

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

IN THE MATTER OF:

Soo & Chan, Inc. t/a
Georgia Avenue Food Barn Show Cause
6205 Georgia Ave., NW Hearing
Retailer A - ANC-4B
License No. 71950
Case #13-CMP-00525

(Sold Go-Cup)

October 8, 2014

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:

WALTER ADAMS, OAG

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

Opening Statement by Government. 6
Closing Statement by Government.48
Closing Statement by Licensee.51

WITNESS	DIRECT	CROSS
John Suero	9	22
Sean Kim	30	36

EXHIBITS	IDENTIFIED	RECEIVED
1 - Investigative Report	15	
2 - 2 Miller Lite cans	15	
3 - 3 Plastic Cups	15	

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

(11:39 a.m.)

CHAIRPERSON MILLER: Okay. So you are all here on Case No. 13-CMP-00525, Georgia Avenue Food Barn located at 6205 Georgia Avenue, N.W., License No. 71950, in ANC-4B.

MR. KIM: Yes, ma'am.

CHAIRPERSON MILLER: Okay. So if you want to start by introducing yourselves for the record?

MR. ADAMS: Yes. Good morning, Madam Chairman and Members of the Board. I'm Walter Adams and I'm with the -- I represent the District of Columbia.

CHAIRPERSON MILLER: Okay. Sir?

MR. KIM: Good morning, Your Honors. Yes, my name is Sean Kim and I represent the Georgia Avenue Food Barn.

CHAIRPERSON MILLER: Yun Kim?

MR. KIM: That's --

CHAIRPERSON MILLER: Oh, no, that's who you represent. Okay. And what's

1 your name?

2 MR. KIM: Sean.

3 CHAIRPERSON MILLER: Sean Kim?

4 MR. KIM: Yes, ma'am.

5 CHAIRPERSON MILLER: Okay. Right.

6 Okay. So I see we have a written
7 authorization for you to represent Georgia
8 Avenue Food Barn in this case.

9 MR. KIM: Yes, ma'am.

10 CHAIRPERSON MILLER: Okay. Good.

11 All right. Are there any preliminary matters
12 in this case?

13 MR. ADAMS: No, Madam Chairman,
14 there are no preliminary matters in this case.

15 CHAIRPERSON MILLER: Okay. So,
16 Mr. Kim, I just want to make sure you
17 understand what is going to happen. Have you
18 participated in a proceeding before this Board
19 before?

20 MR. KIM: No, this is the first
21 time.

22 CHAIRPERSON MILLER: Okay. So Mr.

1 Adams represents the Government, the District
2 of Columbia, and he has the burden of proof of
3 his charges against you.

4 MR. KIM: Okay.

5 CHAIRPERSON MILLER: Okay. So
6 what is going to happen, the order of
7 procedure is, basically, he will give an
8 opening statement --

9 MR. KIM: Right.

10 CHAIRPERSON MILLER: -- about what
11 he is going to do. You have an option to do
12 that or not.

13 MR. KIM: Right.

14 CHAIRPERSON MILLER: Then he is
15 going to present his case.

16 MR. KIM: Absolutely.

17 CHAIRPERSON MILLER: And you will
18 have the opportunity to cross-examine any
19 witness that he puts on the stand.

20 MR. KIM: Okay.

21 CHAIRPERSON MILLER: And then when
22 he is done, you can present your case in

1 whatever form that is. If it's just you
2 testifying about what happened, that's fine,
3 too. And then at the end, you each get
4 closing arguments.

5 MR. KIM: Yes, ma'am.

6 CHAIRPERSON MILLER: And the Board
7 can ask questions of witnesses as well.

8 MR. KIM: Thank you.

9 CHAIRPERSON MILLER: Okay. So
10 that's it. If you have any questions along
11 the way, feel free to ask them.

12 MR. KIM: Yes, ma'am. Thank you.

13 CHAIRPERSON MILLER: Okay. All
14 right. Mr. Adams?

15 MR. ADAMS: Yes, Madam Chairman.
16 The District would like to make an opening
17 statement for the case, if the Board is ready.

18 CHAIRPERSON MILLER: Okay.

19 MR. ADAMS: This case is a single
20 charge case against the Georgia Avenue Food
21 Barn. We believe that the District can meet
22 the burden of proof by a preponderance of

1 evidence to show that on September 13, 2013,
2 that the establishment did indeed violate the
3 D.C. Statute that prohibits establishments
4 from providing go-cups to customers.

5 Specifically, the evidence will
6 show that on September 13th that Investigator
7 John Suero went to the establishment in an
8 undercover capacity, that he was able to
9 procure two beer cans, took it to the cashier
10 and offered to pay for it. But in the
11 process, the evidence will also show that the
12 Investigator asked for cups for consumption of
13 such beverages and that the establishment
14 provided to him three cups to him for a
15 nominal fee of .25 cents per cup.

16 Based upon the D.C. Statute that
17 defines what go-cup is, which is within the
18 definitions, a go-cup in this case is a
19 drinking utensil provided at no charge or
20 nominal charge to a customer for purposes of
21 consuming alcoholic beverages off the premises
22 of the establishment.

1 And based upon the evidence, we
2 believe that the Board will be able to indeed
3 conclude that a go-cup was provided and
4 therefore that the establishment was in
5 violation.

6 CHAIRPERSON MILLER: Okay. So,
7 Mr. Kim, what I say is you also could do an
8 opening statement before your case.

9 MR. KIM: Okay.

10 CHAIRPERSON MILLER: And if you
11 want to do one now, you can, but often when
12 the person is the same, you know, you're not
13 an attorney or whatever, when you give
14 testimony, I'm going to put you under oath.
15 So that's going to be your evidence.

16 MR. KIM: Okay.

17 CHAIRPERSON MILLER: So sometimes
18 it really overlaps, so it's up to you though.
19 You have a right to do an opening statement,
20 but you have an opportunity later, if it makes
21 more sense.

22 MR. KIM: After the Board.

1 CHAIRPERSON MILLER: After he is
2 finished with his case?

3 MR. KIM: I'll wait for him to
4 continue.

5 CHAIRPERSON MILLER: Okay.

6 MR. ADAMS: Thank you.

7 CHAIRPERSON MILLER: Mr. Adams?

8 MR. ADAMS: The District will call
9 its only witness, Investigator John Suero to
10 the stand.

11 CHAIRPERSON MILLER: Good morning.

12 INVESTIGATOR SUERO: Good morning.

13 Whereupon,

14 INVESTIGATOR JOHN SUERO
15 was called as a witness by Counsel for the
16 Government, and having been first duly sworn,
17 assumed the witness stand and was examined and
18 testified as follows:

19 INVESTIGATOR SUERO: I do.

20 CHAIRPERSON MILLER: All right.

21 Thank you.

22 DIRECT EXAMINATION

1 MR. ADAMS: Good morning,
2 Investigator Suero, could you please state
3 your name and spell it for the record?

4 INVESTIGATOR SUERO: Investigator
5 John Suero. Last name is spelled S, as in
6 Sam, U-E-R-O. The John is common spelling.

7 MR. ADAMS: Okay. Investigator
8 Suero, you are employed by the Alcoholic
9 Beverage Regulation Administration. Is that
10 correct?

11 INVESTIGATOR SUERO: Yes, sir, I
12 am.

13 MR. ADAMS: And you have been with
14 -- how long have you been with the Agency?

15 INVESTIGATOR SUERO: I began with
16 ABRA June 3, 2013.

17 MR. ADAMS: All right. And the
18 contraction of the Agency is known as ABRA.
19 Is that correct?

20 INVESTIGATOR SUERO: Yes, sir.

21 MR. ADAMS: All right. On
22 September 13, 2013, were you on duty, Mr.

1 Suero?

2 INVESTIGATOR SUERO: Yes, sir, I
3 was.

4 MR. ADAMS: All right. And did
5 you have occasion to be present at an
6 establishment named Georgia Avenue Food Barn,
7 which is located at 6205 Georgia Avenue, N.W.?

8 INVESTIGATOR SUERO: Yes, sir, I
9 was.

10 MR. ADAMS: All right. And can
11 you explain to the Board why you were there?

12 INVESTIGATOR SUERO: ON that
13 particular date and time I was conducting
14 single sales operations, which we do
15 regularly. I was undercover. I was in plain
16 clothes. I walked into the Georgia Avenue
17 Food Barn specifically in an attempt to see if
18 I could purchase either a single alcoholic
19 beverage or go-cups.

20 MR. ADAMS: All right. And so on
21 that occasion what occurred?

22 INVESTIGATOR SUERO: I walked in,

1 came around the left there was a place where
2 apparently you can purchase lottery tickets.
3 So I had to go around that to go into the main
4 store. I saw a cooler directly across from
5 me. I walked to the cooler. I took out a
6 double pack of Miller Lite beer. I walked
7 with that alcohol to the counter.

8 A young man was at the counter. I
9 put the alcohol in front of him. I said do
10 you have any cups? And I said I need them so
11 my friends and I can go drink outside. He
12 reached under the counter immediately and
13 pulled out what appeared to be a pack of three
14 small plastic cups wrapped in plastic and said
15 .25 cents and I said that's fine.

16 I paid for those items, took them
17 with me and left the store.

18 MR. ADAMS: And how much did you
19 pay for the items again?

20 INVESTIGATOR SUERO: .25 cents.

21 MR. ADAMS: Okay. All right.

22 Investigator Suero, after you made this

1 purchase, what occurred afterwards?

2 INVESTIGATOR SUERO: That was my
3 last stop that afternoon, so I immediately
4 returned to ABRA where I secured the items I
5 had purchased, locked them in the cabinet and
6 waited for a date to turn them over.

7 MR. ADAMS: As part of your
8 investigation, did you -- were there any other
9 actions that you took?

10 INVESTIGATOR SUERO: I checked to
11 see what their history was.

12 MR. ADAMS: Okay. And what did
13 you find?

14 INVESTIGATOR SUERO: I found in
15 their violations history that they had a prior
16 go-cups violation in March, also, 2013.

