

BOARD OF ADJUSTMENT AGENDA
1700 CONVENTION CENTER DRIVE 3RD FL.
Friday, May 4, 2018, 9:00 AM | City Commission Chambers

- I. ATTENDANCE
 - II. APPROVAL OF MINUTES
 - III. CITY ATTORNEY UPDATES
 - IV. SWEARING IN OF PUBLIC
 - V. REQUESTS FOR CONTINUANCES/WITHDRAWALS
 - VI. REQUESTS FOR EXTENSIONS OF TIME
 - VII. DISCUSSION ITEMS
 - VIII. PROGRESS REPORT
 - IX. MODIFICATION OF PREVIOUSLY APPROVED BOARD ORDER
 - X. CONTINUED ITEMS
 - XI. OPEN AND CONTINUED ITEMS
 - XII. NEW APPLICATIONS
 - XIII. APPEALS (BOA ONLY)
 - XIV. OTHER BUSINESS
 - XV. ADJOURNMENT
-

AGENDA ITEMS

APPROVAL OF MINUTES

- 1. After Action Report - March 2, 2018

REQUESTS FOR CONTINUANCES/WITHDRAWALS

APPEALS (BOA ONLY)

- 2. ZBA18-0062 -865 Collins Avenue
Doron Doar -PMJ Holding Company, LLC

ADJOURNMENT

Applications listed herein have been filed with the Planning Department for review by the Board of Adjustments, pursuant Section 118-136 of the City's Land Development Regulations. All persons are invited to attend this meeting or be represented by an agent, or to express their views in writing addressed to the Board of Adjustments c/o the Planning Department, 1700 Convention Center Drive, 2nd Floor, Miami Beach, Florida 33139. Applications for items listed herein are available for public inspection at the following link: or during normal business hours at the Planning Department, 1700 Convention Center Drive, 2nd Floor, Miami Beach, Florida 33139. Inquiries may be directed to the Department at (305) 673-7550.

Any items listed in this agenda may be continued. Under such circumstances, additional legal notice would not be

provided. Please contact the Planning Department at (305) 673-7550 for information on the status of continued items.

Pursuant to Section 286.0105, Fla. Stat., the City hereby advises the public that: Appeals of any decision made by this Board with respect to any matter considered at its meeting or hearing, such person will need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

To request this material in alternate format, sign language interpreter (five-business day notice is required), information on access for persons with disabilities, and accommodation to review any document or participate in any city-sponsored proceedings, call 305.604.2489 and select 1 for English or 2 for Spanish, then option 6; TTY users may call via 711 (Florida Relay Service).

MIAMI BEACH

LAND USE BOARDS

FILE NO.

APPLICANT:

MEETING DATE:

3/2/2018

PRIOR ORDER NUMBER:

ATTACHMENTS:

Description		Type
<input type="checkbox"/>	After Action 3-2-18	Memo

BOARD OF ADJUSTMENT MINUTES
1700 CONVENTION CENTER DRIVE 3RD FL.
Friday, March 2, 2018, 9:00 AM | City Commission Chambers

- I. ATTENDANCE
 - II. APPROVAL OF MINUTES
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AGENDA ITEMS

ATTENDANCE

APPROVAL OF MINUTES

1. After Action Report -January 5, 2018

Approve

Motion to Approve

Moved By: James Orlowsky

Supported By: Richard Baron

Ayes: Baron, Fox, Goldberg, Orlowsky, Urquiza

Absent: Segal

MOTION Passed

REQUESTS FOR CONTINUANCES/WITHDRAWALS

DISCUSSION ITEMS

2. Election of Chair and Vice Chair

Motion

Barton Goldberg as Chair and Noah Fox as Vice Chair
Motion to Approve
Moved By:
Supported By:

Ayes: Baron, Fox, Goldberg, Orlowsky, Urquiza

MOTION

NEW APPLICATIONS

3. ZBA17-0056 -1429 Washington Ave
FDP La Caffè Creperie, LLC/DBA La Creperie Caffè

Approve

Motion to Approve
Moved By: James Orlowsky
Supported By: Elsa Urquiza

Ayes: Baron, Fox, Goldberg, Orlowsky, Urquiza

Absent: Segal

MOTION Passed

ADJOURNMENT

Applications listed herein have been filed with the Planning Department for review by the Design Review Board, pursuant Section 118-252, and 118-71 of the City's Land Development Regulations. All persons are invited to attend this meeting or be represented by an agent, or to express their views in writing addressed to the Design Review Board c/o the Planning Department, 1700 Convention Center Drive, 2nd Floor, Miami Beach, Florida 33139. Applications for items listed herein are available for public inspection at the following link: or during normal business hours at the Planning Department, 1700 Convention Center Drive, 2nd Floor, Miami Beach, Florida 33139. Inquiries may be directed to the Department at (305) 673-7550.

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MIAMI BEACH

LAND USE BOARDS

PROPERTY:

865 Collins Avenue

FILE NO.

ZBA18-0062

APPLICANT:

Doron Doar -PMJ Holding Company, LLC

MEETING DATE:

5/4/2018

LEGAL DESCRIPTION:

THE SKYLARK CONDO

UNIT D

UNDIV 3.167%

INT IN COMMON ELEMENTS

OFF REC 20580-1711

IN RE:

The applicant is appealing the denial by the Planning Department of a Business Tax Receipt for a package store with entertainment at 865 Collins Avenue, due to lack of proper zoning (not a permitted use in the zoning district), pursuant to City Code Section 102-385(b).

PRIOR ORDER NUMBER:**ATTACHMENTS:**

Description	Type
<input type="checkbox"/> APPEAL EXHIBIT A	Memo
<input type="checkbox"/> APPEAL EXHIBIT B	Memo
<input type="checkbox"/> APPEAL EXHIBIT C	Memo
<input type="checkbox"/> APPEAL EXHIBIT D	Memo
<input type="checkbox"/> APPEAL EXHIBIT E (TRANSCRIPT)	Memo
<input type="checkbox"/> APPEAL EXHIBIT F	Memo
<input type="checkbox"/> APPEAL EXHIBIT G	Memo
<input type="checkbox"/> APPEAL EXHIBIT H	Memo
<input type="checkbox"/> APPEAL EXHIBIT I	Memo
<input type="checkbox"/> APPEAL EXHIBIT J (COMPLAINT)	Memo
<input type="checkbox"/> APPEAL EXHIBIT K (R&R)	Memo
<input type="checkbox"/> APPEAL EXHIBIT L (ORDER AFFIRMING R&R)	Memo
<input type="checkbox"/> APPEAL EXHIBIT L (ORDER AFFIRMING R&R)	Memo

<input type="checkbox"/>	APPLICATION	Memo
<input type="checkbox"/>	LETTER OF INTENT	Memo
<input type="checkbox"/>	AMENDED LETTER OF INTENT	Memo
<input type="checkbox"/>	APPEAL EXHIBIT A-SUPPLEMENTAL	Memo
<input type="checkbox"/>	APPEAL EXHIBIT B -SUPPLEMENTAL	Memo
<input type="checkbox"/>	APPEAL EXHIBIT C -SUPPLEMENTAL	Memo
<input type="checkbox"/>	APPEAL EXHIBIT D -SUPPLEMENTAL	Memo
<input type="checkbox"/>	APPEAL EXHIBIT E (TRANSCRIPT) -SUPPLEMENTAL	Memo
<input type="checkbox"/>	APPEAL EXHIBIT F -SUPPLEMENTAL	Memo
<input type="checkbox"/>	APPEAL EXHIBIT G -SUPPLEMENTAL	Memo
<input type="checkbox"/>	APPEAL EXHIBIT H -SUPPLEMENTAL	Memo
<input type="checkbox"/>	APPEAL EXHIBIT I -SUPPLEMENTAL	Memo
<input type="checkbox"/>	APPEAL EXHIBIT J (COMPLAINT) -SUPPLEMENTAL	Memo
<input type="checkbox"/>	APPEAL EXHIBIT K (R&R) -SUPPLEMENTAL	Memo
<input type="checkbox"/>	APPEAL EXHIBIT L (ORDER AFFIRMING R&R) -SUPPLEMENTAL	Memo
<input type="checkbox"/>	SUPPLEMENTAL APPLICATION	Memo
<input type="checkbox"/>	City's Appendix in Support of it's Response	Memo
<input type="checkbox"/>	City's Response in Opposition	Memo
<input type="checkbox"/>	Letter to City of Miami Beach	Memo

EXHIBIT H

SE #CASE #. 2016-117119

CITY OF MIAMI BEACH
CODE COMPLIANCE DEPARTMENT

555 17th Street
Miami Beach, FL 33139
PHONE (305) 673-7555 FAX (305) 678-7012

NOTICE OF CITY CODE VIOLATION AND FINE

ITE SITE ADDRESS: 865 Collins Ave D
VIOLATION ISSUE DATE: 12/21/16 TIME: 8:39 AM.
SSI ISSUED TO: Beach Blitz CO.
MAIL MAILING ADDRESS: 865 Collins Ave, D Miami Beach

DAY OF THE WEEK: SU M T W TH F S

INSPECTION OF THE ABOVE PREMISES ON THIS DATE
REVEALED YOU ARE IN VIOLATION OF SECTION:

6-3(a)(1)

OF THE MIAMI BEACH CITY CODE BY:

	FINE
offering alcoholic beverages	() \$25.00
in a retail establishment for	() \$50.00
package sales between	() \$75.00
the hours of midnight	() \$100.00
and 10:00am on any	() \$150.00
day of the week.	() \$200.00
	() \$250.00
You can comply by ceasing	() \$350.00
immediately illegal alcoholic	() \$500.00
beverage sales upon receipt	(X) \$1,000.00
of this notice and paying	() \$
a civil fine of:	

TOTAL FINES 1,000

COMMENTS: 1st offense

Tax# RL-10005692

CODE COMPLIANCE OFFICER (SIGN)

Ofc. Negrón #1020

CODE COMPLIANCE OFFICER (PRINT)

@miamibeachfl.gov

RECEIVED BY (Signature):

RECEIVED BY (Print Name): NATASHA MUCERIWA

DATE: 12/21/16 11/4/16 TIME: 8:39 AM.

IMPORTANT APPEAL AND ADA INFORMATION ON BACK

NOTICE OF CITY CODE VIOLATION AND FINE

FINE(S) MUST BE PAID WITHIN 72 HOURS:

BY CHECK OR MONEY ORDER
MAKE CHECKS & MONEY ORDERS PAYABLE TO THE
CITY OF MIAMI BEACH.

MAILED TO:

CITY OF MIAMI BEACH
CODE COMPLIANCE DEPARTMENT
555 17TH STREET
MIAMI BEACH, FL. 33139

CASH PAYMENTS ACCEPTED IN PERSON ONLY:

AT MIAMI BEACH CITY HALL
1700 CONVENTION CENTER DRIVE, 1ST FLOOR
MIAMI BEACH, FL 33139

APPEAL PROCESS:

FINES MAY BE APPEALED WITHIN TWENTY (20) DAYS
OF RECEIPT OF THIS NOTICE BY A WRITTEN
REQUEST TO THE CLERK OF THE SPECIAL MASTER
AT THE ABOVE ADDRESS. A \$100.00 CHECK TO
COVER THE COST OF THE HEARING MUST BE
INCLUDED.

FAILURE TO PAY THE FINE OR APPEAL IN THE
MANNER INDICATED ABOVE SHALL CONSTITUTE A
WAIVER OF THE VIOLATOR'S RIGHT TO CONTEST
THE CITATION AND SHALL BE TREATED AS AN
ADMISSION OF THE VIOLATION.

THE CITY MAY INSTITUTE PROCEEDINGS IN A COURT
OF COMPETENT JURISDICTION TO COMPEL
PAYMENT OF CIVIL FINES.

THE CERTIFIED COPY OF THE ORDER IMPOSING CIVIL
FINES MAY BE RECORDED IN THE PUBLIC RECORDS
AND THEREAFTER SHALL CONSTITUTE A LIEN UPON
ANY REAL OR PERSONAL PROPERTY OWNED BY THE
VIOLATOR.

ADA INFORMATION

To request this material in accessible format, sign
language interpreters, information on access for
persons with disabilities, and/or any
accommodation to review any document or
participate in any city-sponsored proceeding,
please contact 305 604-2489 or 1-800-955-8770
(voice), 305 673-7524 (fax), 305 673-7218 or 1-
800-955-8771 (TTY), 1-877-955-5334 (STS), 1-
877-955-8773 (Spanish) five days in advance to
initiate your request. TTY users may also call 711
(Florida Relay Service).

