

Capital Reporting Company
In the Matter of: District of Columbia CVS Pharmacy, LLC 10-09-2012

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DISTRICT OF COLUMBIA

ALCOHOLIC BEVERAGE CONTROL BOARD

MEETING

-----:
IN THE MATTER OF: :
 :
District of Columbia CVS :
Pharmacy, LLC :
CVS Pharmacy #1354 :
2601 Connecticut Avenue, NW :
Retailer B : Roll Call
License No. ABRA-088912 : Hearing
Case No. 12-PRO-00078 :
New Application :
-----:

October 9, 2012

The Alcoholic Beverage Control

The Board's Agent met in the Alcoholic Beverage Control
Hearing Room, Reeves Building, 2000 14th Street, N.W.,
Washington, D.C.

PRESENT

LAVERNE FLETCHER, Board's Agent

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

2 10:04 a.m.

3 MS. FLETCHER: Would the parties in the
4 matter of CVS Pharmacy please come forward? This is
5 Case No. 12-PRO-00078, District of Columbia CVS
6 Pharmacy, LLC, trading as CVS Pharmacy No. 1357, 2601
7 Connecticut Avenue, N.W., License No. ABRA-088912.
8 This is a Retailer Class B new license application.
9 The protest issues are adverse impact on peace, order,
10 and quiet; and residential parking, and vehicular and
11 pedestrian safety; and real property values.

12 My name is LaVerne Fletcher and I'll be
13 conducting the roll call hearing as the Board's Agent
14 pursuant to DC Official Code 1601.2.

15 Introductions beginning with the applicant?

16 MR. PASCAL: Good morning, ma'am. This is
17 Paul L. Pascal of Pascal & Weiss representing the
18 applicant.

19 MR. GOAD: My name is Vernon Goad with CVS
20 Pharmacy.

21 CHAIRPERSON MILLER: Can you spell your name
22 for the record, please?

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1 MR. GOAD: V-E-R-N-O-N, last name will be
2 Goad, G-O-A-D.

3 CHAIRPERSON MILLER: G-O-A-D?

4 MR. GOAD: Yes.

5 CHAIRPERSON MILLER: Thank you, Mr. Goad.

6 And present on behalf of the protestants?

7 MR. REBA: Good morning. My name is Lee
8 Brian Reba, that's L-E-E, capital, "B," as in, "Boy,"
9 R-I-A-N, last name Reba, R, "E," as in, "Edward," "B,"
10 as in, "Boy," "A," as in, "Apple." I am the
11 commissioner for 3C01.

12 MS. FLETCHER: Okay. Thank you, Mr. Reba.
13 You're here on behalf of ANC 3C01 -- ANC 3C?

14 MR. REBA: Yes.

15 MS. FLETCHER: Thank you. And your name is?

16 MS. MORILLO: Ruth Ellis Morillo.

17 MS. FLETCHER: Could you spell it for the
18 court reporter, please?

19 MS. MORILLO: Ruth, R-U-T-H, Ellis, E-L-L-I-
20 S, Morillo, M-O-R-I-L-L-O.

21 MS. FLETCHER: Thank you. You name, ma'am?

22 MS. WEAVER: Hello. My name is Penny Weaver,

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1 P- E-N-N-Y, last name, W-E-A, "V," as in, "Victor," E-
2 R.

3 MS. FLETCHER: And are there any other
4 members from your protestant group present today?

5 MS. MORILLO: Yes.

6 MS. FLETCHER: If everyone would line up
7 behind you, Ms. Morillo? There's a microphone right
8 there on the table. If you would just line up behind
9 Ms. Morillo and state your name and spell it for the
10 court reporter? Your name, sir?

