DISTRICT OF COLUMBIA

ALCOHOLIC BEVERAGE CONTROL BOARD

MEETING

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IN THE MATTER OF:               :
                                :
Java Green Coffee & Tea, Inc.   :
t/a Cafe Green                  :
1513 17th Street, NW            :
Retailer CR                     :  Show Cause
License No. 81752               :  Hearing
ANC 2B                          :  (Status)
Case No. 12-AUD-00021(a)        :
Failed to File Quarterly        :
Statements (4th Quarter 2011)   :
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October 17, 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
FERNANDO RIVERO, OAG

2

1 P R O C E E D I N G S
2 9:49 a.m.
3 CHAIRPERSON MILLER: Okay. The next case on
4 our calendar is Case No. 12-AUD-00021(a) for Cafe
5 Green, located at 1513 17th Street, N.W., License No,
6 81752, in ANC 2B. Would the parties please come
7 forward for this case?
8 MR. RIVERO: Good morning, Board members.
9 Fernando Rivero for the District of Columbia, standing
10 in for Assistant Attorney General Christine Gephardt.
11 CHAIRPERSON MILLER: Okay. It doesn't appear
12 that the Licensee is here. Do you have any knowledge?
13 MR. RIVERO: I'm afraid I don't know where
14 the - - the Licensee was expected to be here.
15 CHAIRPERSON MILLER: Okay. Ms. Jenkins, did
16 we receive any calls from this Licensee? It's Cafe
17 Green. They're not here.
18 MS. JENKINS: Not that I'm aware of.
19 CHAIRPERSON MILLER: Okay.
20 MR. RIVERO: Could do another pass or
21 (inaudible) whatever?
22 CHAIRPERSON MILLER: Okay. Why don't we just

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1 pass for now? It's 9:51. They're supposed to be here
2 at 9:30. But you're going to be here for a few cases,
3 I understand. So -- all right. We'll pass it and see
4 if they show up in a little bit.
5 (WHEREUPON, at 9:50 a.m., the hearing went
6 off record until 10:40 a.m.)
7 CHAIRPERSON MILLER: I understand that -- is
8 the party here from Cafe Green?
9 MR. RIVERO: Yes.
10 CHAIRPERSON MILLER: Okay. Why don't we go
11 back to that case?
12 MR. RIVERO: Oh, well, if we could call the
13 other two cases since it doesn't look like anyone's
14 going to show up and maybe put the dates on the record?
15 CHAIRPERSON MILLER: Yeah, I will. But why
16 don't we hear this Cafe Green?
17 MR. RIVERO: I think we need (inaudible) --
18 CHAIRPERSON MILLER: Oh --
19 MR. RIVERO: -- to do that --
20 CHAIRPERSON MILLER: Okay.
21 MR. RIVERO: -- unfortunately.
22 CHAIRPERSON MILLER: You want to take a few

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1 minutes to do that?
2 MR. RIVERO: We could call the other cases
3 and schedule the dates if the Board would like. We
4 don't feel that anyone is here for those other two
5 matters that we passed on, the first one being Montana
6 Liquor and the other one being George. Yes, Cafe Green
7 is here.
8 CHAIRPERSON MILLER: Okay.
9 (WHEREUPON, at 10:41 a.m., the hearing went
10 off record until 10:57 a.m.)
11 CHAIRPERSON MILLER: Mr. Rivero, are you
12 ready?
13 MR. RIVERO: Yeah.
14 CHAIRPERSON MILLER: Okay. All right. Fine.
15 Then the case is Cafe Green. And please come forward,
16 sir. Good morning. Would you please state your name
17 for the record?
18 MR. KIM: My name's DJ Kim.
19 CHAIRPERSON MILLER: I can't hear you.
20 MR. KIM: My name's DJ Kim, behalf of Cafe
21 Green.
22 CHAIRPERSON MILLER: Okay.

