

DISTRICT OF COLUMBIA  
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ALCOHOLIC BEVERAGE CONTROL BOARD  
+ + + + +  
MEETING

IN THE MATTER OF:

Big Bear Cafe, LLC  
t/a Big Bear Cafe  
1700 1st Street, NW  
Retailer CR - ANC-5E  
License No. 84379  
Case #14-CMP-00581

Show Cause  
Hearing

(Failed to Post Window  
Lettering)

March 25, 2015

The Alcoholic Beverage Control Board  
met in the Alcoholic Beverage Control Hearing  
Room, Reeves Building, 2000 14th Street, N.W.,  
Suite 400S, Washington, D.C. 20009, Chairperson  
Ruthanne Miller, presiding.

PRESENT:

RUTHANNE MILLER, Chairperson  
NICK ALBERTI, Member  
DONALD BROOKS, Member  
MIKE SILVERSTEIN, Member  
HECTOR RODRIGUEZ, Member  
JAMES SHORT, Member

ALSO PRESENT:

FERNANDO RIVERO, OAG

T-A-B-L-E O-F C-O-N-T-E-N-T-S

Opening Statement by Government. . . . . 8  
 Closing Statement by Government. . . . . .10

WITNESS

Stuart Davenport . . . . . .10

EXHIBITS

IDENTIFIED RECEIVED

GOVERNMENT

1 - Investigative Report	8	8
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1 P-R-O-C-E-E-D-I-N-G-S

2 10:33 a.m.

3 CHAIRPERSON MILLER: Okay. The next  
4 case on our calendar is Case No. 14-CMP-00581,  
5 Big Bear Cafe located at 1700 1st Street, N.W.,  
6 License No. 84379, in ANC-5E.

7 Good morning. Would you introduce  
8 yourselves for the record?

9 MR. RIVERO: Good morning. Fernando  
10 Rivero for the District of Columbia standing in  
11 for Michael Stern.

12 MR. DAVENPORT: Good morning. I'm  
13 Stuart Davenport, the owner of the Big Bear Cafe.

14 CHAIRPERSON MILLER: Okay. Good  
15 morning. This is a Show Cause Hearing, but first  
16 we ask if there are any preliminary matters?

17 MR. RIVERO: Yes, actually.

18 CHAIRPERSON MILLER: Okay.

19 MR. RIVERO: Okay. The parties have  
20 an Offer in Compromise to present to the Board,  
21 at this time.

22 CHAIRPERSON MILLER: Okay.

1 MR. RIVERO: The offer is a fine of  
2 \$2,000 payable in 30 days. If the fine is not  
3 paid, the license will be suspended until payment  
4 is received.

5 CHAIRPERSON MILLER: Okay. Did you  
6 say your name is Mr. Davenport?

7 MR. DAVENPORT: Yes.

8 CHAIRPERSON MILLER: Okay. Are you  
9 agreeable to this Offer in Compromise of \$2,000  
10 payable within 30 days and if not paid within 30  
11 days, then the license would be suspended?

12 MR. DAVENPORT: Yes, I am.

13 CHAIRPERSON MILLER: Okay. And do you  
14 understand that you waive your right to a  
15 hearing?

16 MR. DAVENPORT: Yes, I do.

17 CHAIRPERSON MILLER: And you waive  
18 your right to appeal this penalty?

19 MR. DAVENPORT: Yes, I do.

20 CHAIRPERSON MILLER: Okay. Are there  
21 questions by Board Members? Are Board Members  
22 ready to vote on this Offer in Compromise?

1                   MEMBER SILVERSTEIN: Do you have a  
2 motion?

3                   CHAIRPERSON MILLER: I will make a  
4 motion if Board Members are ready for me to move.  
5 Okay. Then this is a failure to post window  
6 lettering and the Offer in Compromise is \$2,000  
7 payable within 30 days. And if not paid within  
8 30 days, then the license will be suspended until  
9 payment is made.

