:4	Amendment 56:10	applicants 32:10 60:5	authorization 17:1	bites 64:8
advice 56:3,12 69:17 71:5		application 1:9 2:9 5:4 22:11 27:16 29:2 31:8,12,21 32:3,16 33:7 34:13,16,21,22 35:4 36:7 38:11 39:5,12 40:1 44:22 49:22 55:20 58:6 59:19 60:2,8 60:12	authorized 48:3	board 1:2,13 3:21 3:22 4:6 5:3 6:20 6:20 7:4 8:8,13,14 8:15,15,20,22 9:12,14,18 10:21 12:5 14:7,21 15:17,18 16:7 17:16 20:6,7 21:8 23:12 27:16 28:11 28:16 32:8,14 33:6 34:15 35:2,3 36:17 38:2 40:8,8 43:15 44:15 49:2 49:9,12,21 50:16 50:17 51:20 52:8 52:12,18,22 53:1 53:8,18,19,21 54:1,2,7,11,16 55:6,22 56:8,11 57:12,13,21 61:11 62:2,16,17 65:8 65:14 67:16,19 68:11 69:12,15
advised 7:20		applying 12:8	aware 9:19 24:15 34:21 67:10	
advises 24:17		apply 18:14	awful 47:18	
advising 68:11		appropriate 14:21 15:19 18:10 21:8 30:16 54:11,17 59:20 61:11 63:9 67:14 68:6	aye 60:13 65:2 67:5	
affect 40:10		argue 10:11 47:21	eyes 60:14 65:3 67:6	
affirm 19:4			B	
afford 22:21			babysitter 42:5	
afield 48:11			babysitters 66:19	
aforementioned 70:10 71:21			back 5:8 37:17,20 41:1,3 52:5 57:18 57:21	
afternoon 2:4,12 23:18 45:13,16,20 46:3,5			backed 63:22	
agenda 69:18 71:7			bad 58:14	
			based 15:20 20:5,5 20:8,20 28:4,18 38:18 43:4,13,14 58:7 62:18	

70:10,14,14,19,22 71:21 72:3,3,7 Board's 22:1 33:22 69:18 71:6 briefed 52:11 briefly 52:10 bring 6:17 51:11 58:5 Brooks 1:20 35:13 57:1,2 58:10,12 brought 6:9 29:19 50:14 Building 1:14 bulletin 70:14 72:3 burden 62:15,20 busy 40:16	51:5,22 56:1 63:19 66:3 67:15 chairman 12:16 chairperson 1:14 1:18 2:3,19 3:4,8 3:17,20 4:16 5:7 5:13,22 6:6,16 8:4 8:18 9:4,7,22 10:19 11:11 12:2 13:4,21 14:17,22 15:8,12 16:21 17:5,17,19 18:15 19:8,14 20:1,4 21:3,6,15 22:6,15 22:17 23:22 24:5 25:15 26:17 27:10 28:6,20 29:7,16 30:8 31:16 33:4 34:6 35:9,16,22 36:6 37:8,14,19 38:9,15 39:4 40:6 42:6,8,17 45:5,15 45:21 46:7,12 47:16 48:13,20 49:5,13,17 50:4 50:10 51:1,6,13 52:7 53:14 54:14 54:20 55:9,18 56:4,6,7,20 57:3,5 57:8,10,20 58:11 59:3,9,14 60:10 60:15 61:2,5,15 63:10 64:19 65:19 65:22 66:4,9,12 66:15,17,22 67:4 67:7,21 68:3,14 69:8,10,11,22 70:4,7,18 71:11 71:15,18 challenge 17:22 challenging 11:21 Change 55:1 changes 10:12 chaos 33:3 choice 65:7 Chorus 60:14 65:3 67:6	circumstances 20:16 49:20 cite 63:15 cited 56:16 citizens 3:18 17:22 42:1 civic 7:14,16 civil 71:4 clarification 18:17 30:22 clarify 8:19 36:19 clarity 16:1 clear 6:1 16:5 17:13,20 20:14 21:9 24:9 28:1 31:4 33:14 37:6 46:11 52:19 61:8 clearly 53:17 client 24:15 34:3 clients 42:13 close 55:13 closed 56:11 57:12 69:15 70:11,22 71:21 colleague 63:21 colleagues 19:10 48:19 Columbia 1:1 56:8 69:12 70:20 combine 29:4 come 62:1 coming 27:22 comments 49:6 56:5 64:21 communication 40:16 46:15 communications 43:1 community 26:5 completely 43:8 compliance 47:11 conceding 52:15 concern 6:19 concerned 7:4 67:14 concerning 71:2 concerns 18:3 62:4	62:8 63:7,14 conclude 60:6 63:7 concludes 72:7 conclusion 12:19 concur 17:9 condition 12:9 13:17,18 55:2 conditions 3:13 4:9 8:16,20 9:11,14 10:1,4 11:18 12:7 13:6,8,11,14,16 15:9 18:20 19:1 20:3 53:6 55:7 61:21 conducted 4:3 confer 6:5 conference 43:16 57:13 confused 31:7 32:20 50:21 59:2 59:12 confusing 59:4 connection 9:15 consensus 65:16 consider 27:19 30:14 50:13 52:5 55:21 59:6 considered 57:22 considering 37:20 51:4 contact 24:1,2 45:8 contacted 7:19 23:5 45:11 contains 12:6 contemporaneou... 25:20 continual 11:2 continuance 58:13 58:20 59:6,12,13 59:15,20,22 66:14 continue 7:6 39:14 65:8,9,15 66:1 67:1 continued 44:17 48:16 continuing 65:11 contrary 32:14	43:1 Control 1:2,13,13 56:7 69:11 70:19 conversation 32:2 cooperatively 64:10 coordinate 68:17 coordinating 67:13 copies 37:1 40:17 44:3 copy 4:15,20,22 21:17 33:12 41:18 58:15 correct 18:6 66:12 correctly 52:22 counsel 22:1 26:6 33:22 41:6 51:10 56:13 67:12 69:17 71:6 country 67:17 course 39:18,21 CR 1:8 criminal 71:4 Crosstalk 15:11 19:18 29:11 30:12 34:5 64:18 65:21 crowded 68:20 current 3:13 4:9 18:19 53:6 55:5
C				
calendar 68:20 70:15 72:4 call 2:5 12:22 36:18 39:19 43:3,13 46:11 56:22 70:1 71:12 called 45:16 46:9 calls 7:8 carefully 47:14 case 1:10 2:5,6 14:6 14:6 19:6 23:15 29:2 32:15 34:21 42:13 43:13,22 44:21 48:16 56:13 56:15 59:17 61:12 62:8,12 65:15 66:1 68:21 69:1 cease 32:4 certain 47:20 certainly 19:4 33:19 47:11,13 64:16 66:19 certified 48:2 chair 5:12 9:6 14:3 15:21 18:8,9 25:13 26:19 28:19 29:13 32:21 35:14 38:14 42:10,19 47:4 49:1 50:20				
D				
D.C 1:14 69:19 70:16 71:8 72:5 date 11:7 43:9 66:1 67:1,10,14 dates 68:9,12 day 46:8 days 4:21 5:2 21:14 22:4 25:4 26:11 26:12 33:7 34:12 34:18 39:19 41:2 45:7 dead 18:16 deal 58:1 decide 14:7 15:19 51:12 62:17 decided 31:4 59:8				

