

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD

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MEETING

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IN THE MATTER OF: :
 :
Case# 11-251-00066 :
Hak LLC, :
t/a Midtown :
1219 Connecticut Avenue NW : Show Cause
License #72087 : Hearing
Retailer CN :
ANC-2B :
Sale to Minor, Failed to Take:
Steps Necessary to Ascertain :
Legal Drinking Age :
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January 18, 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
- CALVIN NOPHLIN, Member
- NICK ALBERTI, Member
- DONALD BROOKS, Member
- MIKE SILVERSTEIN, Member

- HERMAN JONES, Member
- JEANNETTE MOBLEY, Member

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

1:32 p.m.

CHAIRPERSON MILLER: Case #11-251-00066, Hak, LLC trading as Midtown, 1219 Connecticut Avenue NW, License #72087 in ANC-2B.

MS. GEPHARDT: Chrissy Gephardt for the District of Columbia.

MR. KLINE: Andrew Kline, representative of the licensee.

MR. REHMAN: Michael Rehman.

MR. GARABEDIAN: Richard Garabedian.

CHAIRPERSON MILLER: I couldn't hear that. I'm sorry. Could you repeat your name?

MR. GARABEDIAN: Richard Garabedian.

CHAIRPERSON MILLER: Okay. Thank you. Are you the owner?

MR. GARABEDIAN: General manager.

CHAIRPERSON MILLER: General

1 manager.

2 MR. KLINE: Mr. Rehman is the
3 owner. In fact, you have pending before you
4 applications to -- not today but applications
5 for him to be approved as the owner the day of
6 the status hearing.

7 CHAIRPERSON MILLER: At the
8 interim what?

9 MR. KLINE: As the owner, yes. In
10 other words, there was an application
11 approved.

12 CHAIRPERSON MILLER: Oh, I see.
13 Okay. Have your clients received the notice
14 to show cause?

15 MR. KLINE: Yes. They received
16 it, read it, understand it, and waive any
17 required formal reading.

18 CHAIRPERSON MILLER: Okay.

19 Where are we in this case? Do we
20 have an Offer-in-Compromise?

21 MS. GEPHARDT: The parties have
22 discussed the case and we do have an Offer-in-

1 Compromise to present to the Board today. We
2 will -- the compromise essentially is that we
3 will -- sorry. We will drop charge 2 which is
4 a violation of 25783.

5 Per charge 1, which is violation
6 of 25781, we will impose a \$3,000 fine, five
7 days stayed, and two days to be served for the
8 prior violation. The \$3,000 fine will be paid
9 within 60 days. For the two days served, the
10 dates would be January 24th and January 25th
11 which are both days in which Midtown is
12 operating as a nightclub -- would be operating
13 as a nightclub.

14 CHAIRPERSON MILLER: What days of
15 the week are they?

16 MS. GEPHARDT: It's a Tuesday and
17 a Wednesday, I believe.

18 MR. KLINE: Yes, Tuesday and
19 Wednesday.

20 CHAIRPERSON MILLER: What days
21 does it, if I may, operated as a nightclub?
22 I mean, how many days a week?

1 MR. KLINE: Tuesday through
2 Saturday.

3 CHAIRPERSON MILLER: Tuesday
4 through Saturday.

5 MR. REHMAN: Sometimes on Sundays.

6 CHAIRPERSON MILLER: You said five
7 days suspended, two days to be served. Is
8 that correct?

9 MR. KLINE: Yes. The two days
10 represent two days that were stayed from a
11 previous matter.

12 CHAIRPERSON MILLER: From a
13 previous violation. Okay. Not from this
14 violation?

15 MR. KLINE: Correct.

16 MS. GEPHARDT: From a violation, I
17 believe, on July 21, 2010.

18 MEMBER ALBERTI: Ms. Gephardt,
19 when was that case adjudicated?

20 MS. GEPHARDT: The July 21st case?

21 MEMBER ALBERTI: Yes.

22 MS. GEPHARDT: Let's see. One

1 second.

2 MEMBER ALBERTI: I just want to
3 see if your notes jive with my notes.

4 MS. GEPHARDT: I have October 6,
5 2010, the Board accepted an OIC of \$2,000
6 payable within 30 days and a two-day
7 suspension, both days stayed for one year.

8 CHAIRPERSON MILLER: So the one
9 year is up, isn't it?

10 MEMBER ALBERTI: The one year is
11 up.

12 MS. GEPHARDT: Well, I believe the
13 violation in this case was on February 4,
14 2011.

15 MEMBER ALBERTI: Oh, I see what
16 you're saying. Yes. Okay. That's correct.
17 I understand. Thank you.

18 CHAIRPERSON MILLER: I don't. Why
19 isn't the two days served related to this
20 violation?

21 MEMBER ALBERTI: It is.

22 CHAIRPERSON MILLER: Oh, it is?

1 MEMBER ALBERTI: This violation
2 occurred within that year.

3 CHAIRPERSON MILLER: Oh.

4 MEMBER ALBERTI: It occurred the
5 following February. The case was adjudicated
6 in October and the violation occurred in
7 February.

8 CHAIRPERSON MILLER: During that
9 period. Okay.

10 I'm going to repeat it then. Then
11 if Board members need any time to think about
12 it, let me know.

13 This would be -- the second charge
14 is dropped?

15 MS. GEPHARDT: The 783. Right.
16 Correct.

17 CHAIRPERSON MILLER: Second charge
18 was dropped. The first charge relating to
19 sale of an alcoholic beverage to a person
20 under the age of 21 years old, settlement
21 would be \$3,000 to be paid within 60 days,
22 five days license suspension stayed except for

1 two days which will be served on January 24th
2 and January 25th of 2012.