10                   I would move to approve this Offer in  
11 Compromise.

12                   MEMBER SILVERSTEIN: I'll second.

13                   CHAIRPERSON MILLER: Mr. Silverstein  
14 seconded the motion. Any comments?

15                   MEMBER ALBERTI: So just to be clear,  
16 our notes show that this is a sixth secondary  
17 tier violation. Is that correct?

18                   MR. RIVERO: That is correct.

19                   MEMBER ALBERTI: Thank you. I just  
20 wanted to make sure we had that. Thank you.

21                   MR. RIVERO: Yes. The fine is  
22 commensurate with that status.

1 MEMBER ALBERTI: The statutory fine  
2 range --

3 MR. RIVERO: Right.

4 MEMBER ALBERTI: -- is \$4,000 to  
5 \$6,000? I only mention that because you --  
6 because of your comments.

7 MR. RIVERO: Yes, I don't know. I  
8 thought it was \$2,000 to \$4,000.

9 MEMBER ALBERTI: It's \$4,000 to  
10 \$6,000, I believe.

11 MR. RIVERO: Well, the offer is  
12 \$2,000.

13 MEMBER ALBERTI: I understand that.

14 CHAIRPERSON MILLER: Okay. Any other  
15 comments? Okay. Then there is a motion that has  
16 been seconded.

17 All those in favor say aye.

18 MEMBER SILVERSTEIN: Aye.

19 CHAIRPERSON MILLER: Aye.

20 All those opposed?

21 MEMBER ALBERTI: Opposed.

22 MEMBER SHORT: Opposed.

1 MEMBER BROOKS: Opposed.

2 CHAIRPERSON MILLER: Abstaining?

3 MEMBER RODRIGUEZ: Abstain.

4 CHAIRPERSON MILLER: Why don't we take  
5 a roll call on this then, because we are very  
6 divided here.

7 Mr. Brooks?

8 MEMBER BROOKS: I'm opposed.

9 CHAIRPERSON MILLER: Mr. Alberti?

10 MEMBER ALBERTI: Opposed.

11 CHAIRPERSON MILLER: Rodriguez?

12 MEMBER RODRIGUEZ: Abstain.

13 CHAIRPERSON MILLER: Miller approve.

14 Mr. Silverstein?

15 MEMBER SILVERSTEIN: Approve.

16 CHAIRPERSON MILLER: Mr. Short?

17 MEMBER SHORT: I'm opposed.

18 CHAIRPERSON MILLER: So it appears  
19 that the motion is denied or disapproved by a  
20 vote of 2-3-1.

21 All right. Are you prepared to go  
22 forward with the hearing then?

1 MR. RIVERO: The Government is  
2 prepared to move forward.

3 CHAIRPERSON MILLER: Okay.

4 MR. RIVERO: We are here Board Members  
5 for a Show Cause Hearing in the matter of Big  
6 Bear Cafe, License No. 84379. The Notice to Show  
7 Cause indicates that the licensee failed to post  
8 the required window lettering on an interior  
9 window of the establishment in violation of D.C.  
10 Official Code 25-11(b) of 2012 replacement  
11 edition.

12 It's our belief by a preponderance of  
13 the evidence that the violation, in fact, took  
14 place. The parties have a stipulation of fact to  
15 present to the Board, in that we offer the  
16 Investigator's report into the record --

17 CHAIRPERSON MILLER: Yes.

18 MR. RIVERO: -- as Government's  
19 Exhibit 1.

20 CHAIRPERSON MILLER: Okay.

21 (Whereupon, the above-referred to  
22 document was marked as Government

1 Exhibit No. 1 for identification and  
2 was received into evidence.)

3 MR. RIVERO: For the Government's  
4 testimony in this case. As the report does  
5 indicate, that the Investigator observed  
6 lettering that lacked the license number and  
7 there is a photograph attached.

8 I have the Government's Exhibit 1 to  
9 provide at this time.

10 CHAIRPERSON MILLER: Okay. Mr.  
11 Davenport, do you stipulate to the facts in the  
12 Investigator's report?

13 MR. DAVENPORT: I do.

14 CHAIRPERSON MILLER: Okay.

15 MR. RIVERO: This concludes the  
16 Government's case.

17 CHAIRPERSON MILLER: Okay. Does the  
18 Board have any questions on the stipulated facts,  
19 which is the Government's testimony?