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1 MR. RIVERO: Fernando Rivero for the District
2 of Columbia standing in for Assistant Attorney General
3 Gephardt.
4 CHAIRPERSON MILLER: Okay. I'm sorry, I
5 didn't hear your last name.
6 MR. KIM: DJ Kim.
7 CHAIRPERSON MILLER: Kim?
8 MR. KIM: Yes.
9 CHAIRPERSON MILLER: Okay. Mr. Kim, this is
10 a show cause status hearing. So I just need to ask you
11 if you received notice of the hearing.
12 MR. KIM: Yes, Your Honor.
13 CHAIRPERSON MILLER: And did you read it?
14 MR. KIM: Yes, Your Honor.
15 CHAIRPERSON MILLER: And did you understand
16 it?
17 MR. KIM: Yes, Your Honor.
18 CHAIRPERSON MILLER: And then the last
19 question is, do you waive the Board's reading of that
20 notice into the record, which means, will you go
21 forward without our reading the notice that you got
22 into the record?

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1 MR. KIM: Sure.
2 CHAIRPERSON MILLER: Okay. So Mr. Rivero,
3 are there any preliminary matters?
4 MR. RIVERO: Yes, there are. The parties
5 have an offer in compromise to present to the Board at
6 this time. Unfortunately, I took longer than five
7 minutes because of a little wrinkle in this case.
8 CHAIRPERSON MILLER: Okay.
9 MR. RIVERO: The establishment is currently
10 closed. The Office of Tax and Revenue has closed the
11 establishment for failure to pay taxes. So this offer
12 in compromise is contingent upon the opening day of
13 business. And the business will obviously open once
14 it's paid its taxes.
15 And this is the following offer in
16 compromise:
17 suspension of the license for 14 consecutive
18 days on the point in time that the business reopens,
19 and a surrender of the license for safekeeping today.
20 The license is currently hanging on the wall. And the
21 Licensee will turn the license in today. And upon
22 reopening of the business, suspension of 14 days will

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1 be served.
2 CHAIRPERSON MILLER: Okay.
3 MR. RIVERO: Because I cannot tell you when
4 that date will be, that's why there's a floating
5 suspension. It -- but it will be 14 consecutive days
6 from that point. And the Licensee will advise ABRA
7 obviously when business is open. The -- and the
8 suspension will be calculated from that day.
9 CHAIRPERSON MILLER: Okay. So this is lieu
10 of a penalty, the --
11 MR. RIVERO: Correct.
12 CHAIRPERSON MILLER: -- suspension?
13 MR. RIVERO: The government is simply trying
14 to be as practical as possible to understand that there
15 ought to be a penalty that has some meaning. Serving a
16 suspension of any sort while the establishment is
17 closed anyway because of another government agency is
18 not, in my view, an effective penalty because they're
19 closed anyway. And so once they reopen, then that's
20 really when the penalty ought to come.
21 CHAIRPERSON MILLER: Okay.
22 MR. RIVERO: But the government of course has

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1 no control over when that date when be. So we make
2 that a contingency.
3 CHAIRPERSON MILLER: And how will the Board
4 know when the date would be?
5 MR. RIVERO: The Licensee will advise the
6 Board--
7 MR. ALBERTI: May I ask a question?
8 MR. RIVERO: -- ABRA, I should say.
9 MR. ALBERTI: Ms. Miller, may I ask a
10 question of Mr. Rivero?
11 CHAIRPERSON MILLER: Yeah.
12 MR. ALBERTI: Mr. Rivero, what triggers the
13 date? I mean, what officially is the trigger that says
14 this establishment is open?
15 CHAIRPERSON MILLER: Can I --
16 MR. ALBERTI: Is it -- wait. Is it -- is it
17 when you -- when he says it's open or is it when Tax
18 and Revenue says, "You are now allowed -- we are
19 returning your license," or whatever they do and say --
20 MR. RIVERO: Well --
21 MR. ALBERTI: -- "You're allowed to open?"
22 So here's my -- here's my dilemma. Office of Tax and