67:20 decision 28:3 30:6 33:10 36:10,13,16 deem 54:16 deems 61:11 degree 58:17 delay 28:3 32:13 36:10 delayed 64:4 deliberate 36:14 deliberating 56:15 delivery 48:1 demonstrated 61:10 denied 5:15 50:16 65:6 deny 5:20 29:10 54:2 58:8 60:1,12 60:22 63:21 65:1 denying 50:18 depends 26:8 desire 66:6,10 details 24:13 determination 9:16 10:22 determine 21:8 determined 66:2 67:2 devolve 33:3 dice 44:7 different 13:17,18 14:18 15:9 17:12 differently 22:12 direction 20:12 disadvantage 47:3 47:5 65:13 disagree 25:9 discretion 5:3 discuss 58:2 discussing 33:5 71:2 discussion 6:7 59:13 61:9 disingenuous 43:4 dismiss 5:4 9:19 20:9,22 28:4,10 28:18 29:2,9 30:5	30:15,19 31:5,8,9 31:12,17 33:6 34:13,15,20 35:4 36:6 49:22 50:12 50:13,15 51:2,15 51:18 52:11,13 55:19,20 57:22 58:5 60:2,7,12,19 60:22 61:19 65:1 65:7 dismissal 50:9 58:21 59:18 65:13 dismissed 23:3 31:22 32:3 34:22 38:11 39:5,13 40:1 44:5,6,9,12 44:22 48:17 53:12 dismissing 22:10 27:16 32:16 61:14 dispute 17:10 distraction 11:2 District 1:1 56:8 69:12 70:19 doing 23:17 32:8 36:20 DONALD 1:20 doubt 17:6 downloading 41:18 drastic 32:15 drawings 46:22 due 15:14 24:19 35:13 49:20 duplicate 3:12 4:8 53:5 Dupont 3:18 17:21	electronic 70:15 72:4 eliminated 9:17 Elwin 2:22 email 21:17,18 24:18,20 27:20,22 30:10,17,18 36:21 68:8,11,18 emails 24:4 25:18 25:19 27:5,8 enforced 47:14 enlarge 55:6 enlarged 55:4,5 enormous 64:1 enter 6:22 entertain 52:8 entertaining 50:21 entirely 28:22 enumerates 54:19 establishment 13:6 43:17 55:1,12 62:5 estimate 40:5 event 21:21 25:1 everybody 2:4 12:8 68:15 everyone's 46:16 evidence 27:20 28:4 36:12 38:7 54:12 evidentiary 16:19 exactly 9:20 10:14 examine 47:10,10 exchanged 40:22 52:17 Excuse 27:7 exercise 37:12 exhibit 46:19 exhibits 43:19 46:19 exist 15:9 19:10 existing 6:11,12 7:5 10:13 exists 11:6 expect 37:7 43:20 expectation 42:22 expecting 63:3	extraordinary 32:9	64:11 forced 64:6 foregoing 37:16 57:17 72:10 form 40:18,21 41:8 41:11 50:3 53:3 forms 40:22 49:11 forum 62:12 forward 14:4,14 21:11 32:20 41:10 51:8 66:7,8 frame 39:21 Friday 21:22 23:8 23:8,18 25:2 45:13,16,20,22 46:2,4,8 front 6:17
				G
				game 47:9 geared 6:19 gee 43:6 44:4 general 2:18 30:15 60:4 getting 23:7 29:13 41:1 44:3 68:19 give 3:22 20:11 37:12 39:21 40:5 57:11 62:2 70:9 71:20 given 10:15 22:3 25:5 33:5 44:21 53:9,10 60:4 glad 19:3 go 13:11,12 14:4,14 22:10 28:8 37:10 39:14 40:13 41:4 52:5,9 66:7,7 goals 9:2 going 2:4 4:4 11:10 12:17,21 19:6 21:11 28:14 29:21 31:2 40:20 41:4 41:10,13 42:21 43:7 50:7 58:2 61:18 68:7,12,16 good 2:3,12

