

Capital Reporting Company

In the Matter of: Island Cafe, Inc. 07-11-2012 - Summary Suspension Status Hearing

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DISTRICT OF COLUMBIA

ALCOHOLIC BEVERAGE CONTROL BOARD

MEETING

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IN THE MATTER OF: :
 :
Island Cafe, Inc. :
t/a Island Cafe :
829 Upshur Street, NW :
Retailer CT : Summary Suspension
License No. 60578 : Status Hearing
ANC 4C :
Case No. 12-251-00104 :
Update from Licensee on :
Compliance with Board Order :
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July 11, 2012

The Alcoholic Beverage Control

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

PRESENT

RUTHANNE MILLER, Chairperson

NICK ALBERTI, Member

DONALD BROOKS, Member

HERMAN JONES, Member

CALVIN NOPHLIN, Member

MIKE SILVERSTEIN, Member

ALSO PRESENT

MICHAEL STERN, OAG

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<p style="text-align: right;">2</p> <p>1 P R O C E E D I N G S</p> <p>2 11:23 a.m.</p> <p>3 CHAIRPERSON MILLER: Okay. We can now move</p> <p>4 on now to Case No. 12-251-00104, Island Cafe. This is</p> <p>5 a summary suspension status hearing. And the parties</p> <p>6 would introduce themselves for the record.</p> <p>7 MR. STERN: Good morning. Michael Stern</p> <p>8 sitting in for Amy Schmidt with District of Columbia.</p> <p>9 MR. FONSECA: Michael Fonseca on behalf of</p> <p>10 the Licensee. With me is the president/principal,</p> <p>11 Nevaldo Bailey.</p> <p>12 CHAIRPERSON MILLER: Okay. Okay. In this</p> <p>13 case there was a summary suspension hearing and the</p> <p>14 Board accepted an OIC, which included certain terms.</p> <p>15 And it's, I guess, my expectation that you will be</p> <p>16 addressing the compliance with those terms.</p> <p>17 MR. FONSECA: Yes. All those terms, which</p> <p>18 included submitting a new security plan and having the</p> <p>19 security training occurred in April. The security</p> <p>20 trained -- by email to ABRA staff and to Amy Schmidt, I</p> <p>21 submitted a letter from POST training, who's principal</p> <p>22 was here testifying earlier this morning, that listed</p>	<p style="text-align: right;">4</p> <p>1 time we were before the Board. And by and far, you</p> <p>2 know, the business is not doing well. But we have</p> <p>3 complied with the requirements of the -- within the</p> <p>4 summary suspension. You know, that matter actually has</p> <p>5 a show causes before the Board next Wednesday.</p> <p>6 CHAIRPERSON MILLER: Okay. I just have a</p> <p>7 quick question. You submitted a revised security plan,</p> <p>8 correct?</p> <p>9 MR. FONSECA: Yes.</p> <p>10 CHAIRPERSON MILLER: Was that done in</p> <p>11 consultation with OAG or did anybody else review that?</p> <p>12 MR. FONSECA: Well, OAG was copied on it.</p> <p>13 And as I said, it was April 24th.</p> <p>14 CHAIRPERSON MILLER: Right.</p> <p>15 MR. FONSECA: And I've had no -- other than</p> <p>16 an acknowledgement by Jonathan Berman on the General</p> <p>17 Counsel staff of receipt that the reviewed -- I've had</p> <p>18 no comments coming back from the Office of the Attorney</p> <p>19 General. I think after, you know --</p> <p>20 CHAIRPERSON MILLER: Okay.</p> <p>21 MR. FONSECA: -- two month now that that's</p> <p>22 presumably then acceptable.</p>
<p style="text-align: right;">3</p> <p>1 the names of seven individuals, including Mr. Bailey,</p> <p>2 who had -- who had participated and completed the</p> <p>3 training, which occurred, I believe, on April 2nd and</p> <p>4 3rd.</p> <p>5 I do have now copies of certificates, if you</p> <p>6 need those. But know a letter was submitted, if that</p> <p>7 serves the purpose, because it is certification of the</p> <p>8 training and the nature of the training. But the</p> <p>9 security plan was submitted along with the PDF</p> <p>10 attachment of the -- of the letter on the training by</p> <p>11 email from the staff and to the Office of the Attorney</p> <p>12 General April 24th.</p> <p>13 We have not had further communication on any</p> <p>14 concerns with the issue of the security plan. And</p> <p>15 since that time, the business has been operating at</p> <p>16 limited levels and really has not engaged in further</p> <p>17 entertainment activities just because it's -- at this</p> <p>18 point, the business is not doing well at all.</p> <p>19 BOARD MEMBER: I'm sorry, speak a little</p> <p>20 louder. I can't hear you.</p> <p>21 MR. FONSECA: Yeah, just, you know, the</p> <p>22 entertainment activities have ceased since the last</p>	<p style="text-align: right;">5</p> <p>1 CHAIRPERSON MILLER: Mr. Stern?</p> <p>2 MR. STERN: Ms. Schmidt did not note any</p> <p>3 issues that she had with the security plan. She has</p> <p>4 gotten it and reviewed it appears legal -- requirements</p> <p>5 that were put into place after the summary suspension</p> <p>6 hearing.</p> <p>7 CHAIRPERSON MILLER: Okay. Do you have any</p> <p>8 concerns with any other aspects with the plan?</p> <p>9 MR. STERN: No. In fact, all the</p> <p>10 representations that Mr. Fonseca made were also made to</p> <p>11 Ms. Schmidt. And she's prepared for the show cause</p> <p>12 hearing but other than that, there's no comment on</p> <p>13 summary suspension continuation.</p> <p>14 CHAIRPERSON MILLER: Okay. Are there</p> <p>15 questions from other Board members?</p> <p>16 MR. NOPHLIN: I have one quick question --</p> <p>17 CHAIRPERSON MILLER: Yeah.</p> <p>18 MR. NOPHLIN: -- please, Madam Chair.</p> <p>19 CHAIRPERSON MILLER: Uh-huh.</p> <p>20 MR. NOPHLIN: And maybe one of you can</p> <p>21 explain this to the Board -- at least me. Was the</p> <p>22 security plan significant -- it was different from the</p>