EXHIBIT I

Notice of Violation

Violation Notice Date:	Date 12/21/2016	Time 08:39 AM	Case Number CC2016-01704
Address of Violation:	865 COLLINS AVE		Unit D
Parcel Number:	0242032580040		
Legal Description:	THE SKYLARK CONDO UNIT D UNDIV 3.167% INT IN COMMON ELEMENTS OFF REC 20580-1711		
Violator Name:	BEACH BLITZ CO.		
Mailing Address:	13441 NW 5TH CT	City and State PLANTATION, FL	Zip Code 33325

The City of Miami Beach Code Compliance Department has determined that the above Property has violated the Miami Beach Code of Laws and Ordinances (the "City Code"). This violation is the 1st offense, and this Notice of Violation carries a fine (and other monetary charges) of \$1,000.00. Specifically, Code Compliance Officer Treisa Smith has found there to be a violation(s) of the City Code, which is/are:

Section 6-3(1): Retail stores for package sales only may make sales of alcohol only for off-premises consumption between the hours of 8:00 a.m. and midnight.

You can comply by ceasing immediately illegal alcoholic beverage sales upon receipt of this notice and paying a civil fine of:

1st Offense \$1,000.00 within a (12) twelve month period.

2nd Offense \$5,000.00 within a (12) twelve month period

3rd Offense \$10,000.00 within a (12) twelve month period

4th Offense upon a finding by the Special Master that four (4) or more violations by a person or entity have occurred within a twelve month period, the City may initiate proceedings to revoke the Certificate of Use, Business Tax Receipt or the Certificate of Occupancy of the violator.

Fine(s) must be paid within 72 hours of receipt of the violation. A copy of the violation must accompany the payment. Please make checks or money orders payable to: City of Miami Beach. Payment can be mailed or taken in person to: The Finance Department (Cashier), 1700 Convention Center Drive, 1st floor, Miami Beach, FL 33139.

Fine(s) and/or violations may be appealed within days of receipt of the notice of violation. To appeal a fine and/or violation, submit a written request for an appeal hearing to the Clerk of the Special Master - 1700 Convention Center Dr., Miami Beach, FL 33139. A check for \$100 (administrative charges) must accompany the request along with the case number.

Failure to pay the fine or request an appeal hearing in the manner indicated above shall constitute a waiver of the violator's right to contest the citation and shall be treated as an admission of the violation.

The City may institute proceedings in a court of competent jurisdiction to compile payment of civil fine(s). The certified copy of the order imposing civil fine(s) may be recorded in the public records and thereafter shall constitute a lien upon any real or personal property owned by the violator.

Section 6-3(1): Retail stores for package sales only may make sales of alcohol only for off-premises consumption between the hours of 8:00 a.m. and midnight.

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3rd Offense \$10,000.00 within a (12) twelve month period

4th Offense upon a finding by the Special Master that four (4) or more violations by a person or entity have occurred within a twelve month period, the City may initiate proceedings to revoke the Certificate of Use, Business Tax Receipt or the Certificate of Occupancy of the violator.

EXHIBIT J

SE# C 2017-08102

555 17th Street
Miami Beach, FL 33139
(305) 673-7555 FAX (305) 673-7012

Miami Beach, FL 33139
(305) 673-7555 FAX (305) 673-7012

NOTICE OF CITY CODE VIOLATION AND FINE

SITE ADDRESS: 805 Collins

VIOLATION ISSUE DATE: 6/2/17 TIME: 1050

ISSUED

TO: Mr. A. J. 2012

Mailing Address: 12441 NW 5th Ave. #100

Introduction

DAY OF THE WEEK: SU M T W TH F S

INSPECTION OF THE ABOVE PREMISES THIS DATE
REVEALED YOU ARE IN VIOLATION OF SECTION:

26-10

OF THE MIAMI BEACH CITY CODE BY:

	FINE
1. 1st 1/2 hr. late	() \$25.00
2. 1st 1/2 hr. late in the	() \$50.00
3. 1st 1/2 hr. late	() \$75.00
4. 1st 1/2 hr. late	() \$100.00
5. 1st 1/2 hr. late	() \$150.00
6. 1st 1/2 hr. late	() \$200.00
7. 1st 1/2 hr. late	() \$250.00
8. 1st 1/2 hr. late	() \$350.00
9. 1st 1/2 hr. late	() \$500.00
10. 1st 1/2 hr. late	(X) \$1000.00
11. 1st 1/2 hr. late	()

TOTAL FINES 10.00

COMMENTS: File of [illegible] by [illegible]
[illegible] [illegible]

CODE COMPLIANCE OFFICER (SIGN)

CODE COMPLIANCE OFFICER (PRINT)

RECEIVED BY (Signature):

RECEIVED BY (Print Name):

DATE:

TIME:

IMPORTANT ADVICE AND USE INSTRUCTIONS

EXHIBIT K

Code Compliance Department

555 - 17th Street

Miami Beach, Florida 33139

Tele: 305.673.7555

Fax: 305.673.7012

Notice of Violation

Violation Notice Date:	Date 6/25/2017	Time 11:30PM	Case Number CC2017-03103
Address of Violation:	865 COLLINS AVE		Unit D
Parcel Number:	0242032580001		
Legal Description:			
Violator Name:	BEACH BLITZ CO. % DOAR, DORON		
Mailing Address:	13441 NW 5TH CT	City and State PLANTATION, FL	Zip Code 33325

The City of Miami Beach Code Compliance Department has determined that the above Property has violated the Miami Beach Code of Laws and Ordinances (the "City Code"). This violation is the 1st offense, and this Notice of Violation carries a fine (and other monetary charges) of \$1,000.00. Specifically, Code Compliance Officer Enock Valerus has found there to be a violation(s) of the City Code, which is/are:

Article V, Section 102-377. Any person failing to obtain a Business Tax Receipt as required by this article.

Reference: Failure to obtain Business Tax Receipt

Cease immediately until you obtain a Business Tax Receipt from the City of Miami Beach.

A Violation of this Section shall be subject to the following fines:

Any person who shall carry on or conduct any business for which a tax receipt is required by this article without first obtaining such tax receipt shall be issued a violation for the first offense, which shall have a civil fine of \$1000.00. The enhanced enforcement for this violation shall be pursuant to subsection 102-377(d).

In addition to the above a continued violation of subsection 102-377(a) for a period of thirty (30) days or more without first obtaining a tax receipt, shall be punished by imprisonment not to exceed 60 days or by imposition of a fine not to exceed \$500.00 or both.

Fine(s) must be paid within 72 hours of receipt of the violation. A copy of the violation must accompany the payment. Please make checks or money orders payable to: City of Miami Beach. Payment can be mailed or taken in person to: The Finance Department (Cashier), 1700 Convention Center Drive, 1st floor, Miami Beach, FL 33139.

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Issuing Code Compliance Officer	Name:	Enock Valerus	Badge #	740	Phone and Extension:	(305) 673-7555
	Email:	EnockValerus@miamibeachfl.gov				
Received By	Compliance Date	Received Date	Received Time			
Other	06/26/2017	06/25/2017	11:30PM			

Code Compliance Department

555 - 17th Street

Miami Beach, Florida 33139

Tele: 305.673.7555

Fax: 305.673.7012

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Parcel Number:	0242032580001		
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	Email:	EnockValerus@miamibeachfl.gov				
Received By	Compliance Date	Received Date	Received Time			
Other	06/26/2017	06/25/2017	11:30PM			

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF FLORIDA
3 CASE NO. 17-CV-23958

4 BEACH BLITZ CO.,

Miami, Florida

5 Plaintiff(s),

November 17, 2017

6 vs.

7 CITY OF MIAMI BEACH, FLORIDA,

Volume 01

8 Defendant(s).

Pages 1- 173

9 -----
10 PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION
11 BEFORE THE HONORABLE JOHN J. O'SULLIVAN
12 UNITED STATES MAGISTRATE JUDGE

13 APPEARANCES:

14 FOR THE PLAINTIFF(S): PHILLIP M. HUDSON, III, ESQ.

Arnstein & Lehr, LLP

200 South Biscayne Boulevard, Suite 3600

Miami, Florida 33131

(305) 374-3330

pmhudson@arnstein.com

16 FOR THE DEFENDANT(S): ENRIQUE DANIEL ARANA, ESQ.

Carlton Fields Jorden Burt, P.A.

Miami Tower

100 S.E. Second Street

Suite 4200

Miami, Florida 33131

(305) 530-0050

earana@cfjblaw.com

21 - and -

22 SCOTT EVERETT BYERS, ESQ.

GARY PAPPAS, ESQ.

23 REPORTED BY:

Jill M. Felicetti, RPR, CRR, CSR

Official Court Reporter

400 N. Miami Avenue, Suite 08S27

Miami, Florida 33128

jill_felicetti@flsd.uscourts.gov

I N D E X

ExaminationPage

DORAN DOAR

Direct

By Mr. Hudson

15

Cross

By Mr. Pappas

47

MANUEL MARQUEZ

Direct

By Mr. Arana

88

Cross

By Mr. Hudson

102

Redirect

By Mr. Arana

128

HERNAN CARDENO

Direct

By Mr. Byers

130

Cross

By Mr. Hudson

136

Redirect

By Mr. Byers

149

1 Thereupon,
2 the following proceedings began at 11:02 a.m.:

3 (In open court)

4 THE COURT: Hearing on preliminary injunction.

5 Appearances for the plaintiff first.

6 MR. HUDSON: Phillip Hudson on behalf of plaintiff
7 Beach Blitz. I have my paralegal, Jennin Gil, and Mr. Doran
8 Doar, the principal of Beach Blitz, your Honor.

9 THE COURT: Who is here for the defendants?

10 MR. ARANA: Enrique Arana, Scott Byers, and Gary
11 Pappas, from Carlton Fields, on behalf of the defendants.

12 THE COURT: Anything we need to discuss before we get
13 started?

14 MR. HUDSON: Did you want a brief opening?

15 THE COURT: Well, I think we had it yesterday. If you
16 want to spend five minutes, you are welcome to, but I don't
17 want to spend too much time.

18 MR. HUDSON: I will invoke the rule.

19 THE COURT: If anybody has a witness other than the
20 parties, you need to leave. You can't discuss your testimony
21 with anybody until your testimony is completed.

22 Schedule, we will take a break around 1 for lunch. We
23 will come back and finish after that.

24 MR. HUDSON: Thank you. I will try to be as brief as
25 possible given yesterday, your Honor.

1 We are here on a preliminary injunction to get back to
2 the status quo. Although I indicated yesterday, and I still
3 believe this is a simple matter, it's a very, very, very
4 important matter because it involves the destruction of a
5 business, in our view, in the absolute complete absence of due
6 process, whether that be procedural or substantive due process.

7 You know the outline of the case so I am not going to
8 go through what we will put on for evidence today.

9 We believe essentially we need to demonstrate to the
10 court the four elements necessary for a preliminary injunction
11 in this case, your Honor. What we are asking the court to do
12 is to immediately command that the City of Miami Beach issue
13 whatever license necessary, whether it be on a year-to-year
14 basis or on a temporary basis pending during this litigation
15 because there is no status quo, because they put my client out
16 of business. If he's not restored to that position in the
17 relatively near future, he will never be to survive. Whether
18 that's a few weeks or a month at the outside, your Honor, his
19 business will be destroyed.

20 THE COURT: They say you don't have a protective
21 property interest.

22 MR. HUDSON: Well, as I indicated to you yesterday,
23 they are trying to change the narrative. They are trying to
24 say it's about a business license. It's not, your Honor. It's
25 about a unique liquor store in a unique area with unique

1 licensing that is now irreplaceable.

2 THE COURT: It's the license that's the issue. In
3 other words, they are not going to stop you if you want to sell
4 Cheerios from that spot, you can do that. What you can't sell
5 is liquor. For liquor you need a license. They say there are
6 a bunch of cases -- I haven't read those cases -- but they say
7 there is a bunch of cases that you don't have --

8 MR. HUDSON: First of all, we disagree with those
9 cases, your Honor, and we are happy to brief that particular
10 issue again if you want.

11 We don't agree. There are certain types of licenses
12 that are protectable interests, number one.

13 THE COURT: Which ones are those?

14 MR. HUDSON: Your Honor, those are licenses that are
15 critical to a business, that in the absence of that you lose
16 the good will of the business, the customer base of the
17 business. Those types of licenses.

18 THE COURT: A liquor license, for instance.

19 MR. HUDSON: Exactly.

20 THE COURT: Liquor is 90 percent of his sales, I am
21 sure. Do you have cases that say we treat liquor licenses
22 different than we treat -- I don't know what kind of licenses
23 there are. You are a licensed to be a veterinarian. If you
24 lose your license to be a vet, you can keep your store but all
25 you can sell is dog food. Are you saying there's any cases

1 that say there are licenses that you have a property interest
2 in?

3 MR. HUDSON: There are those cases, your Honor. I
4 don't know as I stand here whether there's a liquor license
5 case on point. But there's two ways I want to address that
6 argument with you.

7 First of all, liquor licenses. We are not talking
8 about a liquor license here. My client has a liquor license
9 from the State of Florida that's current and valid. The State
10 of Florida has preempted all other governments in Florida --
11 municipalities, counties, et cetera -- has specifically
12 preempted the regulation of liquor but for three things, and
13 the only one relevant in this case are hours of sales. We are
14 not here on the hour of sale issue.