11 MR. MOHAMMADI: My name?

12 MS. FLETCHER: Yes.

13 MR. MOHAMMADI: My name is Sam Mohammadi, M-
14 O-H-A-M-M-A-D-I.

15 MS. FLETCHER: M-O --

16 MR. MOHAMMADI: H-A-M-M-A-D-I.

17 MS. FLETCHER: M-O-H-A-M-M --

18 MR. MOHAMMADI: A-D-I.

19 MS. FLETCHER: A-E --

20 MR. MOHAMMADI: I.

21 MS. FLETCHER: I. And what's the first name,
22 Sam?

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1 MR. MOHAMMADI: Sam.

2 MS. FLETCHER: And did you sign the protest
3 letter?

4 MR. MOHAMMADI: Yes.

5 MS. FLETCHER: Thank you very much.

6 MR. LEWIS: Good morning. My name's Wade
7 Lewis, W-A-D-E, last name, Lewis, L-E-W-I-S.

8 MS. FLETCHER: And Mr. Lewis, did you sign
9 the protest letter?

10 MR. LEWIS: Yes.

11 MS. FLETCHER: Thank you. Ready.

12 MR. ARCANGELI: My name is Federigo
13 Arcangeli.

14 MS. FLETCHER: What's the --

15 MR. ARCANGELI: It's name, F-E-D-E-R-I-G-O,
16 last name, A-R-C-A-N-G-E-L-I.

17 MS. FLETCHER: Oh, can you state your first
18 name and spell it again for me? I missed it. Thank
19 you. Your first name?

20 MR. ARCANGELI: My first name is F-E-D-E-R-I-
21 G-O.

22 MS. FLETCHER: Thank you very much. Did you

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1 sign --

2 MR. ARCANGELI: Thank you.

3 MS. FLETCHER: -- did you sign the protest
4 letter?

5 MS. WEAVER: She's asking if you signed the
6 letter.

7 MR. ARCANGELI: Signing letter?

8 MS. WEAVER: You signed the letter. She's
9 asking you to confirm.

10 MR. REBA: Did you sign?

11 MR. ARCANGELI: I sign. Yeah, I mean, you
12 (inaudible).

13 PARTICIPANT: Yes, he signed the letter.

14 MS. FLETCHER: I just wanted to get an
15 affirmative response. Thank you. Thank you very much.
16 That's fine.

17 MR. ARCANGELI: Okay.

18 MS. FLETCHER: Thank you.

19 PARTICIPANT: It's okay. You're good.

20 MS. FLETCHER: Thank you very much.

21 MS. WHITING-ELLIS: Good morning.

22 MS. FLETCHER: Hi.

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1 MS. WHITING-ELLIS: My name is Sammie, S-A-M-
2 M- I-E. My last name is Whiting-Ellis, W-H-I-T-I-N-G,
3 hyphen, E-L-L-I-S.

4 MS. FLETCHER: Thank you, Ms. Whiting-Ellis.
5 And did you sign the protest letter?

6 MS. WHITING-ELLIS: Yes, I did.

7 MS. FLETCHER: Thank you.

8 MR. HARMON: Hi. My name is Raymond, R-A-Y-
9 M-O- N-D, Harmon, H-A-R-M-O-N.

10 MS. FLETCHER: And did you sign the protest
11 letter, Mr. Harmon?

12 MR. HARMON: Yes. And my partner signed as
13 well and wrote a letter.

14 MS. FLETCHER: And did he sign the protest
15 letter as well?

16 MR. HARMON: Yes.

17 MS. FLETCHER: Thank you very much. I have a
18 -- this letter of summary -- okay -- designates Raymond
19 Harmon as the representative for Michael Miller. And
20 Michael is M-I-C-H-A-E-L, and Miller is M-I-L-L-E-R.
21 And Mr. Harmon, Michael Miller also signed the protest
22 letter?

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1 MR. HARMON: Yes.