17 MR. ADAMS: And --

18 CHAIRPERSON MILLER: I'm sorry?
19 March of what year?

20 INVESTIGATOR SUERO: 2013.

21 CHAIRPERSON MILLER: '13?

22 INVESTIGATOR SUERO: Yes, ma'am.

1 CHAIRPERSON MILLER: Okay.

2 MR. ADAMS: And that's the same
3 year as the -- when you visited the
4 establishment?

5 INVESTIGATOR SUERO: Yes, sir. I
6 visited in September 2013.

7 MR. ADAMS: And what -- and how
8 did you document your visit?

9 INVESTIGATOR SUERO: I prepared an
10 investigative report.

11 MR. ADAMS: All right. Actually,
12 I'm going to present to Investigator Suero
13 several or three items. I'm going to show
14 them to Mr. Kim. And he already has a copy of
15 the investigative report.

16 So with the Board's indulgence, I
17 want to mark the exhibits. I should have
18 brought stickers.

19 CHAIRPERSON MILLER: All right.

20 MR. ADAMS: I'm going to present
21 it. With the Board's permission, I'll present
22 it to Mr. Suero.

1 CHAIRPERSON MILLER: Did you
2 actually show them to Mr. Kim?

3 MR. ADAMS: Okay.

4 CHAIRPERSON MILLER: Okay. Thank
5 you.

6 MR. KIM: Thank you.

7 MR. ADAMS: I present a document
8 that is marked 1, an item that is marked 3 and
9 an item that's marked for identification
10 purposes as District Exhibit No. 2.

11 (Whereupon, the above-referred to
12 documents were marked as
13 Government Exhibit No. 1, 2 and 3
14 for identification.)

15 MR. ADAMS: Turning to the item
16 that is marked as Exhibit No. 1, do you
17 recognize that item, Mr. Suero?

18 INVESTIGATOR SUERO: Yes, sir, I
19 do.

20 MR. ADAMS: And what is it?

21 INVESTIGATOR SUERO: This is the
22 investigative report that I prepared

1 subsequent to this event.

2 MR. ADAMS: Okay. And based upon
3 -- and have you had a chance to review it?

4 INVESTIGATOR SUERO: I have.

5 MR. ADAMS: Is it a true and
6 accurate version of the Investigator report
7 that you completed at the time as a result of
8 your -- of this investigation?

9 INVESTIGATOR SUERO: Yes, sir, it
10 is.

11 MR. ADAMS: All right. Now, I'm
12 going to ask you to turn to what is marked as
13 Government's Exhibit No. 2.

14 CHAIRPERSON MILLER: What was 1?
15 I'm sorry.

16 MR. ADAMS: Oh, it's the
17 investigative report.

18 CHAIRPERSON MILLER: Okay.

19 MR. ADAMS: That he completed.
20 And do you recognize what is marked as Exhibit
21 No. 2?

22 INVESTIGATOR SUERO: Yes, sir, I

1 do.

2 MR. ADAMS: And what is it?

3 INVESTIGATOR SUERO: These are the
4 24 ounce cans of Miller Lite beer that I
5 purchased on September 13, 2013 from Georgia
6 Avenue Food Barn.

7 MR. ADAMS: All right. And you
8 stated that you kept those in storage?

9 INVESTIGATOR SUERO: Yes, sir.
10 These were turned over to the chief as
11 evidence and they were maintained in evidence.

12 MR. ADAMS: Okay.

13 INVESTIGATOR SUERO: Until we
14 needed them for Court.

15 MR. ADAMS: And --

16 INVESTIGATOR SUERO: For you.

17 MR. ADAMS: I apologize.

18 CHAIRPERSON MILLER: Excuse me.
19 You are kind of soft spoken at times.

20 INVESTIGATOR SUERO: I apologize.

21 CHAIRPERSON MILLER: So just what
22 did you say exactly Exhibit 2 is?

1 INVESTIGATOR SUERO: These are the
2 two cans of Miller Lite beer that I purchased
3 on September 13, 2013 at Georgia Avenue Food
4 Barn.

5 CHAIRPERSON MILLER: Okay. Thank
6 you.

7 MR. ADAMS: And last turning to
8 item that is marked for identification
9 purposes as Item No. 3, do you recognize that
10 item?

11 INVESTIGATOR SUERO: Yes, sir, I
12 do.

13 MR. ADAMS: And what is it?

14 INVESTIGATOR SUERO: These are the
15 three small plastic cups wrapped in plastic
16 that I purchased on September 13, 2013 from
17 Georgia Avenue Food Barn for a cost of .25
18 cents.

19 MR. ADAMS: .25 cents per cup or--

20 INVESTIGATOR SUERO: For the three
21 cups.

22 MR. ADAMS: For three cups. Now,

1 in terms of the package, can you describe the
2 packaging? Does it have any markings on it?

3 INVESTIGATOR SUERO: No, sir.
4 It's just clear plastic with the three plastic
5 cups inside and it's open, it's loose. It's
6 not tied or secured in any way.

7 MR. ADAMS: Okay.

8 INVESTIGATOR SUERO: This is how I
9 was provided. It was provided to me.

10 MR. ADAMS: Is it a true and
11 accurate representation of the cups that you
12 purchased on September 13, 2013?

13 INVESTIGATOR SUERO: Yes, sir, it
14 is.

15 MR. ADAMS: All right. Madam
16 Chairman, I would like to move into evidence
17 Exhibit No. 1, which is the investigative
18 report, Exhibit 2, which is the two cans of
19 beer that were procured, and No. 3, which are
20 the three cups that were purchased.

21 CHAIRPERSON MILLER: Okay. Mr.
22 Kim, do you have any objection?

1 MR. KIM: To him?

2 CHAIRPERSON MILLER: No. To the
3 exhibits?

4 MR. KIM: Yes. I just want to ask
5 him one more time what the go-cup stands for.

6 CHAIRPERSON MILLER: No, okay,
7 that's not -- you will get. Right now, I'm
8 just saying he wants to put them into
9 evidence.

10 MR. KIM: All right.

11 CHAIRPERSON MILLER: And so the
12 Board will consider them --

13 MR. KIM: Oh, anything --

14 CHAIRPERSON MILLER: -- as proof.

15 MR. KIM: Right. Exhibits.

16 CHAIRPERSON MILLER: So do you
17 have any objection to --

18 MR. KIM: No.

19 CHAIRPERSON MILLER: Okay. All
20 right. So Exhibits 1, 2 and 3 of the
21 Government are admitted into evidence.

22 (Whereupon, the above-referred to

1 documents were received into
2 evidence as Government Exhibit No.
3 1, 2 and 3.)

4 MR. ADAMS: I guess there is no
5 copies of that, so I'll just provide copies of
6 the --

7 CHAIRPERSON MILLER: We --

8 MR. ADAMS: -- exhibits I'm
9 marking now.

10 CHAIRPERSON MILLER: -- have
11 Exhibit No. 1 anyway.

12 MR. ADAMS: All right.

13 CHAIRPERSON MILLER: It's the
14 investigative report?

15 MR. ADAMS: Yes.

16 CHAIRPERSON MILLER: Yes, okay.
17 So we are okay for now.

18 MR. ADAMS: Oh, good. The
19 District has no further questions for the
20 Investigator.

21 CHAIRPERSON MILLER: Okay. So
22 now, Mr. Kim?

1 MR. KIM: Yes?

2 CHAIRPERSON MILLER: You can ask
3 the Investigator questions based on his
4 testimony.

5 MR. KIM: Okay.

6 CROSS-EXAMINATION

7 MR. KIM: So, Investigator, I
8 mean, so you paid for the cups, right?

9 INVESTIGATOR SUERO: I paid for
10 the cups and for the alcohol, yes, sir.

11 MR. KIM: Okay. And then why are
12 you asking for the cup that you want to drink
13 it outside with your friends then, is what you
14 said?

15 INVESTIGATOR SUERO: I'm sorry?

16 MR. KIM: You said that you want
17 to drink a beer with your friends on outside?

18 INVESTIGATOR SUERO: I said that
19 to the clerk to make it very clear what the
20 purpose of --

21 MR. KIM: All right.

22 INVESTIGATOR SUERO: -- of the

1 cups were, yes, I did.

2 MR. KIM: Okay. And did he
3 understand for the -- you ask him that you
4 want to drink it outside?

5 INVESTIGATOR SUERO: He provided
6 me the cups, so I'm presuming that he
7 understood what I asked for.

8 MR. KIM: Okay.

9 CHAIRPERSON MILLER: Okay.

10 MR. KIM: Yes.

11 CHAIRPERSON MILLER: Are you
12 finished?

13 MR. KIM: Yes, I am.

14 CHAIRPERSON MILLER: Okay. Mr.
15 Silverstein?

16 MEMBER SILVERSTEIN: Investigator
17 Suero, thank you for your report. Could you
18 hold up the cups again, please, sir? If you
19 would describe the way they are wrapped?

20 INVESTIGATOR SUERO: Well, they
21 are wrapped in plastic and if I might open it,
22 you will see that it's an open piece of

1 plastic and there are three cups inside. I'm
2 presuming this was a sleeve at some point of
3 more, but this is how it was provided to me in
4 this particular manner.

5 MEMBER SILVERSTEIN: Have you ever
6 seen cups wrapped that way in three from the
7 manufacturer?

8 INVESTIGATOR SUERO: No, sir, I
9 have not.

10 MEMBER SILVERSTEIN: So this is
11 not as though they were selling a box of cups
12 that had already been prelisted and
13 manufactured, like if you were going to a
14 supermarket and buy 20 or 30 Dixie cups or
15 something like that in an already prepackage?

16 INVESTIGATOR SUERO: No, they are
17 not the way I would have purchased the regular
18 sleeve.

19 MEMBER SILVERSTEIN: So there is
20 no reason to believe that they would have
21 mistakenly been selling a box or something
22 that a manufacturer had done?

1 INVESTIGATOR SUERO: Not in my
2 mind, sir, no.

3 MEMBER SILVERSTEIN: One could
4 infer that this was an intentional sale of a
5 limited number of cups for use as go-cups?

6 INVESTIGATOR SUERO: Yes, sir.

7 MEMBER SILVERSTEIN: No further
8 questions.

9 CHAIRPERSON MILLER: Mr. Short?

10 MEMBER SHORT: Good morning,
11 Investigator Suero.

12 INVESTIGATOR SUERO: Good morning,
13 sir.

14 MEMBER SHORT: You said after you
15 got back to the office, you looked at the
16 investigation of their history?

17 INVESTIGATOR SUERO: I did.

18 MEMBER SHORT: Investigative
19 history. And that showed what things again,
20 that they previously had done the same
21 violation?