15 So what we are alleging they have done is prevented us
16 from renewing our license, which is a renewal process and would
17 have been automatically renewed had they not prevented us from
18 paying it, therefore requiring us to get a new license, at all
19 times knowing that they would never give us a new license
20 because of the change of the ordinance.

21 One of the exhibits that I believe you are going to
22 see today is an internal City of Miami Beach record that says
23 he may not reapply for a liquor license because of the new
24 ordinance.

25 THE COURT: The BTR. You are making the statement I

1 made.

2 MR. HUDSON: Correct. I'm sorry, Judge. Thank you
3 for correcting me.

4 He may not now apply for that BTR because of the
5 change in the statute. We believe that was intentional. That
6 is a taking, Judge. Certainly it's a taking of the license.
7 But it's not the license that's in our view the relevant issue.

8 They targeted these four liquor stores. They
9 targeted -- malignant tumor, as the Mayor called it. They
10 targeted the cafes that are serving until 5:00 p.m.

11 We have evidence that we will show, that we don't need
12 to get into today, of the targeting, your Honor. They
13 specifically intended to put him out of business by this.

14 THE COURT: I understand your argument of the fact
15 that what they are saying is that legally you have got no right
16 to be here, you should be in Miami Beach appealing this to some
17 special master or administrative law judge. When that gets
18 denied, you should go on your way to state court.

19 MR. HUDSON: Let's talk about that. There is no
20 appellate right at this point because their argument is that
21 the license expired and as a result you can't get it. So their
22 argument in their very papers says, all right, Mr. Hudson, send
23 your client down to do an application for a new license. I am
24 going to show you today that they have already made the
25 decision they are not going to grant him a new license. That's

1 part of the conspiracy.

2 They tried to get to the end of the year. They got to
3 the end of the year. They are now saying you have to go apply
4 for a new license, but you can't get a new license because of
5 the change in the code. So they won. They got what they
6 wanted. They put one of the four liquor stores out of
7 business, your Honor.

8 THE COURT: I don't want to hear too much more. I am
9 going to be more interested after we get the testimony because
10 then we could talk about, instead of what you are going to
11 hear, what I heard. I know the facts. I don't know the way
12 you guys do it, but I read the papers and I am familiar with
13 it. I really don't want to hear too much more argument.

14 MR. HUDSON: Understood, your Honor.

15 The due process, that's what you are going to hear
16 today. You are going to hear from my client two things. One,
17 irreparable harm. Why this is unique. It is unique by the
18 very fact that it's irreplaceable. It's made irreplaceable by
19 their ordinance. So the fact that he was able to stay and
20 renew his license. They took it away from him without any due
21 process. There is no remedy. They are trying to get you to
22 believe there is a remedy. There isn't. It wasn't revoked.
23 It wasn't suspended. It wasn't denied.

24 They got him to October 1 where he couldn't renew it.
25 There is no legal way for him to reopen absent the relief from

1 this court, Judge. That's why an injunction is appropriate.

2 So what you are going to hear from him today, your
3 Honor, is essentially the unique nature of this business, why
4 it's unique, and, as I said, it is now self-evident that it's
5 unique because he was grandfathered in and nobody could do it.
6 Number one.

7 Number two, you are going to hear that he tried and
8 hired professional after professional and he personally went
9 down multiple times --

10 THE COURT: I heard all this yesterday. I told you I
11 don't want to hear this again.

12 Let's go to the defendant. I understand what you
13 want. I want five minutes or less. Same for you. And don't
14 tell me what you told me yesterday. If that's what you are
15 going to tell me, sit down.

16 MR. ARANA: Your Honor, I will take two minutes here
17 at the outset.

18 A critical fact that they are misconstruing, the BTR
19 license expired naturally on September 30, 2016. It expired.

20 THE COURT: Because you wouldn't let what he says --
21 don't say no because you don't know what I am going to say.
22 Because he said that you refused to take payment for the
23 license while the violations were unpaid.

24 MR. ARANA: I apologize for interrupting you. The
25 factual history is as follows. On September 30, 2016, the

1 license expired.

2 THE COURT: We all know that.

3 MR. ARANA: Nine months later they were cited for
4 operating without a license. That was on June 26, 2017, nine
5 months later.

6 Since that time they contend they had been trying to
7 get a new BTR, that they have been trying to renew it or get a
8 new one, and that the city has deprived them of that
9 opportunity. We disagree with that. But here is the point,
10 your Honor. The case law is unequivocally clear that when a
11 license is expired -- this is not about revoking an existing
12 license or taking it away from them. They don't have one. It
13 expired naturally. So there is no --

14 THE COURT: You are saying once September 30, the last
15 year rolled around, no matter what happened, if the city didn't
16 want to give them the license again, you didn't need to.

17 MR. ARANA: No, not at all. What I am saying is
18 there's no property interest at that point. There is no
19 federally protected property interest in an expired license.
20 There's no dispute about that. There's a legion of cases to
21 that effect.

22 They say, well, it was our business. It was our
23 business activity. That's protected. Well, your Honor, there
24 are Supreme Court and Eleventh Circuit authorities. College
25 Savings Bank v. Florida Prepaid PostSecondary Education, 527

1 U.S. 666, that says: While the assets of a business are
2 property, business in the sense of the activity of doing
3 business or the activity of making a profit is not property in
4 the ordinary sense.

5 The Eleventh Circuit says the same thing.

6 In other words, the activity of doing business is also
7 not a protected property interest. So you don't have it either
8 way in terms of a property interest you can protect in federal
9 court.

10 Now, the license expired naturally. The plaintiffs
11 can apply for a new BTR, and it may well be denied by the city
12 on the grounds that there is an ordinance in effect that
13 prohibits package liquor stores in the district. But if that
14 is what the city decides, the plaintiff can appeal that
15 decision through the state process.

16 THE COURT: Who do they appeal to?

17 MR. ARANA: They can appeal it through the city's
18 administrative process to the city manager or his designee, who
19 will then take evidence, and they can make this argument to the
20 city manager. They can say, no, we really should be allowed to
21 get the license because we didn't understand or we were
22 confused or misled or whatever they want to say.

23 THE COURT: What's their due process to remedy the
24 wrong they allege that you refused to take their money and
25 allow them to renew the license within the one-year period?

1 MR. ARANA: If the city did anything wrong by not --
2 if the city did not take their money, and the evidence will
3 show that that is not correct.

4 THE COURT: We will see.

5 MR. ARANA: They can make those arguments in state
6 court, that they are entitled to a license under state law.

7 Their argument to the court is that they are entitled
8 to a new license under state law. Well, they need to make that
9 argument in state court. First in the state administrative
10 procedure and then in the state -- and then if they want in the
11 state courts.

12 THE COURT: But is there a way for them to get to an
13 administrative procedure without applying for a new license?
14 Because they don't want to apply for a new license. What they
15 want you to do is -- what they wanted you to do is issue them
16 their BTR before September 30, or to renew the BTR, whatever it
17 is.

18 MR. ARANA: I don't think there will be any dispute
19 about this. The license expired on September 30, 2016 because
20 they did not renew it, and they will not dispute that they made
21 no effort to renew it before that date or for nine months
22 thereafter.

23 THE COURT: Well, I think once June rolled around they
24 started to.

25 MR. ARANA: I am saying -- June is nine months later.

1 They realized that they were operating without a license. So
2 they have an expired license. So they have no federal property
3 right.

4 Now if they want a new license --

5 THE COURT: Getting back to the facts, what if they
6 didn't get a citation, but on June 1st he woke up and said, my
7 Lord, I forgot to get a new BTR and he went down to City Hall
8 and gave you guys \$1,000?

9 MR. ARANA: If he had done that, he may have gotten a
10 license at that time.

11 THE COURT: Is the city obligated to give him a
12 license at that time?

13 MR. ARANA: I am not sure whether they are obligated
14 or not, but the city would make a decision and if he didn't
15 like that decision, he could appeal it.

16 If he had tendered the money and they said you get a
17 license, they give it to him. If they said no, you are not
18 entitled to a license, then he could appeal that decision.

19 THE COURT: What can he do now other than apply for a
20 new license? Assuming he doesn't apply for a new license, does
21 he have any administrative rights in the city?

22 MR. ARANA: Vis-a-vis the license, no.

23 THE COURT: No. Vis-a-vis -- well, when you say the
24 license, the BTR.

25 MR. ARANA: Vis-a-vis the BTR.

1 THE COURT: What he says is he has no administrative
2 process to go to because the BTR was wrongfully withheld from
3 him.

4 MR. ARANA: If he thinks that was the case, he
5 could -- yes, if he thinks it's been withheld from him already,
6 he can appeal that, whatever decision he -- you know, he's got
7 to identify at a point in time where the city said you can't
8 have one. But if at any point the city says we will not give
9 you a BTR, he can appeal that decision.

10 Section 102.372 of the city code says: Any person
11 whose application for business tax receipt has been denied may
12 seek a hearing under Sections 102.384 and 102.385.

13 If he in fact tried during the course of the year to
14 get a BTR license and the city said I am sorry, we are not
15 going to give it to you, he could appeal that.

16 THE COURT: All right. Very good.

17 Call your first witness, please.

18 MR. HUDSON: Doran Doar.

19 THE COURT: Come on up, Mr. Doar.

20 DORAN DOAR,
21 having been first duly sworn on oath, was examined and
22 testified as follows:

23 THE WITNESS: Doran Doar. Last name D-O-A-R.
24
25

DIRECT EXAMINATION

BY MR. HUDSON:

Q. Good morning.

Are you familiar with an entity by the name of Beach Blitz, which is the plaintiff in this case?

A. Yes.

Q. And what is your involvement with Beach Blitz?

A. I am the owner of the Beach Blitz, Florida corporation.

Q. Are you familiar with an entity or something called Ocean 9 Liquor?

A. Yes. It is the liquor store, the d/b/a Beach Blitz. Beach Blitz d/b/a Ocean 9 Liquor.

Q. So you own Ocean 9 Liquor store through Beach Blitz?

A. Yes.

Q. Please wait for me to finish my question, sir.

A. Yes.

Q. Thank you.

Are you familiar with something called Ocean 11 Liquor or Ocean 11 Market?

A. Yes.

Q. What is Ocean 11 Market?

A. It's a regular convenience store that I own.

Q. You own that as well?

A. Yes.

Q. Now, Ocean 9 Liquors is a full liquor store, correct?

1 A. Yes.

2 Q. Does Ocean 11 Market sell liquor?

3 A. Yes. Beer and wine.

4 Q. Only beer and wine?

5 A. Yes.

6 Q. Does Ocean 9 hold a Florida state license to sell all types
7 of liquor?

8 A. Yes.

9 Q. How long has Ocean 9 been in business?

10 A. From 2012.

11 Q. Is it a profitable company?

12 A. Very profitable.

13 Q. Briefly tell the court the location of Ocean 9 Liquor and
14 what type of business it is.

15 A. Ocean 9 Liquor, it's located in a very unique place in the
16 center of South Beach, half a block from Ocean Drive, next door
17 to Mangos Tropical Bar, and many turn to the beach. It's a
18 very unique, special location.

19 Q. Do you know what the MXE district is?

20 A. Yes.

21 Q. Tell the court what you understand the MXE district to be.

22 A. What I understand from right now that MXE, it's from Fifth
23 Street to 15th or 16th Street southwest and from Collins Avenue
24 to Ocean Drive east and west.

25 Q. And the City of Miami Beach recognizes the MXE district as

1 a separate zoning district; is that correct?

2 A. Yes.

3 Q. How many liquor stores that sell full liquor are presently
4 in the MXE district?

5 A. Three or four. Four liquor store.

6 Q. And does that include Ocean 9, which is closed?

7 A. Yes.

8 Q. So there are presently three liquor stores that are
9 operating?

10 A. Yes.

11 Q. Are you generally familiar with a series of ordinances over
12 the past 12 months or so where the City of Miami Beach has
13 substantially reduced the hours of operation of the liquor
14 stores in the MXE district?

15 A. Yes, I am familiar.

16 Q. Have you objected to those ordinances?

17 A. Yes.

18 Q. Have you hired professionals to help you deal with the City
19 of Miami Beach to try to change those ordinances?

20 A. Yes.

21 Q. What are the current hours of sale in the MXE district, do
22 you know?

23 A. Yes.

24 Q. What are they?

25 A. Until a few changes, but I think right now the hours is

1 between 10:00 a.m. to 8:00 p.m. in the evening. It used to be
2 8:00 a.m. in the morning to 12:00 a.m. in the night.

3 Q. So in the last 12 months there had been a series of
4 ordinances that have reduced the number of hours by six hours;
5 is that fair?