3 MEMBER ALBERTI: Madam Chair, can
4 I ask a clarification?

5 CHAIRPERSON MILLER: Sure. That's
6 why I'm saying it.

7 MEMBER ALBERTI: I think it's five
8 days suspension regarding this charge.

9 MS. GEPHARDT: This charge.

10 MEMBER ALBERTI: All days stayed.

11 MS. GEPHARDT: Correct.

12 MEMBER ALBERTI: The Board notes
13 that there are two days to be served --

14 MS. GEPHARDT: From a prior
15 violation.

16 MEMBER ALBERTI: -- from a prior
17 violation.

18 MS. GEPHARDT: Correct.

19 CHAIRPERSON MILLER: Thank you.
20 Okay. That's correct.

21 MS. GEPHARDT: That's correct.

22 MR. KLINE: That's correct from

1 our standpoint.

2 MEMBER ALBERTI: Thank you.

3 CHAIRPERSON MILLER: Okay. Do
4 Board members have any other comments? Okay.
5 We're going to take one more recess.

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 #11-251-00066 per 405(b)(4) of
14 the Open Meetings Amendment Act of 2010 and
15 deliberating upon such.

16 Is there a second?

17 MEMBER SILVERSTEIN: Second.

18 CHAIRPERSON MILLER: All those in
19 favor say aye.

20 BOARD MEMBERS: Aye.

21 CHAIRPERSON MILLER: All those
22 opposed? All those abstaining? The vote is

1 seven zero zero. The Board will take a quick
2 recess and go off the record at this point.

3 (Whereupon, at 1:39 p.m. off the
4 record until 2:07 p.m.)

5 CHAIRPERSON MILLER: We are back
6 on the record. Did the parties have anything
7 else to state with respect to the Offer-in-
8 Compromise that was being discussed before the
9 Board recessed?

10 MS. GEPHARDT: We don't have any
11 additional information to present to the
12 Board.

13 CHAIRPERSON MILLER: Okay. I'm
14 going to try to articulate it again.

15 MEMBER ALBERTI: I can repeat my
16 motion.

17 CHAIRPERSON MILLER: Oh, okay.

18 Mr. Alberti wants to make a motion
19 and he is going to articulate the Offer-in-
20 Compromise then in the motion.

21 MEMBER ALBERTI: Madam
22 Chairperson, I make a motion to the Board that

1 we deny the Offer-in-Compromise of a fine of
2 \$3,000 to be paid in 60 days, five days stayed
3 for a period of one year, and two days from
4 case #10-CMP-00504. That is my motion before
5 the Board.

6 MEMBER MOBLEY: I second that
7 motion.

8 CHAIRPERSON MILLER: Okay. I just
9 wanted to add that it was to be paid within 60
10 days.

11 MEMBER ALBERTI: Yes.

12 CHAIRPERSON MILLER: Any comments
13 before we vote?

14 All those in favor of the motion
15 say aye.

16 BOARD MEMBERS: Aye.

17 CHAIRPERSON MILLER: All those
18 opposed? All those abstaining? The vote is
19 seven zero zero for the motion to deny the
20 Offer-in-Compromise.

21 MEMBER ALBERTI: Ask the parties
22 if they are ready to proceed.

1 CHAIRPERSON MILLER: I would ask
2 the parties will you be ready to proceed with
3 the show cause hearing? Not right at this
4 second.

5 MR. KLINE: Can the Board give us
6 a minute?

7 CHAIRPERSON MILLER: Okay.

8 (Whereupon, at 2:10 p.m. off the
9 record until 2:12 p.m.)

10 MS. GEPHARDT: Thank you very much
11 for allowing us the time. In discussing this
12 with Mr. Kline, they have agreed to if we drop
13 charge two, they will stipulate to the facts
14 for charge 1 and then we will argue for
15 mitigation of damages. We will argue on
16 damages.

17 CHAIRPERSON MILLER: Okay. So you
18 are available to proceed today?

19 MR. KLINE: Oh, yes.

20 CHAIRPERSON MILLER: Okay. We
21 just need to --

22 MR. KLINE: I wouldn't ask the

1 Board for a continuance on this ever again.

2 CHAIRPERSON MILLER: So you're not
3 going to put on any witnesses or anything.
4 You're just going to -- is that correct?
5 You're just going to stipulate and then argue
6 damages?

7 MR. KLINE: What is being proposed
8 is the Government would drop charge 2. We
9 would admit to the underlying facts on charge
10 1. We would want to be heard with respect to
11 mitigation in terms of steps that the licensee
12 has taken to prevent any reoccurrence of the
13 facts giving rise to charge 1, and would want
14 to put on one witness with respect to that.

15 CHAIRPERSON MILLER: Okay.

16 MR. KLINE: Which would not be to
17 the deny the charge because we would obviously
18 under those circumstances be admitting the
19 facts giving rise to the alleged violation.

20 CHAIRPERSON MILLER: Okay.

21 MEMBER ALBERTI: May I ask a
22 question, Madam Chair?

1 CHAIRPERSON MILLER: Sure. Okay.

2 MEMBER ALBERTI: Ms. Gephardt,
3 with regard to charge 2, are you declining to
4 prosecute or are you making a motion to the
5 Board to dismiss?