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1 Revenue comes to the Licensee and says, "You're allowed
2 to open now." All right. But he doesn't have anything
3 in place to really serve customers. He's going to take
4 a couple of days to --
5 MR. RIVERO: Right.
6 MR. ALBERTI: -- to get that up and running.
7 Then he -- but he comes to us and he says, "I'm -- I
8 can open and now my suspension starts." For that
9 period of time where he's trying to get his business
10 back in shape to really open the doors to customers,
11 our suspension is meaningless.
12 BOARD MEMBER: Yeah.
13 MR. RIVERO: Well --
14 MR. ALBERTI: And so this --
15 MR. RIVERO: I --
16 MR. ALBERTI: You know, in some ways this
17 suspension has no teeth to me.
18 MR. RIVERO: Well, if I could respond to that
19 --
20 MR. ALBERTI: Okay.
21 MR. RIVERO: -- actually? The establishment
22 cannot operate now because another government agency

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1 says it cannot operate.
2 MR. ALBERTI: I understand.
3 MR. RIVERO: And a government agency operates
4 within its own legal authority. So once the taxes are
5 paid, then OTR doesn't have any legal reason to keep
6 the establishment closed or from operating. So at that
7 point, the Licensee has the legal right to operate as
8 now. But during that period of time, because the
9 Licensee is part of this offer in compromise,
10 surrendering the license, the Licensee is not able to
11 sell alcohol until the Licensee notifies ABRA that it
12 is ready to open.
13 It's at that point that the 14 days kicks in.
14 And so this period of time that has been described in
15 this question is not the period of time that would
16 actually count until the Licensee says, "I'm actually,
17 you know, prepared to open for, you know, business."
18 So if there is a couple of days, for example, and the
19 Licensee has to take care of that now, I'm not quite
20 sure what scenario would be where, for instance, the
21 Licensee would show up the next day after the OTR says,
22 "You can open now," and says, "I'm ready to sell

11

1 alcohol."
2 I'm not aware of what circumstances one would
3 -- under which one would imagine that operation was not
4 possible, given that there are no facts in the -- in
5 the case before us -- there are no facts in the case
6 before us to call into question the Licensee's ability
7 to operate. The facts in the case before us have to do
8 with the fact that the Licensee did not file a
9 quarterly report on time.
10 The only information the government is
11 presenting to the Board at this time, as part of the
12 offer in compromise, is the inability to pay taxes. So
13 presumably, if the taxes had been paid, then the
14 government has no legal recourse to keep the Licensee
15 from operating, given that the facts of this case do
16 not have anything to do with inability to operate, but
17 merely with the failure to file a quarterly report.
18 And thus, this particular offer in compromise
19 was tailored to the facts of the case. If there -- if
20 there wants -- if the agency wants to conduct a
21 particular investigation, for instance, at the point in
22 time in which the License requests for the license and

12

1 information to be discovered at that point that gives
2 ABRA pause or the Board pause, then it would be
3 appropriate at that point to take a different posture.
4 But as far as the facts of this case are
5 concerned, we're talking about the inability to file a
6 report.
7 CHAIRPERSON MILLER: Let --
8 MR. RIVERO: To me it doesn't say more than
9 that.
10 CHAIRPERSON MILLER: But I --
11 MR. RIVERO: Unfortunately but I can't do
12 more than the -- what I've got.
13 CHAIRPERSON MILLER: Okay. Let me -- let me
14 ask this. What --
15 MR. RIVERO: I thought it was clear.
16 CHAIRPERSON MILLER: No. And Mr. Kim might
17 want to say something but the whole business is closed
18 for failure to pay taxes right now. However, once
19 that's cleared up, Mr. Kim can open his business but
20 not serve alcohol right away. So it seems to me once
21 the business is open for serving food and non-alcoholic
22 drinks, the count could start on the license suspense.