20 Okay. Not hearing any, Mr. Davenport,  
21 do you have anything you want to present in  
22 response to the Government's case?

1 MR. DAVENPORT: I don't dispute that  
2 the number wasn't there. We did have a paper --

3 CHAIRPERSON MILLER: Wait a second.  
4 Let me swear you in because you're not an  
5 attorney and you sound like you are testifying.  
6 Whereupon,

7 STUART DAVENPORT  
8 was called as a witness for the Licensee, and  
9 having been first duly sworn, assumed the witness  
10 stand and was examined and testified as follows:

11 MR. DAVENPORT: I do.

12 CHAIRPERSON MILLER: Okay. You can  
13 proceed now.

14 MR. DAVENPORT: The -- you can see  
15 that half of the posting is still up. The other  
16 half just -- it's our responsibility to make sure  
17 it's there, but it wasn't there. So what we have  
18 done is we have replaced it with permanent  
19 lettering. We did it immediately.

20 We have had problems over the past  
21 four years with the six second tier violations.  
22 We have been -- have gone through a few evening

1 managers trying to get consistency and we were  
2 doing a much better job. The managerial issues  
3 at times have been overlooked and that's a good  
4 example just the fact that the sign fell and  
5 nobody actually noticed.

6 Just simply what we do now is not only  
7 a consistent compliance review, we also just have  
8 periodic reviews of everything in-house with  
9 checklists and with trying to get better at the  
10 compliance issues. So that's all.

11 CHAIRPERSON MILLER: Okay. All right.  
12 Thank you. Any questions for Mr. Davenport?  
13 Okay. Any closing arguments?

14 MR. RIVERO: We believe the Government  
15 has proven by a preponderance of the evidence  
16 that the violation alleged, in fact, took place.  
17 The Government's recommendation is a \$2,000 fine  
18 payable in 30 days. Thank you.

19 CHAIRPERSON MILLER: That's your  
20 recommendation?

21 MR. RIVERO: Correct.

22 CHAIRPERSON MILLER: \$2,000?

1 MR. RIVERO: Correct.

2 CHAIRPERSON MILLER: Okay. Okay. Any  
3 other closing remarks? Mr. Davenport?

4 MR. DAVENPORT: No, that's it.

5 CHAIRPERSON MILLER: All right. Thank  
6 you. All right. I'm going to close the record  
7 then in this case and ask if you want to file  
8 proposed findings of facts and conclusions of law  
9 or waive your right to do so?

10 MR. RIVERO: The Government waives.

11 CHAIRPERSON MILLER: Okay. Do you  
12 understand the question?

13 MR. DAVENPORT: Do I waive?

14 CHAIRPERSON MILLER: It's a filing of  
15 proposed findings of facts and conclusions of  
16 law.

17 MR. DAVENPORT: I'll --

18 CHAIRPERSON MILLER: You'll waive?

19 MR. DAVENPORT: -- waive.

20 CHAIRPERSON MILLER: Okay. We already  
21 have your stipulated facts, so okay.

22 All right. Then the Board is going to

1 just take a vote on deliberating this case in  
2 closed session. So what that means is this case  
3 is completed as far as you making your arguments  
4 and presenting any evidence. And we are going to  
5 consider in closed session the liability and the  
6 fine and we will be issuing a decision within 90  
7 days in writing.

8 MR. DAVENPORT: Okay.

9 CHAIRPERSON MILLER: Okay. So I'm  
10 just going to take a vote to do that deliberation  
11 in closed session.

12 As Chairperson of the Alcoholic  
13 Beverage Control Board for the District of  
14 Columbia and in accordance with Section 405 of  
15 the Open Meetings Amendment Act of 2010, I move  
16 that the ABC Board hold a closed meeting for the  
17 purpose of seeking legal advice from our counsel  
18 on Case No. 14-CMP-00581, Big Bear Cafe, per  
19 Section 405(b)(4) of the Open Meetings Amendment  
20 Act of 2010, and deliberating upon this case for  
21 the reasons cited in Section 405(b)(13) of the  
22 Open Meetings Amendment Act of 2010.