6 MS. GEPHARDT: I'm making a motion
7 to the Board to dismiss charge 2.

8 MEMBER ALBERTI: So the Board can
9 still consider that motion. There is a
10 distinction there. It's your discretion as to
11 whether to bring that charge or not. But if
12 you're making -- if you are leaving the
13 discretion up to the Board in the form of a
14 motion, then it's the Board's decision as to
15 whether --

16 MS. GEPHARDT: I see.

17 MEMBER ALBERTI: -- to drop that
18 charge. I wanted to clarify that for the
19 record.

20 MS. GEPHARDT: Sure. I
21 understand. I guess now that I'm thinking
22 about it, I think that we will decline to

1 prosecute charge 2 and we will move forward on
2 charge 1. That is what the Government is
3 doing.

4 MEMBER ALBERTI: Okay. Thank you.

5 MR. KLINE: Under that scenario,
6 then the licensee will admit the violation of
7 charge 1 and would like to have one witness in
8 mitigation in terms of the Board determining
9 what the appropriate penalty should be.

10 MEMBER ALBERTI: But are you
11 stipulating to the facts of the report?

12 MR. KLINE: Yes.

13 MEMBER ALBERTI: Okay. So that
14 part hasn't changed. You just wanted to have
15 -- you want to argue the penalty and have one
16 witness with respect to arguing the penalty
17 phase. Is that correct, Mr. Kline?

18 MR. KLINE: Yes.

19 MEMBER ALBERTI: Thank you.

20 CHAIRPERSON MILLER: I just want
21 to be clear. You are stipulating to the facts
22 in the case report?

1 MR. KLINE: What we are doing, so
2 we are precisely clear, we are admitting
3 charge 1. Charge 2 the Government has
4 declined to prosecute. In light of that, the
5 licensee is admitting charge 1. We don't even
6 need to get to the underlying facts because we
7 are admitting there is a violation.

8 If the Government moves forward,
9 the facts would show a violation. If we were
10 in the criminal context, it would be like
11 pleading guilty to that charge.

12 We would like to put on a witness
13 to talk about subsequent steps that have been
14 taken to address these issues, not to dispute
15 any of the underlying facts in the report, not
16 to argue that a violation didn't occur, but
17 for the Board to understand that the licensee
18 understands the seriousness of this situation
19 and what steps have been taken to prevent a
20 repeat of the facts which gave rise to the
21 offense.

22 CHAIRPERSON MILLER: Okay. This

1 is my question. Maybe you can help me here.
2 So we are just proceeding with respect to
3 charge 1 which you are saying the licensee
4 will admit. But when we are evaluating the
5 penalty, we won't be -- we won't have before
6 us anymore information about what were the
7 circumstances which might affect our
8 evaluation of the penalty.

9 MR. KLINE: Well, we would like to
10 put on a witness to present evidence that we
11 would ask the Board to consider in imposing
12 the penalty within the statutory range. Some
13 changes have been made.

14 CHAIRPERSON MILLER: You're
15 talking about the future. If the Board is
16 considering not just that there was a
17 violation but what the gravity of the
18 evaluation, what occurred, are you saying
19 you're not contesting what's in the case
20 report?

21 MR. KLINE: Correct.

22 CHAIRPERSON MILLER: Okay. Okay.

1 We have one more case to deal with
2 before we all take a lunch break. I would say
3 to you all that you should feel free to take
4 an hour or so for lunch or regrouping, or
5 whatever. The Board is going to take a lunch
6 break and also deal with another case. I
7 think we can safely say we can be back here --
8 we have at least an hour.

9 MR. KLINE: So what time does the
10 Board require that we be back here?

11 CHAIRPERSON MILLER: Oh, 3:00.
12 3:00? 3:15.

13 MR. KLINE: 3:15?

14 CHAIRPERSON MILLER: Yes.

15 MR. KLINE: Okay. Thanks.

16 CHAIRPERSON MILLER: Thank you.

17 (Whereupon, at 2:19 p.m. off the
18 record until 3:45 p.m.)

19 CHAIRPERSON MILLER: Back on the
20 record for case #11-251-00066 of Midtown,
21 License #72087.

22 MS. GEPHARDT: Chrissy Gephardt

1 for the District of Columbia.

2 MR. KLINE: Andrew Kline on behalf
3 of the licensee.

4 MR. REHMAN: Michael Rehman.

5 MR. GARABEDIAN: Richard
6 Garabedian.

7 CHAIRPERSON MILLER: To counsel
8 for the parties have anything they wish to
9 present before we move forward?

10 MS. GEPHARDT: Yes, we do. In
11 talking with Mr. Kline and the licensee, since
12 the Board rejected our previous Offer-in-
13 Compromise, we have since discussed how we
14 could amend this.

15 We would like to offer an amended
16 Offer-in-Compromise for consideration by the
17 Board. What we would like to do, as I
18 mentioned before, we are going to continue to
19 drop charge 2, which is 25783. For charge 1
20 we are going to keep the \$3,000 fine.

21 We are going to have three days
22 for the current violation, the one we are here

1 about today, three days served, two days
2 stayed for a year and two days served for the
3 prior violation for a total of five days
4 served to be served consecutive days from
5 March 13th to March 17th which covers a
6 Tuesday through a Saturday.

7 CHAIRPERSON MILLER: 2012?

8 MS. GEPHARDT: Yes.

9 CHAIRPERSON MILLER: Okay. Do you
10 still have the same provision with respect to
11 date of payment of the fine?

12 MS. GEPHARDT: Within 60 days.
13 Yes.

14 CHAIRPERSON MILLER: Okay. Does
15 the licensee agree to those terms?

16 MR. KLINE: Yes. I would like to
17 make a couple of comments if I may.

18 CHAIRPERSON MILLER: Okay.

19 MR. KLINE: Madam Chairperson and
20 members of the Board, we certainly understand
21 based on the report the Board's concerns with
22 the events of the evening that gave rise to

1 the charges that are before the Board today.