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<p style="text-align: right;">6</p> <p>1 original plan?</p> <p>2 MR. FONSECA: It is different and format-wise</p> <p>3 there are similarities.</p> <p>4 MR. NOPHLIN: Similarities?</p> <p>5 MR. FONSECA: Yes, but it is different.</p> <p>6 MR. NOPHLIN: And I just didn't have a chance</p> <p>7 to review this plan. But there was a violation -- that</p> <p>8 was one of the violations the Licensee had was didn't</p> <p>9 follow security plan or they need to improve their</p> <p>10 security plan? Which one?</p> <p>11 MR. FONSECA: Yeah, well, shall we say both?</p> <p>12 If I recall --</p> <p>13 MR. NOPHLIN: And I hate to say this but the</p> <p>14 reason I'm asking is I don't -- we don't have the</p> <p>15 original plan in front of us. We have the new plan.</p> <p>16 MR. FONSECA: Well, I don't know if I have</p> <p>17 the older version of the file. I probably do. It's in</p> <p>18 the show cause. The two issues of the security plan;</p> <p>19 one was the functionality and recording by the -- by</p> <p>20 the cameras, and the other one was an issue -- again, I</p> <p>21 don't want to prejudice our case but the other one was</p> <p>22 the issue of the requirement to call 911 in an</p>	<p style="text-align: right;">8</p> <p>1 MR. FONSECA: That one's hard-wired and that</p> <p>2 one does work and record.</p> <p>3 MR. NOPHLIN: The one in front was not</p> <p>4 recording?</p> <p>5 MR. FONSECA: Correct.</p> <p>6 MR. NOPHLIN: Okay. Now, and it's been</p> <p>7 testified the plan will change that, right?</p> <p>8 MR. BAILEY: Um-huh. It was frozen.</p> <p>9 MR. FONSECA: Yeah, it was frozen. And that</p> <p>10 was result was it didn't capture images.</p> <p>11 MR. NOPHLIN: But it didn't --</p> <p>12 MR. FONSECA: So, I mean, rather than, you</p> <p>13 know, split hairs, it didn't capture images. So even</p> <p>14 if you printed out, you know, and you saved what was</p> <p>15 there for 30 minutes, it was a dead monitor.</p> <p>16 MR. NOPHLIN: Okay. Thank you.</p> <p>17 CHAIRPERSON MILLER: I'm sorry, I just want</p> <p>18 to for the record say that in the Board's Order,</p> <p>19 lifting the summary suspension -- because Paragraph 5</p> <p>20 it says that, "The Licensee shall submit a revised and</p> <p>21 updated security plan. This plan will include</p> <p>22 provisions regarding the use of uniforms by security</p>
<p style="text-align: right;">7</p> <p>1 emergency.</p> <p>2 So the plan has those issues in there. The</p> <p>3 cameras are now -- without conceding that they weren't</p> <p>4 functioning that evening, the number of cameras in the</p> <p>5 plan, those are all working and are able to record for</p> <p>6 30 days. Is that correct?</p> <p>7 MR. BAILEY: Yes, sir. It's hard-wired.</p> <p>8 MR. FONSECA: Yeah.</p> <p>9 MR. NOPHLIN: Thank you and thank you, Madam.</p> <p>10 CHAIRPERSON MILLER: That's --</p> <p>11 MR. FONSECA: Hard-wire contacted. Oh, I'm</p> <p>12 sorry. Okay. And the other thing is that the two</p> <p>13 outdoor cameras have been on a wireless. Where the</p> <p>14 interior ones were hard-wired, now the outdoor ones are</p> <p>15 hard-wired.</p> <p>16 MR. NOPHLIN: Hard-wired.</p> <p>17 MR. FONSECA: Because the one in the front,</p> <p>18 which was an issue --</p> <p>19 MR. NOPHLIN: Okay.</p> <p>20 MR. FONSECA: -- which we had to concede was</p> <p>21 not recording --</p> <p>22 MR. NOPHLIN: Was not -- the one --</p>	<p style="text-align: right;">9</p> <p>1 employees, the process for maintaining and completing</p> <p>2 an incident log, a process for contacting MPD, the</p> <p>3 preservation of any crime scenes, and procedures for</p> <p>4 the ejection of patrons from the establishment."</p> <p>5 MR. FONSECA: Those are all in there.</p> <p>6 CHAIRPERSON MILLER: Okay.</p> <p>7 MR. FONSECA: And I think --</p> <p>8 CHAIRPERSON MILLER: I just wanted -</p> <p>9 MR. FONSECA: I believe the uniform is a</p> <p>10 black t-shirt with the word, "Security," across the</p> <p>11 front. And then the issues are in there as to log</p> <p>12 book, as to capturing of evidence, as to ejection of</p> <p>13 patrons. So those are all in there. It's a -- it's a</p> <p>14 shorter version, but probably more to the point as to</p> <p>15 hitting all those issues.</p> <p>16 CHAIRPERSON MILLER: Right. Okay. Well,</p> <p>17 there -- yes, Mr. Alberti.</p> <p>18 MR. ALBERTI: Hi. Thank you. I mean, one of</p> <p>19 the stipulations is that security footage will be made</p> <p>20 available ABRA to view it in 72 hours. So Mr. Bailey,</p> <p>21 who knows how to do that in your -- is that only you?</p> <p>22 Okay. And --</p>