22 INVESTIGATOR SUERO: Yes, in March

1 of 2013, they had a prior go-cups violation.

2 MEMBER SHORT: And your event
3 occurred September of the same year?

4 INVESTIGATOR SUERO: Yes, sir, it
5 did.

6 MEMBER SHORT: That's all I have
7 at this time.

8 CHAIRPERSON MILLER: Okay.
9 Others? Mr. Suero, were you the Investigator
10 on the previous violation?

11 INVESTIGATOR SUERO: No, Madam
12 Chairwoman, I was not.

13 CHAIRPERSON MILLER: Okay. And
14 was there any kind of language issue with the
15 clerk that you are aware of?

16 INVESTIGATOR SUERO: No. I don't
17 believe there was. There were other patrons
18 in the store that spoke English besides me, so
19 when -- he answered me in English. He spoke
20 to me in English, so I didn't believe there
21 was.

22 CHAIRPERSON MILLER: The clerk?

1 INVESTIGATOR SUERO: Yes, ma'am.

2 CHAIRPERSON MILLER: Okay. And
3 then my other question is well, you asked for
4 three cups?

5 INVESTIGATOR SUERO: No, I just
6 asked for a cup so my friends and I could go
7 drink outside.

8 CHAIRPERSON MILLER: Oh, you
9 didn't ask for three?

10 INVESTIGATOR SUERO: I didn't ask
11 for a specific number. He just reached under
12 the counter and that's what he produced.

13 CHAIRPERSON MILLER: Okay. And
14 got that. It wasn't like he put three in a
15 sleeve?

16 INVESTIGATOR SUERO: Immediately
17 after I asked, he reached under and provided
18 right away.

19 CHAIRPERSON MILLER: Okay.

20 INVESTIGATOR SUERO: There was no
21 time lapse at all. He just reached and got
22 it.

1 CHAIRPERSON MILLER: Okay. Okay.
2 Anything else? Any questions on Board
3 questions?

4 MR. ADAMS: The District has no
5 further questions for Investigator Suero.

6 CHAIRPERSON MILLER: Okay. Any
7 other questions based on our questions?

8 MR. KIM: No, I don't.

9 CHAIRPERSON MILLER: Okay. Thank
10 you very much.

11 INVESTIGATOR SUERO: Thank you.

12 (Whereupon, witness was excused.)

13 MR. ADAMS: As an administrative
14 matter, I obviously would like to dismiss the
15 witness, but would the Board like us to pass
16 forward Exhibits 2 and 3 for your --

17 CHAIRPERSON MILLER: Oh, sure. In
18 case we want to examine them.

19 MR. ADAMS: Sure.

20 CHAIRPERSON MILLER: If we are
21 thirsty.

22 MR. ADAMS: Yes, we will all go.

1 Anyway, the District rests its case.

2 CHAIRPERSON MILLER: Okay. Thank
3 you. Okay. Mr. Kim?

4 MR. KIM: Yes, ma'am.

5 CHAIRPERSON MILLER: It's your
6 turn. Are you going to testify, tell your
7 story?

8 MR. KIM: Yes, I am.

9 CHAIRPERSON MILLER: Okay. So I'm
10 going to --

11 MR. KIM: I would like to.

12 CHAIRPERSON MILLER: So I guess
13 it's easier if you go over there.

14 MR. KIM: Right. Am I speaking
15 from over there or I --

16 CHAIRPERSON MILLER: Yes, I think
17 so. You can even -- I mean, if you have -- if
18 you do an opening, it's going to end up
19 getting merged with your testimony, so I'll
20 swear you in and then you can present your
21 side.

22 Whereupon,

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SEAN KIM

was called as a witness for the Licensee, and having been first duly sworn, assumed the witness stand and was examined and testified as follows:

MR. KIM: I do.

CHAIRPERSON MILLER: Okay. So have a seat and then you can give us your case however you choose.

MR. KIM: Gotcha. Thanks, Your Honor. Okay.

DIRECT EXAMINATION

MR. KIM: Yes, my name is Sean Kim from the Georgia Avenue Food Barn and I represent the store. And I'm here to talk about the one ticket issued on September 13, 2013 last year.

First of all, we had a first ticket on March 26, 2013. The Investigator came out that date and he was looking for the cup of ice that we are selling and that you guys get a ticket for that. And then he come

1 in and say sorry, we don't sell the cup of
2 ice.

3 And then he went out. He call up
4 5 to 10 minutes, he came back, oh, do you give
5 away any cups? I told him yes, because we
6 used to be the grocery store about last 30
7 years. We recently changed to the liquor
8 stores. And I didn't know the like go-cups or
9 what the go-cups means.

10 Anyway, I told him we didn't give
11 away the empty cups to the customers and I
12 asked him we never get a word, so can you give
13 us some warning or there something we can do
14 you a favor, but he said it's too late to do
15 it now, yeah.

16 He said he even said so, yes, it's
17 too late to do it, but so however we paid for
18 the one with the penalty, but that for future
19 incident happening, I asked him what is the
20 go-cup meaning for it?

21 Because we don't want to just
22 against the law. We did it before, so we pay

1 for it. Something we never aware of even, but
2 I still want to find out what a go-cup is.

3 And the Investigator he mentions
4 of course no free give away single cups. Yes,
5 he clearly told us that, so I asked him and he
6 even told me in other words he said -- what
7 was that? When the cup is packed, as long as
8 it is packed more than one and as long as its
9 charged, it's good to go. That's what he
10 said. That's what he clarify us.

11 And after that, I also request the
12 written statement that what is the book of
13 violation exactly, because I was going to do
14 the packet, because if there was some cups
15 that they package for it, there was another
16 distributor that cup -- exactly same cups with
17 six in the packs.

18 And I guess it came to like three
19 in the cups or something like that, because a
20 lot of people, they asking one cup all the
21 time and then we told them we don't do it, but
22 there are a couple people and we have a lot of

1 single and couples, like we have a lot of like
2 20, 30 like customer bases and I know them for
3 like more than 10 years. So I know that they
4 are families and their family members and
5 everything, they just need two for them. They
6 just want one for themselves.

7 So he said about put more than
8 one, we just packed the three which is
9 reasonable packed for the either couples or
10 just for the single person, so they can get it
11 and they can go home.

12 And additionally, I totally
13 understand why they made go-cups violation.
14 We so support for the idea, because if they
15 want people get their drink and consumption at
16 their home, not on the streets. And we
17 voluntarily selling -- not selling half-pint
18 and a pint of liquors that cost a couple
19 dollars.

20 We the only one stores around
21 there probably all over the city to -- we
22 don't sell like couple dollars vodka or

1 something that just for handy they can drink
2 at the corner. We don't sell them. Once from
3 the beginning when we get a license.

4 And we clean our store all the
5 time. And we even call the police officer if
6 somebody drink it outside, right outside at
7 the corner or anywhere even if they bought it
8 from us, even I know them or not. If you see
9 the police report, there is hundreds of -- I
10 mean, many numbers of reportings that we did
11 call somebody drinking outside.

12 It doesn't matter if they buy it
13 from us or not, we just call them. And then
14 we put the signs for the no loitering at the
15 windows. So therefore like I'm careful to
16 like try to explain why we get the second time
17 second ticket from the ABRA for the go-cup
18 violation. That was not on purpose.

19 Now, we don't sell the three packs
20 any more because of we're not sure there is a
21 possible to sell or not, but honestly, we've
22 got 20 cups we selling for \$1.

1 So compared to 3425, it almost
2 give it away, but we selling 20 cups for \$1,
3 that's even better value for them. It's still
4 under the counter. The reason we put under
5 the counter is handy. A lot of people they
6 come out to get their drinks on the counter,
7 to have a cup, we don't want to send them
8 back, oh, they are in the corner.

9 That's at our counter right at the
10 door and our cups all the way back in the
11 store. They got a -- took about -- it's about
12 50 feet away, so they left their liquor some
13 on the counter and if they have to walk all
14 the way back to where the cups, they've got to
15 come back. So but we always just put some
16 handy cups on the side.

17 But that means we don't want -- we
18 want them like to drink it outside or not and
19 then all year the Investigator said can I
20 drink -- I mean, even somebody said can I
21 drink inside? We're going to say no. Of
22 course, no.

1 If somebody say can I drink
2 outside, I'm going to say you might try, but
3 you better watch out. If we see somebody
4 drink it, we're going to call them right away.

5 Okay. That's my testimony.

6 CHAIRPERSON MILLER: Okay.

7 MR. KIM: Yes, I think that's it.

8 CHAIRPERSON MILLER: That's it?

9 MR. KIM: Yes.

10 CHAIRPERSON MILLER: Okay. Good.

11 All right. Mr. Adams, do you have some
12 questions?

13 MR. ADAMS: Sure, a couple
14 questions.

15 MR. KIM: Yes.

16 CROSS-EXAMINATION

17 MR. ADAMS: All right. Mr. Kim,
18 so on September 13th were you the cashier?

19 MR. KIM: Possibly, but I could be
20 maybe right behind, because I have my family
21 members working and I have about four
22 employees at the counter.

1 MR. ADAMS: Okay. All right. So
2 now you mentioned that within the store right
3 now that, you essentially said that, you know,
4 you state that you sell 20 cups for \$1?

5 MR. KIM: Right.

6 MR. ADAMS: So essentially, the
7 cups are pretty cheap, I guess in terms of
8 selling them?

9 MR. KIM: That's one of our
10 service.

11 MR. ADAMS: All right.

12 MR. KIM: That's almost a little
13 less -- I mean, almost about the cost that we
14 get it. That's something we do as service for
15 our customers.

16 MR. ADAMS: Okay. So in terms of
17 those cups, those cups are labeled?

18 MR. KIM: Yes, it is labeled.

19 MR. ADAMS: Okay. So and it's pre
20 -- it's from the manufacturer that way?

21 MR. KIM: It is from manufacturer
22 with a bar code on it.

1 MR. ADAMS: Okay.

2 MR. KIM: Yes, that's something we
3 can get any time from them.

4 MR. ADAMS: All right. So now in
5 your testimony, you were speaking about a
6 prior incident that occurred, I guess, on
7 March 26th. Now, you stated that at that time
8 you were given a citation and that you paid
9 that citation, correct?