2 We do want the Board to know, and
3 I was going to put Mr. Rehman on the stand to
4 testify to it, but I think in the interest of
5 time I'll just tell you that certain changes
6 in the operation of the establishment have
7 been made to assure that nothing like this
8 happens again.

9 In looking at the situation it
10 became clear that much of what went on here
11 was the result of the promoter that they had
12 the relationship with that night. They
13 severed the relationship with that promoter
14 the same night. Mr. Rehman has even called at
15 least one other venue where the promoter is
16 now operating out of to warn them and let them
17 know what he experienced.

18 They have also changed their
19 method of dealing with people entering the
20 establishment on the nights that they do
21 events where people under 21 are allowed to
22 enter the establishment. They only do those

1 events on off nights. They don't do them on
2 the busy Friday and Saturday nights. But what
3 they've done is they now rotate the color of
4 the wrist bands.

5 They don't announce in advance
6 what colors they will use. The wrist bands
7 are secured by security for the establishment
8 and they keep tight control on those because
9 that was obviously one of the problems that
10 night.

11 The other thing that they've done
12 is they prohibit anyone under 21 from being in
13 the table service areas where bottle service
14 is offered to assure that patrons that are
15 taking advantage of bottle service are not
16 making those beverages available to anyone
17 under 21. It is believed that these changes
18 will certainly go a long way towards
19 preventing this was happening again.

20 They also understand -- Mr. Rehman
21 has instructed his servers and bartenders that
22 the fact that people are carded at the door

1 may or may not have a wrist band, the primary
2 responsibility for ascertaining adequate age
3 for service of beverages still resides with
4 the server or bartender which is a double
5 check against serving those that are under.

6 As we all know, if they serve --
7 it doesn't matter whether they were checked at
8 the bar. It's the server or bartender that is
9 going to face potential criminal liability.

10 I wanted to give that explanation
11 because I wanted the Board to know that this
12 establishment does take this seriously and has
13 made changes to address the facts that gave
14 rise to the violation.

15 CHAIRPERSON MILLER: Okay. Thank
16 you.

17 MR. KLINE: And, yes, we
18 understand the offer. We accept it. If the
19 Board accepts the offer, then we would waive
20 any right to appeal.

21 CHAIRPERSON MILLER: Okay. Thank
22 you.

1 Is the Board ready to vote? I
2 would move that we accept the Offer-in-
3 Compromise that has been presented to the
4 Board, that being a \$3,000 fine to be paid
5 within 60 days, five days -- let me see if I
6 can say this right -- suspension of license,
7 three days served, two days stayed pending no
8 further violation within a year, and two days
9 served for a prior violation. These days will
10 be consecutive from March 13th through March
11 17th.

12 Do I have a second?

13 MEMBER NOPHLIN: Second.

14 MEMBER JONES: May I ask a
15 clarifying question?

16 CHAIRPERSON MILLER: Sure.

17 MEMBER JONES: Ms. Gephardt.

18 MS. GEPHARDT: Yes.

19 MEMBER JONES: Is the dropping of
20 charge 2 part of the OIC?

21 MS. GEPHARDT: Yes.

22 MEMBER JONES: Okay. Thank you.

1 Thank you, Madam Chair.

2 CHAIRPERSON MILLER: It's part of
3 the OIC for the Board to vote on?

4 MS. GEPHARDT: Well, because we
5 initially charged this as two primary
6 violations and so as part of the Offer-in-
7 Compromise we are taking off 783.

8 CHAIRPERSON MILLER: Thank you,
9 Mr. Jones.

10 MEMBER JONES: Thank you.

11 CHAIRPERSON MILLER: That would be
12 added to the motion to cover the drop of
13 charge 2. I will ask for a second again.

14 MEMBER NOPHLIN: Second.

15 CHAIRPERSON MILLER: Okay. All
16 those in favor say aye.

17 BOARD MEMBERS: Aye.

18 MEMBER ALBERTI: Madam Chair, I
19 would ask that you poll the Board on this one.

20 CHAIRPERSON MILLER: Okay. There
21 has been a request that the Board be polled.

22 Mr. Nophlin.

1 MEMBER NOPHLIN: I agree.

2 CHAIRPERSON MILLER: Mr. Brooks.

3 MEMBER BROOKS: I agree.

4 CHAIRPERSON MILLER: Mr. Alberti.

5 MEMBER ALBERTI: Madam Chair,

6 given the facts in the investigative report
7 and the fact that the licensee stipulated to
8 those facts, I find this penalty way too
9 light. I find the facts very disturbing.

10 Also, Mr. Kline offered an
11 explanation of changes that are going to
12 happen in an attempt to mitigate, I guess, the
13 penalty. I would say if this was an
14 experienced owner, I might consider that as
15 mitigating on the penalty. Mr. Rehman is a
16 very experienced --

17 CHAIRPERSON MILLER: Mr. Alberti,
18 where --

19 MEMBER ALBERTI: Please. Let me
20 finish. Mr. Rehman is a very experienced --
21 I going to explain why I'm voting against this
22 motion. Mr. Rehman is a very experienced

1 licensee. These changes that you talk about
2 should have been in place and implemented from
3 day one. With that, I will not agree with
4 this motion.