13

1 MR. RIVERO: Well, that's a decision the
2 Licensee can make. The Licensee can decide not to pick
3 up the license for whatever reason from ABRA and
4 conduct business minus the sale of alcohol. Obviously,
5 the alcohol sales would not be permitted until the
6 license is in possession. So that's a decision that
7 the Licensee can make or not. But because it does not
8 bear on the facts of the case, the real trigger for us
9 for purposes of handing out suspension is the Licensee
10 advising ABRA, "I'm ready to open for business."
11 At that point, then the penalty and all 14
12 days would begin.
13 CHAIRPERSON MILLER: Okay.
14 MR. RIVERO: Now, the Licensee would have a
15 business interest, one would presume reasonably, that
16 that period of time between being able to open and
17 actually requesting the license should be minimized
18 from a business point of view, I would think. But
19 regardless, when that request is made is when the 14
20 days begin. So we're not actually having a ten-day
21 suspension or a six- day suspension.
22 It's 14 days from the Licensee's notice to

14

1 ABRA to say, "Look, I want to sell alcohol." "Well,
2 but you're not going to because you're going to serve
3 14 days." Well, I think that those two components
4 together get at something --
5 CHAIRPERSON MILLER: Okay. Thank you. Other
6 questions? Mr. Jones.
7 MR. JONES: Just for clarification purposes,
8 so you said the two components are him coming in --
9 that's Item 1 of the trigger.
10 MR. RIVERO: Surrendering the license today
11 is the first component.
12 MR. JONES: First component of the OIC,
13 correct? Correct.
14 MR. RIVERO: Does he -- that's right. And
15 then, when he -- he cannot ask for the license
16 obviously when he's closed. And the government through
17 OTR has the legal right to keep the Licensee closed.
18 MR. JONES: Right.
19 MR. RIVERO: When that legal right ends,
20 meaning the Licensee has paid taxes, then the Licensee
21 has a right to come in and ask for the license. It's
22 at that point that the 14 days kick in.

15

1 MR. JONES: Okay. Would -- in your --
2 MR. RIVERO: Not 10 or 12.
3 MR. JONES: Understood. In your thinking --
4 MR. RIVERO: A normal time has passed
5 between, you know, his -- OTR saying you can open and
6 him asking, that time is irrelevant.
7 MR. JONES: Understood.
8 MR. RIVERO: What kicks in is his notice to
9 ABRA.
10 MR. JONES: In your -- in your thinking
11 through that process, is there a mechanism by which
12 ABRA would be required to do a correlation or
13 confirmation of this fact with OTR in order to verify
14 that what he has said is actually the case?
15 MR. RIVERO: ABRA can do that.
16 MR. JONES: Okay. Thank you. Thank you,
17 Madam Chair.
18 CHAIRPERSON MILLER: Other questions? Mr.
19 Kim?
20 MR. KIM: A question for the -- for the Board
21 is (inaudible) choose to open (inaudible) pay the fine
22 or the suspension or do they have to choose one?

16

1 MR. RIVERO: Board's indulgence?
2 CHAIRPERSON MILLER: Uh-huh. Okay.
3 MR. JONES: You know, you're right. Yeah,
4 you're right. We don't -- just those are the terms.
5 All right. Okay. Those are the terms.
6 CHAIRPERSON MILLER: Yes, sir.
7 MR. RIVERO: We're done.
8 CHAIRPERSON MILLER: You're done. Oh, okay.
9 Mr. Kim?
10 MR. KIM: Yes, ma'am.
11 CHAIRPERSON MILLER: I'm going to repeat back
12 to you what I understand is the offer in compromise.
13 And you should let us know whether that's what you
14 agree to or not.
15 MR. KIM: Yes.
16 CHAIRPERSON MILLER: Okay. So first is that
17 you would surrender your license today to ABRA to have
18 in safekeeping temporarily; two, that your license to
19 serve alcohol would be suspended 14 days from the date
20 that you notified ABRA and the ABC Board that you can
21 open for business. That's it. Do you agree to that?
22 MR. KIM: Yes, I do.

17

1 CHAIRPERSON MILLER: Oh, okay. And do you
2 understand by agreeing to this you waive your right to
3 a hearing?
4 MR. KIM: Yes, ma'am.
5 CHAIRPERSON MILLER: Okay. All right. Any
6 other questions? Okay. Then I would move that we
7 approve this offer in compromise as I just articulated
8 it to the Licensee.
9 Is there a second?
10 MR. SILVERSTEIN: Second.
11 CHAIRPERSON MILLER: Any other comments?
12 (No audible response.)
13 CHAIRPERSON MILLER: All those in favor then,
14 say aye?
15 (Chorus of ayes.)
16 CHAIRPERSON MILLER: All those opposed?
17 MR. ALBERTI: Opposed.
18 MR. JONES: Opposed.
19 CHAIRPERSON MILLER: I will do roll call.
20 Mr. Nophlin?
21 MR. NOPHLIN: I agree.
22 CHAIRPERSON MILLER: Mr. Brooks?