Capital Reporting Company
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<p style="text-align: right;">10</p> <p>1 MR. BAILEY: Me and the managers are trained. 2 My -- I train -- I train other people how to do it. 3 MR. ALBERTI: So they know how to operate the 4 system and provide the video to whoever -- to MPD or 5 however one requests? Okay. So you don't need to call 6 in a technician or anything but -- 7 MR. BAILEY: I also have somebody that I can 8 call in. 9 MR. ALBERTI: But you're capable of doing 10 that? 11 MR. BAILEY: Yes, sir. On the night of the 12 incident I was very ill. I was taken from my bed. I 13 was taking Percocet and I was off queue totally. 14 MR. ALBERTI: Right, right. 15 MR. BAILEY: So -- 16 MR. ALBERTI: I don't want (inaudible) I want 17 to know where we're at. 18 MR. BAILEY: I just want to make sure you 19 know - 20 - 21 MR. ALBERTI: Right. 22 MR. BAILEY: -- that I'm a technician</p>	<p style="text-align: right;">12</p> <p>1 MR. ALBERTI: Okay. 2 MR. FONSECA: -- to copy. Yeah. 3 MR. ALBERTI: All right. I just wanted to 4 make sure I understand that you have a mechanism for 5 doing that. You'd be surprised how many will tell me 6 they don't really know. Have all of your current 7 employees taken -- you know, taken formal security 8 training? 9 MR. BAILEY: Yes, everybody taken formal 10 security training. 11 MR. ALBERTI: And how -- who conducted that 12 training? 13 MR. FONSECA: It was HOST training. It was 14 Mr. Smith. It was Mr. Smith himself, correct? 15 MR. BAILEY: Yes. 16 MR. FONSECA: Yeah. 17 MR. ALBERTI: Okay. And -- 18 MR. FONSECA: Who was just here testifying. 19 And there were seven, including -- 20 MR. ALBERTI: He's still sitting in the back 21 there. 22 MR. FONSECA: -- Mr. Bailey. I mean, we can</p>
<p style="text-align: right;">11</p> <p>1 for 30 years. 2 MR. ALBERTI: Oh, okay. 3 MR. BAILEY: I'm qualified. 4 MR. ALBERTI: Okay. Great, great. What 5 would be the mechanism for providing that video 6 footage? 7 MR. BAILEY: CD. 8 MR. ALBERTI: CD? 9 MR. BAILEY: Right. 10 MR. ALBERTI: Okay. DVD or CD? Is CD big 11 enough? 12 MR. BAILEY: CD and DVD. 13 MR. ALBERTI: Okay. 14 MR. BAILEY: The machine will do both. 15 MR. ALBERTI: It'll just make a hard disk. 16 Okay, great. 17 MR. BAILEY: So you could also do flash -- 18 MR. ALBERTI: Have all your -- 19 MR. BAILEY: -- flash drive. We have a flash 20 drive. 21 MR. FONSECA: You could also, if you need 22 more data, use a flash drive --</p>	<p style="text-align: right;">13</p> <p>1 provide -- if I could staff, for the -- for the record, 2 provide the certificates. 3 MR. ALBERTI: That'd be great. 4 MR. FONSECA: There was a letter that was 5 previously -- 6 MR. ALBERTI: Great. 7 MR. FONSECA: -- submitted. This way -- 8 MR. ALBERTI: Are those extra copies for us? 9 MR. FONSECA: Pardon me? 10 MR. ALBERTI: Are those extra copies? 11 MR. FONSECA: Yes, yes, yes. This is a set 12 of seven. 13 MR. ALBERTI: Okay, great. Thank you. That 14 is -- that's all I have. Thank you very much. 15 CHAIRPERSON MILLER: Others? Okay. I'm 16 sorry if this has already been addressed, but I just 17 saw this -- an email and I just wanted to make sure. 18 The cameras -- is there a functioning camera to view 19 the summer garden? 20 MR. FONSECA: Yes. That's -- 21 CHAIRPERSON MILLER: Yeah. 22 MR. FONSECA: -- the front --</p>