6 A. Yes. From 6 to 10.

7 Q. Do you believe Ocean 9 Liquors would be able to survive
8 with the substantially reduced hours? It's possible, but do
9 you believe --

10 A. Hard to believe, but it's possible.

11 Q. Do you believe the other stores -- strike that.

12 Is Ocean 11 Market also in the MXE district?

13 A. Yes.

14 Q. Could someone come into the MXE district today and open a
15 new full service liquor store?

16 A. I don't think it's even possible because of the new
17 ordinance that they did a few month ago, last year.

18 Q. So tell us what your understanding is of the ordinance that
19 would prevent any new liquor stores from opening in that
20 district.

21 A. What I understand from the ordinance, that notify that
22 nobody can open liquor store, any liquor store, any kind of
23 liquor store, not beer and wine, not any kind of liquor store
24 in the MXE district.

25 Q. Do you believe that fact makes your liquor store special or

1 unique?

2 A. For the moment it's going to be much more unique, much more
3 profitable because less competition possible.

4 Q. Do you know what a BTR is?

5 A. I learn about the BTR only in the last three or four month.

6 Q. What is your understanding of a BTR?

7 A. Business tax receipt.

8 Q. And is that like an occupational license?

9 A. Yes. It change the name from occupation license to
10 business tax receipt in -- I don't recall when.

11 Q. And that's a license -- do you understand that you need a
12 BTR to operate a business in Miami Beach?

13 A. Yes.

14 Q. Do you have BTRs for Ocean 11 Market?

15 A. Yes.

16 Q. You always had BTRs for Ocean 11 Market?

17 A. Always.

18 Q. Have you always had, except for fiscal years 2016 and '17,
19 have you always had BTRs for Ocean 9 Liquor?

20 A. Always.

21 Q. Did there come a time in 2017 when you realized that you
22 did not have or that your BTR was not current because you
23 didn't renew it at some point?

24 A. I didn't understand the question. I am sorry.

25 Q. At some point did you realize in 2017 that there was a

1 problem with your BTR?

2 A. I realize in June after I receive a BTR violation, which I
3 don't have the BTR. It's never happened to me before in the
4 surviving of my business. I realize for some reason that's
5 what happened.

6 THE COURT: Who usually went and got your BTR? You or
7 somebody else at your work?

8 THE WITNESS: Usually it's either me or another woman.
9 The name is Rochelle Malik. She is professional dealing with
10 the city with violation and with the license and all this. She
11 know the people and she lead me usually what to do.

12 MR. HUDSON: Your Honor, I'd like to point the witness
13 to what's been marked as Plaintiff Exhibit 5. I don't know if
14 he has a binder or not yet.

15 THE COURT: Did you give him one? Where is the
16 binder?

17 For the record, all these exhibits are in evidence.
18 You don't need to set the predicate or anything.

19 MR. HUDSON: Correct, your Honor. I am going to
20 proceed.

21 BY MR. HUDSON:

22 Q. Sir, turn to tab 5 in that white binder that I just sent to
23 you. Take a look at that document the first page. When you
24 have had an opportunity to look at it, tell the court, please,
25 what is there.

1 A. I see two violations. Usually the last three number 102
2 and 103.

3 102, it's selling alcohol after hour of ordinance
4 separation.

5 103 is not having business tax receipt license.

6 Q. When did you first see these two citations?

7 A. I saw this -- when I got it, I was overseas. I was in a
8 different country, in Israel, and I saw this when I came back
9 on June 27.

10 Q. So someone in the U.S. sent these to you while were you in
11 Israel?

12 A. Yes.

13 Q. You saw them. You returned to the United States a couple
14 of days later, correct?

15 A. Yes.

16 Q. And at that point did you do anything, sir, to try to
17 resolve these violations?

18 A. Of course. I handed them to Rochelle Malik and also I
19 handed them to Guy Shir, which is also a lawyer, and we tried
20 to appeal the violations.

21 Q. Let's start one at a time, and I know sometimes dates are
22 hard to remember, but do your best, please, for the Court.

23 When you came back in late June, did you personally do
24 anything at that time other than to contact Ms. Malik?

25 A. I went to the city on June 27 and I tried to pay the BTR.

1 Q. You physically went where?

2 A. To finance.

3 Q. Describe for the Court where that is physically.

4 A. I think it's on Meridian and 18, first floor.

5 Q. So there is a counter or something you go to?

6 A. It's a counter. You take a number, you stand in line, and
7 you do a few things over there, I mean, and --

8 Q. So you personally went in late June --

9 A. Yes.

10 Q. -- to the city. And describe for us what happened when you
11 were at the counter.

12 A. They did not renew. They didn't let me renew the license.
13 So I went to Rochelle office.

14 THE COURT: What did you tell the person at the
15 counter and what did the person tell you?

16 THE WITNESS: I don't remember exactly the
17 conversation, but I went over there, tried to renew, to pay my
18 BTR because I got the violation of the BTR. So I went to the
19 finance, tried to pay. For some reason they probably show me a
20 violation or some -- I don't remember exactly. I went to
21 Rochelle.

22 THE COURT: You went to what?

23 THE WITNESS: To Rochelle Malik, to the woman that
24 usually take care of --

25 THE COURT: No. I am talking about when you were at

1 the finance department in Miami Beach. Tell me exactly what
2 did you do; how much money did you give them; did you give them
3 cash, check; who do you give it to?

4 THE WITNESS: No. You ask them for how much to pay,
5 how much to pay. Then say they are not allow you to renew the
6 license.

7 THE COURT: Okay.

8 BY MR. HUDSON:

9 Q. So they told you specifically that day, someone behind the
10 counter at Miami Beach, that they would not allow to you renew
11 the license; is that your testimony?

12 A. Yes.

13 Q. Then what did you do next?

14 A. I went to Rochelle office and I hand her the violations and
15 I ask her to do, to appeal it.

16 Q. Explain to the court who Rochelle Malik is, to the best of
17 your knowledge.

18 A. Rochelle Malik, she is the wife of the former mayor of
19 Miami Beach. She is dealing with the Miami Beach city on
20 stuff, like on violations and BTR and helping people like me,
21 small business owners, to try to resolve problems. So she know
22 the system, how it's working. And I work with her for a few
23 years already and she usually help me to renew the license, or
24 maybe she go, maybe she pay some kind of checks. Sometimes
25 it's me.

1 Q. Earlier you told the court that you had hired folks from
2 time to time that helped you with the BTR process prior to when
3 you found out you had the problem, right? Ms. Malik had
4 already been working for you for some time to help you with
5 licensing and to help you with issues on Miami Beach, correct?

6 A. Yes.

7 Q. So when you couldn't accomplish what you wanted to
8 accomplish trying to get your BTR, you then asked her to get
9 involved, correct?

10 A. Yes.

11 Q. And you hired her to go down and try to pay the BTR as
12 well?

13 A. Yes.

14 Q. Was she successful?

15 A. No. From few month.

16 Q. How many times, let's --

17 THE COURT: I am a little confused. His testimony
18 before you started leading him was, I went to Malik, I handed
19 her the tickets and asked her to appeal it. He didn't say I
20 went to Malik and said, hey, they are not taking my money for
21 the license. He said I went to Malik, handed her the tickets
22 and said appeal it, is what I remember him saying.

23 So now all of a sudden you jump to Malik -- what he
24 testified to is he told Malik to appeal the tickets. Appealing
25 the tickets is not get me my BTR.

1 MR. HUDSON: I am not sure --

2 THE COURT: They are two different things. I think
3 it's extremely important. So you need to get answers from him
4 and he needs to provide answers.

5 MR. HUDSON: I agree with you, Judge. There is a big
6 distinction. I am trying to --

7 THE COURT: You seem to be doing it now by telling him
8 what he is going to say. I want to hear what he has to say
9 rather than what you have to say.

10 MR. HUDSON: I understand.

11 BY MR. HUDSON:

12 Q. Mr. Doar, focus on my questions and the Court's questions.

13 Okay. Let's go back. You personally went down at the
14 end of June, correct, to try to get a BTR license? Correct?

15 A. Yes.

16 Q. You had previously hired Ms. Malik to do other things for
17 you before the BTR problem, including renewing BTRs, paying
18 violations; is that correct?

19 A. Yes.

20 Q. After June 27 or 28 when you were unsuccessful at renewing
21 your BTR, did you hire Ms. Malik to assist you with the BTR?

22 A. Yes.

23 Q. And what was it that you asked her to try to accomplish?

24 A. I told her -- I give her the violations and I ask her to
25 deal with the violation. Part of the dealing with the

1 violation, as I understand, we have a few days to appeal it.

2 Q. So the violations that you are talking about is the Exhibit
3 5 in front of you, correct?

4 A. Yes.

5 Q. The violation ending in 102 and 103.

6 A. Yes.

7 If I am not mistaken, it was one more violation.

8 Q. There was a third violation from December of '16 as well,
9 correct?

10 A. Yes.

11 Q. That she was dealing with?

12 A. Yes.

13 Q. It was not a BTR violation, correct?

14 A. No.

15 Q. Okay. Did Ms. Malik report back to you whether she was
16 able to resolve the BTR problem?

17 A. She always told me that it's okay, it's under control, that
18 she's dealing with that. But she could not resolve the
19 problem.

20 Q. She could not. Please get closer to the microphone. I
21 can't hear you.

22 A. Rochelle Malik didn't resolve the -- she resolved the
23 problem with the violation but not with the BTR. They never
24 let her pay or me to pay the BTR.

25 Q. Did you specifically charge Ms. Malik with going down and

1 trying to get a BTR for you in June or July of 2017?

2 A. Yes.

3 Q. Did you either give her money to do so or did you have an
4 understanding that if she paid, you would repay her?

5 A. We have understanding. I didn't give her money but we have
6 understanding that, you know, she pay with her checks and she
7 get the money from me all the time.

8 Q. That understanding goes back years, correct?

9 A. Yes.

10 Q. It's a course and custom in business, correct?

11 MR. PAPPAS: I have got to object to the leading at
12 this point.

13 THE COURT: Stop the leading. On this part it doesn't
14 make much difference to me, but go ahead.

15 BY MR. HUDSON:

16 Q. When Ms. Malik reported that she was unsuccessful at
17 getting a BTR, what did you do next?

18 A. Also at the same time I went to a Guy, Shir which is a
19 lawyer from --

20 THE COURT: Can you spell that name?

21 MR. HUDSON: S-H-I-R.

22 THE COURT: The first name Guy?

23 MR. HUDSON: Yes.

24 BY MR. HUDSON:

25 Q. So you retained an attorney by the name of Guy Shir?

1 A. Guy Shir, and I also emailing the violations. And because
2 Rochelle had a hard time to deal with the city or with the
3 violation, he send the letter with the checks of \$100 to the
4 city to appeal with the letter to appeal the violation.

5 Q. The violations?

6 A. And for some reason after he send the letter, the city
7 didn't accept it.

8 Q. Mr. --

9 A. Because -- some reason.

10 Q. I am sorry. I didn't mean to cut you off.

11 A. Okay.

12 Q. So Mr. Shir was unsuccessful in getting you a BTR, correct?

13 MR. ARANA: Leading.

14 THE COURT: Sustained.

15 What he is talking about is that he sent a check with
16 \$100 to appeal, which they didn't accept, is what he said. I
17 mean, that's the way I understand what he said.

18 THE WITNESS: Yes. That's what I said. And I know
19 that Mr. Shir was speaking with a woman named Cindy in the
20 special master and she give him instruction, different
21 instruction than what he had, you know, to appeal it.

22 BY MR. HUDSON:

23 Q. Was Mr. Shir successful at getting you a BTR in 2017?

24 A. No.

25 Q. What did you do next?

1 THE COURT: Excuse me. What did Mr. Shir do to get
2 you a BTR in or last year before October of 2017, this past
3 year?

4 THE WITNESS: We understand from the city that without
5 resolve the violation we cannot get a BTR several time.

6 MR. HUDSON: May I continue, Judge?

7 THE COURT: Yes.

8 BY MR. HUDSON:

9 Q. So after Mr. Shir was unsuccessful, what did you do next?

10 A. I went to Harold Rosen.

11 Q. Who is Harold Rosen?

12 A. He is a lawyer that used to be a -- he is a former, of
13 Miami Beach that also dealing with violations and special
14 masters and tries to resolve problem for people like business
15 owners.

16 Q. So you retained Mr. Rosen, correct?

17 A. Yes. I hire him and -- I hire him in July, the end of
18 July. They lead me that without resolve the violation cannot
19 renew the BTR. So he had a special master on August 28th. On
20 August 28th he had an order with the special master.

21 Q. So let's break it down a little bit so everybody can
22 understand.

23 You hired Mr. Rosen, you said, sometime in late July?

24 A. Yes.

25 Q. And was Mr. Rosen successful at making some progress on the

1 violations and the BTR?

2 A. Not on the BTR, on the violation. He had some agreement
3 with the special master.

4 Q. Okay. How many violations were outstanding at the time
5 that you hired Harold Rosen?

6 A. Three.

7 Q. And what were those violations for?

8 A. One violation from December 22, if I don't mistake. That
9 say that I selling liquor before 10:00 a.m. This was maybe one
10 week, two weeks after the new ordinance, that they change the
11 time.