gotten 28:14
grant 4:7 5:20 6:20
 6:20 14:21 51:20
 53:9 61:19
granted 18:12,13
 39:2
great 32:6 42:4
 43:17,21
Griffin 1:6
grounds 15:3 34:16
 51:18 61:13
group 1:6 2:21
groups 3:10
guess 19:16 22:7
Guy 3:2,6

H

handled 23:16
happen 8:11 13:5
happening 4:4
happens 12:13
happy 11:17 40:12
 68:8,11
harm 36:14
hate 43:3
hear 13:2 19:17
 22:14 25:8 35:17
 37:9 40:4 61:12
 61:17 66:5
heard 14:2,3 17:11
 61:20 68:15
hearing 1:8,14 2:9
 4:2,13 5:3 6:3,18
 8:19 10:17,21
 12:13,19,20 13:9
 13:13 14:5,14
 18:11 20:2,20
 28:13 29:5 30:16
 33:2 34:12,18
 39:7,12 40:11
 41:22 44:11,17
 45:8 47:12 52:17
 52:18 53:16 54:12
 65:8,12 67:1,11
 70:14 71:2 72:3
hearings 4:1 29:5
 64:14

helpful 42:12
HERMAN 1:21
hey 40:22
hire 42:4
history 32:7
hold 30:6 56:11
 57:12 69:15 70:10
 70:22 71:21
hope 9:1,2 64:2,12
hoped 23:10
hopefully 7:22 8:7
 8:16
horse 18:16
hours 45:2,3

I

idea 3:22 19:5
 39:22 40:5 47:8
identified 69:18
identifying 41:11
impact 15:4 25:6
implement 14:8
 63:3
implemented 62:18
included 9:1
inconsistent 43:8
incorporated 9:11
India 68:7
indicate 53:4
indicated 16:15
 37:13
indication 33:6
individual 15:16,18
 16:11
individuals 16:14
 26:7 27:2 43:16
information 15:22
 28:13 42:11,14
 49:11 50:2 53:3
 61:17
inquire 38:20 49:2
 49:8
inquired 38:5
instance 24:10
intended 43:12
interest 20:17
interminably 64:5

introductions 2:11
investigations 71:3
investigative 71:6
involves 62:9
issue 4:19 8:13,15
 10:22 29:8,14,19
 30:4 31:3 32:21
 33:1 34:9,14 35:1
 47:18 52:12 66:21
issues 3:9 4:2,17
 6:18 9:18 15:6
 20:18 48:12

J

Jenkins 4:21 7:19
 23:5 24:1,2,3 25:3
 33:12 34:11 41:2
 45:9,11,17,17
 46:6,9,11 67:22
 68:16
Joan 21:16 26:20
 68:6
job 26:7
Johnson 2:20,20
 3:15,19 4:11,18
 5:11,14 6:8 10:18
 10:20 11:22 12:11
 13:2,22 14:1,9,12
 14:15,20 15:2
 16:12 17:3,4,6,15
 17:20 18:7 19:3
 19:12 21:5,7
 22:22 24:3 26:4
 27:5,8 29:15
 32:18 33:11 34:2
 38:13,20 39:10
 40:6,12 42:7,10
 42:15 45:6,10,18
 46:4,10,14 48:15
 48:18,21 50:7
 52:3 53:13,15
 54:14,18 55:3,17
 66:13 69:7
Johnson's 22:14
 30:4
join 8:1,8,9,10 64:9
Jones 1:21 12:12

13:3 14:4 24:6,7
 24:12,21 25:8
 35:5,21 36:3,4
 37:11 57:8,9
 69:21 70:2,3
 71:13,14
July 20:7
jurisdiction 6:22

K

keep 59:3
kind 19:6 35:1
Kinkos 41:17
Kline 2:12,13 9:6,8
 10:1,7 13:7 15:21
 17:8 20:4 21:15
 22:18 24:10,11,17
 25:1,17,22 26:14
 26:14,19 27:7,21
 27:22 28:5,9
 30:10,17 31:20
 33:17 36:11,17
 37:2,10 38:1,18
 40:21 42:17,19
 45:8,19 46:2,6
 47:4,19 48:5,6,9
 49:1,8,16,19
 50:11,14,22 51:4
 51:10,16 52:1,10
 61:1 66:3,5,11,16
 66:18 67:15 68:1
 69:5
Kline's 29:20 30:7
know 4:1,3 5:3
 9:18 10:20 21:1
 22:11 23:6 24:12
 25:3 26:13 27:11
 27:15 33:1 37:5
 39:20,20 40:10
 41:2,13 42:2 44:8
 46:16 51:3,8
 54:21,22 62:6
 63:1 67:9,22 68:5
 68:10,15,18
knowing 23:14
 27:4
known 9:10