Capital Reporting Company
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<p style="text-align: right;">14</p> <p>1 CHAIRPERSON MILLER: Okay.</p> <p>2 MR. FONSECA: -- in essence. Right.</p> <p>3 CHAIRPERSON MILLER: And did the Licensee</p> <p>4 review the terms and conditions of the VA with all the</p> <p>5 employees?</p> <p>6 MR. BAILEY: Yes.</p> <p>7 MR. FONSECA: We did that actually in advance</p> <p>8 -- which I was there and assisted in that -- in advance</p> <p>9 of the -- of the hearing to lift the summary</p> <p>10 suspension. So that was -- that was accomplished</p> <p>11 before the Board's order.</p> <p>12 CHAIRPERSON MILLER: Okay. And how</p> <p>13 frequently is that being done?</p> <p>14 MR. FONSECA: And after again.</p> <p>15 MR. BAILEY: After the Board order and we</p> <p>16 went to visit the camera, I did it again.</p> <p>17 MR. FONSECA: Okay. So it was done twice.</p> <p>18 Mr. Bailey did again afterwards.</p> <p>19 CHAIRPERSON MILLER: Okay. And, I mean, the</p> <p>20 way that the order's written, it says that you'll do it</p> <p>21 on a regular basis. So what does that mean to you</p> <p>22 though?</p>	<p style="text-align: right;">16</p> <p>1 CERTIFICATE OF NOTARY PUBLIC</p> <p>2</p> <p>3 I, NATALIA THOMAS, the officer before whom the</p> <p>4 foregoing hearing was taken, do hereby certify that the</p> <p>5 testimony appearing in the foregoing transcript was</p> <p>6 recorded by me and thereafter reduced to typewriting</p> <p>7 under my direction; that said transcription is a true</p> <p>8 record of the testimony given by said parties; that I</p> <p>9 am neither counsel for, related to, nor employed by any</p> <p>10 of the parties to the action in which this was taken;</p> <p>11 and, further, that I am not a relative or employee of</p> <p>12 any counsel or attorney employed by the parties hereto,</p> <p>13 nor financially or otherwise interested in the outcome</p> <p>14 of this action.</p> <p>15</p> <p>16</p> <p>17</p> <p>18 _____</p> <p>19 NATALIA THOMAS</p> <p>20 Notary Public in and for</p> <p>21 DISTRICT OF COLUMBIA</p> <p>22</p>
<p style="text-align: right;">15</p> <p>1 MR. BAILEY: New employees are monthly or</p> <p>2 every two months and we usually have security meetings.</p> <p>3 So I told the security people to -- when they meet to</p> <p>4 do it.</p> <p>5 CHAIRPERSON MILLER: Okay. Okay. All right.</p> <p>6 Mr. Stern, anything else on your part?</p> <p>7 MR. STERN: Nothing of relevance.</p> <p>8 CHAIRPERSON MILLER: Okay. Anything else on</p> <p>9 other Board members' part? All right. Then this is</p> <p>10 just an update. And I think you've given us a good</p> <p>11 update.</p> <p>12 (WHEREUPON, at 11:36 a.m., the hearing was</p> <p>13 concluded.)</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">17</p> <p>1 CERTIFICATE OF TRANSCRIPTION</p> <p>2</p> <p>3 I, MIRANDA PENNACHI, hereby certify that I am not</p> <p>4 the Court Reporter who reported the following</p> <p>5 proceeding and that I have typed the transcript of this</p> <p>6 proceeding using the Court Reporter's notes and</p> <p>7 recordings. The foregoing/attached transcript is a</p> <p>8 true, correct and complete transcription of said</p> <p>9 proceeding.</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14 _____</p> <p>15 Date MIRANDA PENNACHI</p> <p>16 Transcriptionist</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>