2 MS. FLETCHER: Thank you very much.

3 MR. CLIFTON: My name is Robert Clifton, last
4 name, C-L-I, "F," as in, "Frank," T-O-N.

5 MS. FLETCHER: And you signed the protest
6 letter, Mr. Clifton?

7 MR. CLIFTON: Yes, ma'am. I did.

8 MS. FLETCHER: Thank you very much.

9 MR. DORCH: Good morning.

10 MS. FLETCHER: Good morning.

11 MR. DORCH: My name's Timothy Dorch.

12 MS. FLETCHER: What's the first name?

13 MR. DORCH: Timothy.

14 MS. FLETCHER: Could you spell that for the
15 reporter?

16 MR. DORCH: Sure, T-I-M-O-T-H-Y.

17 MS. FLETCHER: And what's the last name?

18 MR. DORCH: Dorch, D-O-R-C-H.

19 MS. FLETCHER: D-O-R-C-H?

20 MR. DORCH: Yep.

21 MS. FLETCHER: Okay. Mr. Dorch, have you
22 signed the protest letter?

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1 MR. DORCH: Yes, I did.

2 MS. FLETCHER: Thank you very much.

3 MS. ANDREWS: Tina Andrews, T-I-N-A, A-N-D-R-
4 E-W-S.

5 MS. FLETCHER: And you signed the protest
6 letter, Ms. Andrews?

7 MS. ANDREWS: Yes.

8 MS. FLETCHER: Thank you. Okay.

9 MR. PORCARO: Edward Porcaro, P-O-R-C-A-R-O.

10 MS. FLETCHER: And the first name is Edward?

11 MR. PORCARO: Edward.

12 MS. FLETCHER: And Mr. Porcaro, did you sign
13 the protest letter?

14 MR. PORCARO: Yes, I did.

15 MS. FLETCHER: Thank you very much. There
16 are two protestants in this matter. ANC 3C is a
17 protestant and has standing as a protestant. And then
18 we have a group of approximately 113 being represented
19 by Ruth Ellis-Morillo and Penny Weaver. Your group has
20 standing as protestants.

21 MR. PASCAL: I believe that sets a record for
22 me, Ms. Fletcher.

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1 MS. FLETCHER: Yes. That --

2 MR. PASCAL: A hundred and eight was my past
3 record.

4 MS. FLETCHER: Yes, that is a record. There
5 are 13 individuals present today from your protestant
6 group and that includes Mr. Miller. And what that
7 means is that at the upcoming status hearing, only the
8 designated representatives need to appear. At the
9 point of the status hearing, there's a requirement that
10 the ABC Board has seen at least five members from your
11 protestant group.

12 But because 13 are present today, at the
13 upcoming status hearing -- I'll give you the date for
14 that in a moment -- only one or both of you need to
15 attend if you want. Only one's required. I'll give
16 you the dates for the upcoming status hearing,
17 protestant hearing and we've also got to have a
18 mediation prior to the status hearing.

19 The date of the status hearing is November
20 the 14th.

21 MR. PASCAL: Ms. Fletcher, I will be out of
22 the country and not coming back until actually the 16th

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1 of November.

2 MS. FLETCHER: Okay.

3 MR. PASCAL: So if you could push that back a
4 week or so?

5 MS. FLETCHER: Mr. Pascal, could you -- I'll
6 inform the Board of that. Could you make a written
7 request to Martha Jenkins to that effect?

8 MR. PASCAL: November 14th is what you have?

9 MS. FLETCHER: Yeah, November 14th --

10 MR. PASCAL: Okay.

11 MS. FLETCHER: -- at 9:30 is the date that I
12 have. That's the date that I've got to provide today
13 because that's the date I was given for the Board's
14 calendar.

15 MR. PASCAL: Actually I can have my associate
16 come down for the status hearing. So

17 MS. FLETCHER: Okay. Well, then -- okay.
18 That will be --

19 MR. PASCAL: Yeah, right.

20 MS. FLETCHER: -- perfect.

21 MR. PASCAL: Okay.

22 MS. FLETCHER: So then we're all set then for

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1 November 14 at 9:30. That's for the status hearing.

2 The protest hearing is set for February 13, 2013 at
3 1:30 p.m. I'll give you some dates that available for
4 mediation to occur prior to November 14.