1 MR. BROOKS: I agree.
2 CHAIRPERSON MILLER: Alberti?
3 MR. ALBERTI: I oppose.
4 CHAIRPERSON MILLER: Ms. Miller agrees. Mr.
5 Silverstein?
6 MR. SILVERSTEIN: I agree.
7 CHAIRPERSON MILLER: And Mr. Jones?
8 MR. JONES: I oppose.
9 CHAIRPERSON MILLER: So the vote is 4-2-0
10 with Mr. Alberti and Mr. Jones opposed and the motion
11 passes. Okay. Thank you very much.
12 (WHEREUPON, at 11:10 a.m., the hearing was
13 concluded.)
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1 CERTIFICATE OF NOTARY PUBLIC
2
3 I, ERICK McNAIR, the officer before whom the
4 foregoing hearing was taken, do hereby certify that the
5 testimony appearing in the foregoing pages was recorded
6 by me and thereafter reduced to typewriting under my
7 direction; that said transcription is a true record of
8 the testimony given by said parties; that I am neither
9 counsel for, related to, nor employed by any of the
10 parties to the action in which this hearing was taken;
11 and, further, that I am not a relative or employee of
12 any counsel or attorney employed by the parties hereto,
13 nor financially or otherwise interested in the outcome
14 of this action.
15
16
17 _____
18 ERICK McNAIR
19 Notary Public in and for the
20 District of Columbia
21
22 My commission expires: July 14, 2016

1 CERTIFICATE OF TRANSCRIPTION
2
3 I, MIRANDA PENNACHI, hereby certify that I am not
4 the Court Reporter who reported the proceeding and that
5 I have typed the transcript of the proceeding using the
6 Court Reporter's notes and recordings. The
7 foregoing/attached transcript is a true, correct and
8 complete transcription of the proceedings.
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14 Date MIRANDA PENNACHI
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1
1 14:9
10 15:2
10:40 3:6
10:41 4:9
10:57 4:10
11:10 18:12
12 15:2
12-AUD-00021(a 1:8 2:4
14 6:17,22 7:5 10:13 13:11,19,22 14:3,22 16:19 19:22
14th 1:13
1513 1:6 2:5
17 1:11
17th 1:6 2:5

2
2000 1:13
2011 1:9
2012 1:11
2016 19:22
2B 1:8 2:6

4
4-2-0 18:9
4th 1:9

8
81752 1:7 2:6

9
9:30 3:2
9:49 2:2
9:50 3:5
9:51 3:1

A
a.m 2:2 3:5,6 4:9,10 18:12
ABC 16:20
ability 11:6
able 10:10 13:16
ABRA 7:6 8:8 10:11 12:2 13:3,10 14:1 15:9,12,15 16:17,20
action 19:10,14
actually 9:21 10:16 13:17,20 15:14
advise 7:6 8:5
advising 13:10
afraid 2:13
agency 7:17 9:22 10:3 11:20
agreeing 17:2
Alberti 1:17 8:7,9,12,16,21 9:6,14,16,20 10:2 17:17 18:2,3,10
alcohol 10:11 11:1 12:20 13:4,5 14:1 16:19
Alcoholic 1:2,12,13
allowed 8:18,21 9:1
am 19:8,11 20:3
ANC 1:8 2:6
anyone 4:4
anyone's 3:13
anything 9:2 11:16
anyway 7:17,19
appear 2:11
appearing 19:5
appropriate 12:3
approve 17:7
articulated 17:7
Assistant 2:10 5:2
attorney 2:10 5:2 19:12
audible 17:12
authority 10:4
aware 2:18 11:2
away 12:20
aye 17:14
ayes 17:15