1 Is there a second?

2 MEMBER ALBERTI: Second.

3 CHAIRPERSON MILLER: Mr. Alberti  
4 seconded the motion. I'll now take a roll call  
5 vote on the motion now that it has been seconded.

6 Mr. Brooks?

7 MEMBER BROOKS: I agree.

8 CHAIRPERSON MILLER: Mr. Alberti?

9 MEMBER ALBERTI: I agree.

10 CHAIRPERSON MILLER: Mr. Rodriguez?

11 MEMBER RODRIGUEZ: I agree.

12 CHAIRPERSON MILLER: Ms. Miller

13 agrees.

14 Mr. Silverstein?

15 MEMBER SILVERSTEIN: I agree.

16 CHAIRPERSON MILLER: Mr. Short?

17 MEMBER SHORT: I agree.

18 CHAIRPERSON MILLER: Okay. It appears  
19 that the motion has passed by a 6-0-0 vote.

20 And I hereby give notice that the ABC  
21 Board will hold this closed meeting in the ABC  
22 Board conference room pursuant to the Open

1 Meetings Amendment Act of 2010 and we will be  
2 issuing a decision in writing within 90 days.

3 All right. Thank you very much.

4 MR. DAVENPORT: Okay. Thank you.

5 (Whereupon, the Show Cause Hearing in  
6 the above-entitled matter was concluded at 10:44  
7 a.m.)