<p>1</p> <p>11 1:11</p> <p>11:23 2:2</p> <p>11:36 15:12</p> <p>12-251-00104 1:8 2:4</p> <p>14th 1:13</p> <hr/> <p>2</p> <p>2000 1:13</p> <p>2012 1:11</p> <p>24th 3:12 4:13</p> <p>2nd 3:3</p> <hr/> <p>3</p> <p>30 7:6 8:15 11:1</p> <p>3rd 3:4</p> <hr/> <p>4</p> <p>4C 1:8</p> <hr/> <p>5</p> <p>5 8:19</p> <hr/> <p>6</p> <p>60578 1:7</p> <hr/> <p>7</p> <p>72 9:20</p> <hr/> <p>8</p> <p>829 1:6</p> <hr/> <p>9</p> <p>911 6:22</p> <hr/> <p>A</p> <p>a.m 2:2 15:12</p> <p>able 7:5</p>	<p>ABRA 2:20 9:20</p> <p>acceptable 4:22</p> <p>accepted 2:14</p> <p>accomplished 14:10</p> <p>acknowledgement 4:16</p> <p>across 9:10</p> <p>action 16:10,14</p> <p>activities 3:17,22</p> <p>actually 4:4 14:7</p> <p>addressed 13:16</p> <p>addressing 2:16</p> <p>advance 14:7,8</p> <p>afterwards 14:18</p> <p>Alberti 1:16 9:17,18 10:3,9,14,16,21 11:2,4,8,10,13,1 5,18 12:1,3,11,17,20 13:3,6,8,10,13</p> <p>Alcoholic 1:2,12,13</p> <p>already 13:16</p> <p>am 16:9,11 17:3</p> <p>Amy 2:8,20</p> <p>ANC 1:8</p> <p>anybody 4:11</p> <p>anything 10:6 15:6,8</p> <p>appearing 16:5</p> <p>appears 5:4</p> <p>April 2:19 3:3,12 4:13</p> <p>aspects 5:8</p>	<p>assisted 14:8</p> <p>attachment 3:10</p> <p>attorney 3:11 4:18 16:12</p> <p>available 9:20</p> <hr/> <p>B</p> <p>Bailey 2:11 3:1 7:7 8:8 9:20 10:1,7,11,15,18, 22 11:3,7,9,12,14,1 7,19 12:9,15,22 14:6,15,18 15:1</p> <p>basis 14:21</p> <p>bed 10:12</p> <p>behalf 2:9</p> <p>believe 3:3 9:9</p> <p>Berman 4:16</p> <p>Beverage 1:2,12,13</p> <p>black 9:10</p> <p>Board 1:2,9,13 2:14 3:19 4:1,5 5:15,21 14:15 15:9</p> <p>Board's 8:18 14:11</p> <p>book 9:12</p> <p>BROOKS 1:16</p> <p>Building 1:13</p> <p>business 3:15,18 4:2</p> <hr/> <p>C</p> <p>Cafe 1:5,6 2:4</p> <p>CALVIN 1:17</p> <p>camera 13:18</p>	<p>14:16</p> <p>cameras 6:20 7:3,4,13 13:18</p> <p>capable 10:9</p> <p>capture 8:10,13</p> <p>capturing 9:12</p> <p>case 1:8 2:4,13 6:21</p> <p>cause 5:11 6:18</p> <p>causes 4:5</p> <p>CD 11:7,8,10,12</p> <p>ceased 3:22</p> <p>certain 2:14</p> <p>CERTIFICATE 16:1 17:1</p> <p>certificates 3:5 13:2</p> <p>certification 3:7</p> <p>certify 16:4 17:3</p> <p>Chair 5:18</p> <p>Chairperson 1:14,15 2:3,12 4:6,10,14,20 5:1,7,14,17,19 7:10 8:17 9:6,8,16 13:15,21 14:1,3,12,19 15:5,8</p> <p>chance 6:6</p> <p>change 8:7</p> <p>Columbia 1:1 2:8 16:21</p> <p>coming 4:18</p> <p>comment 5:12</p> <p>comments 4:18</p> <p>communication</p>