5 CHAIRPERSON MILLER: Ms. Miller
6 votes yes.

7 Mr. Silverstein?

8 MEMBER SILVERSTEIN: I agree.

9 CHAIRPERSON MILLER: Ms. Mobley?

10 MEMBER MOBLEY: Ms. Mobley votes
11 no.

12 CHAIRPERSON MILLER: And Mr.
13 Jones?

14 MEMBER JONES: I am not in favor
15 of the motion. I am concerned due to my lack
16 of understanding of the OAG's rationale for
17 dropping charge 2. Because I'm not clear, I'm
18 not comfortable accepting the OIC given that
19 charge 2 has been dropped without explanation.
20 With that I am not in favor of the motion.

21 CHAIRPERSON MILLER: Okay. Mr.
22 Jones votes no.

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MEMBER SILVERSTEIN: I voted yes.

CHAIRPERSON MILLER: Okay. Then I believe the motion passes by a vote of four yes and three no. The Board accepts the Offer-in-Compromise. Thank you.

So that concludes our show cause hearings for today.

(Whereupon, at 3:55 p.m. the hearing was adjourned.)

A	9:14 ANC 2:5 ANC-2B 1:12 Andrew 2:9 19:2 announce 22:5 anymore 17:6 appeal 23:20 application 3:10 applications 3:4,4 appropriate 15:9 approved 3:5,11 areas 22:13 argue 12:14,15 13:5 15:15 16:16 arguing 15:16 articulate 10:14,19 Ascertain 1:13 ascertaining 23:2 assure 21:7 22:14 attempt 26:12 available 12:18 22:16 Avenue 1:10 2:5 aye 9:19,20 11:15 11:16 25:16,17	12:5 13:1 14:5,7,8 14:13 15:8 16:17 17:11,15 18:5,10 19:12,17 20:20 21:1,2 23:11,19 24:1,4 25:3,17,19 25:21 28:4 Board's 14:14 20:21 bottle 22:13,15 break 18:2,6 bring 14:11 Brooks 1:23 26:2,3 Building 1:18 busy 22:2	26:17 27:5,9,12 27:21 28:2 changed 15:14 21:18 changes 17:13 21:5 22:17 23:13 26:11 27:1 charge 4:3,5 7:13 7:17,18 8:8,9 12:13,14 13:8,9 13:13,17 14:3,7 14:11,18 15:1,2,7 16:3,3,5,11 17:3 19:19,19 24:20 25:13 27:17,19 charged 25:5 charges 21:1 check 23:5 checked 23:7 Chrissy 2:7 18:22 circumstances 13:18 17:7 clarification 8:4 clarify 14:18 clarifying 24:15 clear 15:21 16:2 21:10 27:17 clients 3:13 closed 9:11 CN 1:12 color 22:3 colors 22:6 Columbia 1:1 2:8 9:8 19:1 comfortable 27:18 comments 9:4 11:12 20:17 compromise 4:1,2 10:8,20 19:13 24:3 25:7 concerned 27:15 concerns 20:21 concludes 28:6 Connecticut 1:10 2:5 consecutive 20:4 24:10	consider 14:9 17:11 26:14 consideration 19:16 considering 17:16 contesting 17:19 context 16:10 continuance 13:1 continue 19:18 control 1:3,17,17 9:7 22:8 correct 5:8,15 6:16 7:16 8:11,18,20 8:21,22 13:4 15:17 17:21 counsel 9:13 19:7 couple 20:17 cover 25:12 covers 20:5 criminal 16:10 23:9 current 19:22
	B	C	D	
ABC 9:11 abstaining 9:22 11:18 accept 23:18 24:2 accepted 6:5 accepting 27:18 accepts 23:19 28:4 Act 9:10,14 add 11:9 added 25:12 additional 10:11 address 16:14 23:13 adequate 23:2 adjourned 28:9 adjudicated 5:19 7:5 admit 13:9 15:6 17:4 admitting 13:18 16:2,5,7 advance 22:5 advantage 22:15 advice 9:12 affect 17:7 age 1:14 7:20 23:2 agree 20:15 26:1,3 27:3,8 agreed 12:12 Alberti 1:22 5:18 5:21 6:2,10,15,21 7:1,4 8:3,7,10,12 8:16 9:2 10:15,18 10:21 11:11,21 13:21 14:2,8,17 15:4,10,13,19 25:18 26:4,5,17 26:19 alcoholic 1:3,17,17 7:19 9:7 alleged 13:19 allowed 21:21 allowing 12:11 amend 19:14 amended 19:15 Amendment 9:10	back 10:5 18:7,10 18:19 band 23:1 bands 22:4,6 bar 23:8 bartender 23:4,8 bartenders 22:21 based 20:21 behalf 19:2 believe 4:17 5:17 6:12 28:3 believed 22:17 beverage 1:3,17,17 7:19 9:7 beverages 22:16 23:3 Board 1:3,17 4:1 6:5 7:11 8:12 9:4 9:8,11,20 10:1,9 10:12,22 11:5,16	called 21:14 CALVIN 1:22 carded 22:22 case 1:9 2:3 3:19,22 5:19,20 6:13 7:5 9:13 11:4 15:22 17:19 18:1,6,20 cause 1:10 3:14 12:3 28:6 certain 21:5 certainly 20:20 22:18 Chair 8:3 13:22 25:1,18 26:5 Chairperson 1:19 1:21 2:3,14,19,22 3:7,12,18 4:14,20 5:3,6,12 6:8,18,22 7:3,8,17 8:5,19 9:3,6,7,18,21 10:5 10:13,17,22 11:8 11:12,17 12:1,7 12:17,20 13:2,15 13:20 14:1 15:20 16:22 17:14,22 18:11,14,16,19 19:7 20:7,9,14,18 20:19 23:15,21 24:16 25:2,8,11 25:15,20 26:2,4	damages 12:15,16 13:6 date 20:11 dates 4:10 day 3:5 27:3 days 4:7,7,9,9,11 4:14,20,22 5:7,7,9 5:10 6:6,7,19 7:21 7:22 8:1,8,10,13 11:2,2,3,10 19:21 20:1,1,2,3,4,12 24:5,5,7,7,8,9 deal 18:1,6 dealing 21:19 decision 14:14 decline 14:22 declined 16:4 declining 14:3 deliberating 9:15 deny 11:1,19 13:17 determining 15:8 discretion 14:10,13 discussed 3:22 10:8	