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<b>A</b>	<b>called</b> 10:8	<b>District</b> 1:1 3:10 13:13	<b>IDENTIFIED</b> 2:6
<b>\$2,000</b> 4:2,9 5:6 6:8,12 11:17,22	<b>case</b> 1:8 3:4,4 9:4,16,22 12:7 13:1,2,18,20	<b>divided</b> 7:6	<b>immediately</b> 10:19
<b>\$4,000</b> 6:4,8,9	<b>Cause</b> 1:6 3:15 8:5,7 15:5	<b>document</b> 8:22	<b>in-house</b> 11:8
<b>\$6,000</b> 6:5,10	<b>Chairperson</b> 1:14,16 3:3,14,18,22 4:5,8,13 4:17,20 5:3,13 6:14 6:19 7:2,4,9,11,13,16 7:18 8:3,17,20 9:10 9:14,17 10:3,12 11:11 11:19,22 12:2,5,11,14 12:18,20 13:9,12 14:3 14:8,10,12,16,18	<b>doing</b> 11:2	<b>indicate</b> 9:5
<b>a.m</b> 3:2 15:7	<b>checklists</b> 11:9	<b>DONALD</b> 1:17	<b>indicates</b> 8:7
<b>ABC</b> 13:16 14:20,21	<b>cited</b> 13:21	<b>duly</b> 10:9	<b>interior</b> 8:8
<b>above-entitled</b> 15:6	<b>clear</b> 5:15	<b>E</b>	<b>introduce</b> 3:7
<b>above-referred</b> 8:21	<b>close</b> 12:6	<b>edition</b> 8:11	<b>Investigative</b> 2:8
<b>Abstain</b> 7:3,12	<b>closed</b> 13:2,5,11,16 14:21	<b>establishment</b> 8:9	<b>Investigator</b> 9:5
<b>Abstaining</b> 7:2	<b>closing</b> 2:3 11:13 12:3	<b>evening</b> 10:22	<b>Investigator's</b> 8:16 9:12
<b>Act</b> 13:15,20,22 15:1	<b>Code</b> 8:10	<b>evidence</b> 8:13 9:2 11:15 13:4	<b>issues</b> 11:2,10
<b>advice</b> 13:17	<b>Columbia</b> 1:1 3:10 13:14	<b>examined</b> 10:10	<b>issuing</b> 13:6 15:2
<b>agree</b> 14:7,9,11,15,17	<b>commensurate</b> 5:22	<b>example</b> 11:4	<b>J</b>
<b>agreeable</b> 4:9	<b>comments</b> 5:14 6:6,15	<b>Exhibit</b> 8:19 9:1,8	<b>JAMES</b> 1:19
<b>agrees</b> 14:13	<b>completed</b> 13:3	<b>EXHIBITS</b> 2:6	<b>job</b> 11:2
<b>Alberti</b> 1:17 5:15,19 6:1 6:4,9,13,21 7:9,10 14:2,3,8,9	<b>compliance</b> 11:7,10	<b>F</b>	<b>K</b>
<b>Alcoholic</b> 1:2,12,13 13:12	<b>Compromise</b> 3:20 4:9 4:22 5:6,11	<b>fact</b> 8:13,14 11:4,16	<b>know</b> 6:7
<b>alleged</b> 11:16	<b>concluded</b> 15:6	<b>facts</b> 9:11,18 12:8,15 12:21	<b>L</b>
<b>Amendment</b> 13:15,19 13:22 15:1	<b>concludes</b> 9:15	<b>failed</b> 1:9 8:7	<b>lacked</b> 9:6
<b>ANC-5E</b> 1:7 3:6	<b>conclusions</b> 12:8,15	<b>failure</b> 5:5	<b>law</b> 12:8,16
<b>appeal</b> 4:18	<b>conference</b> 14:22	<b>far</b> 13:3	<b>legal</b> 13:17
<b>appears</b> 7:18 14:18	<b>consider</b> 13:5	<b>favor</b> 6:17	<b>lettering</b> 1:10 5:6 8:8 9:6 10:19
<b>approve</b> 5:10 7:13,15	<b>consistency</b> 11:1	<b>fell</b> 11:4	<b>liability</b> 13:5
<b>arguments</b> 11:13 13:3	<b>consistent</b> 11:7	<b>Fernando</b> 1:21 3:9	<b>license</b> 1:8 3:6 4:3,11 5:8 8:6 9:6
<b>assumed</b> 10:9	<b>Control</b> 1:2,12,13 13:13	<b>file</b> 12:7	<b>licensee</b> 8:7 10:8
<b>attached</b> 9:7	<b>correct</b> 5:17,18 11:21 12:1	<b>filing</b> 12:14	<b>LLC</b> 1:6
<b>attorney</b> 10:5	<b>counsel</b> 13:17	<b>findings</b> 12:8,15	<b>located</b> 3:5
<b>aye</b> 6:17,18,19	<b>CR</b> 1:7	<b>fine</b> 4:1,2 5:21 6:1 11:17 13:6	<b>M</b>
<b>B</b>	<b>D</b>	<b>first</b> 3:15 10:9	<b>making</b> 13:3
<b>Bear</b> 1:6,6 3:5,13 8:6 13:18	<b>D.C</b> 1:14 8:9	<b>follows</b> 10:10	<b>managerial</b> 11:2
<b>belief</b> 8:12	<b>Davenport</b> 2:5 3:12,13 4:6,7,12,16,19 9:11 9:13,20 10:1,7,11,14 11:12 12:3,4,13,17,19 13:8 15:4	<b>forward</b> 7:22 8:2	<b>managers</b> 11:1
<b>believe</b> 6:10 11:14	<b>days</b> 4:2,10,11 5:7,8 11:18 13:7 15:2	<b>four</b> 10:21	<b>March</b> 1:11
<b>better</b> 11:2,9	<b>decision</b> 13:6 15:2	<b>G</b>	<b>marked</b> 8:22
<b>Beverage</b> 1:2,12,13 13:13	<b>deliberating</b> 13:1,20	<b>give</b> 14:20	<b>matter</b> 1:5 8:5 15:6
<b>Big</b> 1:6,6 3:5,13 8:5 13:18	<b>deliberation</b> 13:10	<b>go</b> 7:21	<b>matters</b> 3:16
<b>Board</b> 1:2,12 3:20 4:21 4:21 5:4 8:4,15 9:18 12:22 13:13,16 14:21 14:22	<b>denied</b> 7:19	<b>going</b> 12:6,22 13:4,10	<b>means</b> 13:2
<b>Brooks</b> 1:17 7:1,7,8 14:6,7	<b>disapproved</b> 7:19	<b>good</b> 3:7,9,12,14 11:3	<b>meeting</b> 1:3 13:16 14:21
<b>Building</b> 1:13	<b>dispute</b> 10:1	<b>Government</b> 2:2,3,7 8:1 8:22 11:14 12:10	<b>Meetings</b> 13:15,19,22 15:1
<b>C</b>		<b>Government's</b> 8:18 9:3 9:8,16,19,22 11:17	<b>Member</b> 1:17,17,18,18 1:19 5:1,12,15,19 6:1 6:4,9,13,18,21,22 7:1 7:3,8,10,12,15,17 14:2,7,9,11,15,17
<b>C-O-N-T-E-N-T-S</b> 2:1		<b>H</b>	<b>Members</b> 4:21,21 5:4 8:4
<b>Cafe</b> 1:6,6 3:5,13 8:6 13:18		<b>half</b> 10:15,16	<b>mention</b> 6:5
<b>calendar</b> 3:4		<b>hearing</b> 1:7,13 3:15 4:15 7:22 8:5 9:20 15:5	<b>met</b> 1:13
<b>call</b> 7:5 14:4		<b>HECTOR</b> 1:18	<b>Michael</b> 3:11
		<b>hold</b> 13:16 14:21	<b>MIKE</b> 1:18
		<b>I</b>	<b>Miller</b> 1:14,16 3:3,14,18
		<b>identification</b> 9:1	