12 Q. That was one. What was the next one?

13 A. The second one, it was selling alcohol after 10:00 p.m.,
14 and the third violation was not having a BTR.

15 Q. So when Mr. Rosen was successful at getting a special
16 master involved, was he dealing with two of those or three of
17 those?

18 A. With the three of them.

19 Q. All three of them, correct?

20 A. All three of them.

21 Q. Including the BTR issue, correct?

22 A. All of them.

23 Q. Was he also retained by you to assist or try to get you a
24 BTR in 2017?

25 A. Excuse me. I didn't understand.

1 Q. Did you also hire him to help you get a BTR in 2017?

2 A. So I hired him to resolve my problem. So probably to get
3 the BTR was part of it, yeah.

4 Q. Was he successful at getting you a BTR in 2017?

5 A. No.

6 Q. At some point did Mr. Rosen indicate that he had an
7 agreement with the City of Miami Beach regarding the resolution
8 of all of the violations?

9 A. I am sorry. Can you repeat?

10 Q. Did Mr. Rosen tell you at any time that he had reached an
11 agreement with the city to solve all of the violations, all
12 three?

13 A. Yes.

14 Q. When did he tell you that?

15 A. On August 28th.

16 Q. Of what year?

17 A. 2017.

18 Q. Did he ask you to do anything on that date?

19 A. Yes. He asked me to give, to give a check to the City of
20 Miami Beach for \$1,000.

21 Q. Did you do so?

22 A. Yes.

23 Q. Turn to tab 1 in your book in front of you, please. Please
24 look at that.

25 Is that the check that you are talking about?

1 A. Yes.

2 Q. So did you write that check on or about August 28 of '17?

3 A. Yes.

4 Q. Is that your signature?

5 A. Yes.

6 Q. Is that your handwriting on the rest of the check?

7 A. Yes.

8 Q. And I note that it says in the line "paid in full," and it
9 seems to list the three violations. Is that a fair reading of
10 that document?

11 A. Yes.

12 Q. When did you give that to Mr. Rosen or -- I am sorry. Whom
13 did you deliver that check to?

14 A. To Mr. Rosen, in the meeting between Mr. Rosen and Rochelle
15 Malik.

16 Q. Did Mr. Rosen tell you that after that date that he had
17 delivered that to the City of Miami Beach?

18 A. He admit a few times in front of us.

19 Q. Did he tell you who at the City of Miami Beach he gave it
20 to?

21 A. He gave it to Alex Baxter, I think. He is deputy of city
22 attorney.

23 Q. Alex Boxner?

24 A. Alex Boxner.

25 Q. Did he say when he gave it to Mr. Boxner?

1 A. He said on August 28 or August 29.

2 Q. About the time, within a day or two of when you delivered
3 the check?

4 A. Yes. That's what he said, within a day or two.

5 Q. Look at the second page there, the back of the check.

6 Do you see that?

7 A. Yes.

8 Q. It seems to have been deposited by the City of Miami Beach
9 on 10/18/2017.

10 Do you have any idea why it would have taken the city
11 a month and a half, if not more, to deposit that check?

12 A. You are asking me?

13 MR. PAPPAS: Foundation, your Honor.

14 THE COURT: Overruled.

15 If you know, you know. If you don't, you don't.

16 MR. HUDSON: Exactly.

17 THE COURT: I assume he doesn't know, but maybe he
18 does.

19 Did he answer?

20 Do you know?

21 A. No, I don't know why.

22 BY MR. HUDSON:

23 Q. After you gave Mr. Rosen the check, did you personally go
24 down and try to obtain a BTR now that the violations were
25 cleared?

1 A. I don't remember if after I give him the check I went to
2 try to pay the BTR.

3 Q. Let's go to --

4 A. I tried on the month of September.

5 Q. I know. We are jumping ahead.

6 Turn to page 7 of your binder, please.

7 Have you seen that document before?

8 A. This is the agreed order. Yes.

9 Q. What do you understand this order to do?

10 A. I understand that this order, it's agreement between the
11 Beach Blitz to the City of Miami Beach regarding the three
12 violation that say they agree that \$3,000 resolve the problem.

13 Q. Do you have any idea why it took a month from August 28
14 when you delivered the check to Mr. Rosen told you he had a
15 deal for this order to be prepared and signed?

16 A. I don't have any idea.

17 Q. When did you first see this order?

18 A. Excuse me?

19 Q. When did you first see this order?

20 A. This order, on August -- when I see the order, I think on
21 September 28.

22 Q. Did Mr. Rosen give it to you?

23 A. Yes.

24 Q. At that time when you received it, did you personally go
25 down and try to get your BTR again?

1 A. Yes.

2 Q. September 28 was 2017 was a Thursday, was it not?

3 A. Yeah, Thursday.

4 Q. Do you recall?

5 A. It's either was Thursday or Friday.

6 THE COURT: It was a Thursday. I will take judicial
7 notice of that.

8 MR. HUDSON: Thank you, Judge.

9 BY MR. HUDSON:

10 Q. Do you recall, did you go down on the 28th or 29th, or
11 both?

12 A. Either the 28th or the 29th. Either was Thursday or
13 Friday.

14 Q. And so you personally once again went down to the city
15 first floor counter, correct?

16 A. Yes.

17 Q. And you personally asked to please allow to you get a BTR,
18 correct?

19 A. Yes.

20 Q. What did they tell you?

21 A. They tell me that they are not going to issue me a BTR
22 because I have the violations.

23 MR. HUDSON: One moment, your Honor.

24 THE COURT: Yes.

25 MR. ARANA: Your Honor, we were presented with a

1 document this morning that plaintiffs want to add to an exhibit
2 list. It appears to be a city record, but we haven't had an
3 opportunity to confirm.

4 We object on timeliness grounds.

5 THE COURT: What is it?

6 MR. HUDSON: It was potentially a rebuttal or
7 impeachment exhibit. It's a record that basically shows
8 internally why they closed his license and that it couldn't be
9 renewed or replied for. I believe the witness will testify
10 that it was given to him that day.

11 THE COURT: Well, I will allow it subject to the city,
12 if you determine that it's not a record, then let me know
13 afterwards and I will take the opportunity to strike it.

14 MR. HUDSON: This will be admitted?

15 MR. BYERS: Your Honor, we have an objection. It's
16 dated after September 28 and 29th. There's actually markings
17 on there showing October 6th of 2017. So therefore it is
18 impossible --

19 THE COURT: You should have saved that for
20 cross-examination.

21 MR. HUDSON: We don't know what it is. That's the
22 problem, Judge. But he is going to testify that he was given
23 this by the city.

24 THE DEPUTY CLERK: Speak into the microphone.

25 MR. HUDSON: May I approach the witness, your Honor?

1 THE COURT: We will mark that as 17. Is that your
2 next exhibit?

3 THE DEPUTY CLERK: Yes.

4 Can I have a brief description of it. Brief.

5 MR. HUDSON: It is a screenshot from the City of Miami
6 Beach that has, for lack of a better word, a rectangle in the
7 middle of it, that we can't see what it is, and I can't tell
8 you when it's dated, to be honest with you. Maybe the city
9 can, if they know how to read it. But we can't tell when it's
10 dated.

11 THE COURT: Okay. Give it to the witness to look at
12 it.

13 MR. HUDSON: Do you need a copy?

14 THE DEPUTY CLERK: I don't.

15 THE COURT: I do.

16 BY MR. HUDSON:

17 Q. Sir, you went down to the city on either the Thursday or
18 the Friday and, once again, they told you they could not give
19 you the BTR, correct?

20 A. Yes.

21 Q. Did you indicate to them at that time that your violations
22 had been resolved?

23 A. Yeah.

24 Q. And what did they say? What was their response?

25 A. I have a violation, that they cannot renew the BTR.

1 Q. Do you understand that to mean that their system had not
2 been updated or did you understand that to mean something else?

3 A. That's what Rochelle told me, that probably the system is
4 not updated.

5 Q. So when you were told you couldn't do it, did you call
6 Ms. Malik or did you ask her to go do it as well?

7 A. Yes. Yes. I told her that I can't renew it.

8 Q. Do you know whether Ms. Malik went down there that Thursday
9 or Friday to try to renew it?

10 A. I am not sure.

11 Q. But you were unable to, correct?

12 A. I wasn't.

13 Q. You went down there for the specific purpose of renewing
14 it?

15 A. Correct.

16 Q. You had the financial capability of renewing it at that
17 time?

18 A. Of course. The financial was no problem at any time.

19 Q. Okay. So next Monday was October 1st, correct?

20 MR. HUDSON: The court will take judicial notice of
21 that?

22 THE COURT: Next Monday was what?

23 MR. HUDSON: October 1.

24 THE COURT: No, that's not true. October 2.

25 MR. HUDSON: Okay. Thank you, Judge.

1 THE COURT: October 1st was Sunday. At least that's
2 what my government calendar says.

3 BY MR. HUDSON:

4 Q. So the following week, starting on October 2nd, any time
5 during that week did you go down and try to get the BTR?

6 A. Which week are you talking about?

7 Q. The Thursday or Friday was the 28th --

8 A. Yes.

9 Q. -- and 29th.

10 The next Monday or any day that following week
11 starting on October 2nd, as the court has just indicated, did
12 you personally go down to the city to try to get a BTR?

13 A. Yes, on October 3. On October 3.

14 Q. Did you go on October 3 for other reasons as well?

15 A. Yeah. I renew my Ocean 11 BTR, because they didn't want to
16 renew it on September 28. They told me that I had a violation.

17 Q. So turn to page 9.

18 THE COURT: You say page 9. You mean Exhibit 9?

19 MR. HUDSON: Exhibit 9, please.

20 BY MR. HUDSON:

21 Q. Please, in the book. You are at tab 9.

22 Is that an invoice for Miami Beach for \$966?

23 A. Yes.

24 Q. What is that, sir?

25 A. It's a payment of --

1 THE COURT: You need to talk into the microphone.

2 A. It's a license for Ocean 11 Market.

3 Q. So is this something that was given to you the day that you
4 were -- on October 3 when you were at the city? Did they give
5 this to you that day so you could tell how much to pay?

6 A. No, they didn't give me this paper. They give me the
7 receipt.

8 Q. So you had this paper in advance?

9 A. No, I didn't have. They give me this on October, on
10 October 9.

11 Q. So turning to Exhibit 10, tell us what Exhibit 10 is.

12 A. This is the bill for -- this is the bill for Ocean 11
13 Market.

14 Q. Is this the receipt that was physically given to you on
15 October 3 when you paid the bill for Ocean 11 Market?

16 A. I don't remember. But it's another receipt that I remember
17 they give it to me. I don't remember this one was together.

18 Q. Look at the date, sir.

19 A. Yes, yes. Actually, yes. They give me this. They give me
20 this and they give me also another receipt.

21 Q. Okay. So this Exhibit 10 was physically given to you by
22 someone at the City of Miami Beach on October 3, correct?

23 A. Yes.

24 Q. At that same time you attempted to pay the BTR for your
25 other business, Ocean 9, correct?

1 A. Of course.

2 Q. They refused?

3 A. They refused to take the money.

4 Q. Did they tell you why they refused?

5 A. Because I have violations.

6 Q. Because you had open violations?

7 A. Open violations.

8 Q. Consistent with everything they have told you in the past,
9 correct?

10 A. Yes.

11 Q. Do you know if Ms. Malik or Mr. Rosen or Mr. Shir or
12 anybody else continued to try to ask the city to --

13 A. All the time. All the time. Every day. Every day phone
14 calls.

15 Q. Ms. Malik's job, in fact, was to stay on top of this,
16 correct?

17 A. Yes.

18 Q. And she was unsuccessful, correct?

19 A. Yes. Also, Harold Rosen was calling.

20 Q. Turn to Exhibit 11, please. Tell the court what Exhibit 11
21 is, if you know.

22 A. This is the receipt and my check from the city after I paid
23 the BTR of Ocean 11.

24 Q. I am looking at --

25 A. Eleven you said?

1 Q. -- Exhibit 11. I think that's 10, sir.

2 A. Sorry.

3 Q. Eleven should be a document, a Miami Beach document
4 regarding the closing of violation 102.

5 A. Okay. The exhibit it's after the number, right? After the
6 number?

7 Q. It should be after the tab, correct.

8 Is that what you are looking at, sir?

9 A. Yeah, I think so, if it's regarding violation ending 102.

10 Q. Yes.

11 A. Yes, that's what I have.

12 Q. Do you know why only that violation was closed out on 10/4,
13 yet you had paid all three violations at one time?

14 MR. PAPPAS: Objection, your Honor. No foundation
15 whatsoever.

16 THE COURT: On the next day it shows all three were
17 closed out on the same day. So it's a bad question to start
18 with.

19 MR. HUDSON: Your Honor, part of our problem is we
20 don't have access to the records. We are using what we have.
21 But there were three violations.

22 THE COURT: You just asked the question why was 02
23 closed out. You look on the next page, 03 was closed out on
24 the next day.