19:13 discussing 12:11 dismiss 14:5,7 dispute 16:14 distinction 14:10 District 1:1 2:8 9:8 19:1 disturbing 26:9 doing 15:3 16:1 DONALD 1:23 door 22:22 double 23:4 Drinking 1:14 drop 4:3 12:12 13:8 14:17 19:19 25:12 dropped 7:14,18 27:19 dropping 24:19 27:17 due 27:15 D.C 1:18	Failed 1:13 favor 9:19 11:14 25:16 27:14,20 February 6:13 7:5 7:7 feel 18:3 find 26:8,9 fine 4:6,8 11:1 19:20 20:11 24:4 finish 26:20 first 7:18 five 4:6 5:6 7:22 8:7 11:2 20:3 24:5 following 7:5 form 14:13 formal 3:17 forward 15:1 16:8 19:9 four 28:3 free 18:3 Friday 22:2 further 24:8 future 17:15	26:21 Government 13:8 15:2 16:3,8 gravity 17:17 guess 14:21 26:12 guilty 16:11	4:18 5:1,9,15 8:22 12:5,12,19,22 13:7,16 15:5,12 15:17,18 16:1 17:9,21 18:9,13 18:15 19:2,2,11 20:16,19 23:17 26:10 know 7:12 21:2,17 23:6,11	10:15,21 11:6,11 11:21 13:21 14:2 14:8,17 15:4,10 15:13,19 24:13,14 24:17,19,22 25:10 25:14,18 26:1,3,5 26:19 27:8,10,14 28:1 members 7:11 9:4 9:20 11:16 20:20 25:17 mentioned 19:18 met 1:17 method 21:19 Michael 2:11 19:4 Midtown 1:10 2:4 4:11 18:20 MIKE 1:23 Miller 1:19,21 2:3 2:14,19,22 3:7,12 3:18 4:14,20 5:3,6 5:12 6:8,18,22 7:3 7:8,17 8:5,19 9:3 9:6,18,21 10:5,13 10:17 11:8,12,17 12:1,7,17,20 13:2 13:15,20 14:1 15:20 16:22 17:14 17:22 18:11,14,16 18:19 19:7 20:7,9 20:14,18 23:15,21 24:16 25:2,8,11 25:15,20 26:2,4 26:17 27:5,5,9,12 27:21 28:2	
<hr/> E <hr/> enter 21:22 entering 21:19 essentially 4:2 establishment 21:6 21:20,22 22:7 23:12 evaluating 17:4 evaluation 17:8,18 evening 20:22 events 20:22 21:21 22:1 evidence 17:10 experienced 21:17 26:14,16,20,22 explain 26:21 explanation 23:10 26:11 27:19	<hr/> G <hr/> Garabedian 2:12 2:13,17,18,21 19:5,6 General 2:21,22 Gephardt 2:7,7 3:21 4:16 5:16,18 5:20,22 6:4,12 7:15 8:9,11,14,18 8:21 10:10 12:10 14:2,6,16,20 18:22,22 19:10 20:8,12 24:17,18 24:21 25:4 give 12:5 23:10 given 26:6 27:18 giving 13:13,19 go 10:2 22:18 going 7:10 9:5 10:14,19 13:3,4,5 18:5 19:18,20,21 21:3 23:9 26:11	<hr/> H <hr/> Hak 1:9 2:4 happen 26:12 happening 22:19 happens 21:8 hear 2:15 heard 13:10 hearing 1:11,18 3:6 12:3 28:9 hearings 28:7 help 17:1 HERMAN 1:24 hold 9:11 hour 18:4,8	<hr/> L <hr/> lack 27:15 leaving 14:12 legal 1:14 9:12 Let's 5:22 liability 23:9 license 1:11 2:5 7:22 18:21 24:6 licensee 2:10 13:11 15:6 16:5,17 17:3 19:3,11 20:15 26:7 27:1 light 16:4 26:9 LLC 1:9 2:4 long 22:18 looking 21:9 lunch 18:2,4,5	<hr/> M <hr/> Madam 8:3 10:21 13:22 20:19 25:1 25:18 26:5 making 14:4,6,12 22:16 manager 2:21 3:1 March 20:5,5 24:10,10 matter 1:8 5:11 23:7 mean 4:22 meeting 1:5 9:11 Meetings 9:10,14 Member 1:22,22 1:23,23,24,25 5:18,21 6:2,10,15 6:21 7:1,4 8:3,7 8:10,12,16 9:2,17	<hr/> I <hr/> implemented 27:2 impose 4:6 imposing 17:11 information 10:11 17:6 initially 25:5 instructed 22:21 interest 21:4 interim 3:8 investigative 26:6 issues 16:14
<hr/> F <hr/> face 23:9 fact 3:3 22:22 26:7 facts 12:13 13:9,13 13:19 15:11,21 16:6,9,15,20 23:13 26:6,8,9	<hr/> J <hr/> January 1:15 4:10 4:10 8:1,2 JEANNETTE 1:25 jive 6:3 Jones 1:24 24:14 24:17,19,22 25:9 25:10 27:13,14,22 July 5:17,20	<hr/> K <hr/> keep 19:20 22:8 Kline 2:9,9 3:2,9,15	<hr/> M <hr/> Madam 8:3 10:21 13:22 20:19 25:1 25:18 26:5 making 14:4,6,12 22:16 manager 2:21 3:1 March 20:5,5 24:10,10 matter 1:8 5:11 23:7 mean 4:22 meeting 1:5 9:11 Meetings 9:10,14 Member 1:22,22 1:23,23,24,25 5:18,21 6:2,10,15 6:21 7:1,4 8:3,7 8:10,12,16 9:2,17	<hr/> M <hr/> Madam 8:3 10:21 13:22 20:19 25:1 25:18 26:5 making 14:4,6,12 22:16 manager 2:21 3:1 March 20:5,5 24:10,10 matter 1:8 5:11 23:7 mean 4:22 meeting 1:5 9:11 Meetings 9:10,14 Member 1:22,22 1:23,23,24,25 5:18,21 6:2,10,15 6:21 7:1,4 8:3,7 8:10,12,16 9:2,17	