L

late 33:8
law 48:3 71:5
legal 56:2,12 69:16
 71:5
legitimate 62:6
let's 3:9 5:8 51:13
letters 46:21
letting 41:2
level 27:15
license 1:9 2:7 5:15
 5:17,21 7:13 9:12
 9:13 10:3,4,6
 11:16,20 12:5,6,9
 13:8,14 18:2,11
 19:2,20,21 34:4
 54:3,3,22 55:7
 62:9
licensee 2:13 4:15
 5:1 6:13 7:10 8:1
 8:7,9,10 11:13
 14:6 19:7 30:5
 31:5 32:3,6 34:17
licensee's 6:22
licensees 21:11
licenses 18:13
list 46:19 47:6,7
listen 15:17
little 32:20 50:21
LLC 1:6
located 2:7
long 4:13 47:18
 52:4 69:1
longer 64:6
look 20:2 50:8
looking 3:16,17
 41:11 46:19
losing 34:4
Lounge 2:15

M

M-U-L 2:14
ma'am 5:11
Madam 5:12 9:6
 15:21 18:7,9 20:4
 21:15 25:13 26:19
 28:19 29:13 32:21

35:14 38:13 42:10 42:19 47:4 49:1 50:20 51:5,22 56:1 63:19 66:3 67:15 mail 48:2 majority 34:15 making 26:15,15 48:4,7,9,10 MALE 15:14 19:19 19:22 manager 2:18 managing 2:15 43:16 manner 5:6 70:17 72:6 maps 46:22 matter 1:5 11:6 12:3,13 16:18 23:3 24:7 28:9 30:7,18 31:14,15 32:5 37:16 54:13 57:17 59:6 72:10 matters 69:17 72:8 mean 5:12 7:9 27:19,21 31:17 39:3 40:7 41:13 43:3,7,12 44:8 55:11,16 59:2 61:8 means 40:19 41:3 47:21 meant 52:14 meeting 1:3 56:11 57:12 69:15 70:11 70:22 71:22 Meetings 56:10,14 56:17 57:14 69:14 70:11,21 71:22 member 1:19,20,21 1:22 12:12 13:3 13:20,22 14:2,10 14:13,16 15:16,17 15:18 17:18 18:9 22:13,16,18 24:7 24:12,21 25:8,14 25:17 27:18 28:16	28:19,21 29:12,18 30:13,21 31:1,6 31:10 32:19 33:9 35:5,8,11,13,14 35:18,21 36:2,4,8 36:22 37:5,11 39:8,11 42:9,16 48:4,7 50:20 51:3 51:7,9,22 56:1,19 57:2,4,7,9 58:10 59:1,5,10 60:3,21 61:4,7 62:13 63:19 64:15 65:17 67:3 68:1 69:21 70:3,6 71:10,14 71:17 members 7:4,15 17:15 18:18 27:17 35:3,3 50:17 55:22 membership 7:7 met 1:13 MICHAEL 1:22 microphone 49:6 56:5 Miller 1:15,18 2:3 2:19 3:4,8,17,20 4:16 5:7,13,22 6:6 6:16 8:4,18 9:4,7 9:22 10:19 11:11 12:2 13:4,21 14:17,22 15:8,12 16:13,21 17:5,17 17:19 18:15 19:8 19:14 20:1 21:3,6 22:6,15,17 23:22 24:5 25:15 26:17 27:10 28:6,20 29:7,16 30:8 31:16 33:4 34:6 35:9,16,22 36:6 37:8,14,19 38:9 38:15 39:4 40:6 42:6,8,17 45:5,15 45:21 46:7,12 47:16 48:13,20 49:5,13,17 50:4	50:10 51:1,6,13 52:7 53:14 54:14 54:20 55:9,18 56:4,6,20 57:3,5,5 57:8,10,20 58:11 59:2,3,9,14 60:10 60:15 61:2,5,15 63:10 64:19 65:19 65:22 66:4,9,12 66:15,17,22 67:4 67:7,21 68:3,14 69:8,10,22 70:4,7 70:7 71:11,15,18 71:18 mind 55:11,14 59:16,18 minutes 52:2,3 misconduct 71:4 missed 24:13 missing 26:20 misstep 32:17 33:18 mistake 33:18 mode 16:19 modify 54:3 moment 6:4 32:22 35:20 48:18 Monday 23:21 45:22 money 42:2 month 64:6 moot 30:19 motion 9:19 20:9 20:22 28:10,17 29:8,10,20 30:7 30:14,14 31:5,11 31:12,13 35:6,10 35:11,15,19,20 36:1 38:10 39:2 48:5,8,10 50:12 50:15,16,18,19,22 51:2,4,11,15,17 52:2,8,11,13 55:19,20 56:21 58:1,4,5,9,12 59:7 59:11,22 60:1,1,9 60:11,12,13,17,18	60:19,20,22 61:6 61:16,19 64:20,21 64:22 65:1,5,18 65:18,20 67:9 70:1,8 71:12,19 motion's 57:10 motions 31:17 52:6 57:16,22 65:6 mount 39:16 mounted 39:22 40:3 move 28:16 29:9 30:7 31:15 32:20 51:8 56:2,10 58:8 60:20,21 65:22 67:1 69:14 70:22 moving 30:11 31:3 Multani 2:14,14 mystery 36:19	53:16 now's 22:20 number 2:6,8 7:8 43:9,10
<hr/> O <hr/>				
O-D-G-O-R-N-I-K				
3:7 objection 21:10 obtaining 40:17 obviously 32:6 41:13 occur 62:21 occurred 43:4,9 October 68:8 69:15 69:18 71:1,7 offer 36:11 offered 29:3 office 21:18 23:12 25:19 32:11 36:18 oh 5:11 13:16 22:17 24:5 40:19 43:6 44:4 45:21 46:7 46:12 49:7 55:12 63:11 okay 2:4,10,19 3:8 3:8 4:18 5:7,13,22 6:6,16 8:4,11 9:2 9:4 11:14 12:2 13:3 17:5,17,18 17:20 19:8,14,17 21:3 22:6 24:6,21 25:15 26:17 27:10 28:6,7 29:7 30:8 30:13 35:22 37:14 37:19 38:9,15 42:8 45:5 46:8,12 47:16 48:20 49:7 50:4,10 51:6,13 55:18 56:4 57:20 58:11 59:4 60:11 60:16 61:5,15 64:19,22 65:6,22 66:11,15,17,22 67:8,21 68:14 69:10 once 36:19				
<hr/> N <hr/>				
N.W 1:8,14 2:7 name 3:5 names 47:7 nature 25:5 60:4 necessarily 19:10 25:10 64:11 necessary 61:12 62:14 64:7 need 30:3,6 34:6 37:1,1 39:6 51:7 65:19 needed 63:6,8 negotiate 5:17 neighborhood 46:22 never 21:1 33:11 33:13,15 NICK 1:19 note 26:20 47:19 52:12 noted 15:4 notice 24:16 40:22 53:11 57:11 70:9 70:13 71:20 72:2 notion 42:20 notwithstanding				