B
bear 13:8
begin 13:12,20
behalf 4:20
Beverage 1:2,12,13
bit 3:4
Board 1:2,13 2:8 4:3 6:5 8:3,6 9:12 11:11 12:2 15:20 16:20
Board's 5:19 16:1
Brooks 1:17 17:22 18:1
Building 1:13
business 6:13,18,22 7:7 9:9 10:17 12:17,19,21 13:4,10,15,18 16:21

C
Cafe 1:6 2:4,16 3:8,16 4:6,15,20
calculated 7:8
calendar 2:4
CALVIN 1:18
care 10:19
case 1:8 2:3,4,7 3:11 4:15 6:7 11:5,7,15,19 12:4 13:8 15:14
cases 3:2,13 4:2
cause 1:7 5:10
CERTIFICATE 19:1 20:1
certify 19:4 20:3
Chair 15:17
Chairperson 1:14,16 2:3,11,15,19,22 3:7,10,15,18,20,22 4:8,11,14,19,22 5:4,7,9,13,15,18 6:2,8 7:2,9,12,21 8:3,11,15 12:7,10,13,16 13:13 14:5 15:18 16:2,6,8,11,16 17:1,5,11,13,16,19,22 18:2,4,7,9
choose 15:21,22
Chorus 17:15
Christine 2:10

circumstances 11:2
clarification 14:7
clear 12:15
cleared 12:19
closed 6:10 7:17,19 10:6 12:17 14:16,17
Coffee 1:5
Columbia 1:1 2:9 5:2 19:20
comes 9:1,7
coming 14:8
comments 17:11
commission 19:22
complete 20:8
component 14:11,12
components 14:3,8
compromise 6:5,12,16 10:9 11:12,18 16:12 17:7
concerned 12:5
concluded 18:13
conduct 11:20 13:4
confirmation 15:13
consecutive 6:17 7:5
contingency 8:2
contingent 6:12
control 1:2,12,13 8:1
correct 7:11 14:13 20:7
correlation 15:12
counsel 19:9,12
count 10:16 12:22
couple 9:4 10:18
course 7:22
Court 20:4,6
CR 1:7
currently 6:9,20
customers 9:3,10

D

D.C 1:14
date 7:4 8:1,4,13 16:19 20:14
dates 3:14 4:3
day 6:12 7:8 10:21 13:21
days 6:18,22 7:5 9:4 10:13,18 13:12,20,22 14:3,22 16:19
decide 13:2
decision 13:1,6
described 10:14
different 12:3
dilemma 8:22
direction 19:7
discovered 12:1
District 1:1 2:9 5:1 19:20
DJ 4:18,20 5:6
DONALD 1:17
done 16:7,8
doors 9:10
drinks 12:22
during 10:8

E

effective 7:18
employed 19:9,12
employee 19:11
ERICK 19:3,18
establishment 6:9,11 7:16 8:14 9:21 10:6
example 10:18
expected 2:14
expires 19:22

F

fact 11:8 15:13
facts 11:4,5,7,15,19 12:4 13:8
Failed 1:9
failure 6:11 11:17 12:18
favor 17:13
feel 4:4
Fernando 1:20 2:9 5:1
file 1:9 11:8,17 12:5
financially 19:13
fine 4:14 15:21
first 4:5 14:11,12 16:16
five 6:6
floating 7:4
food 12:21
foregoing 19:4,5
foregoing/ attached 20:7
forward 2:7 4:15 5:21

G

General 2:10 5:2
George 4:6
Gephardt 2:10 5:3
given 11:4,15 19:8
gives 12:1
government 7:13,17,22 9:22 10:3 11:10,14 14:16
Green 1:5,6 2:5,17 3:8,16 4:6,15,21

H

handing 13:9
hanging 6:20
having 13:20
hear 3:16 4:19 5:5
hearing 1:7,13 3:5 4:9 5:10,11 17:3 18:12 19:4,10
hereby 19:4 20:3
here's 8:22
hereto 19:12
HERMAN 1:18
he's 9:3,9 14:16
Honor 5:12,14,17