25 MR. HUDSON: But the third wasn't. That's where we

1 are going.

2 THE COURT: Ask him if he knows why the third wasn't
3 closed out.

4 MR. PAPPAS: There's no foundation -- he hasn't
5 established that it was or it wasn't, and he can't with this
6 witness.

7 THE COURT: Overruled. He can if he knows. Hearsay
8 is admissible here. Maybe someone from Miami Beach told him
9 it's not closed out because we don't like you or something. I
10 don't know what they told him.

11 MR. PAPPAS: Let's hear.

12 BY MR. HUDSON:

13 Q. Turn to Exhibit 12.

14 A. Violation 704.

15 Q. Yes.

16 Do you have any idea why that violation was closed out
17 on 10/13 as opposed to 10/4?

18 A. What is this violation?

19 Q. Sir, if you know, you do. If you don't, you don't.

20 THE COURT: I think that's the earlier one. The
21 December 2016, if I recall.

22 MR. HUDSON: Correct.

23 A. Yes, I recall. This violation, it's for before 10:00 a.m.

24 BY MR. HUDSON:

25 Q. So you paid all three violations at one time with one

1 check, correct?

2 A. Yes.

3 Q. You have no idea why one lasted for two weeks into October,
4 correct?

5 A. No, I don't.

6 MR. PAPPAS: Leading.

7 THE COURT: Sustained.

8 MR. PAPPAS: No foundation.

9 A. This is part of the reloader.

10 BY MR. HUDSON:

11 Q. So to the best of your ability, sir, how many times between
12 you, Ms. Malik, Mr. Shir, and Mr. Rosen do you believe Beach
13 Blitz and Ocean 9 tried to get the 2016/2017 BTR before
14 October 1st of 2017?

15 A. Many, many times. Many times. I don't remember all the
16 dates, but many times.

17 Q. How much would the BTR have been?

18 A. Excuse me?

19 Q. How much would the BTR have been?

20 A. What do you mean?

21 Q. Money. How much would it cost?

22 A. About, I think, \$2,000 and change.

23 Q. Beach Blitz and Ocean 9 had the financial ability to pay
24 that, correct?

25 A. Of course.

1 Q. Today if you were to apply for a new license, do you
2 believe the City of Miami Beach would give you a new license?

3 A. I don't believe because of the new ordinance.

4 Q. That does what? Which ordinance?

5 A. That I'm not allowed to have -- if I went to renew, you ask
6 me?

7 Q. No. To apply for a new license.

8 A. To apply for a new license. They are not going to give me
9 a liquor license.

10 Q. Please look at the document that we gave you to the right
11 that's marked as 17.

12 A. This one?

13 Q. Yes.

14 A. Yes.

15 Q. Was that document given to you by someone at the City of
16 Miami Beach?

17 A. Yes.

18 Q. Do you recall which of the visits that you went that it was
19 given to you?

20 A. I think this give it to me, I think, I think on October --
21 I think on October -- Monday. It was a Monday, I think.

22 Q. Monday?

23 THE COURT: Monday was October 2nd.

24 THE WITNESS: No, the next, following Monday. After
25 October 6th.

1 BY MR. HUDSON:

2 Q. So let's talk about October 6th.

3 October 6th was a Friday.

4 A. Yes.

5 Q. What happened on October 6th?

6 A. October 6th, about 5:00 o'clock, two law code enforcement
7 came --

8 Q. Speak up, please.

9 A. On October 6th, about 5:00 o'clock afternoon, two code
10 enforcement came to my store with two policeman, Miami Beach
11 policemen, and give me violation for not having a BTR. They
12 told me that I have to shut down my store, and I told them that
13 it's impossible. I have agreed order for the violation. I
14 didn't understand exactly what they want from me. And they
15 told me within five minutes I am not shutting the door of the
16 business, I am going to be arrested.

17 I tried to talk to them, to show them paper, and they
18 told me, listen, we give you five minutes to close the door or
19 we taking you right now. There was very, very tough with me.
20 They didn't want to see any paper of mine, just want me to sign
21 and shut down the doors.

22 Q. That was a Friday, correct?

23 A. Yes.

24 Q. Are you aware of any contact on behalf of Beach Blitz the
25 day before that event?

1 A. What -- I don't understand.

2 Q. Do you recall -- strike that.

3 MR. HUDSON: Judge, I have no further questions.

4 THE COURT: Any cross-examination?

5 MR. PAPPAS: Yes, your Honor.

6 May I approach to give Mr. Doar a copy of the exhibits
7 as well?

8 CROSS-EXAMINATION

9 BY MR. PAPPAS:

10 Q. Mr. Doar, my name is Gary Pappas.

11 You and I have never met before, right?

12 A. Right. How are you doing?

13 Q. Nice to meet you.

14 A. Nice to meet you.

15 Q. Your spoken English is a little broken. My question for
16 you, and I don't mean this personally at all, do you read
17 English?

18 A. I read. I read, not perfect.

19 Q. Not perfect?

20 A. Yes.

21 Q. But you can read English?

22 A. I can read, but not perfect.

23 Q. Okay. Now, does Beach Blitz own any other businesses
24 besides the package store on 865 Collins, Ocean 9, and the
25 market on 1100 Collins, Ocean 11?

1 A. No.

2 Q. Those are the only two businesses that Beach Blitz owns and
3 operates?

4 A. Yes.

5 Q. Okay. And you are the sole shareholder, sole owner?

6 A. Yes.

7 Q. And just in general, given the location of those markets,
8 is it fair to say that customer base is tourists?

9 A. Yes.

10 Q. Almost exclusively, right?

11 A. Yes. I would say 85 percent.

12 Q. Before December 16, 2016, did either of your businesses --
13 strike that for a second.

14 Do you go by the Ocean 9, Ocean 11, or do you go by
15 the address? What's the best way you want to talk about them?

16 A. Any way you want.

17 Q. I have in my mind the address.

18 Ocean 9 is 865 Collins, correct?

19 A. Yes.

20 Q. And Ocean 11 is the 1100?

21 A. Yes.

22 Q. So back to my question. Before December 16, 2016, had
23 either Ocean 9 or Ocean 11 ever received any type of citation
24 from the City of Miami Beach for any reason?

25 A. Before? What you mean before?

1 Q. December 16, 2016 is when Ocean 9 received a citation by
2 the City of Miami Beach for selling alcohol too early, right?

3 A. I don't remember.

4 Q. Well, I mean, it's in all of our exhibits.

5 If you will just turn to -- I didn't want to get hung
6 up on that, but we could just turn to your exhibits.

7 MR. HUDSON: Yours and ours or yours?

8 MR. PAPPAS: He can do them off mine, too. I think
9 it's in mine. I will go to mine.

10 BY MR. PAPPAS:

11 Q. If you will turn in the black binder to tab 10E,
12 Plaintiff's 10.

13 Tell me when you are there. Are you there?

14 A. Yes.

15 Q. Okay. That is the citation that the City of Miami Beach
16 issued to 865 Collins Avenue, which is Ocean 9, on December 21,
17 2016 at 8:39 in the morning for selling alcohol too early in
18 the morning?

19 A. I recognize this. I thought you ask me about December 16,
20 2016. I'm sorry.

21 Q. That's the date of Defendants' 10, correct?

22 THE COURT: No, it's December 21.

23 BY MR. PAPPAS:

24 Q. My apologies. I was thinking 2016. December 21. Okay.

25 A. I recognize it.

1 Q. Right. No doubt that that citation was issued to your
2 store on December 21st at 8:39 in the morning, right?

3 A. Yes.

4 Q. Before December 21, 2016 -- let's start with Ocean 9. Had
5 Ocean 9 ever received a citation from the City of Miami Beach?

6 A. I think so. I don't remember, but I think so, after that
7 code enforcement on my store.

8 Q. And how about Ocean 11, had it received citations?

9 A. I believe so.

10 Q. All right. So let's just talk about 865 for the time
11 being. If you will turn to tab 4 in the black binder,
12 Defendants' 4.

13 That is the original BTR issued by the City of Miami
14 Beach for 865 Collins Avenue, correct?

15 A. The first BTR.

16 Q. The very first BTR?

17 A. I am getting confused.

18 Q. That's all right.

19 You are on Defendants' 4, correct? You are in number
20 4?

21 A. I think so.

22 Q. So let's start up in the upper left -- yes, you are in 4 --
23 upper left-hand corner. The trade name is Beach Blitz.

24 Do you see that?

25 A. Yes.

1 Q. And it says in care of you, Doran Doar, correct?

2 A. Yes.

3 Q. And then it has an address, 1344 Northwest 5th Court in
4 Plantation?

5 A. Correct.

6 Q. Who lives there?

7 A. Me.

8 Q. Is that where you live today?

9 A. Yes.

10 THE COURT: You have got about a half an hour more to
11 cross-examine this fellow. If you want to go through each of
12 these, you are welcome to. Nobody is saying -- I don't know
13 what this has to do with his cross-examination or how it's
14 moving the ball for you.

15 MR. PAPPAS: Judge, I will move on.

16 BY MR. PAPPAS:

17 Q. That's where you live, right?

18 A. Yes.

19 Q. Do you receive mail --

20 A. Yes.

21 Q. -- at that address?

22 A. Yes.

23 Q. Related to Beach Blitz?

24 A. Yes.

25 Q. And if you go to the right-hand side of Defendants' 4, it

1 shows that the beginning date for this BTR is October 1, 2011,
2 correct?

3 A. Yes.

4 Q. That was the first year Ocean 9 had a BTR?

5 A. I don't think so.

6 Q. All right. If you turn to --

7 A. You confuse me, because Beach Blitz -- Beach Blitz, if you
8 call it BTR or occupational license before this.

9 Q. But not for the 865 location?

10 A. Of course for the 865 location.

11 Q. Okay. And so if you turn to, if you turn to the second
12 page of Defendants' 4, you see that there is an application;
13 correct? Do you see the application on the second page of
14 Defendants' 4, with handwriting on it?

15 A. Yes.

16 Q. Is that your handwriting?

17 A. No.

18 Q. That's not your handwriting?

19 A. No.

20 Q. How about the signature on the third page, is that your
21 signature?

22 A. No.

23 Q. That's not your signature either?

24 A. No.

25 Q. It says your name. Your name is printed there. Is that

1 correct?

2 A. Yes.

3 Q. So someone forged your signature. On June 15, 2012 someone
4 forged your signature on an application for a BTR with the City
5 of Miami Beach?

6 A. You are talking on the right side?

7 THE COURT: Talk into the microphone. We can't hear
8 you, sir. What did you say?

9 Sir, look at me when I ask you a question. You have
10 got to answer. I said, what did you say? Look at me again.

11 THE WITNESS: Yes.

12 THE COURT: You said something when you were facing
13 the other way. I didn't hear it. You need to repeat what you
14 said.

15 THE WITNESS: This is not my signature.

16 THE COURT: You said something after that.

17 THE WITNESS: I don't remember. Sorry.

18 BY MR. PAPPAS:

19 Q. Do you recognize the signature? Do you recognize the
20 handwriting or the signature?

21 A. No.

22 Q. Is this Ms. Malik's signature and handwriting?

23 A. No. I don't know.

24 Q. In the years from 2011, 2012, 2013, 2014, did you receive
25 renewal notices from the City of Miami Beach in or about July

1 of each year notifying you that your BTR would expire on
2 September 30th?

3 A. Usually, yes.

4 Q. Yes.

5 To your address at home, correct?

6 A. Yes.

7 Q. And then what would you do with those renewal notices?

8 A. I renew.

9 Q. Before September 30, before the BTR expired, correct?

10 A. Sometime I was late.

11 Q. Sometimes you were late. But would you go down personally
12 and pay the check and renew?

13 A. I don't remember all the situation, but we renew the BTR.

14 Q. Well, I want to be clear. When you say we renew. Is there
15 anyone else that's associated with Beach Blitz that would go
16 down and renew BTR applications?

17 A. Yes.

18 Q. Who?

19 A. If it's not me, it was Rochelle Malik.

20 Q. Okay. Now did you receive -- turn to Defendants' 7. Are
21 you on Defendants' 7? Tab 7.

22 A. I think so.

23 Q. What is the address 865 Collins Avenue D?

24 A. Yes.

25 Q. Is that the address of --

1 A. Yes. This is the address of the Ocean 9 Liquor.

2 Q. This is an invoice from the City of Miami dated July 1,
3 2016, correct?

4 A. Yes.

5 Q. For the renewal of your BTR for that location?

6 A. This is what it look like. I never receive it.

7 Q. You never received it?

8 A. I never receive it.

9 Q. Okay. You received one, though, for 1100 Collins Avenue
10 because you renewed that license?

11 A. I receive for -- yeah, I receive it to 13441 Northwest 5th
12 Court.

13 Q. For 1100?

14 A. Yes.

15 Q. And you renewed 1100?

16 A. Yes.

17 Q. Why didn't you renew 865 Ocean 9 when you renewed 1100?
18 You knew they expired on the exact same date. Why didn't you
19 do that?