3:22 4:5,8,13,17,20  
5:3,13 6:14,19 7:2,4,9  
7:11,13,13,16,18 8:3  
8:17,20 9:10,14,17  
10:3,12 11:11,19,22  
12:2,5,11,14,18,20  
13:9 14:3,8,10,12,12  
14:16,18

**morning** 3:7,9,12,15  
**motion** 5:2,4,14 6:15  
7:19 14:4,5,19  
**move** 5:4,10 8:2 13:15

---

**N**

**N.W** 1:13 3:5  
**name** 4:6  
**NICK** 1:17  
**notes** 5:16  
**notice** 8:6 14:20  
**noticed** 11:5  
**number** 9:6 10:2  
**NW** 1:7

---

**O**

**O-F** 2:1  
**OAG** 1:21  
**observed** 9:5  
**offer** 3:20 4:1,9,22 5:6  
5:10 6:11 8:15  
**Official** 8:10  
**okay** 3:3,14,18,19,22  
4:5,8,13,20 5:5 6:14  
6:15 8:3,20 9:10,14  
9:17,20 10:12 11:11  
11:13 12:2,2,11,20,21  
13:8,9 14:18 15:4  
**Open** 13:15,19,22 14:22  
**Opening** 2:2  
**opposed** 6:20,21,22 7:1  
7:8,10,17  
**overlooked** 11:3  
**owner** 3:13

---

**P**

**P-R-O-C-E-E-D-I-N-G-S**  
3:1  
**paid** 4:3,10 5:7  
**paper** 10:2  
**parties** 3:19 8:14  
**passed** 14:19  
**payable** 4:2,10 5:7  
11:18  
**payment** 4:3 5:9  
**penalty** 4:18  
**periodic** 11:8  
**permanent** 10:18  
**photograph** 9:7  
**place** 8:14 11:16

**post** 1:9 5:5 8:7  
**posting** 10:15  
**preliminary** 3:16  
**prepared** 7:21 8:2  
**preponderance** 8:12  
11:15

**present** 1:15,20 3:20  
8:15 9:21

**presenting** 13:4  
**presiding** 1:14  
**problems** 10:20  
**proceed** 10:13  
**proposed** 12:8,15  
**proven** 11:15  
**provide** 9:9  
**purpose** 13:17  
**pursuant** 14:22