I

I'm 2:13,18 5:4 9:7 10:16,19,22 11:2

13:10 16:11
imagine 11:3
inability 11:12,16 12:5
inaudible 2:21 3:17 15:21
Inc 1:5
indulgence 16:1
information 11:10 12:1
instance 10:20 11:21
interest 13:15
interested 19:13
investigation 11:21
irrelevant 15:6
Item 14:9
it's 2:16 3:1 6:14 8:17 10:13 13:22 14:21
I've 12:12

J
Java 1:5
Jenkins 2:15,18
Jones 1:18 14:6,7,12,18 15:1,3,7,10,16 16:3 17:18 18:7,8,10
July 19:22

K
kick 14:22
kicks 10:13 15:8
Kim 4:18,20 5:6,7,8,9,12,14,17 6:1 12:16,19 15:19,20 16:9,10,15,22 17:4
knowledge 2:12

L
last 5:5,18
legal 10:4,5,7 11:14 14:17,19
license 1:7 2:5 6:17,19,20,21 8:19 10:10 11:22 12:22 13:3,6,17 14:10,15,21 16:17,18
Licensee 2:12,14,16 6:21 7:6 8:5 9:1 10:7,9,10,11,16,19,21 11:8,14 13:2,7,9,14 14:17,20 17:8
Licensee's 11:6 13:22
lieu 7:9
Liquor 4:6
little 3:4 6:7
located 2:5
longer 6:6

M
ma'am 16:10 17:4
Madam 15:17
MATTER 1:4
matters 4:5 6:3
may 8:7,9
maybe 3:14
McNAIR 19:3,18
mean 8:13
meaning 7:15 14:20
meaningless 9:11
means 5:20
mechanism 15:11
MEETING 1:3
Member 1:17,18,19 9:12
members 2:8
merely 11:17
met 1:13
MIKE 1:19
Miller 1:14,16 2:3,11,15,19,22 3:7,10,15,18,20,22 4:8,11,14,19,22 5:4,7,9,13,15,18 6:2,8 7:2,9,12,21 8:3,9,11,15 12:7,10,13,16 13:13 14:5 15:18 16:2,6,8,11,16 17:1,5,11,13,16,19,22 18:2,4,7,9
minimized 13:17
minus 13:4
minutes 4:1 6:7
MIRANDA 20:3,14
Montana 4:5
morning 2:8 4:16
motion 18:10
move 17:6

N
N.W 1:13 2:5
name's 4:18,20
neither 19:8
NICK 1:17
non-alcoholic 12:21
Nophlin 1:18 17:20,21
nor 19:9,13
normal 15:4
Notary 19:1,19
notes 20:6
notice 5:11,20,21 13:22 15:8
notified 16:20
notifies 10:11
NW 1:6

O
OAG 1:20
obviously 6:13 7:7 13:4 14:16
October 1:11
offer 6:5,11,15 10:9 11:12,18 16:12 17:7
Office 6:10 8:22
officer 19:3
officially 8:13
Oh 3:12,18 16:8 17:1
OIC 14:12
okay 2:3,11,15,19,22 3:10,20

4:8,14,22 5:4,9 6:2,8 7:2,9,21 9:20 12:13 13:13 14:5 15:1,16 16:2,5,8,16 17:1,5,6 18:11
open 6:13 7:7 8:14,17,21 9:2,8,10 10:12,17,22 12:19,21 13:10,16 15:5,21 16:21
opening 6:12
operate 9:22 10:1,7 11:7,16
operates 10:3
operating 10:6 11:15
operation 11:3
oppose 18:3,8
opposed 17:16,17,18 18:10
order 15:13
otherwise 19:13
OTR 10:5,21 14:17 15:5,13
ought 7:15,20
outcome 19:13