ongoing 71:3	PARTICIPANT	placarding 39:15	4:17 16:18 28:9	20:10 31:9 39:16
open 19:16 56:9,14	15:14 19:19,22	39:16	29:14 30:4	39:22 40:2,2 44:9
56:17 57:14 69:13	participation 40:10	placards 7:7	premises 47:1	44:11,12 49:11
70:11,21 71:22	particular 16:11	place 12:4 33:1	prepare 23:15 25:7	50:2,14,15 51:18
operate 12:10	53:22	placed 70:14 72:3	41:12,14,21	53:2,12 55:21
operating 18:1,3	parties 3:14 4:10	planned 71:3	preparing 23:10	60:19,22 61:14
operation 39:14	6:13 8:14 10:11	play 10:15 47:9	42:13 43:22	62:1 65:1
operations 62:5	16:20 24:4 39:1	pleadings 47:13	prepping 41:9	protestant 2:21
opinion 48:15	42:22 53:7 64:2	51:21	present 1:17 14:5	16:2 20:21 32:13
64:17	partner 2:16	please 39:10	53:15 63:5	52:19,20 62:16
opportunity 22:20	party 7:17 10:8	Podgornik 3:2,2,6	presented 20:7	protestants 8:1
22:21 29:3 37:12	11:5,9,14 12:1,7	3:6	52:16	20:12,14 21:21
44:19	12:14,15,18,21	point 7:22 9:21	presents 14:6	24:16 33:8 34:10
opposed 21:2 60:16	26:13 52:20 54:9	13:4 15:22,22	president 68:6	37:22 38:4,10
65:4,4 67:8	passed 57:11 70:8	16:17 21:4 22:3	presiding 1:15	43:6 44:1,15 45:1
option 29:6 37:12	71:20	22:10 25:4 27:13	presume 52:14	51:19 52:14 53:4
order 8:14,15,22	passes 60:17 65:5	28:12 30:20,21	pretend 44:10	53:10 54:8 58:6
9:12 15:4 16:1	67:9	33:20 34:1,12	pretty 4:3	58:15 61:9,20
18:4 29:22 30:1	Pause 48:22 69:9	38:8 46:16 48:10	prevented 23:20	62:20,22 66:6
53:20,22 54:1	pay 42:2	51:10 61:18 62:14	previously 9:10	protesting 15:3
63:14	peace 15:4 18:3	63:22 67:16	20:22 51:17 52:11	prove 62:21
ordered 12:6	63:14	pointed 53:1	53:1	provided 22:1
organization 10:8	pedestrian 18:5	Policy 1:7 2:6,15	printing 41:18	24:15 25:2
16:2,4,6,8,10 17:1	pending 9:15	2:18 56:13	probably 40:2,3	provisions 9:1
17:2,2,14 26:6	Penn 2:17,17	portion 54:19	63:20	published 69:19
40:15 41:5 42:1	people 16:3 17:9	position 18:1 22:7	procedural 21:10	70:16 71:7 72:5
other's 47:10	32:22 64:5,8	25:9,11	21:12 32:17	purpose 56:12
ought 29:22 36:10	period 39:15,17	positions 17:12	procedure 5:4 7:22	69:16 71:1
outcome 8:22	44:18 68:8	possibility 28:22	23:4 24:8	pursuant 57:13
OVA 12:22	permission 17:16	possible 28:22	proceed 28:3 44:11	70:11 71:22
overconcentration	person 16:6	36:16	58:3	put 6:1 7:8 19:6
15:5 18:5,10,13	personal 48:1	possibly 34:3	proceeding 9:16	30:5 67:18
<hr/>	personally 63:16	posted 70:13 72:2	10:9,10 43:2	<hr/>
P	PIF 3:11,18 4:15	posture 5:16 44:21	proceedings 25:5	Q
P 3:6	4:20,22 5:5 6:2	potentially 42:12	process 8:7 48:1	question 5:8 15:13
P-E-N-N 2:17	14:19 18:18 20:5	power 53:22 54:2	64:4,13	25:14 28:8 31:7
P-R-O-C-E-E-D-...	20:11 21:13,16,22	practicable 72:6	produce 21:18	37:21 42:10 48:14
2:1	22:3 23:1 24:19	practical 70:17	24:22 28:5 30:18	50:17 58:22
p.m 2:2 37:17,18	25:2,20,21 26:13	precedence 24:8	produces 30:17	questions 16:7,13
57:18,19 72:11	27:1 32:12 33:13	prejudice 22:2,8	proper 10:10 41:21	47:17 53:18 55:22
page 37:7	34:11,18,20 38:12	23:7 32:6 42:4	59:16	69:3
paid 26:6 41:6	42:11,12 43:5	43:11 44:14 58:17	properly 10:11	quiet 15:4 18:4
pardon 48:6	45:2,7,12,14,17	60:7 66:20	protections 18:19	63:15
parking 15:5 18:4	45:19,21 46:9	prejudiced 23:16	18:22 19:5,9	<hr/>
part 9:12 10:2,3	47:5 58:16 60:5	34:10 40:9 44:16	protest 1:7 2:8 5:2	R
11:15,19,19 19:2	PIFs 3:10,22 25:20	46:20	7:12,16,21,21	raise 4:14
19:20,20 30:15	47:10 60:4	preliminary 3:9	11:1,8 13:11	raised 9:19 29:8
				35:5