5 MR. PASCAL: Could they be the dates prior to
6 -- I'm leaving the country on the 26th.

7 MS. FLETCHER: Okay. The 26th of October is
8 when you're leaving, Mr. Pascal?

9 MR. PASCAL: I'm leaving, yeah. So

10 MS. FLETCHER: Okay. Let me see what's
11 available before the 26th of October. Monday, the
12 15th, is available at 1:00 in the afternoon. I'll keep
13 going.

14 MR. PASCAL: Yeah, I'm coming back --

15 MS. FLETCHER: Okay.

16 MR. PASCAL: -- from New York that day. I'm

17 MS. FLETCHER: Wednesday, the 17th, is
18 available at 9:00, 10:00, 11:00 or 1:00.

19 MR. PASCAL: 9:00 is fine.

20 MS. FLETCHER: And the 17th, does that work
21 for you, Mr. Reba?

22 MR. REBA: No. And I'm not even clear what

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1 month you're referencing.

2 MS. FLETCHER: We're in October.

3 MR. PASCAL: October.

4 MS. FLETCHER: We're just -- I'm looking at
5 dates prior to October 26th. So I'll keep moving. But
6 Mr. Reba, October 17th is not good for you?

7 MR. REBA: Not at 9:00.

8 MS. FLETCHER: Okay.

9 MR. PASCAL: Well, I'm -- any time that day
10 is actually --

11 MS. FLETCHER: It could be 9:00, 10:00, 11:00
12 or 1:00.

13 MR. REBA: Just for clarification for those
14 that are in the room as well as the residents,
15 protestants --

16 MS. FLETCHER: Uh-huh.

17 MR. REBA: -- representatives, when you're
18 referencing status hearing, you're really referencing
19 mediation?

20 MS. FLETCHER: No.

21 MR. PASCAL: No.

22 MR. REBA: No?

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1 MS. FLETCHER: No. What --

2 MR. PASCAL: Mediation is a separate --

3 MR. REBA: May I have Ms. Fletcher, please?

4 MS. FLETCHER: Yes. The status -- the status
5 hearing is -- well, let me start with the mediation.
6 The purpose of the mediation is for you to meet with
7 the Board's mediator in an attempt to resolve this
8 protest. If you are able to do that and you enter into
9 a voluntary agreement that resolves all of your
10 concerns, then there would not be a need for a status
11 hearing.

12 But if the matter is not resolved, at the
13 status hearing the purpose is to inform the Board of
14 the outcome of the mediation. Is this --

15 MR. REBA: And how long --

16 MS. FLETCHER: Hmm?

17 MR. REBA: And generally if a resolution has
18 not been -- has not been met and I unfortunately -- I
19 don't want to be a pessimist -- I don't want to be
20 pessimistic but based on the facts before me and the
21 calls and emails and all concerned, I unfortunately
22 don't see a resolution at this point.

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1 MS. FLETCHER: Uh-huh.

2 MR. REBA: I'm absolutely willing to go
3 through the process, come to mediation, discuss these
4 concerns, discuss the issues and, of course, be as
5 flexible as possible.

6 MS. FLETCHER: Uh-huh.

7 MR. REBA: But there are some issues on the
8 table that I don't see being resolved based on the
9 facts.

10 MS. FLETCHER: Uh-huh.

11 MR. REBA: So with that being said, if at the
12 status hearing -- if the -- if mediation is not
13 favorable and we come to the status hearing, how long
14 do you think we would be here? And I ask you that
15 because the 17th is a full day. And I can probably
16 work this in if you think we'd be here for an hour.

17 MS. FLETCHER: You would be here -- I don't
18 know how many status hearings are on the Board's
19 calendar right now but status hearings go by very fast.
20 They last a couple minutes because all you're going to
21 do is report to the Board that you participated in
22 mediation because that is mandatory.

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1 MR. REBA: Right.