27:15,20 28:3 move 9:10 15:1 19:9 24:2 moves 16:8	8:20 9:3,4 10:13 10:17 11:8 12:7 12:17,20 13:15,20 14:1 15:4,13 16:22 17:22,22 18:15 20:9,14,18 23:15,21 24:22 25:15,20 27:21 28:2	present 1:20 4:1 10:11 17:10 19:9 presented 24:3 presiding 1:19 prevent 13:12 16:19 preventing 22:19 previous 5:11,13 19:12 primary 23:1 25:5 prior 4:8 8:14,16 20:3 24:9 problems 22:9 proceed 11:22 12:2 12:18 proceeding 17:2 prohibit 22:12 promoter 21:11,13 21:15 proposed 13:7 prosecute 14:4 15:1 16:4 provision 20:10 purpose 9:12 put 13:3,14 16:12 17:10 21:3	12:9 14:19 18:18 18:20 Reeves 1:18 regard 14:3 regarding 8:8 regrouping 18:4 Rehman 2:11,11 3:2 5:5 19:4,4 21:3,14 22:20 26:15,20,22 rejected 19:12 related 6:19 relating 7:18 relationship 21:12 21:13 reoccurrence 13:12 repeat 2:15 7:10 10:15 16:20 report 15:11,22 16:15 17:20 20:21 26:6 represent 5:10 representative 2:10 request 25:21 require 18:10 required 3:17 resides 23:3 respect 10:7 13:10 13:14 15:16 17:2 20:10 responsibility 23:2 result 21:11 Retailer 1:12 Richard 2:12,17 19:5 right 7:15 12:3 23:20 24:6 rise 13:13,19 16:20 20:22 23:14 Room 1:18 rotate 22:3 Ruthanne 1:18,21	20:6 22:2 saying 6:16 8:6 17:3,18 scenario 15:5 second 6:1 7:13,17 9:16,17 11:6 12:4 24:12,13 25:13,14 Section 9:9 secured 22:7 security 22:7 see 3:12 5:22 6:3,15 14:16 24:5 seeking 9:12 seriously 23:12 seriousness 16:18 serve 23:6 served 4:7,9 5:7 6:19 8:1,13 20:1,2 20:4,4 24:7,9 server 23:4,8 servers 22:21 service 22:13,13,15 23:3 serving 23:5 settlement 7:20 seven 10:1 11:19 severed 21:13 show 1:10 3:14 12:3 16:9 28:6 Silverstein 1:23 9:17 27:7,8 28:1 situation 16:18 21:9 sorry 2:15 4:3 stand 21:3 standpoint 9:1 state 10:7 status 3:6 statutory 17:12 stayed 4:7 5:10 6:7 7:22 8:10 11:2 20:2 24:7 steps 1:13 13:11 16:13,19 stipulate 12:13 13:5 stipulated 26:7
<hr/> N <hr/>				
name 2:16 Necessary 1:13 need 7:11 12:21 16:6 NICK 1:22 night 21:12,14 22:10 nightclub 4:12,13 4:21 nights 21:20 22:1,2 Nophlin 1:22 24:13 25:14,22 26:1 notes 6:3,3 8:12 notice 3:13 NW 1:10 2:5 N.W 1:18	old 7:20 Open 9:9,14 operated 4:21 operating 4:12,12 21:16 operation 21:6 opposed 9:22 11:18 owner 2:20 3:3,5,9 26:14	<hr/> P <hr/>		
<hr/> O <hr/>	paid 4:8 7:21 11:2 11:9 24:4 part 15:14 24:20 25:2,6 parties 3:21 10:6 11:21 12:2 19:8 passes 28:3 patrons 22:14 payable 6:6 payment 20:11 penalty 15:9,15,16 17:5,8,12 26:8,13 26:15 pending 3:3 24:7 people 21:19,21 22:22 period 7:9 11:3 person 7:19 phase 15:17 place 27:2 pleading 16:11 Please 26:19 point 10:2 poll 25:19 polled 25:21 potential 23:9 precisely 16:2	proceed 11:22 12:2 12:18 proceeding 17:2 prohibit 22:12 promoter 21:11,13 21:15 proposed 13:7 prosecute 14:4 15:1 16:4 provision 20:10 purpose 9:12 put 13:3,14 16:12 17:10 21:3 P-R-O-C-E-E-D-... 2:1 p.m 2:2 10:3,4 12:8 12:9 18:17,18 28:8	<hr/> Q <hr/>	
OAG's 27:16 obviously 13:17 22:9 occur 16:16 occurred 7:2,4,6 17:18 October 6:4 7:6 offense 16:21 offer 19:15 23:18 23:19 offered 22:14 26:10 Offer-in 3:22 10:7 10:19 19:12 24:2 25:6 Offer-in-Compr... 3:20 11:1,20 19:16 28:5 Oh 3:12 6:15,22 7:3 10:17 12:19 18:11 OIC 6:5 24:20 25:3 27:18 okay 2:19 3:13,18 5:13 6:16 7:9		<hr/> R <hr/>		
		question 13:22 17:1 24:15 quick 10:1	<hr/> R <hr/>	
		range 17:12 rationale 27:16 read 3:16 reading 3:17 ready 11:22 12:2 24:1 received 3:13,15 recess 9:5 10:2 recessed 10:9 record 10:2,4,6	<hr/> S <hr/>	
			safely 18:7 sale 1:13 7:19 Saturday 5:2,4	