10 MR. KIM: I did.

11 MR. ADAMS: All right. So now,
12 one of the things you mentioned is that you
13 asked -- at the time you asked for a
14 definition. Did you ever get something in
15 writing or anything of that sort?

16 MR. KIM: That was a request made.

17 MR. ADAMS: Okay. You asked for
18 something in writing?

19 MR. KIM: I did ask him, but
20 nobody provide that.

21 MR. ADAMS: And have you ever
22 looked at the Rules and Regulations for --

1 MR. KIM: I mean, I tried, but,
2 you know, that's many pages.

3 MR. ADAMS: It's a lot of pages.

4 MR. KIM: Yes.

5 MR. ADAMS: Okay.

6 MR. KIM: So I tried to look for
7 that week, but after that I been busy, you
8 know. I keep forget about.

9 MR. ADAMS: And so you asked for
10 this example. You stated -- and according to
11 your testimony, the person told you that, let
12 me make sure I have this right, they said that
13 -- the person told you that you can -- as long
14 as you don't give away a single cup that
15 that's okay. Is that more or less what you
16 are saying?

17 MR. KIM: That's what he said. I
18 even asked him it's got to be manufacturer?
19 He said it doesn't have to be. He's manager
20 on the books.

21 MR. ADAMS: Okay.

22 MR. KIM: He said it can be

1 manufactured. It can be store -- wrap
2 yourself. It doesn't state on the books, so
3 that's what he said.

4 MR. ADAMS: But you don't remember
5 -- do you remember who the -- which
6 Investigator that was?

7 MR. KIM: Probably in the record.

8 MR. ADAMS: Is there a record by
9 you? Do you remember?

10 MR. KIM: I remember him.

11 MR. ADAMS: Okay. Do you remember
12 his name?

13 MR. KIM: No, it's more than a
14 year.

15 MR. ADAMS: Did he provide a card
16 or anything to you?

17 MR. KIM: I think he probably do.
18 If I find the paperwork, it probably would be
19 there.

20 MR. ADAMS: Okay.

21 MR. KIM: I'll see.

22 MR. ADAMS: All right. But more

1 or less, I mean, what the Board is relying on,
2 I guess, is your word regarding, essentially,
3 what you are saying about what the person
4 said. Is that correct?

5 MR. KIM: Basically, that's what
6 he did. Because I can't get a written
7 statement.

8 MR. ADAMS: Okay.

9 MR. KIM: That's the only
10 knowledge I get it from him. And he is the
11 Investigator from the ABRA and I have to trust
12 him. And I ask him a written statement, but
13 he never send me. I don't know if he even
14 request for it. There is no way that I can
15 check it where I can get it from.

16 MR. ADAMS: All right.

17 MR. KIM: Yes.

18 MR. ADAMS: I have no further
19 questions for you.

20 CHAIRPERSON MILLER: Are there --
21 okay. Are there Board questions?

22 MEMBER SHORT: Yes, I have one.

1 CHAIRPERSON MILLER: Okay. Mr.
2 Short?

3 MEMBER SHORT: Good afternoon.

4 MR. KIM: Good afternoon.

5 MEMBER SHORT: Is it your
6 testimony that you are aware that the codes,
7 that the law you broke was in the books and
8 you said there were too many pages. Was that
9 your testimony?

10 MR. KIM: I mean, I look up on the
11 website and try to put the go-cups, it doesn't
12 come out. I mean, that's the only thing I can
13 do.

14 MEMBER SHORT: You read the
15 regulations after you received the first fine.

16 MR. KIM: Um-hum.

17 MEMBER SHORT: And you still
18 didn't understand is that what you are saying?

19 MR. KIM: At that point, I
20 couldn't find any information. It didn't come
21 up exactly what clarified whatever the go-cups
22 meant. They said there is a go-cup violation

1 it is, but there is no clarified written
2 statement that clearly stated what is it
3 you're going to get a charge because of this
4 and this and this.

5 MEMBER SHORT: Okay. Well, I have
6 something to say to you.

7 MR. KIM: Yes, sir.

8 MEMBER SHORT: You went to the
9 website.

10 MR. KIM: Right.

11 MEMBER SHORT: And you saw the law
12 there and you read the law.

13 MR. KIM: No, I couldn't find it.

14 MEMBER SHORT: You could not find
15 it?

16 MR. KIM: No, I couldn't. I put
17 the go-cups, nothing come up.

18 MEMBER SHORT: Okay. Hopefully
19 after this hearing is over, you will get that
20 information from the Investigator.

21 MR. KIM: Please, yes, that's why
22 I'm here today for it, yes.

1 MEMBER SHORT: Okay. No problem.
2 Okay. Thank you, Madam Chair, that's all I
3 have.

4 CHAIRPERSON MILLER: Okay.
5 Others? I just want to put on the record what
6 the definition of go-cup says before we finish
7 this hearing. And it says, it's in the
8 Definitions No. 23, "Go-cup means a drinking
9 utensil provided at no charge or a nominal
10 charge to a customer for the purpose of
11 consuming alcoholic beverages off the premises
12 of an establishment."

13 At the beginning of the
14 regulations are definitions.

15 MR. KIM: Okay. Thank you.

16 CHAIRPERSON MILLER: Okay. So as
17 I understand your testimony --

18 MR. KIM: Right.

19 CHAIRPERSON MILLER: -- you hadn't
20 read that before you got the first citation
21 even, correct? And you got -- an Investigator
22 came and told you you can't sell single cups?

1 MR. KIM: Yes, he did.

2 CHAIRPERSON MILLER: And is it
3 your testimony that the Investigator said as
4 long as it was more than one cup, you weren't
5 violating the law?

6 MR. KIM: That's what he said,
7 more than one cup in the pack as long as you
8 charge it.

9 CHAIRPERSON MILLER: What?

10 MR. KIM: As long as you charge
11 it. No free cups.

12 CHAIRPERSON MILLER: And you
13 charge it?

14 MR. KIM: Yes. He said no free
15 cups. Charge it, yes, that's what he said.

16 CHAIRPERSON MILLER: Okay.

17 MR. KIM: Yes.

18 CHAIRPERSON MILLER: Okay. So you
19 thought if you had three --

20 MR. KIM: Right.

21 CHAIRPERSON MILLER: -- you
22 weren't violating the law. Is that it?

1 MR. KIM: Right.

2 CHAIRPERSON MILLER: Okay.

3 MR. KIM: Yes.

4 CHAIRPERSON MILLER: All right.

5 Anything else? Okay. Any other questions?

6 MR. ADAMS: The District has no
7 further questions.

8 CHAIRPERSON MILLER: Okay. Do you
9 have anything --

10 MR. KIM: I'm sorry, the one in
11 the -- the definition for the go-cups, you
12 said no cost or at nominal charge?

13 CHAIRPERSON MILLER: At no charge
14 or a nominal charge.

15 MR. KIM: I'm sorry, so what a
16 nominal charge?

17 CHAIRPERSON MILLER: What does a
18 nominal charge mean?

19 MEMBER ALBERTI: You know, Madam
20 Chair, I think it would be best if Mr. Kim
21 consulted with our General Counsel.

22 MR. KIM: Okay.

1 MEMBER ALBERTI: Ms. Martha
2 Jenkins.

3 CHAIRPERSON MILLER: Okay. Yes, I
4 can --

5 MEMBER ALBERTI: If you call her,
6 she will be more than happy to help you.

7 CHAIRPERSON MILLER: I can't
8 really infuse my interpretation.

9 MEMBER ALBERTI: I think that that
10 would be the best place to get it.

11 CHAIRPERSON MILLER: Yes.

12 MEMBER ALBERTI: Advice is from
13 our General Counsel.

14 MR. KIM: Thank you. Yes, sir.
15 Thank you.

16 CHAIRPERSON MILLER: Okay.
17 Anything else for your case, Mr. Kim? Is
18 there anything else?

19 MR. KIM: I'm done with it.

20 CHAIRPERSON MILLER: Okay. So you
21 can go back over there then if you are
22 finished testifying.

1 MR. KIM: Okay. Thank you.

2 CHAIRPERSON MILLER: Okay. So
3 that completes your case. Am I correct? You
4 don't have any exhibits or anything like that?

5 MR. KIM: No, I don't.

6 CHAIRPERSON MILLER: Okay. All
7 right. So then is there any rebuttal?

8 MR. ADAMS: No. The District does
9 not have any rebuttal witnesses.

10 CHAIRPERSON MILLER: Okay. So
11 closing arguments?

12 MR. ADAMS: Yes. Madam Chairman,
13 based on what you have heard today, you have--
14 the District has proven that there has been a
15 violation of -- that has occurred here, that
16 indeed this establishment did provide go-cups
17 to Investigator Suero.

18 There has been no attempts to not
19 dispute the fact that on September 13 that
20 Investigator Suero was able to procure two
21 Miller Lites from one of the coolers and then
22 was able to purchase for a small fee. And

1 that the -- and when he asked for cups, that
2 he was given a packet of three plastic cups
3 that were unsecured, but in a plastic bag for
4 the cost of .25 cents.

5 More or less as -- in terms of
6 what has -- Mr. Kim has stated, he has more or
7 less stated that well, I haven't really quite
8 read the regulations. I didn't quite
9 understand what that was, that he more or less
10 took at the word of Investigator.

11 I mean, at best, you know, we
12 can't totally rely on it because it was
13 hearsay, but he is stating that, you know, at
14 best that whomever it was who did a prior
15 citation, that that person said that. Now, of
16 course, we don't know who that person was. We
17 don't know if that statement -- if the
18 statements were made by that person, but that
19 person said that if you don't -- if you have
20 more than one cup and that you pack it and you
21 charge for it, that that's okay.

22 Without really getting definitive

1 on the meaning of what it is. But I think
2 what is pretty clear is that in reality what
3 that is is a mistake of law. And a mistake of
4 law is not -- would not excuse what would have
5 occurred here.

6 So in the end, when you look at 25
7 -- when a person has come in and says, clearly
8 stated an intent as Investigator Suero did,
9 that he was going to drink the beverages
10 outside, it does show an intent to -- as Mr.
11 Kim stated, he understood the purpose of the
12 law which is to keep people from loitering.