2 MS. FLETCHER: And then you'll tell them that
3 you've resolved the matter or not. And then they will
4 restate the protest date of February 13. If, when you
5 show up for the status hearing, there is a possibility
6 still that the matter could be resolved in mediation
7 but it has not yet, you have until the protest hearing
8 date to continue your efforts.

9 But the purpose of the status hearing is
10 we're to tell the Board the results of the mediation.
11 But as I stated, if you resolve in the mediation,
12 somehow -- although you don't expect to -- but if you
13 are able to do that prior to the status hearing and you
14 submit a voluntary agreement to the Board for review,
15 then the status hearing would be cancelled, as well as
16 the protest hearing.

17 MR. REBA: Right. Well, unfortunately, we
18 cannot enter mediation regarding the status of whether
19 or not they are a full-service grocery store. Under
20 the law, they're not. I cannot enter into a voluntary
21 agreement, not can anybody enter into a voluntary
22 agreement regarding a code or regulation within the

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1 District of Columbia. That would be superseding the
2 laws of the District.

3 So one of the issues on the table, aside from
4 peace, order and noise, which the residents are
5 protesting, the ANC, while our -- is focusing on well
6 as peace, order and noise as a secondary issue, the
7 primary issue is whether or not CVS qualifies under the
8 law as a full-service grocery store. And that's
9 something that cannot be discussed during mediation.

10 MS. FLETCHER: Yeah, that is not negotiable
11 at all. That's an ABC Board decision. None of us can
12 --

13 MR. PASCAL: And the -- well, the Board has
14 already issued an advisory opinion.

15 MS. FLETCHER: Well, yeah, the Board has
16 issued an advisory opinion with respect to that. That
17 is -- that is not an issue that can be mediated at all.
18 And so your challenge is to whether or not the Board
19 has the authority to issue this license to CVS as a
20 full-service grocery store? That's the issue of the
21 ANC primarily?

22 MR. REBA: Correct.

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1 MS. FLETCHER: Yeah, that's -- that does not
2 meet the -- that's non-negotiable with respect to
3 mediation. So that's fine. We still have to go
4 through the mediation process. And that's something
5 you can challenge of the ABC Board beyond mediation.
6 You may have to go through the motions anyway, just see --

7 MR. REBA: Right. Understood.

8 MS. FLETCHER: -- what we can do. But I do
9 understand that's an issue for the ANC. And --

10 MR. PASCAL: That indicates to me that
11 mediation may be short.

12 MS. FLETCHER: Yes. In that case, mediation
13 could be very short. That -- or if you get there and
14 decide there are some issues you'd like to resolve,
15 you're -- we can do that at that time. But it's not
16 mandatory that you resolve the matter of course, just
17 that you appear for the mediation. Any other concerns,
18 Mr. Reba?

19 MR. REBA: No, Ms. Fletcher. Thank you.

20 MS. FLETCHER: Uh-huh. Ms. Morillo, Ms.
21 Weaver, is October 17 -- Ms. Weaver, is October 17 good
22 for you? I didn't ask if it's good for you.

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1 MR. REBA: After.

2 MS. FLETCHER: It could be at 9:00, 10:00,
3 11:00 or 1:00. The 18th is also available.

4 MR. PASCAL: That's fine for me also.

5 MS. FLETCHER: The 18th is good -- is also
6 available if that would be better, which is Thursday.

7 MR. REBA: Okay. Would you bear with me for
8 one moment?

9 MS. FLETCHER: Yeah.

10 MR. REBA: I apologize.

11 MS. FLETCHER: Yeah.

12 MR. REBA: I just need to confirm. I -- bear
13 with me for one second.

14 MS. FLETCHER: Okay.

15 MR. REBA: I just need to apologize.

16 MS. FLETCHER: And Mr. Reba, just to throw
17 that out there for you to consider, the 17th, 18th and
18 19th are available, that Wednesday, Thursday, and
19 Friday.

20 MR. PASCAL: Midday on the 19th is bad but
21 certainly in the afternoon or first thing in the
22 morning.

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1 MS. FLETCHER: Okay.