P

pages 19:5
paid 6:14 10:5 11:13 14:20
particular 11:18,21
parties 2:6 6:4 19:8,10,12
party 3:8
pass 2:20 3:1,3
passed 4:5 15:4
passes 18:11
pause 12:2
pay 6:11 11:12 12:18 15:21
penalty 7:10,15,18,20 13:11
PENNACHI 20:3,14
period 9:9 10:8,14,15 13:16
permitted 13:5
pick 13:2
please 2:6 4:15,16
point 6:18 7:6 10:7,13 11:21 12:1,3 13:11,18 14:22
possession 13:6
possible 7:14 11:4
posture 12:3
practical 7:14
preliminary 6:3
prepared 10:17
present 1:16,20 6:5
presenting 11:11
presiding 1:14
presumably 11:13
presume 13:15
proceeding 20:4,5
proceedings 20:8
process 15:11
Public 19:1,19
purposes 13:9 14:7

Q

Quarter 1:9
quarterly 1:9 11:9,17
question 5:19 8:7,10 10:15 11:6 15:20
questions 14:6 15:18 17:6
quite 10:19

R

reading 5:19,21
ready 4:12 10:12,22 13:10
real 13:8
really 7:20 9:3,10
reason 10:5 13:3
reasonably 13:15
receive 2:16
received 5:11
record 3:6,14 4:10,17 5:20,22 19:7
recorded 19:5
recordings 20:6
recourse 11:14
reduced 19:6
Reeves 1:13
regardless 13:19
related 19:9
relative 19:11
reopen 7:19
reopening 6:22
reopens 6:18
repeat 16:11
report 11:9,17 12:6
reported 20:4
Reporter 20:4
Reporter's 20:6
request 13:19
requesting 13:17
requests 11:22
required 15:12
respond 9:18
response 17:12
Retailer 1:7
returning 8:19
Revenue 6:10 8:18 9:1
Rivero 1:20 2:8,9,13,20 3:9,12,17,19,21 4:2,11,13 5:1 6:2,4,9 7:3,11,13,22 8:5,8,10,12,20 9:5,13,15,18,21 10:3 12:8,11,15 13:1,14 14:10,14,19 15:2,4,8,15 16:1,7
roll 17:19
Room 1:13
running 9:6

Ruthanne 1:14,16

S

safekeeping 6:19 16:18
sale 13:4
sales 13:5
scenario 10:20
schedule 4:3
second 17:9,10
seems 12:20
sell 10:11,22 14:1
serve 9:3 12:20 14:2 16:19
served 7:1
serving 7:15 12:21
shape 9:10
Silverstein 1:19 17:10 18:5,6
simply 7:13
sir 4:16 16:6
six 13:21
sorry 5:4
sort 7:16
standing 2:9 5:2
start 12:22
starts 9:8
state 4:16
Statements 1:9
status 1:8 5:10
Street 1:6,13 2:5
supposed 3:1
sure 6:1 10:20
surrender 6:19 16:17
surrendering 10:10 14:10
suspended 16:19
suspense 12:22
suspension 6:17,22 7:5,8,12,16 9:8,11,17 13:9,21 15:22

T

t/a 1:6
tailored 11:19
talking 12:5
Tax 6:10 8:17,22
taxes 6:11,14 10:4 11:12,13 12:18 14:20
Tea 1:5
teeth 9:17
temporarily 16:18
ten-day 13:20
terms 16:4,5
testimony 19:5,8
Thank 14:5 15:16 18:11
that's 7:4,19 12:19 13:1,6 14:9,14 16:13,21
thereafter 19:6
there's 7:4
they're 2:17 3:1 7:18
thus 11:18
today 6:19,21 14:10 16:17
transcript 20:5,7
transcription 19:7 20:1,8
Transcriptionist 20:15
trigger 8:13 13:8 14:9
triggers 8:12
true 19:7 20:7
trying 7:13 9:9
turn 6:21
typed 20:5
typewriting 19:6

U

Uh-huh 16:2
understand 3:3,7 5:15 7:14 10:2 16:12 17:2
Understood 15:3,7
unfortunately 3:21 6:6 12:11
upon 6:12,21

V

verify 15:13
view 7:18 13:18
vote 18:9

W

wait 8:16
waive 5:19 17:2
wall 6:20
Washington 1:14
ways 9:16
We'll 3:3
we're 12:5 13:20 16:7
whatever 2:21 8:19 13:3
WHEREUPON 3:5 4:9 18:12
whether 16:13
whole 12:17
whom 19:3
wrinkle 6:7