20 A. Because I didn't have the renewal, and I don't recall why,
21 what's happened. I don't remember what's happened, why.

22 Q. You knew --

23 A. I don't remember the situation.

24 Q. You knew that the BTRs expired on the exact same day year
25 after year after year, correct?

1 A. I do. I do remember the dates.

2 Q. Right. So when you renewed 1100, Ocean 11, for the
3 2016/2017 year beginning on October 1, 2016, you could have
4 renewed Ocean 9, but you didn't, right?

5 A. If I had a choice to renew it from the city, I would renew
6 it for sure. If something happened with the city -- I don't
7 remember what it was before -- they not allow me to renew the
8 license.

9 Q. You are testifying under oath here today that when you
10 renewed Ocean 11 for the 2016/2017 year, you tried to renew
11 Ocean 9 and the city told you you could not; that's your
12 testimony?

13 A. Yes.

14 Q. Did you bring a check?

15 A. I asked them, you know, to give me the bill. They didn't
16 give me the bill.

17 Q. When you went down --

18 A. How can I make a check if I don't have the bill. I don't
19 know how much.

20 Q. Did you bring your checkbook with you?

21 A. Of course. Always I have my credit card. I have anything
22 to pay. It's not a problem, the payment.

23 Q. When did you go back -- so this was what, before
24 September 30, 2016, you renewed Ocean 11 and you tried to renew
25 Ocean 9 and the city wouldn't give you an invoice; is that what

1 you are saying?

2 A. I said that I tried to pay before, before.

3 Q. I am talking -- I want to be very clear about the time we
4 are talking about. We are talking about before your BTR
5 expired on September 30, 2016.

6 Both of your BTRs for your two businesses expired on
7 the exact same date, correct?

8 A. Should, because this is from the Miami Beach. Yes.

9 Q. You got a renewal notice for Ocean 11 and you usually got a
10 renewal notice for Ocean 9, but you didn't this year, correct?
11 That's your testimony?

12 A. That I didn't renew? I don't remember the situation when I
13 renew exactly on Ocean 11. It was before 2016, 30th of
14 September or not, I don't remember. Maybe it was after.

15 Q. Well, sir, you know that the city charges you a late fee if
16 you renew after October 1, correct?

17 A. Yes, I know.

18 Q. You would always try to renew before to save the late fee,
19 correct?

20 A. You always try to save the money, but it's --

21 Q. So I am asking a very specific question. You went down and
22 renewed your license, your BTR license, for Ocean 11 before
23 September 30, 2016?

24 A. I don't think I renew it before September 30, 2016. I
25 don't think I -- I renew Ocean 11 before.

1 Q. After?

2 A. September.

3 Q. After.

4 A. Maybe after sometime, yeah. I don't remember the date.

5 Q. You only own two businesses. They have two BTRs. You went
6 down to renew Ocean 11 just like you had year after year after
7 year. You always have two to renew.

8 Are you saying you tried to renew Ocean 9 when you
9 renewed Ocean 11?

10 A. I don't remember what was the situation.

11 Q. Okay. So you don't remember?

12 A. I don't remember.

13 Q. You are not testifying --

14 THE COURT: Wait. He is talking.

15 MR. HUDSON: Your Honor, asked and answered as well.

16 THE COURT: Well, he's given a couple of different
17 answers is the problem.

18 BY MR. PAPPAS:

19 Q. Finish your answer.

20 A. I don't remember exactly the situation when I paid the
21 2016, '17 for Ocean 11 Market. I don't remember the situation,
22 if it was Ocean 9 or not, if I try, and I don't remember the
23 situation.

24 Q. So you are not saying that the city prohibited you from
25 renewing Ocean 9 when you renewed Ocean 11, correct?

1 A. I don't remember the situation. I don't remember the
2 situation. I don't remember.

3 Q. There is no doubt whatsoever as we sit here today that your
4 Ocean 9 BTR expired on September 30, 2016, correct?

5 MR. HUDSON: Objection to the extent it calls for a
6 legal conclusion.

7 THE COURT: Overruled.

8 BY MR. PAPPAS:

9 Q. Correct?

10 A. Yeah. According to the papers, yes.

11 Q. Did you display your BTR license prominently and
12 conspicuously at the location just as the BTR says you are
13 supposed to?

14 A. Usually, yes.

15 Q. Posted like right above the cash register or something,
16 right?

17 A. Usually, yes, something like that. I have a folder with --
18 I should have a folder with the license.

19 Q. But you know the license says it has to be posted somewhere
20 conspicuously, right?

21 A. Yes.

22 Q. You had the license posted at your store, right?

23 A. Usually, yes.

24 Q. And you work at the store, don't you?

25 A. I work. Of course I work.

1 Q. And so it was sitting there for nine months expired and you
2 didn't notice and you didn't remember that it was expired for
3 nine months, correct?

4 A. It's possible I didn't put, I didn't put it.

5 Q. You didn't notice. You testified on direct examination
6 that the first time you found out that you did not have a BTR
7 for Ocean 9 --

8 A. Was June 27th.

9 Q. June 27th?

10 A. June 25, yeah.

11 Q. Well --

12 A. Twenty-five, 27.

13 Q. So what happened was you were in Israel on June 25,
14 correct?

15 A. Yes.

16 Q. And one of your clerks sent you the notices of violation in
17 Israel?

18 A. I think so.

19 Q. And you came right back, correct?

20 A. Yes.

21 Q. And by the way, do you do the bookkeeping for your stores?

22 A. Most of it.

23 Q. Right. So don't you have a journal somewhere that says BTR
24 license every year? And you knew you wrote a check for Ocean
25 11 but you didn't write one for Ocean 9?

1 A. Usually I don't do mistakes. Usually I don't do mistakes.

2 Q. So you come back and -- let me back up for a second.

3 I want you to go back to Defendants' 10. Okay. Black
4 binder number ten. Right. That's the December 16 violation.
5 Okay.

6 THE COURT: December 21.

7 BY MR. PAPPAS:

8 Q. December 21, 2016. I will get my year. December 21.

9 Are you there, sir?

10 A. I think so, yeah.

11 Q. Did you receive this violation personally? Did you look at
12 it in person?

13 A. Yes. I didn't receive it personal, but I look at it.

14 Q. Did you obtain a copy of it at or about the time of
15 December 21, 2016?

16 A. If I had a copy of this violation, that's what you are
17 asking me?

18 Q. Yes. Within 24 hours of getting the violation you had a
19 copy of it, right?

20 A. I am not sure about 24 hours.

21 Q. Had you ever seen -- you said you thought you had received
22 violations before. You are familiar with the City of Miami
23 Beach's violation, aren't you?

24 A. Yes.

25 Q. Right at the bottom it says: Important. Appeal and ADA

1 information on the back.

2 Do you see that right at the bottom of the ticket?

3 A. What it says?

4 Q. Important?

5 A. Important appeal.

6 Q. Important appeal, right?

7 A. Yeah.

8 Q. And then turn over to the next page. You have read these
9 before, haven't you?

10 A. Usually I give it to -- when it's come to violation, I give
11 it to professional people to deal with it.

12 Q. You know that the city's policy is that you can appeal a
13 ticket within 20 days, correct?

14 MR. HUDSON: Objection on legal conclusion, your
15 Honor.

16 THE COURT: Overruled.

17 BY MR. PAPPAS:

18 Q. Correct.

19 A. I know that it's a different time for appeal for different
20 kind of violations. It's not all the same.

21 Q. And this ticket says right on the back of it that it must
22 be appealed within 20 days by a written request to the clerk.
23 Do you see that?

24 A. No. Where is it?

25 MR. PAPPAS: May I, your Honor?

1 THE COURT: Yes.

2 MR. HUDSON: I will object to this line of questioning
3 because the special master accepted jurisdiction and resolved
4 these three violations.

5 THE COURT: Overruled.

6 BY MR. PAPPAS:

7 Q. Sir, you never appealed this ticket, did you? Within 20
8 days you never filed a written appeal of this ticket, correct?

9 A. No, I didn't.

10 Q. Okay. So now let's go to December 25th. You find out
11 about the new hour violation, different than December 21, and
12 you find out that for the first time that you did not have a
13 BTR.

14 Are you with me?

15 THE COURT: I think you meant June 25. You said
16 December 25, I think. But go ahead.

17 MR. PAPPAS: My apologies. It's dyslexia kicking in.

18 THE COURT: Maybe you are thinking about Christmas. I
19 don't know.

20 BY MR. PAPPAS:

21 Q. And you personally went right down to the finance
22 department in person with the violations, correct?

23 A. Yes.

24 Q. That's what you testified. You went down in person with
25 the violations. You went to the finance department and you

1 have got your number. You waited to be called. You met face
2 to face with a human being at the City of Miami Beach finance
3 department, correct?

4 A. Yes.

5 Q. At that point in time you testified on direct examination
6 that you were told -- in fact, I wrote that they showed you
7 that you had an outstanding violation, correct?

8 A. Yes.

9 Q. That was the December 21, 2016 ticket that you did not
10 appeal, correct?

11 A. I don't remember which one it was.

12 Yes. Yes.

13 Q. And they told you, the people at the finance department
14 told you that in order to renew your BTR license you had to pay
15 the ticket?

16 MR. HUDSON: Objection. Speculation. He is
17 testifying to what someone at the counter told him. He can
18 testify differently.

19 THE COURT: That's what happens when you get to lead.
20 He says yes or no.

21 MR. HUDSON: It's leading, but it's an inappropriate.

22 THE COURT: Stand up if you are objecting, and the
23 objection is overruled.

24 You can answer the question, sir.

25

1 BY MR. PAPPAS:

2 Q. You can answer, sir.

3 A. Ask it again, the question, please.

4 Q. When you went down with the June 25th tickets on June 27th
5 in person and met with another human being from the City of
6 Miami Beach, they showed you you had an outstanding violation
7 back from December that you had to pay first in order to renew
8 your BTR license, correct?

9 A. I am not sure what they show me. I am not sure what they
10 show me.

11 Q. They showed you you had a violation?

12 A. They told me that I cannot renew the license.

13 Q. Because you had an outstanding violation, correct?

14 A. I don't remember for what. I think because of having
15 violations.

16 Q. Right, and they told you all you have to do, sir, is pay
17 the violation and you can renew your BTR license?

18 MR. HUDSON: Objection, your Honor. He's asked three
19 times and he's answered the same way three times.

20 THE COURT: He hasn't answered the question yet.

21 You need to stand up if you want to be recognized in
22 this courtroom. Okay?

23 MR. HUDSON: He said he doesn't remember three times,
24 your Honor. He's trying to get him to answer it. He says I
25 don't remember.

1 THE COURT: The question is, sir, they told you all
2 you have to do, sir, is pay the violation and you can renew
3 your BTR license. Answer that question, please.

4 A. I don't remember this exactly what they told me.

5 BY MR. PAPPAS:

6 Q. Was it something sort of like that if not exactly?

7 A. What I understand is that I cannot renew my license because
8 I have violations.

9 Q. Right. Did you ask how do I pay for the violations so I
10 can renew? Did you ask that?

11 A. I went to Rochelle Malik.

12 Q. No. I am talking about -- we are not at Rochelle Malik.

13 A. I don't remember exactly the conversation that I had with
14 cashier over there, the officer in the finance.

15 Q. We are sitting there on December 27th. You are sitting
16 there talking to a finance department --

17 THE COURT: I am sorry. You keep using the wrong
18 date. It's June 27.

19 MR. PAPPAS: June 27th.

20 BY MR. PAPPAS:

21 Q. You are sitting face to face at the finance department on
22 June 27th. They told you you could not renew because you had
23 an outstanding violation. Correct?

24 A. Something make a noise like that over here like boom, boom
25 something. Like a noise.

1 Q. They told you that you could not renew.

2 THE COURT: Now asked and answered. Let's go.

3 BY MR. PAPPAS:

4 Q. Did you simply ask while you were sitting there --

5 A. They told me -- I understand in general that I need to
6 resolve the violations in order to come and pay my license.

7 Q. Okay.

8 A. That's what I understand.

9 Q. And --

10 A. I didn't understand --

11 Q. And did you say, great, how do I resolve my violation from
12 December? Where do I pay it?

13 A. That's what I say great, to who?

14 Q. You wanted your BTR, didn't you?

15 A. What you mean I say great?

16 Q. They told you you had to resolve the violation in order to
17 get your BTR, right?

18 A. Yes. They told me that I need to resolve my violations in
19 order to pay my BTR.

20 Q. And resolve the violation from back --

21 THE COURT: Hold on a second. He is saying violations
22 and you are saying violation. So you can't change his
23 testimony. He is saying violations, which would include the
24 December 1 and the one that he got two days before, is what his
25 testimony is that he was told he had to resolve.

1 BY MR. PAPPAS:

2 Q. Right. And so you distinctly recall them telling you on
3 December 27th that you had to resolve all three of your
4 violations to get your BTR?