<p>stipulating 15:11 15:21 Street 1:18 subsequent 16:13 Sundays 5:5 Sure 8:5 14:1,20 24:16 suspended 5:7 suspension 6:7 7:22 8:8 24:6</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>table 22:13 take 1:13 9:5 10:1 18:2,3,5 23:12 taken 13:12 16:14 16:19 talk 16:13 27:1 talking 17:15 19:11 tell 21:5 terms 13:11 15:8 20:15 testify 21:4 Thank 2:19 6:17 8:19 9:2 12:10 15:4,19 18:16 23:15,21 24:22 25:1,8,10 28:5 Thanks 18:15 thing 22:11 think 7:11 8:7 14:22 18:7 21:4 thinking 14:21 three 19:21 20:1 24:7 28:4 tight 22:8 time 7:11 12:11 18:9 21:5 today 3:4 4:1 12:18 20:1 21:1 28:7 total 20:3 trading 2:4 try 10:14 Tuesday 4:16,18 5:1,3 20:6 two 4:7,9 5:7,9,10 6:19 8:1,13 11:3</p>	<p>12:13 20:1,2 24:7 24:8 25:5 two-day 6:6 t/a 1:10</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>underlying 13:9 16:6,15 understand 3:16 6:17 14:21 16:17 20:20 22:20 23:18 understanding 27:16 understands 16:18 use 22:6</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>venue 21:15 violation 4:4,5,8 5:13,14,16 6:13 6:20 7:1,6 8:15,17 13:19 15:6 16:7,9 16:16 17:17 19:22 20:3 23:14 24:8,9 violations 25:6 vote 9:22 11:13,18 24:1 25:3 28:3 voted 28:1 votes 27:6,10,22 voting 26:21</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>waive 3:16 23:19 want 6:2 13:10,13 15:15,20 21:2 wanted 11:9 14:18 15:14 23:10,11 wants 10:18 warn 21:16 Washington 1:18 way 22:18 26:8 Wednesday 4:17 4:19 week 4:15,22 went 21:10 We're 9:5 wish 19:8 wit 13:14</p>	<p>witness 13:14 15:7 15:16 16:12 17:10 witnesses 13:3 words 3:10 wouldn't 12:22 wrist 22:4,6 23:1</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>year 6:7,9,10 7:2 11:3 20:2 24:8 years 7:20</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>zero 10:1,1 11:19 11:19</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>p 1:7,14</p> <hr/> <p style="text-align: center;">\$</p> <hr/> <p>\$2,000 6:5 \$3,000 4:6,8 7:21 11:2 19:20 24:4</p> <hr/> <p style="text-align: center;">#</p> <hr/> <p>#10-CMP-00504 11:4 #11-251 2:3 #11-251-00066 9:13 18:20 #72087 1:11 2:5 18:21</p> <hr/> <p style="text-align: center;">0</p> <hr/> <p>00066 2:4</p> <hr/> <p style="text-align: center;">1</p> <hr/> <p>1 4:5 12:14 13:10 13:13 15:2,7 16:3 16:5 17:3 19:19 1:32 2:2 1:39 10:3 11-251-00066 1:9 1219 1:10 2:4 13th 20:5 24:10 14th 1:18 17th 20:5 24:11 18 1:15</p>	<hr/> <p style="text-align: center;">2</p> <hr/> <p>2 4:3 13:8 14:3,7 15:1 16:3 19:19 24:20 25:13 27:17 27:19 2B 2:6 2:07 10:4 2:10 12:8 2:12 12:9 2:19 18:17 2000 1:18 2010 5:17 6:5 9:10 9:14 2011 6:14 2012 1:15 8:2 20:7 21 5:17 7:20 21:21 22:12,17 21st 5:20 24th 4:10 8:1 25th 4:10 8:2 25781 4:6 25783 4:4 19:19</p> <hr/> <p style="text-align: center;">3</p> <hr/> <p>3:00 18:11,12 3:15 18:12,13 3:45 18:18 3:55 28:8 30 6:6</p> <hr/> <p style="text-align: center;">4</p> <hr/> <p>4 6:13 405 9:9 405(b)(4) 9:13</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p>6 6:4 60 4:9 7:21 11:2,9 20:12 24:5</p> <hr/> <p style="text-align: center;">7</p> <hr/> <p>783 7:15 25:7</p>
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