<p>raising 5:9 Raj 2:14 rationale 59:21 ready 34:15 50:5,9 66:7,7 real 62:6 realized 38:3 really 19:3 32:10 34:8 40:19 62:8 reapply 29:4 39:6 reason 22:4,11 26:11 40:7 44:20 reasonable 27:12 reasons 44:13 56:16 receipt 32:13 receive 4:22 21:13 27:1 45:4,7 received 4:20 7:8 23:1,6 26:16 33:12,13 41:8 45:2,12,14 receiving 23:11 recess 36:18 37:15 56:2 recognized 34:7 recognizing 65:12 reconsider 28:17 29:10,20 50:19 51:2 record 6:7 18:22 26:21 37:17,18,20 57:18,19,21 72:11 Reeves 1:14 regarding 62:9 regards 64:17 Register 69:19 70:16 71:8 72:5 registered 48:2 regs 41:19 regulation 49:14 50:1 regulations 44:4 50:8 71:5 relaxed 9:17 relevant 11:1 relief 4:6 5:9 6:10</p>	<p>6:19,21 11:12 20:13,15 51:19,19 53:8,19,22 54:8 54:11,16 59:16,19 61:11 62:2 remain 7:13 9:14 remedied 15:1 remedies 14:7,21 15:17,19 62:16,17 63:1,2,4,6,8,13 remedy 58:13,20 61:21 reminders 11:2 renew 20:9,21 21:10 28:10 51:14 renewal 1:9 2:9 5:20 7:6,7,12,16 17:22 18:11 21:11 39:4 50:15 62:21 renewed 9:13 11:16 12:5 28:15,16 51:17 renewing 13:13 repeat 36:9 repercussions 39:2 replacarded 40:1 reply 29:3 report 38:2 47:2 reporter 16:16 reports 71:2 represent 7:15 17:2 representative 16:16 17:7 26:21 40:15 43:22 represented 21:20 43:15 representing 2:21 3:1 16:22 37:3 54:7 request 29:20 requested 3:12 4:7 5:19 21:17 54:1 requesting 53:5 require 47:20 required 5:1 32:12 45:3 requirements</p>	<p>21:13 requires 50:2 requiring 49:10,14 residential 15:5 18:4 respect 15:15 34:19 35:14 43:10,19 46:18 48:15 49:21 67:13 respond 21:5 31:20 32:18 42:18 47:3 52:3 63:11 responded 16:13 22:19 response 16:10 22:14,20 23:1 45:13 52:13 53:17 responsible 23:14 34:3 Restaurant 2:15 result 32:1 Retailer 1:8 retrieved 27:2 return 57:15 review 4:20 right 9:5 11:4 12:4 12:18 13:1,8,15 17:19 22:22 24:20 26:1,18 27:14 30:15 31:11 33:4 42:6 46:13 47:17 50:14 55:19 59:9 rise 65:13 rises 27:15 risk 19:15,19 roll 39:19 44:6 56:22 70:1 71:12 room 1:14 57:13 70:14 72:3 rule 49:10,12,14 50:1 rules 26:10,11,12 26:12 45:4 47:11 47:13,20 run 39:18,20 Ruthanne 1:15,18</p>	<p style="text-align: center;">S</p> <p>SA 3:12,13 4:8,9 12:21 19:20 53:6 53:7 Sadly 38:1 safety 18:5 said-she 27:11 SAs 12:18 satisfactory 14:11 satisfied 9:3 saying 8:9 10:1 11:7 12:16 13:7,9 27:1 30:2 31:8 43:6 44:4,5 59:16 says 4:7 27:22 28:5 47:6 schedule 39:20 SDCA 2:21 3:1,3 3:11 6:14 7:4 11:5,8,22 second 29:12 56:18 56:19 58:9,10 61:3,4 67:2,3 69:20,21 71:9,10 seconded 35:7,12 35:19 56:21 58:12 60:11 64:20 70:2 71:13 Section 56:9,14,16 69:13 70:20 see 13:5 19:10,16 22:2,5 24:5 25:4 26:22 27:20 36:11 38:7 44:20 54:4 62:12 68:20 seek 8:20 15:15 53:10,11 56:2 seeking 4:6 5:10,15 6:2 8:17 10:4 13:10 14:19 15:9 20:13,15 21:9 50:9 53:18 54:8,9 54:10 56:12 61:10 61:22 63:1 69:16 71:5 seeks 52:20 seen 42:11</p>	<p>send 4:15 25:18,19 26:2 sending 26:8 sent 24:3,18 45:17 46:9 separate 10:22 separately 58:2 September 1:12 69:20 71:8 72:8 serve 5:5 26:12 32:12 33:17 38:12 59:17 served 5:1 21:16 22:5,9 26:14,22 33:7,15 34:17 37:4 38:4 40:21 47:21 53:3 58:7 server 48:1 service 35:1 37:21 47:20 49:10 serving 32:4 set 28:7 settlement 5:17 7:1 9:9 10:2,5,13 11:14,15,18 12:1 12:3 15:10 19:1 41:5 52:21 62:10 seven 5:2 21:13 26:12 45:7 severely 25:6 Shaw 3:18 17:21 short 8:12 44:18 shortly 57:15 68:19 show 41:20 sick 23:20 sign 4:8 40:20 41:4 42:21 43:7 53:5 signatories 6:11 18:19 signatory 6:14 Silverstein 1:22 18:9 25:14,16,17 28:19,21 30:21 31:6 36:22 51:9 56:1,19,21 57:6,7 61:4 63:12,18,19 64:15 67:3 70:5,6</p>
---	--	---	---	---