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<p>3:13 complete 17:8 completed 3:2 completing 9:1 compliance 1:9 2:16 complied 4:3 concede 7:20 conceding 7:3 concerns 3:14 5:8 concluded 15:13 conditions 14:4 conducted 12:11 consultation 4:11 contacted 7:11 contacting 9:2 continuation 5:13 Control 1:2,12,13 copied 4:12 copies 3:5 13:8,10 copy 12:2 correct 4:8 7:6 8:5 12:14 17:8 counsel 4:17 16:9,12 Court 17:4,6 crime 9:3 CT 1:7 current 12:6</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>D.C 1:14 data 11:22 Date 17:15 days 7:6</p>	<p>dead 8:15 different 5:22 6:2,5 direction 16:7 disk 11:15 District 1:1 2:8 16:21 DONALD 1:16 done 4:10 14:13,17 drive 11:19,20,22 DVD 11:10,12</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>earlier 2:22 ejection 9:4 ejectment 9:12 else 4:11 15:6,8 email 2:20 3:11 13:17 emergency 7:1 employed 16:9,12 employee 16:11 employees 9:1 12:7 14:5 15:1 engaged 3:16 entertainment 3:17,22 essence 14:2 establishment 9:4 evening 7:4 everybody 12:9 evidence 9:12 expectation 2:15 explain 5:21 extra 13:8,10</p>	<hr/> <p style="text-align: center;">F</p> <hr/> <p>fact 5:9 file 6:17 financially 16:13 flash 11:17,19,22 Fonseca 2:9,17 3:21 4:9,12,15,21 5:10 6:2,5,11,16 7:8,11,17,20 8:1,5,9,12 9:5,7,9 11:21 12:2,13,16,18,22 13:4,7,9,11,20,2 2 14:2,7,14,17 footage 9:19 11:6 foregoing 16:4,5 foregoing/ attached 17:7 formal 12:7,9 format-wise 6:2 frequently 14:13 front 6:15 7:17 8:3 9:11 13:22 frozen 8:8,9 functionality 6:19 functioning 7:4 13:18</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>garden 13:19 General 3:12 4:16,19 given 15:10 16:8 gotten 5:4 great 11:4,16 13:3,6,13</p>	<p>guess 2:15</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>hairs 8:13 hard 11:15 Hard-wire 7:11 hard-wired 7:7,14,15,16 8:1 hate 6:13 having 2:18 hear 3:20 hearing 1:7,13 2:5,13 5:6,12 14:9 15:12 16:4 hereby 16:4 17:3 hereto 16:12 HERMAN 1:17 He's 12:20 Hi 9:18 hitting 9:15 HOST 12:13 hours 9:20</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>ill 10:12 I'm 3:19 6:14 7:11 8:17 10:22 11:3 13:15 images 8:10,13 improve 6:9 inaudible 10:16 Inc 1:5 incident 9:2 10:12 include 8:21 included 2:14,18 including 3:1</p>
---	---	---	--