13 So this kind of -- there was at
14 least a statement where the Investigator said
15 well, I intend to loiter with these alcoholic
16 beverages. So regardless, I mean, so
17 basically, with there being any understanding
18 of how this can be used or cups can be used,
19 certainly there is understanding that the
20 spirit of the law would have been broken by
21 providing the cups.

22 So in the end, there is really no

1 doubt that there is a violation here. And so
2 the nominal fee, in this case, would be just
3 the .25 cents. And so it can't be -- Mr. Kim
4 is right, it can't be for free, but it also
5 can't just be for a very small fee which
6 would, I guess for lack of a better term,
7 accomplish the same purpose or defeat the same
8 purpose as it would be if it were free cups.

9 So with that being the case, I'll
10 conclude my comments and just state that since
11 it would be a secondary tier violation, the
12 District would recommend a \$750 fine.

13 CHAIRPERSON MILLER: Okay. Do you
14 have a closing statement, Mr. Kim?

15 MR. KIM: Like I said, on the cost
16 of cups, I mean, it probably just too cheap,
17 but the cost that I get for three cups, that's
18 only .05 cent, that's why we charge .25 cents,
19 which is, I mean, way more than what it would
20 cost.

21 And I keep on saying the
22 Investigator said like he wants to go out and

1 drink with their friends, but I don't think
2 that that doesn't count us that we let them
3 drink it outside.

4 CHAIRPERSON MILLER: Okay.

5 MR. KIM: And oh, one more thing.

6 CHAIRPERSON MILLER: Okay.

7 MR. KIM: Yes, if I could ask him
8 again, I mean, did he see anybody drinking it
9 outside --

10 CHAIRPERSON MILLER: No.

11 MR. KIM: -- once he come in.

12 CHAIRPERSON MILLER: You can't ask
13 now. I'm sorry.

14 MR. KIM: Okay. Yes.

15 CHAIRPERSON MILLER: I'm sorry.
16 So you can only make your closing based on
17 what was --

18 MR. KIM: Okay.

19 CHAIRPERSON MILLER: -- in the
20 record.

21 MR. KIM: Yes.

22 CHAIRPERSON MILLER: Okay. Okay.

1 So that completes your closing?

2 MR. KIM: Oh, one more thing.

3 CHAIRPERSON MILLER: Okay.

4 MR. KIM: If I have to charge -- I
5 mean, if I have to pay for it, just give me
6 the first one, not the second ticket for it,
7 because --

8 CHAIRPERSON MILLER: I'm sorry,
9 what did you say?

10 MR. KIM: No, never mind. Don't
11 worry about it.

12 MR. ADAMS: Madam Chair? No, go
13 ahead. Say what you were saying.

14 MR. KIM: Yes, I mean, if I have
15 to get charged on this ticket, I wanted to ask
16 in my favor for that, this count as a first
17 one, not as a secondary.

18 MR. ADAMS: If it might help the
19 Board, I know it's closing arguments, and I
20 think what he is -- for clarification
21 purposes, I think what Mr. Kim is saying is he
22 would like there to be a fine in the same

1 range as a first time offense, but not as a
2 second. Is that what you are trying to say?

3 MR. KIM: Right. I mean it's
4 complicated. Don't worry about it. Yes,
5 sorry about that.

6 CHAIRPERSON MILLER: That's all
7 right. Okay. That's all right. Okay. So
8 I'm going to close the record now and ask if
9 you want to file proposed findings of facts
10 and conclusions of law?

11 MR. ADAMS: No, the District would
12 not want to file proposed findings of facts.

13 CHAIRPERSON MILLER: What I'm
14 asking, Mr. Kim, in most cases, the parties
15 don't do this, but the law allows you to file
16 a written document --

17 MR. KIM: I'll do it.

18 CHAIRPERSON MILLER: -- based on
19 this hearing that would make arguments about
20 the facts in the law.

21 MR. KIM: Yes, please.

22 CHAIRPERSON MILLER: You want to

1 do that?

2 MR. KIM: Yes, please.

3 MEMBER SILVERSTEIN: He doesn't
4 understand.

5 MR. KIM: Do I have to do extra
6 work?

7 CHAIRPERSON MILLER: Yes.

8 MEMBER ALBERTI: Yes.

9 MR. KIM: No, I don't want to.

10 CHAIRPERSON MILLER: Neither does
11 Mr. Adams. Okay. All right. All right. So
12 the Board will deliberate in closed session,
13 I believe, based on this transcript.

14 MR. KIM: Great.

15 CHAIRPERSON MILLER: And based on
16 this hearing and the documents and exhibits
17 that are in the evidence and in the record.
18 And we will issue a written decision --

19 MR. KIM: Okay.

20 CHAIRPERSON MILLER: -- to you, to
21 all the parties within 90 days.

22 MR. KIM: Thanks, Your Honor.

1 CHAIRPERSON MILLER: Okay. Thank
2 you. And for Board purposes, we are going to
3 have --

4 MR. KIM: Will I see you here?

5 CHAIRPERSON MILLER: -- to take a
6 vote on hearing this in closed session.

7 MR. ADAMS: May the parties be
8 excused?

9 MR. KIM: I'm sorry.

10 CHAIRPERSON MILLER: You can.
11 Yes, you don't have to wait for this.

12 MR. KIM: Okay. Thank you.

13 CHAIRPERSON MILLER: Okay. Thank
14 you.

15 As Chairperson of the Alcoholic
16 Beverage Control Board for the District of
17 Columbia and in accordance with Section 405 of
18 the Open Meetings Amendment Act of 2010, I
19 move that the ABC Board hold a closed meeting
20 for the purpose of seeking legal advice from
21 our counsel on Case No. 13-CMP-00525, Georgia
22 Avenue Food Barn, per Section 405(b)(4) of the

1 Open Meetings Amendment Act of 2010, and
2 deliberating upon this case for the reasons
3 cited in Section 405(b)(13) of the Open
4 Meetings Amendment Act of 2010.

5 Is there a second?

6 MEMBER SILVERSTEIN: Second.

7 CHAIRPERSON MILLER: Mr.

8 Silverstein has seconded the motion. I'm now
9 going to take a roll call vote on the motion
10 now that it has been seconded.

11 Mr. Brooks?

12 MEMBER BROOKS: I agree.

13 CHAIRPERSON MILLER: Mr. Alberti?

14 MEMBER ALBERTI: I agree.

15 CHAIRPERSON MILLER: Mr.

16 Rodriguez?

17 MEMBER RODRIGUEZ: I agree.

18 CHAIRPERSON MILLER: Ms. Miller

19 agrees.

20 Mr. Silverstein?

21 MEMBER SILVERSTEIN: I agree.

22 CHAIRPERSON MILLER: And, Mr.

1 Short?

2 MEMBER SHORT: I agree.

3 CHAIRPERSON MILLER: Okay. It
4 appears that the motion has passed by a 6-0-0
5 vote.

6 And I hereby give notice that the
7 ABC Board will hold a closed meeting on this
8 case pursuant to the Open Meetings Amendment
9 Act of 2010 and issue an order within 90 days.

10 That concludes this case.

11 (Whereupon, the Show Cause Hearing
12 in the above-entitled matter was concluded at
13 12:22 p.m.)

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\$1 34:22 35:2 37:4	admitted 20:21	18:3,17 30:14	42:7	1:16 3:3,8,15,19
\$750 51:12	advice 47:12 56:20	56:22	bought 34:7	3:21 4:3,5,10,15
a.m 3:2	afternoon 13:3	aware 26:15 32:1	box 24:11,21	4:22 5:5,10,14,17
ABC 56:19 58:7	42:3,4	42:6	broke 42:7	5:21 6:6,9,13,18
able 7:8 8:2 48:20	Agency 10:14,18		broken 50:20	8:6,10,17 9:1,5,7
48:22	agree 57:12,14,17	B	Brooks 1:17 57:11	9:11,20 13:18,21
above-entitled	57:21 58:2	back 25:15 31:4	57:12	14:1,19 15:1,4
58:12	agrees 57:19	35:8,10,14,15	brought 14:18	16:14,18 17:18,21
above-referred	ahead 53:13	47:21	Building 1:12	18:5 19:21 20:2,6
15:11 20:22	Alberti 1:16 46:19	bag 49:3	burden 5:2 6:22	20:11,14,16,19
ABRA 10:16,18	47:1,5,9,12 55:8	bar 37:22	busy 39:7	21:7,10,13,16,21
13:4 34:17 41:11	57:13,14	Barn 1:6 3:5,18 4:8	buy 24:14 34:12	22:2 23:9,11,14
Absolutely 5:16	alcohol 12:7,9	6:21 11:6,17 17:6		25:9 26:8,13,22
accomplish 51:7	22:10	18:4,17 30:14	C	27:2,8,13,19 28:1
accurate 16:6	alcoholic 1:2,11,12	56:22	C-O-N-T-E-N-T-S	28:6,9,17,20 29:2
19:11	7:21 10:8 11:18	based 7:16 8:1 16:2	2:1	29:5,9,12,16 30:7
Act 56:18 57:1,4	44:11 50:15 56:15	22:3 28:7 48:13	cabinet 13:5	36:6,8,10 41:20
58:9	allows 54:15	52:16 54:18 55:13	call 9:8 31:3 34:5	42:1 44:4,16,19
actions 13:9	Amendment 56:18	55:15	34:11,13 36:4	45:2,9,12,16,18
Adams 1:20 3:11	57:1,4 58:8	bases 33:2	47:5 57:9	45:21 46:2,4,8,13
3:13 4:13 5:1	ANC-4B 1:7 3:6	basically 5:7 41:5	called 9:15 30:2	46:17 47:3,7,11
6:14,15,19 9:6,7,8	answered 26:19	50:17	cans 2:8 7:9 17:4	47:16,20 48:2,6
10:1,7,13,17,21	anybody 52:8	beer 7:9 12:6 17:4	18:2 19:18	48:10 51:13 52:4
11:4,10,20 12:18	anyway 21:11 29:1	18:2 19:19 22:17	capacity 7:8	52:6,10,12,15,19
12:21 13:7,12,17	31:10	began 10:15	card 40:15	52:22 53:3,8 54:6
14:2,7,11,20 15:3	apologize 17:17,20	beginning 34:3	careful 34:15	54:13,18,22 55:7
15:7,15,20 16:2,5	apparently 12:2	44:13	case 1:8 3:4 4:8,12	55:10,15,20 56:1
16:11,16,19 17:2	appeared 12:13	believe 6:21 8:2	4:14 5:15,22 6:17	56:5,10,13,15
17:7,12,15,17	appears 58:4	24:20 26:17,20	6:19,20 7:18 8:8	57:7,13,15,18,22
18:7,13,19,22	arguments 6:4	55:13	9:2 28:18 29:1	58:3
19:7,10,15 21:4,8	48:11 53:19 54:19	best 46:20 47:10	30:8 47:17 48:3	Chairwoman 26:12
21:12,15,18 28:4	asked 7:12 23:7	49:11,14	51:2,9 56:21 57:2	Chan 1:5
28:13,19,22 36:11	27:3,6,17 31:12	better 35:3 36:3	58:8,10	chance 16:3
36:13,17 37:1,6	31:19 32:5 38:13	51:6	cases 54:14	changed 31:7
37:11,16,19 38:1	38:13,17 39:9,18	beverage 1:2,11,12	cashier 7:9 36:18	charge 6:20 7:19
38:4,11,17,21	49:1	10:9 11:19 56:16	Cause 1:6 58:11	7:20 43:3 44:9,10
39:3,5,9,21 40:4,8	asking 22:12 32:20	44:11 50:9,16	cent 51:18	45:8,10,13,15
40:11,15,20,22	54:14	Board 1:2,12 3:12	cents 7:15 12:15,20	46:12,13,14,16,18
41:8,16,18 46:6	assumed 9:17 30:3	4:18 6:6,17 8:2,22	18:18,19 49:4	49:21 51:18 53:4
48:8,12 53:12,18	attempt 11:17	11:11 20:12 28:2	51:3,18	charged 32:9 53:15
54:11 55:11 56:7	attempts 48:18	28:15 41:1,21	certainly 50:19	charges 5:3
additionally 33:12	attorney 8:13	53:19 55:12 56:2	Chair 44:2 46:20	cheap 37:7 51:16
Administration	authorization 4:7	56:16,19 58:7	53:12	check 41:15
10:9	Ave 1:6	Board's 14:16,21	Chairman 3:12	checked 13:10
administrative	Avenue 1:6 3:5,6	book 32:12	4:13 6:15 19:16	chief 17:10
28:13	3:18 4:8 6:20	books 39:20 40:2	48:12	choose 30:9
	11:6,7,16 17:6		Chairperson 1:13	citation 38:8,9