71:10,16,17
simply 44:22
sir 14:1
sit 16:5 30:9
situation 27:11
 32:9
slightly 17:12
smart 24:1
sole 20:21
son 23:19 42:5
soon 21:19
sorry 3:4,15 20:1
 50:13 66:11 68:22
sought 51:19
sounded 62:7
speak 7:2 10:18
 13:20 17:11,14,16
 34:7,19 52:2
 58:22 61:6 62:13
speaking 16:3
 38:22
specific 49:10 50:1
 54:15,22 55:14
spelled 51:20
spend 8:5 64:7
spent 34:8 47:17
spoke 22:19 24:12
spoken 36:9
staff 26:7
standard 43:20
start 2:10
started 41:9
stated 10:21 25:2
 53:17 65:10
statement 54:6
status 10:21 11:9
 43:13,15 52:17,17
statute 9:9 54:19
 63:15
stay 7:10 13:12
step 32:16
Sterling 21:17
 26:20 27:3,6,9
 40:13 45:11,16
 46:13,14 68:7,12
stop 48:14
streamline 64:3,13

Street 1:8,14 2:7
strictly 34:19
submit 20:18 44:14
 49:20
submitted 40:3
subsequent 31:15
suffice 54:7
sufficient 60:7
suggest 44:16
 62:16 63:4
suggested 47:15
suggestion 31:21
 52:1,6
suitable 54:12
summary 47:6
Sunday 67:17
support 46:21
supposed 47:22
sure 4:5 12:12 16:9
 17:10 22:8 24:9
 25:10 31:2 38:18
 58:16
surprise 43:11,18
surprises 43:21

T

T-A-N-I 2:15
t/a 1:7
table 11:4 17:9
 59:7 60:1 64:20
take 18:12 29:21
 31:18 32:15 36:18
 37:15 50:11 56:22
 69:22 71:11
taken 17:12 31:19
 32:8
talk 3:9 29:22
 48:19
talking 32:22
technical 47:13
telegram 48:2
term 55:5
termination 10:9
 11:3 13:10 20:19
 29:5 62:10
terms 3:13 4:8
 18:20 20:12,13,14