<p>12:19</p> <p>individuals 3:1</p> <p>interested 16:13</p> <p>interior 7:14</p> <p>introduce 2:6</p> <p>Island 1:5,6 2:4</p> <p>issue 3:14 6:20,22 7:18</p> <p>issues 5:3 6:18 7:2 9:11,15</p> <p>It'll 11:15</p> <p>it's 2:15 3:17 6:17 7:7 8:6 9:13</p> <p>I've 4:15,17</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>Jonathan 4:16</p> <p>JONES 1:17</p> <p>July 1:11</p> <hr/> <p style="text-align: center;">L</p> <hr/> <p>last 3:22</p> <p>least 5:21</p> <p>legal 5:4</p> <p>letter 2:21 3:6,10 13:4</p> <p>levels 3:16</p> <p>License 1:7</p> <p>Licensee 1:9 2:10 6:8 8:20 14:3</p> <p>lift 14:9</p> <p>lifting 8:19</p> <p>limited 3:16</p> <p>listed 2:22</p> <p>little 3:19</p> <p>log 9:2,11</p>	<p>louder 3:20</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>machine 11:14</p> <p>Madam 5:18 7:9</p> <p>maintaining 9:1</p> <p>managers 10:1</p> <p>matter 1:4 4:4</p> <p>maybe 5:20</p> <p>mean 8:12 9:18 12:22 14:19,21</p> <p>mechanism 11:5 12:4</p> <p>meet 15:3</p> <p>MEETING 1:3</p> <p>meetings 15:2</p> <p>Member 1:16,17,18 3:19</p> <p>members 5:15 15:9</p> <p>met 1:13</p> <p>Michael 1:19 2:7,9</p> <p>MIKE 1:18</p> <p>Miller 1:14,15 2:3,12 4:6,10,14,20 5:1,7,14,17,19 7:10 8:17 9:6,8,16 13:15,21 14:1,3,12,19 15:5,8</p> <p>minutes 8:15</p> <p>MIRANDA 17:3,15</p> <p>monitor 8:15</p> <p>month 4:21</p>	<p>monthly 15:1</p> <p>months 15:2</p> <p>morning 2:7,22</p> <p>move 2:3</p> <p>MPD 9:2 10:4</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>N.W 1:13</p> <p>NATALIA 16:3,19</p> <p>nature 3:8</p> <p>neither 16:9</p> <p>Nevaldo 2:11</p> <p>NICK 1:16</p> <p>night 10:11</p> <p>NOPHLIN 1:17 5:16,18,20 6:4,6,13 7:9,16,19,22 8:3,6,11,16</p> <p>nor 16:9,13</p> <p>Notary 16:1,20</p> <p>note 5:2</p> <p>notes 17:6</p> <p>Nothing 15:7</p> <p>NW 1:6</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>OAG 1:19 4:11,12</p> <p>occurred 2:19 3:3</p> <p>Office 3:11 4:18</p> <p>officer 16:3</p> <p>Oh 7:11 11:2</p> <p>OIC 2:14</p> <p>older 6:17</p> <p>ones 7:14</p>	<p>one's 8:1</p> <p>operate 10:3</p> <p>operating 3:15</p> <p>order 1:9 8:18 14:11,15</p> <p>order's 14:20</p> <p>original 6:1,15</p> <p>Others 13:15</p> <p>otherwise 16:13</p> <p>outcome 16:13</p> <p>outdoor 7:13,14</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>Paragraph 8:19</p> <p>Pardon 13:9</p> <p>participated 3:2</p> <p>parties 2:5 16:8,10,12</p> <p>patrons 9:4,13</p> <p>PDF 3:9</p> <p>PENNACHI 17:3,15</p> <p>people 10:2 15:3</p> <p>Percocet 10:13</p> <p>plan 2:18 3:9,14 4:7 5:3,8,22 6:1,7,9,10,15,18 7:2,5 8:7,21</p> <p>please 5:18</p> <p>point 3:18 9:14</p> <p>POST 2:21</p> <p>prejudice 6:21</p> <p>prepared 5:11</p> <p>PRESENT 1:15,18</p> <p>preservation 9:3</p>
---	--	--	---