44:20 49:15 cited 57:3 city 33:21 clarification 53:20 clarified 42:21 43:1 clarify 32:10 clean 34:4 clear 19:4 22:19 50:2 clearly 32:5 43:2 50:7 clerk 22:19 26:15 26:22 close 54:8 closed 55:12 56:6 56:19 58:7 closing 2:3,3 6:4 48:11 51:14 52:16 53:1,19 clothes 11:16 code 37:22 codes 42:6 Columbia 1:1 3:14 5:2 56:17 come 30:22 35:6,15 42:12,20 43:17 50:7 52:11 comments 51:10 common 10:6 compared 35:1 completed 16:7,19 completes 48:3 53:1 complicated 54:4 conclude 8:3 51:10 concluded 58:12 concludes 58:10 conclusions 54:10 conducting 11:13 consider 20:12 consulted 46:21 consuming 7:21 44:11 consumption 7:12 33:15 continue 9:4 contraction 10:18	Control 1:2,11,12 56:16 cooler 12:4,5 coolers 48:21 copies 21:5,5 copy 14:14 corner 34:2,7 35:8 correct 10:10,19 38:9 41:4 44:21 48:3 cost 18:17 33:18 37:13 46:12 49:4 51:15,17,20 counsel 9:15 46:21 47:13 56:21 count 52:2 53:16 counter 12:7,8,12 27:12 35:4,5,6,9 35:13 36:22 couple 32:22 33:18 33:22 36:13 couples 33:1,9 course 32:4 35:22 49:16 Court 17:14 CROSS 2:5 CROSS-EXAMI... 22:6 36:16 cross-examine 5:18 cup 7:15 18:19 22:12 27:6 30:21 31:1 32:7,16,20 35:7 39:14 45:4,7 49:20 cups 2:9 7:12,14 12:10,14 18:15,21 18:22 19:5,11,20 22:8,10 23:1,6,18 24:1,6,11,14 25:5 27:4 31:5,11 32:4 32:14,16,19 34:22 35:2,10,14,16 37:4,7,17,17 44:22 45:11,15 49:1,2 50:18,21 51:8,16,17 customer 7:20 33:2	44:10 customers 7:4 31:11 37:15 <hr/> D <hr/> D.C 1:13 7:3,16 date 11:13 13:6 30:20 days 55:21 58:9 decision 55:18 defeat 51:7 defines 7:17 definition 38:14 44:6 46:11 definitions 7:18 44:8,14 definitive 49:22 deliberate 55:12 deliberating 57:2 describe 19:1 23:19 DIRECT 2:5 9:22 30:12 directly 12:4 dismiss 28:14 dispute 48:19 distributor 32:16 District 1:1 3:14 5:1 6:16,21 9:8 15:10 21:19 28:4 29:1 46:6 48:8,14 51:12 54:11 56:16 Dixie 24:14 document 14:8 15:7 54:16 documents 15:12 21:1 55:16 dollars 33:19,22 DONALD 1:17 door 35:10 double 12:6 doubt 51:1 drink 12:11 22:12 22:17 23:4 27:7 33:15 34:1,6 35:18,20,21 36:1 36:4 50:9 52:1,3 drinking 7:19	34:11 44:8 52:8 drinks 35:6 duly 9:16 30:3 duty 10:22 <hr/> E <hr/> easier 29:13 either 11:18 33:9 employed 10:8 employees 36:22 empty 31:11 English 26:18,19 26:20 essentially 37:3,6 41:2 establishment 7:2,7 7:13,22 8:4 11:6 14:4 44:12 48:16 establishments 7:3 event 16:1 26:2 evidence 7:1,5,11 8:1,15 17:11,11 19:16 20:9,21 21:2 55:17 exactly 17:22 32:13 32:16 42:21 EXAMINATION 9:22 30:12 examine 28:18 examined 9:17 30:4 example 39:10 excuse 17:18 50:4 excused 28:12 56:8 Exhibit 15:10,13 15:16 16:13,20 17:22 19:17,18 21:2,11 exhibits 2:7 14:17 20:3,15,20 21:8 28:16 48:4 55:16 explain 11:11 34:16 extra 55:5 <hr/> F <hr/> fact 48:19 facts 54:9,12,20 families 33:4	family 33:4 36:20 favor 31:14 53:16 fee 7:15 48:22 51:2 51:5 feel 6:11 feet 35:12 file 54:9,12,15 find 13:13 32:2 40:18 42:20 43:13 43:14 findings 54:9,12 fine 6:2 12:15 42:15 51:12 53:22 finish 44:6 finished 9:2 23:12 47:22 first 4:20 9:16 30:3 30:18,18 42:15 44:20 53:6,16 54:1 follows 9:18 30:5 Food 1:6 3:5,18 4:8 6:20 11:6,17 17:6 18:3,17 30:14 56:22 forget 39:8 form 6:1 forward 28:16 found 13:14 four 36:21 free 6:11 32:4 45:11,14 51:4,8 friends 12:11 22:13 22:17 27:6 52:1 front 12:9 further 21:19 25:7 28:5 41:18 46:7 future 31:18 <hr/> G <hr/> General 46:21 47:13 Georgia 1:6,6 3:4,5 3:18 4:7 6:20 11:6,7,16 17:5 18:3,17 30:14 56:21
---	--	---	--	---

getting 29:19 49:22
give 5:7 8:13 30:8
 31:4,10,12 32:4
 35:2 39:14 53:5
 58:6
given 38:8 49:2
go 12:3,3,11 27:6
 28:22 29:13 32:9
 33:11 47:21 51:22
 53:12
go-cup 1:9 7:17,18
 8:3 20:5 31:20
 32:2 34:17 42:22
 44:6,8
go-cups 7:4 11:19
 13:16 25:5 26:1
 31:8,9 33:13
 42:11,21 43:17
 46:11 48:16
going 4:17 5:6,11
 5:15 8:14,15
 14:12,13,20 16:12
 24:13 29:6,10,18
 32:13 35:21 36:2
 36:4 43:3 50:9
 54:8 56:2 57:9
good 3:11,16 4:10
 9:11,12 10:1
 21:18 25:10,12
 32:9 36:10 42:3,4
Gotcha 30:10
Government 2:2,3
 5:1 9:16 15:13
 20:21 21:2
Government's
 16:13
Great 55:14
grocery 31:6
guess 21:4 29:12
 32:18 37:7 38:6
 41:2 51:6
guys 30:22

H

half-pint 33:17
handy 34:1 35:5,16
happen 4:17 5:6

happened 6:2
happening 31:19
happy 47:6
heard 48:13
hearing 1:6,12
 43:19 44:7 54:19
 55:16 56:6 58:11
hearsay 49:13
HECTOR 1:18
help 47:6 53:18
history 13:11,15
 25:16,19
hold 23:18 56:19
 58:7
home 33:11,16
honestly 34:21
Honor 30:11 55:22
Honors 3:17
Hopefully 43:18
hundreds 34:9

I

ice 30:21 31:2
idea 33:14
identification 15:9
 15:14 18:8
IDENTIFIED 2:7
immediately 12:12
 13:3 27:16
incident 31:19 38:6
indulgence 14:16
infer 25:4
information 42:20
 43:20
infuse 47:8
inside 19:5 24:1
 35:21
intend 50:15
intent 50:8,10
intentional 25:4
interpretation 47:8
introducing 3:9
investigation 13:8
 16:8 25:16
investigative 2:8
 14:10,15 15:22
 16:17 19:17 21:14