---

**Q**

**question** 12:12  
**questions** 4:21 9:18  
11:12

---

**R**

**range** 6:2  
**ready** 4:22 5:4  
**reasons** 13:21  
**received** 2:6 4:4 9:2  
**recommendation** 11:17  
11:20  
**record** 3:8 8:16 12:6  
**Reeves** 1:13  
**remarks** 12:3  
**replaced** 10:18  
**replacement** 8:10  
**report** 2:8 8:16 9:4,12  
**required** 8:8  
**response** 9:22  
**responsibility** 10:16  
**Retailer** 1:7  
**review** 11:7  
**reviews** 11:8  
**right** 4:14,18 6:3 7:21  
11:11 12:5,6,9,22  
15:3

**Rivero** 1:21 3:9,10,17  
3:19 4:1 5:18,21 6:3,7  
6:11 8:1,4,18 9:3,15  
11:14,21 12:1,10

**Rodriguez** 1:18 7:3,11  
7:12 14:10,11

**roll** 7:5 14:4

**room** 1:13 14:22  
**Ruthanne** 1:14,16

---

**S**

**second** 5:12 10:3,21  
14:1,2

**secondary** 5:16  
**seconded** 5:14 6:16  
14:4,5

**Section** 13:14,19,21  
**see** 10:14

**seeking** 13:17

**session** 13:2,5,11

**Short** 1:19 6:22 7:16,17  
14:16,17

**show** 1:6 3:15 5:16 8:5  
8:6 15:5

**sign** 11:4

**Silverstein** 1:18 5:1,12  
5:13 6:18 7:14,15  
14:14,15

**simply** 11:6

**six** 10:21

**sixth** 5:16

**sound** 10:5

**stand** 10:10

**standing** 3:10

**Statement** 2:2,3

**status** 5:22

**statutory** 6:1

**Stern** 3:11

**stipulate** 9:11

**stipulated** 9:18 12:21

**stipulation** 8:14

**Street** 1:7,13 3:5

**Stuart** 2:5 3:13 10:7

**Suite** 1:14

**sure** 5:20 10:16

**suspended** 4:3,11 5:8

**swear** 10:4

**sworn** 10:9

---

**T**

**T-A-B-L-E** 2:1

**t/a** 1:6

**take** 7:4 13:1,10 14:4

**testified** 10:10

**testifying** 10:5

**testimony** 9:4,19

**Thank** 5:19,20 11:12,18  
12:5 15:3,4

**thought** 6:8

**tier** 5:17 10:21

**time** 3:21 9:9

**times** 11:3

**trying** 11:1,9

---

**U**

**understand** 4:14 6:13  
12:12

---

**V**

**violation** 5:17 8:9,13  
11:16

**violations** 10:21  
**vote** 4:22 7:20 13:1,10  
14:5,19

---

**W**

**Wait** 10:3

**waive** 4:14,17 12:9,13  
12:18,19

**waives** 12:10

**want** 9:21 12:7

**wanted** 5:20

**Washington** 1:14

**wasn't** 10:2,17

**window** 1:9 5:5 8:8,9

**witness** 2:4 10:8,9

**writing** 13:7 15:2

---

**X**

---

**Y**

**years** 10:21

---

**Z**

---

**0**

---

**1**

1 2:8 8:19 9:1,8

**10** 2:3,5

**10:33** 3:2

**10:44** 15:6

**14-CMP-00581** 1:8 3:4  
13:18

**14th** 1:13

**1700** 1:7 3:5

**1st** 1:7 3:5

---

**2**

**2-3-1** 7:20

**2000** 1:13

**2009** 1:14

**2010** 13:15,20,22 15:1

**2012** 8:10

**2015** 1:11

**25** 1:11

**25-11(b)** 8:10

---

**3**

**30** 4:2,10,10 5:7,8 11:18

---

**4**

**400S** 1:14

**405** 13:14

**405(b)(13)** 13:21

**405(b)(4)** 13:19

---

**5**

6
6-0-0 14:19
7
8
8 2:2,8,8 84379 1:8 3:6 8:6
9