<p>president/ principal 2:10</p> <p>presiding 1:14</p> <p>presumably 4:22</p> <p>previously 13:5</p> <p>principal 2:21</p> <p>printed 8:14</p> <p>probably 6:17 9:14</p> <p>procedures 9:3</p> <p>proceeding 17:5,6,9</p> <p>process 9:1,2</p> <p>provide 10:4 13:1,2</p> <p>providing 11:5</p> <p>provisions 8:22</p> <p>Public 16:1,20</p> <p>purpose 3:7</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>qualified 11:3</p> <p>question 4:7 5:16</p> <p>questions 5:15</p> <p>queue 10:13</p> <p>quick 4:7 5:16</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>rather 8:12</p> <p>really 3:16 12:6</p> <p>reason 6:14</p> <p>recall 6:12</p> <p>receipt 4:17</p> <p>record 2:6 7:5 8:2,18 13:1 16:8</p> <p>recorded 16:6</p>	<p>recording 6:19 7:21 8:4</p> <p>recordings 17:7</p> <p>reduced 16:6</p> <p>Reeves 1:13</p> <p>regarding 8:22</p> <p>regular 14:21</p> <p>related 16:9</p> <p>relative 16:11</p> <p>relevance 15:7</p> <p>reported 17:4</p> <p>Reporter 17:4</p> <p>Reporter's 17:6</p> <p>representations 5:10</p> <p>requests 10:5</p> <p>requirement 6:22</p> <p>requirements 4:3 5:4</p> <p>result 8:10</p> <p>Retailer 1:7</p> <p>review 4:11 6:7 14:4</p> <p>reviewed 4:17 5:4</p> <p>revised 4:7 8:20</p> <p>Room 1:13</p> <p>Ruthanne 1:14,15</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>saved 8:14</p> <p>saw 13:17</p> <p>scenes 9:3</p> <p>Schmidt 2:8,20 5:2,11</p> <p>security 2:18,19 3:9,14 4:7 5:3,22</p>	<p>6:9,10,18 8:21,22 9:10,19 12:7,10 15:2,3</p> <p>serves 3:7</p> <p>seven 3:1 12:19 13:12</p> <p>she's 5:11</p> <p>shorter 9:14</p> <p>significant 5:22</p> <p>SILVERSTEIN 1:18</p> <p>similarities 6:3,4</p> <p>sir 7:7 10:11</p> <p>sitting 2:8 12:20</p> <p>Smith 12:14</p> <p>somebody 10:7</p> <p>sorry 3:19 7:12 8:17 13:16</p> <p>speak 3:19</p> <p>split 8:13</p> <p>staff 2:20 3:11 4:17 13:1</p> <p>status 1:7 2:5</p> <p>Stern 1:19 2:7 5:1,2,9 15:6,7</p> <p>stipulations 9:19</p> <p>Street 1:6,13</p> <p>submit 8:20</p> <p>submitted 2:21 3:6,9 4:7 13:7</p> <p>submitting 2:18</p> <p>summary 1:7 2:5,13 4:4 5:5,13 8:19 14:9</p> <p>summer 13:19</p> <p>sure 10:18 12:4</p>	<p>13:17</p> <p>surprised 12:5</p> <p>suspension 1:7 2:5,13 4:4 5:5,13 8:19 14:10</p> <p>system 10:4</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>t/a 1:6</p> <p>taking 10:13</p> <p>technician 10:6,22</p> <p>terms 2:14,16,17 14:4</p> <p>testified 8:7</p> <p>testifying 2:22 12:18</p> <p>testimony 16:5,8</p> <p>thank 7:9 8:16 9:18 13:13,14</p> <p>That'd 13:3</p> <p>that's 4:21 7:10 13:14,20</p> <p>themselves 2:6</p> <p>thereafter 16:6</p> <p>there's 5:12</p> <p>THOMAS 16:3,19</p> <p>totally 10:13</p> <p>train 10:2</p> <p>trained 2:20 10:1</p> <p>training 2:19,21 3:3,8,10 12:8,10,12,13</p> <p>transcript 16:5 17:5,7</p> <p>transcription 16:7 17:1,8</p> <p>Transcriptionist</p>
---	--	--	---

<p>17:16 true 16:7 17:8 t-shirt 9:10 twice 14:17 typed 17:5 typewriting 16:6</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>Uh-huh 5:19 Um-huh 8:8 understand 12:4 uniform 9:9 uniforms 8:22 update 1:9 15:10,11 updated 8:21 Upshur 1:6 usually 15:2</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>VA 14:4 version 6:17 9:14 video 10:4 11:5 view 9:20 13:18 violation 6:7 violations 6:8 visit 14:16</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>Washington 1:13 Wednesday 4:5 we're 10:17 WHEREUPON 15:12 whoever 10:4 whom 16:3</p>	<p>who's 2:21 wireless 7:13 work 8:2 working 7:5 written 14:20</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>you'll 14:20 you've 15:10</p>		
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