23:14 43:21 44:3
 53:6 54:3 55:4
testimony 15:6,20
 47:7,8 62:18
t 1:5,10
thank 14:16 25:12
 25:13 35:21 36:2
 42:16 45:5 48:21
 68:2 69:2,5,7,8
thing 8:6 18:17
 26:20
things 23:13 26:8
 41:19 47:1
think 3:21 9:3,8,20
 9:22 10:10 13:6
 16:19 21:7 23:22
 27:12,15,21 28:14
 28:15 29:13,21
 30:3,19 31:2,14
 33:5 34:7 36:10
 38:17 40:19 41:3
 42:12 47:17 48:11
 51:9,17 55:10
 58:12,14,19 60:6
 61:8,12,13,22
 62:4,11,14 63:15
 63:16 65:14 67:12
 68:18
thinking 41:10,20
 46:21
thought 43:6 44:5,6
 44:8 45:15 49:3
 66:9,18
three 3:14 4:9 16:3
 17:11 53:7
three-minute 36:18
Thursdays 67:19
Tiffany 2:17
time 4:13 8:5 30:16
 34:8 39:15,21
 41:21 44:18 46:17
 47:18 51:11 52:4
 60:5 64:7 69:1
timely 5:6 26:8
 70:17 72:5
today 12:13 17:21
 20:8,13 27:1

41:17 42:5 47:3
 59:4 61:20 69:4
tonight 65:9
totally 31:18
touch 67:12,22
 68:19
town 68:13
transcript 20:6
travel 40:14
true 32:11
trying 5:16 24:9
 25:22 37:4 41:19
turn 38:22 52:5
 53:13 54:18
turned 23:19
two 17:8 25:18,19
 25:20 29:4 31:16
 33:7 41:2 43:10
 47:9 52:1,3 57:15
 57:22 64:8,13
 67:17,18
two-day 32:13
typically 47:14

U

unable 23:9
unambiguous
 36:15
understand 10:16
 12:15,16 13:1
 31:11 32:2 66:21
understood 10:15
 25:8,11 37:2
 43:14
unsuccessful 5:18
 36:20
upset 34:2
usual 39:18

V

vague 62:1
valid 62:7
valuable 46:17
verification 24:22
versus 48:16
view 65:14
violations 71:4
voices 17:11

voluntary 7:5,9,12
 8:2 9:10 10:13
vote 28:17 50:13,16
 57:15 59:10 61:18
 67:20 70:1,9
 71:12
voted 28:11 29:10
 50:18
voting 59:15 60:8
 63:20

W

wait 16:21 27:18,20
 29:12,17 30:9
 32:19 64:6
walk 44:10
want 4:5,11 6:17
 7:9,14,15 8:5 11:2
 11:12,13 12:22
 13:11,12,16,17
 14:4,14 15:18
 16:8 17:10,20
 18:15,16,21 19:4
 19:9,12 29:9,16
 30:9 35:3 37:6,9
 38:16,17,21 42:18
 46:10,15 47:10
 48:14 51:2 54:6
 55:4,9 58:4,21
 66:20
wanted 8:10,19
 25:10 28:12 31:18
 54:21 55:1 61:17
 67:20
wants 16:8 28:10
 28:16 36:17 52:8
 62:2
Washington 1:14
wasn't 22:9 35:9,12
 35:19 58:16 63:3
 63:12
way 4:3 7:20,21
 12:9 19:11 27:3
 27:17 28:15 36:12
 51:14 58:15 64:3
 68:10
we'll 19:16 20:2

36:22 37:1	<hr/> Z <hr/>	5th 33:15,20		
we're 6:1 7:14 9:3				
9:8 26:20 29:13	<hr/> 0 <hr/>	<hr/> 6 <hr/>		
29:21,22 30:2	0 65:6	6:08 57:19		
31:3 33:2,2 37:7		6:23 72:11		
37:19 52:4 58:2	<hr/> 1 <hr/>	<hr/> 7 <hr/>		
59:14 66:6	11 38:3	76804 1:9 2:8		
we've 26:18 31:4	13-PRO-00062			
34:8,22	1:10 2:6 56:13			
website 70:15 72:4	14th 1:8,14 2:7			
Wednesday 24:18	18th 40:21 41:9,10			
Wednesdays 67:19	1904 1:8 2:7			
week 22:5 44:17	<hr/> 2 <hr/>			
64:6	2000 1:14			
weekend 23:8,9,18	2010 56:10,15,17			
23:20	57:14 69:14 70:12			
weeks 67:17	70:21 72:1			
welcome 6:10 36:5	2013 1:12 20:8			
66:13	69:16,19,20 71:1			
went 27:13 37:17	71:7,8 72:8			
37:17 45:19,22	25 1:12			
46:2,4,7 57:18,18	25th 72:8			
72:11	2B 2:8			
weren't 47:21	2nd 69:16,19 71:1			
wish 50:18	71:7			
wishes 51:11	<hr/> 3 <hr/>			
withdraw 35:20	3-0-0 70:9			
witness 41:15	30th 69:20 71:8			
witnesses 23:15	31st 20:7			
41:12,15 43:11,12	<hr/> 4 <hr/>			
47:6	4-0-1 50:16			
wondering 46:20	4-1 65:5			
work 64:3,12	4:31 2:2			
working 24:22	405 56:9,14 69:13			
workload 64:1	70:20			
world 44:20	405(b)(13) 56:16			
worry 16:20	45 39:19			
wouldn't 8:13	48 45:2,3			
22:10 28:2 40:2	<hr/> 5 <hr/>			
44:9,10	5-0-0 57:11 60:17			
wow 41:3	67:9			
writing 21:1	5:06 37:17			
<hr/> X <hr/>	5:23 37:18			
<hr/> Y <hr/>	5:44 57:18			
year 40:4				
years 38:3				