25:18
Investigator 7:6,12
 9:9,12,14,19 10:2
 10:4,4,7,11,15,20
 11:2,8,12,22
 12:20,22 13:2,10
 13:14,20,22 14:5
 14:9,12 15:18,21
 16:4,6,9,22 17:3,9
 17:13,16,20 18:1
 18:11,14,20 19:3
 19:8,13 21:20
 22:3,7,9,15,18,22
 23:5,16,20 24:8
 24:16 25:1,6,11
 25:12,17,22 26:4
 26:9,11,16 27:1,5
 27:10,16,20 28:5
 28:11 30:19 32:3
 35:19 40:6 41:11
 43:20 44:21 45:3
 48:17,20 49:10
 50:8,14 51:22

issue 26:14 55:18
 58:9

issued 30:16

item 15:8,9,15,17
 18:8,9,10

items 12:16,19 13:4
 14:13

J

JAMES 1:18

Jenkins 47:2

John 2:5 7:7 9:9,14
 10:5,6

June 10:16

K

keep 39:8 50:12
 51:21

kept 17:8

Kim 2:6 3:7,16,17
 3:19,20 4:2,3,4,9
 4:16,20 5:4,9,13
 5:16,20 6:5,8,12
 8:7,9,16,22 9:3

14:14 15:2,6
 19:22 20:1,4,10
 20:13,15,18 21:22
 22:1,5,7,11,16,21
 23:2,8,10,13 28:8
 29:3,4,8,11,14
 30:1,6,10,13,13
 36:7,9,15,17,19
 37:5,9,12,18,21
 38:2,10,16,19
 39:1,4,6,17,22
 40:7,10,13,17,21
 41:5,9,17 42:4,10
 42:16,19 43:7,10
 43:13,16,21 44:15
 44:18 45:1,6,10
 45:14,17,20 46:1
 46:3,10,15,20,22
 47:14,17,19 48:1
 48:5 49:6 50:11
 51:3,14,15 52:5,7
 52:11,14,18,21
 53:2,4,10,14,21
 54:3,14,17,21
 55:2,5,9,14,19,22
 56:4,9,12

kind 17:19 26:14
 50:13

know 8:12 31:8
 33:2,3 34:8 37:3
 39:2,8 41:13

46:19 49:11,13,16
 49:17 53:19

knowledge 41:10

known 10:18

L

labeled 37:17,18

lack 51:6

language 26:14

lapse 27:21

late 31:14,17

law 31:22 42:7
 43:11,12 45:5,22

50:3,4,12,20

54:10,15,20

left 12:1,17 35:12

legal 56:20
license 1:7 3:6 34:3
Licensee 2:3 30:2
limited 25:5
liquor 31:7 35:12
liquors 33:18
Lite 2:8 12:6 17:4
 18:2
Lites 48:21
little 37:12
located 3:5 11:7
locked 13:5
loiter 50:15
loitering 34:14
 50:12
long 10:14 32:7,8
 39:13 45:4,7,10
look 39:6 42:10
 50:6
looked 25:15 38:22
looking 30:20
loose 19:5
lot 32:20,22 33:1
 35:5 39:3
lottery 12:2

M

ma'am 3:7 4:4,9
 6:5,12 13:22 27:1
 29:4

Madam 3:12 4:13
 6:15 19:15 26:11
 44:2 46:19 48:12
 53:12

main 12:3

maintained 17:11

man 12:8

manager 39:19

manner 24:4

manufactured

24:13 40:1

manufacturer 24:7

24:22 37:20,21

39:18

March 13:16,19

25:22 30:19 38:7

mark 14:17

marked 15:8,8,9,12 15:16 16:12,20 18:8	6:9,13,18 8:6,10 8:17 9:1,5,7,11,20 12:6 13:18,21 14:1,19 15:1,4 16:14,18 17:4,18 17:21 18:2,5 19:21 20:2,6,11 20:14,16,19 21:7 21:10,13,16,21 22:2 23:9,11,14 25:9 26:8,13,22 27:2,8,13,19 28:1 28:6,9,17,20 29:2 29:5,9,12,16 30:7 36:6,8,10 41:20 42:1 44:4,16,19 45:2,9,12,16,18 45:21 46:2,4,8,13 46:17 47:3,7,11 47:16,20 48:2,6 48:10,21 51:13 52:4,6,10,12,15 52:19,22 53:3,8 54:6,13,18,22 55:7,10,15,20 56:1,5,10,13 57:7 57:13,15,18,18,22 58:3	41:13 53:10 NICK 1:16 nominal 7:15,20 44:9 46:12,14,16 46:18 51:2 notice 58:6 number 25:5 27:11 numbers 34:10 NW 1:6	42:1 43:5,18 44:1 44:2,4,15,16 45:16,18 46:2,5,8 46:22 47:3,16,20 48:1,2,6,10 49:21 51:13 52:4,6,14 52:18,22,22 53:3 54:7,7 55:11,19 56:1,12,13 58:3 once 34:2 52:11 open 19:5 23:21,22 56:18 57:1,3 58:8 opening 2:2 5:8 6:16 8:8,19 29:18 operations 11:14 opportunity 5:18 8:20 option 5:11 order 5:6 58:9 ounce 17:4 outside 12:11 22:13 22:17 23:4 27:7 34:6,6,11 35:18 36:2 50:10 52:3,9 overlaps 8:18	56:7 pass 28:15 passed 58:4 patrons 26:17 pay 7:10 12:19 31:22 53:5 penalty 31:18 people 32:20,22 33:15 35:5 50:12 permission 14:21 person 8:12 33:10 39:11,13 41:3 49:15,16,18,19 50:7 piece 23:22 pint 33:18 place 12:1 47:10 plain 11:15 plastic 2:9 12:14,14 18:15,15 19:4,4 23:21 24:1 49:2,3 please 10:2 23:18 43:21 54:21 55:2 point 24:2 42:19 police 34:5,9 possible 34:21 Possibly 36:19 pre 37:19 preliminary 4:11 4:14 prelisted 24:12 premises 7:21 44:11 prepackage 24:15 prepared 14:9 15:22 preponderance 6:22 present 1:15,19 5:15,22 11:5 14:12,20,21 15:7 29:20 presiding 1:14 presuming 23:6 24:2 pretty 37:7 50:2 previous 26:10
mean 22:8 29:17 34:10 35:20 37:13 39:1 41:1 42:10 42:12 46:18 49:11 50:16 51:16,19 52:8 53:5,14 54:3 meaning 31:20 50:1 means 31:9 35:17 44:8 meant 42:22 meet 6:21 meeting 1:3 56:19 58:7 Meetings 56:18 57:1,4 58:8 Member 1:16,17,17 1:18,18 23:16 24:5,10,19 25:3,7 25:10,14,18 26:2 26:6 41:22 42:3,5 42:14,17 43:5,8 43:11,14,18 44:1 46:19 47:1,5,9,12 55:3,8 57:6,12,14 57:17,21 58:2 members 3:12 33:4 36:21 mentioned 37:2 38:12 mentions 32:3 merged 29:19 met 1:12 MIKE 1:17 Miller 1:13,16 2:8 3:3,8,15,19,21 4:3 4:5,10,15,22 5:5 5:10,14,17,21 6:6	mind 25:2 53:10 minutes 31:4 mistake 50:3,3 mistakenly 24:21 morning 3:11,16 9:11,12 10:1 25:10,12 motion 57:8,9 58:4 move 19:16 56:19	<hr/> O <hr/> O-F 2:1 OAG 1:20 oath 8:14 objection 19:22 20:17 obviously 28:14 occasion 11:5,21 occurred 11:21 13:1 26:3 38:6 48:15 50:5 October 1:10 offense 54:1 offered 7:10 office 25:15 officer 34:5 oh 3:21 16:16 20:13 21:18 27:8 28:17 31:4 35:8 52:5 53:2 okay 3:3,8,15,22 4:5,6,10,15,22 5:4 5:5,20 6:9,13,18 8:6,9,16 9:5 10:7 12:21 13:12 14:1 15:3,4 16:2,18 17:12 18:5 19:7 19:21 20:6,19 21:16,17,21 22:5 22:11 23:2,8,9,14 26:8,13 27:2,13 27:19 28:1,1,6,9 29:2,3,9 30:7,11 36:5,6,10 37:1,16 37:19 38:1,17 39:5,15,21 40:11 40:20 41:8,21	<hr/> P <hr/> P-R-O-C-E-E-D-... 3:1 p.m 58:13 pack 12:6,13 45:7 49:20 package 19:1 32:15 packaging 19:2 packed 32:7,8 33:8 33:9 packet 32:14 49:2 packs 32:17 34:19 pages 39:2,3 42:8 paid 12:16 22:8,9 31:17 38:8 paperwork 40:18 part 13:7 participated 4:18 particular 11:13 24:4 parties 54:14 55:21	
<hr/> N <hr/> N.W 1:13 3:6 11:7 name 3:17 4:1 10:3 10:5 30:13 40:12 named 11:6 need 12:10 33:5 needed 17:14 Neither 55:10 never 31:12 32:1				