2 MR. REBA: Ms. Fletcher, I apologize --

3 MS. FLETCHER: Yeah.

4 MR. REBA: -- for the delay. Mr. Pascal, I
5 apologize to you as well for the delay. That week at
6 UDC is homecoming.

7 MS. FLETCHER: Uh-huh.

8 MR. REBA: And there's a lot of activities
9 that I'm overseeing and responsible for that week. And
10 I was trying to pull up the conflict that I had on the
11 17th. So I'm going to ask you as well as Mr. Pascal if
12 the 18th works for you because I believe I have more
13 flexibility on that day.

14 MR. PASCAL: The 18th?

15 MS. FLETCHER: It works for me.

16 MR. PASCAL: All day 18th is fine.

17 MR. REBA: Okay.

18 MS. FLETCHER: 9:00, 10:00, 11:00, 1:00,
19 anytime -- either one of those times or any time in-
20 between is good.

21 MR. PASCAL: 10:00 would -- starting at 10:00
22 would be okay.

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1 MR. REBA: Oh, well, I was going to say I
2 have morning appointments that day. I could -- we
3 could be here at 11:00.

4 MR. PASCAL: That's fine.

5 MR. REBA: And that works for --

6 MS. FLETCHER: Is that good?

7 MR. REBA: -- the party -- yeah.

8 MR. PASCAL: 11:00 is fine.

9 MS. FLETCHER: Okay.

10 MR. PASCAL: 11:00 a.m. on the 18th.

11 MS. FLETCHER: Yes. 11:00 a.m. on the 18th.

12 MR. REBA: Oh, that's October 18th?

13 MS. FLETCHER: Yes.

14 MR. PASCAL: Yes.

15 MR. REBA: Yeah, okay. October 18th. And
16 then November 14th is the status hearing?

17 MS. FLETCHER: Yes.

18 MR. PASCAL: Correct. And I'll have my
19 associate attend that.

20 MS. FLETCHER: Okay. And the mediation takes
21 place here, maybe in this room, but you can just check
22 in with the receptionist and we'll -- I'll take you

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1 wherever we're going to be but most likely, right here
2 in this room.

3 MR. REBA: Okay.

4 MS. FLETCHER: Okay. So we're set.

5 MR. PASCAL: Thank you.

6 MS. FLETCHER: Any questions at all? Thank
7 you for coming. Oh, and one other thing before we go
8 off the record. The designated -- this is with respect
9 to the group you're representing, Ms. Morillo and Ms.
10 Weaver. For the purpose of mediation, only the
11 designated representatives need to -- need to come or
12 either one of you. If there are any other members from
13 the group that would want to come, of course they could
14 come.

15 But we would want one of the designated
16 representatives at the table so to speak, as opposed to
17 everybody.

18 MS. MORILLO: Okay. Thank you.

19 MS. FLETCHER: I just wanted to let you know,
20 anybody is welcome to come.

21 MS. MORILLO: Okay. Thank you.

22 MR. PASCAL: Thanks a lot.

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1 MS. FLETCHER: Okay. Roll call hearing

2 concluded. Thank you.

3 (WHEREUPON, at 10:25 a.m., the hearing was

4 concluded.)

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CERTIFICATE OF NOTARY PUBLIC

I, BRADLEY ANGLIN, the officer before whom the foregoing hearing was taken, do hereby certify that the testimony appearing in the foregoing transcript was recorded by me and thereafter reduced to typewriting under my direction; that said transcription is a true record of the testimony given by said parties; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

BRADLEY ANGLIN

Notary Public in and for the
District of Columbia

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CERTIFICATE OF TRANSCRIPTION

I, MIRANDA PENNACHI, hereby certify that I am not the Court Reporter who reported the following proceeding and that I have typed the transcript of this proceeding using the Court Reporter's notes and recordings. The foregoing/attached transcript is a true, correct and complete transcription of said proceeding.

Date

MIRANDA PENNACHI

Transcriptionist

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