previously 25:20	28:2,3,5,7,7 36:12	19:11	53:17	18:11 19:3,13
prior 13:15 26:1	36:14 41:19,21	represents 5:1	seconded 57:8,10	22:10 23:18 24:8
38:6 49:14	46:5,7	request 32:11	Section 56:17,22	25:2,6,13 26:4
probably 33:21	quite 49:7,8	38:16 41:14	57:3	43:7 47:14
40:7,17,18 51:16		rests 29:1	secured 13:4 19:6	six 32:17
problem 44:1	R	result 16:7	see 4:6 11:17 13:11	sleeve 24:2,18
procedure 5:7	range 54:1	Retailer 1:7	23:22 34:8 36:3	27:15
proceeding 4:18	reached 12:12	returned 13:4	40:21 52:8 56:4	small 12:14 18:15
process 7:11	27:11,17,21	review 16:3	seeking 56:20	48:22 51:5
procure 7:9 48:20	read 42:14 43:12	right 4:5,11 5:9,13	seen 24:6	soft 17:19
procured 19:19	44:20 49:8	6:14 8:19 9:20	sell 31:1 33:22 34:2	Sold 1:9
produced 27:12	ready 6:17	10:17,21 11:4,10	34:19,21 37:4	somebody 34:6,11
prohibits 7:3	reality 50:2	11:20 12:21 14:11	44:22	35:20 36:1,3
proof 5:2 6:22	really 8:18 47:8	14:19 16:11 17:7	selling 24:11,21	Soo 1:5
20:14	49:7,22 50:22	19:15 20:7,10,15	30:21 33:17,17	sorry 13:18 16:15
proposed 54:9,12	reason 24:20 35:4	20:20 21:12 22:8	34:22 35:2 37:8	22:15 31:1 46:10
proven 48:14	reasonable 33:9	22:21 27:18 29:14	send 35:7 41:13	46:15 52:13,15
provide 21:5 38:20	reasons 57:2	34:6 35:9 36:4,11	sense 8:21	53:8 54:5 56:9
40:15 48:16	rebuttal 48:7,9	36:17,20 37:1,2,5	September 7:1,6	sort 38:15
provided 7:14,19	received 2:7 21:1	37:11 38:4,11	10:22 14:6 17:5	speaking 29:14
8:3 19:9,9 23:5	42:15	39:12 40:22 41:16	18:3,16 19:12	38:5
24:3 27:17 44:9	recognize 15:17	43:10 44:18 45:20	26:3 30:16 36:18	specific 27:11
providing 7:4	16:20 18:9	46:1,4 48:7 51:4	48:19	specifically 7:5
50:21	recommend 51:12	54:3,7,7 55:11,11	service 37:10,14	11:17
pulled 12:13	record 3:10 10:3	Rodriguez 1:18	session 55:12 56:6	spell 10:3
purchase 11:18	40:7,8 44:5 52:20	57:16,17	Short 1:18 25:9,10	spelled 10:5
12:2 13:1 48:22	54:8 55:17	roll 57:9	25:14,18 26:2,6	spelling 10:6
purchased 13:5	Reeves 1:12	Room 1:12	41:22 42:2,3,5,14	spirit 50:20
17:5 18:2,16	regarding 41:2	Rules 38:22	42:17 43:5,8,11	spoke 26:18,19
19:12,20 24:17	regardless 50:16	Ruthanne 1:13,16	43:14,18 44:1	spoken 17:19
purpose 22:20	regular 24:17		58:1,2	stand 5:19 9:10,17
34:18 44:10 50:11	regularly 11:15	S	show 1:6 7:1,6,11	30:4
51:7,8 56:20	Regulation 10:9	S 10:5	14:13 15:2 50:10	stands 20:5
purposes 7:20	regulations 38:22	sale 25:4	58:11	start 3:9
15:10 18:9 53:21	42:15 44:14 49:8	sales 11:14	showed 25:19	state 10:2 37:4 40:2
56:2	rely 49:12	Sam 10:6	side 29:21 35:16	51:10
pursuant 58:8	relying 41:1	saw 12:4 43:11	signs 34:14	stated 17:8 38:7
put 8:14 12:9 20:8	remember 40:4,5,9	saying 20:8 39:16	Silverstein 1:17	39:10 43:2 49:6,7
27:14 33:7 34:14	40:10,11	41:3 42:18 51:21	23:15,16 24:5,10	50:8,11
35:4,15 42:11	report 2:8 14:10,15	53:13,21	24:19 25:3,7 55:3	statement 2:2,3,3
43:16 44:5	15:22 16:6,17	says 44:6,7 50:7	57:6,8,20,21	5:8 6:17 8:8,19
puts 5:19	19:18 21:14 23:17	Sean 2:6 3:17 4:2,3	single 6:19 11:14	32:12 41:7,12
	34:9	30:1,13	11:18 32:4 33:1	43:2 49:17 50:14
Q	reportings 34:10	seat 30:8	33:10 39:14 44:22	51:14
question 27:3	represent 3:13,18	second 34:16,17	sir 3:15 10:11,20	statements 49:18
questions 6:7,10	3:22 4:7 30:15	53:6 54:2 57:5,6	11:2,8 14:5 15:18	stating 49:13
21:19 22:3 25:8	representation	secondary 51:11	16:9,22 17:9	Statute 7:3,16

stickers 14:18
 stop 13:3
 storage 17:8
 store 12:4,17 26:18
 30:15 31:6 34:4
 35:11 37:2 40:1
 stores 31:8 33:20
 story 29:7
 Street 1:13
 streets 33:16
 subsequent 16:1
 Suero 2:5 7:7 9:9
 9:12,14,19 10:2,4
 10:5,8,11,15,20
 11:1,2,8,12,22
 12:20,22 13:2,10
 13:14,20,22 14:5
 14:9,12,22 15:17
 15:18,21 16:4,9
 16:22 17:3,9,13
 17:16,20 18:1,11
 18:14,20 19:3,8
 19:13 22:9,15,18
 22:22 23:5,17,20
 24:8,16 25:1,6,11
 25:12,17,22 26:4
 26:9,11,16 27:1,5
 27:10,16,20 28:5
 28:11 48:17,20
 50:8
 Suite 1:13
 supermarket 24:14
 support 33:14
 sure 4:16 28:17,19
 34:20 36:13 39:12
 swear 29:20
 sworn 9:16 30:3

T

T-A-B-L-E 2:1
 t/a 1:5
 take 56:5 57:9
 talk 30:15
 tell 29:6
 term 51:6
 terms 19:1 37:7,16
 49:5

testified 9:18 30:4
 testify 29:6
 testifying 6:2 47:22
 testimony 8:14
 22:4 29:19 36:5
 38:5 39:11 42:6,9
 44:17 45:3
 thank 6:8,12 9:6,21
 15:4,6 18:5 23:17
 28:9,11 29:2 44:2
 44:15 47:14,15
 48:1 56:1,12,13
 Thanks 30:10
 55:22
 themselves 33:6
 thing 42:12 52:5
 53:2
 things 25:19 38:12
 think 29:16 36:7
 40:17 46:20 47:9
 50:1 52:1 53:20
 53:21
 thirsty 28:21
 thought 45:19
 three 7:14 12:13
 14:13 18:15,20,22
 19:4,20 24:1,6
 27:4,9,14 32:18
 33:8 34:19 45:19
 49:2 51:17
 ticket 30:16,19,22
 34:17 53:6,15
 tickets 12:2
 tied 19:6
 tier 51:11
 time 4:21 11:13
 16:7 20:5 26:7
 27:21 32:21 34:5
 34:16 38:3,7,13
 54:1
 times 17:19
 today 43:22 48:13
 told 31:5,10 32:5,6
 32:21 39:11,13
 44:22
 totally 33:12 49:12
 transcript 55:13

tried 39:1,6
 true 16:5 19:10
 trust 41:11
 try 34:16 36:2
 42:11
 trying 54:2
 turn 13:6 16:12
 29:6
 turned 17:10
 turning 15:15 18:7
 two 7:9 18:2 19:18
 33:5 48:20

U

U-E-R-O 10:6
 Um-hum 42:16
 undercover 7:8
 11:15
 understand 4:17
 23:3 33:13 42:18
 44:17 49:9 55:4
 understanding
 50:17,19
 understood 23:7
 50:11
 unsecured 49:3
 use 25:5
 utensil 7:19 44:9

V

value 35:3
 version 16:6
 violate 7:2
 violating 45:5,22
 violation 8:5 13:16
 25:21 26:1,10
 32:13 33:13 34:18
 42:22 48:15 51:1
 51:11
 violations 13:15
 visit 14:8
 visited 14:3,6
 vodka 33:22
 voluntarily 33:17
 vote 56:6 57:9 58:5

W

wait 9:3 56:11
 waited 13:6
 walk 35:13
 walked 11:16,22
 12:5,6
 Walter 1:20 3:13
 want 3:9 4:16 8:11
 14:17 20:4 22:12
 22:16 23:4 28:18
 31:21 32:2 33:6
 33:15 35:7,17,18
 44:5 54:9,12,22
 55:9
 wanted 53:15
 wants 20:8 51:22
 warning 31:13
 Washington 1:13
 wasn't 27:14
 watch 36:3
 way 6:11 19:6
 23:19 24:6,17
 35:10,14 37:20
 41:14 51:19
 we're 34:20 35:21
 36:4
 we've 34:21
 website 42:11 43:9
 week 39:7
 went 7:7 31:3 43:8
 weren't 45:4,22
 windows 34:15
 witness 2:5 5:19
 9:9,15,17 28:12
 28:15 30:2,4
 witnesses 6:7 48:9
 word 31:12 41:2
 49:10
 words 32:6
 work 55:6
 working 36:21
 worry 53:11 54:4
 wrap 40:1
 wrapped 12:14
 18:15 23:19,21
 24:6
 writing 38:15,18
 written 4:6 32:12

41:6,12 43:1
 54:16 55:18

X

Y

yeah 31:15
 year 13:19 14:3
 26:3 30:17 35:19
 40:14
 years 31:7 33:3
 young 12:8
 Yun 3:19

Z

0

05 51:18

1

1 2:8 15:8,13,16
 16:14 19:17 20:20
 21:3,11
 10 31:4 33:3
 11:39 3:2
 12:22 58:13
 13 7:1 10:22 13:21
 17:5 18:3,16
 19:12 30:16 48:19
 13-CMP-00525 1:8
 3:4 56:21
 13th 7:6 36:18
 14th 1:12
 15 2:8,8,9

2

2 2:8,8 15:10,13
 16:13,21 17:22
 19:18 20:20 21:3
 28:16
 20 24:14 33:2 34:22
 35:2 37:4
 2000 1:12
 20009 1:13
 2010 56:18 57:1,4
 58:9
 2013 7:1 10:16,22
 13:16,20 14:6

17:5 18:3,16 19:12 26:1 30:17 30:19 2014 1:10 22 2:5 23 44:8 24 17:4 25 7:15 12:15,20 18:17,19 49:4 50:6 51:3,18 26 30:19 26th 38:7 <hr/> 3 <hr/> 3 2:9,9 10:16 15:8 15:13 18:9 19:19 20:20 21:3 28:16 30 2:6 24:14 31:6 33:2 3425 35:1 36 2:6 <hr/> 4 <hr/> 400S 1:13 405 56:17 405(b)(13) 57:3 405(b)(4) 56:22 48 2:3 <hr/> 5 <hr/> 5 31:4 50 35:12 51 2:3 <hr/> 6 <hr/> 6 2:2 6-0-0 58:4 6205 1:6 3:5 11:7 <hr/> 7 <hr/> 71950 1:7 3:6 <hr/> 8 <hr/> 8 1:10 <hr/> 9 <hr/> 9 2:5 90 55:21 58:9				
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