5 A. June 27. I don't understand.

6 THE COURT: You have to get the dates.

7 MR. HUDSON: Creating confusion.

8 A. December 27. I am sorry.

9 BY MR. PAPPAS:

10 Q. When you were there in person on June 27th --

11 A. When I was there on June 27.

12 Q. -- did the clerk from the finance department tell you you
13 had to resolve all three outstanding violations or only the
14 December 21, 2016 violation in order to renew your BTR?

15 A. I understand that I cannot renew my BTR until I resolve my
16 violation. I don't know what it mean, but I assume it's not --
17 they don't mean that the other two because it was new. But I
18 assumed that it was maybe the other.

19 Q. You understood and assumed it was the December violation,
20 which you didn't appeal, right?

21 A. That I had a violation and I need to -- I didn't know
22 exactly which violation. They show you a paper all the time
23 with more than ten violations. And some violation close, some
24 violation open, some violation this. It's very hard for me to
25 read this paper when it's with a lot of violation. It's taking

1 time to understand what's going on. So I am going to a
2 professional people and I am trying to get explanation how it's
3 work. I don't know exactly how it's work because --

4 Q. Before you went to professionals, while you were still
5 sitting there, did you say to the clerk, I have my checkbook, I
6 am ready to pay for the December violation, I have the money,
7 where do I pay so can I renew my BTR? Did you do that?

8 A. I came to pay. I came to get my BTR.

9 Q. Did you do that? Did you ask?

10 A. Probably. I probably say it. I don't remember exactly
11 what it was I said, but probably I came to pay my BTR. What I
12 came for what? I came to finance to what? To find out about
13 my violation? To find out about my violation you go to the
14 code enforcement.

15 Q. Did you ask how much you owed for your BTR?

16 A. I think so.

17 Q. Okay. Turn to Defendants' Exhibit 15 in the black book.
18 The black book. That's the white one. The black one. Sir,
19 the other one. The Defendants' 15.

20 Are you there?

21 A. Yes.

22 Q. If you look in the upper right-hand corner, it's an Ocean 9
23 invoice. Correct?

24 A. Yes.

25 Q. It's dated June 27th, 2017, correct?

1 A. Yes.

2 Q. They handed this to you on June 27 when you were there
3 trying to renew your BTR license, didn't they?

4 A. Yes.

5 Q. And it has the \$570 late charge on it because your license
6 had been expired for nine months, correct?

7 First line. The very first line. Late fee, \$570.
8 Right?

9 A. Yes.

10 Q. And you had your checkbook with you, didn't you?

11 A. Always I have my checkbook with me.

12 Q. And you had plenty of money to pay the \$2,246 for this BTR
13 license, right?

14 A. Yes.

15 Q. And you had an extra thousand dollars to pay the December
16 invoice to resolve it, didn't you?

17 A. Yes.

18 Q. And you never paid the December 16 invoice?

19 A. They didn't accept my money.

20 Q. Did you try to pay?

21 A. I tried to pay. They told me that I need to resolve my
22 violation.

23 Q. I am talking about the violation, sir. Did you go and try
24 to pay the \$1,000 violation from December to resolve it?

25 A. I give it to my professional people. I give it to my

1 professional people to deal with that because I wasn't agree
2 about this violation.

3 This violation, this violation that they give me on
4 December, it was selling before 10:00 a.m., 8:33 or something
5 in the morning, which we didn't even know that this ordinance,
6 it's already in order.

7 Q. So on June 27th you voluntarily refused to pay the
8 outstanding December 2016 violation which you never appealed?

9 MR. HUDSON: Objection, your Honor. Mischaracterizes
10 his testimony.

11 THE COURT: Overruled.

12 BY MR. PAPPAS:

13 Q. You chose not to pay it at that time even though the clerk
14 said to you if you just paid the thousand dollars and resolved
15 the violation, we will give you your BTR for \$2,246.46, just
16 like it says on Defendants' Exhibit 15, right?

17 A. I don't remember exactly what was the situation with the
18 violation, but they told me that I need to resolve the
19 violation and either way in order to pay the BTR.

20 Q. And you knew when you --

21 A. I went to my professional people to see what we doing, and
22 we agreed that we need to appeal a violation of thousand
23 dollar, that it's not correct to give, it's not right to give
24 it to me if they create a new ordinance and it doesn't let us
25 know that we have a new ordinance and they just come and give

1 you a violation and you come and you just pay thousand dollar
2 like, like we make the thousand dollars in one second and just,
3 you know, for to pay the BTR.

4 I think the mind on the same moment was the violation
5 wasn't right and the other violation wasn't right and they
6 attacking me and they trap us and they tried to get us out of
7 business by giving us violation on violation on violation
8 without us to know anything, what's going on. They create a
9 new ordinance and changing the ordinance and nobody recognize
10 what is real and what is not and what to do right and what to
11 do wrong, and every move I had to go to professional people to
12 see if I am doing the right thing or not. This exactly what's
13 happening.

14 Q. And so on June 27, 2017 it was already six months after the
15 December 2016 citation had been issued to you, correct? Right?

16 A. Probably.

17 Q. You knew you couldn't file a written appeal like it says
18 right on the citation. You knew you waived your right to
19 appeal it, correct?

20 A. We appeal. I didn't waive the right to appeal. Maybe I
21 didn't appeal in the first 20 days because I didn't exactly
22 know the situation, but we didn't waive the right to appeal
23 because we appeal it after.

24 Q. Did you ever file a written notice of appeal for the
25 June 25, 2017 violations?

1 A. Excuse me again?

2 Q. I will rephrase it.

3 The June 25th violations were on the exact same ticket
4 form that the December violation was on, correct?

5 A. I am sorry. I am not --

6 Q. The tickets from June.

7 A. June 25.

8 Q. They were exactly the same form as the December tickets,
9 right?

10 A. Yes.

11 Q. You knew you had time to appeal them in writing just like
12 it says on the ticket, correct?

13 A. Yes. I brought it to the professional people.

14 Q. You never appealed in writing with the special master's
15 office just like it says on the ticket, correct?

16 A. Yes, correct.

17 You are talking about the December?

18 Q. And the June.

19 You never filed a written appeal?

20 A. We had filed an appeal and they didn't accept our appeal.

21 Q. Because it was too late?

22 A. Not because it was too late. Because they said -- not
23 because it was too late. Because they said that we send the
24 appeal to a wrong office in the Miami Beach. We send it to,
25 maybe to Miami Beach instead of to Miami City of Miami Beach,

1 maybe to the cashier instead of to -- I don't know exactly the
2 situation, but not the reason because of the 20 days.

3 Q. When you say "we," you are referring to some professional
4 that you hired? Not you personally, correct?

5 A. Yes.

6 Q. So the professional that you hired sent the notice of
7 appeal to the wrong office; is that what you are saying?

8 A. They sent the appeal and I don't know what is the reason it
9 didn't exactly accept it, but what I understand it was a wrong
10 address.

11 Q. Did you ever sign a written notice of appeal of the
12 June 25, 2017 violations within 20 days? Did you ever do that?

13 A. If I sign -- tell me again the question.

14 Q. You never --

15 A. I don't want to a make mistakes.

16 Q. You never filed a written appeal according to the City of
17 Miami Beach's procedures for the June 25th, 2017 violations,
18 correct?

19 A. We send appeal. We send appeal. I mean, Guy Shir send
20 appeal with a \$100 check. We send appeal. But they didn't --
21 for some reason it didn't work.

22 Q. When you say "we," you are talking about Ms. Malik?

23 A. Ms. Malik and Guy Shir, yeah.

24 Q. So your professionals that you hired, you claim took care
25 of it for you, and they sent the appeal to the wrong location,

1 correct?

2 A. The professional, all the professional that I hire, any
3 time that you come and try to do movement, they get some
4 problem, you know, to deal with my cases.

5 Q. Did you ever --

6 A. I don't understand what is that. The professional try and
7 try and try and all the time they have a problem and problem.
8 You are not talking about one professional, another one,
9 another one, another one. I did anything I can. Anything I
10 can to try to resolve the problem with the city.

11 The City set me up. The city trap me. The city set
12 me up not to get the license. That's what the city did. They
13 set me up not to get the license in order to take for me my
14 liquor store and destroy my business. That's exactly what's
15 happened.

16 Q. You said it just now. You did everything in your power,
17 right?

18 A. Everything in my power.

19 Q. When you were sitting with across from the clerk on
20 June 27th at the finance department did you say, look, I have
21 got my checkbook, how much do I owe you to get my BTR? Did you
22 ask that?

23 A. But you are talking about the violation from December and
24 then violation from June 25 and then another violation that
25 come and come and come. So when does it stop? When are you

1 going to stop with it? When are you going to let me work and
2 not attack me with all the violations? When you going to do
3 it?

4 Q. Sir, answer my question.

5 A. Why should I answer you?

6 Q. Answer my question, sir. When you were sitting in front of
7 that clerk on June 27th, did you say I have my checkbook right
8 here, how much do I owe you to get the BTR? You didn't do
9 that, did you, sir?

10 A. I answer you many time already.

11 Q. You didn't do it?

12 A. I don't have problem to pay any money. If any money, I
13 don't have problem to pay.

14 Q. You refused to pay the December 16, 2016 invoice, the
15 citation, you refused to pay it on June 27?

16 A. I appeal it because it was the wrong violation and I wasn't
17 agreeing with all these violations, that we getting attacked
18 from the city for no reasons. And changing ordinance from time
19 to time. You know, how many time you change the ordinance in
20 the city in the last year? Maybe four or five times. If you
21 ask any liquor store or any convenience store what time is the
22 hours right now, right now today, even the code enforcement
23 doesn't know when to open and when to close. Then you come
24 with the code enforcement and give violation, then you attack
25 me and what? Just pay the thousand dollars, just pay another

1 thousand dollars, and then it's \$5,000 and then \$10,000.

2 Q. The answer to my question is --

3 THE COURT: Let's move on to another area.

4 BY MR. PAPPAS:

5 Q. Sir, you were not present with Mr. Rosen --

6 A. Shame on you.

7 Q. You were in the presence -- excuse me? Excuse me, sir?

8 A. Sorry.

9 Q. What did you say?

10 THE COURT: He said shame on you. Let's go. Move
11 along.

12 BY MR. PAPPAS:

13 Q. You were not present with Mr. Rosen on August 28 when you
14 allegedly met with the special master, correct? You were not
15 there?

16 A. No.

17 Q. You have no idea what he did with the check, do you?

18 A. Who? Mr. Rosen?

19 Q. Yes.

20 A. He told us that he gave the check.

21 Q. You weren't there though, right?

22 A. I wasn't there.

23 Q. Were you in Miami in September?

24 A. Yes.

25 Q. Right. Do you remember what happened on the weekend of

1 September 9th and 10th?

2 A. No.

3 Q. Do you remember Hurricane Irma?

4 A. I remember Hurricane Irma.

5 Q. You remember the city shut down on a Thursday? The city
6 shut down I think even on Wednesday.

7 A. So what's happened before. Every Thursday you have the
8 special master. What happened before, the week before? You
9 move the computer from office to another office and then shut
10 down again.

11 Q. Right, sir. You know that the city was shut down on
12 September 7th, correct? Correct? That was the --

13 A. I didn't know exactly when the city shut down, when the
14 city opened.

15 Q. And you knew that the city remained shut down on
16 September 14th after Hurricane Irma, correct? Correct?

17 A. I am sorry. I need to drink some water. Can I?

18 Q. Yes, of course. Tell me when you are ready.

19 Are you all set?

20 A. Yes.

21 Q. You did not go down to the City of Miami Beach on
22 September 28th, Thursday, September 28th, 2017, correct?

23 A. What you mean?

24 Q. You didn't go in person on Thursday, September 28?

25 A. I went on 28, 29.

1 Q. You did?

2 A. I went. I don't remember the date exactly, you know, but I
3 went after they told me to sign the order and go pay your BTR.

4 Q. Right. And --

5 A. Harold told me go pay your BTR.

6 Q. Did you renew your Ocean 11 BTR on September 28?

7 A. They didn't allow me.

8 Q. Why not?

9 A. Because they told me that I have a violation.

10 Q. Did you have a violation on Ocean 11?

11 A. Some signed violation.

12 Q. Did you pay for the violation?

13 A. No. They dismiss the violation.

14 Q. When?

15 A. They dismiss it for some -- they dismiss the violation and
16 then I went Monday and I paid.

17 Q. Tuesday?

18 A. Actually, actually, I don't remember how it was working.

19 Q. So you had an open violation on September 28th on Ocean 11
20 and they wouldn't let you renew, correct?

21 A. Yeah, I think so.

22 Q. Right. Then when you had to pay -- then you renewed Ocean
23 11 on October 3?

24 A. On October 3.

25 Q. You went down in person with your checkbook. Now the

1 violation was resolved and you could pay your bill, right, just
2 like they told you for Ocean 9 back on June 27? Right?

3 A. The code enforcement dismiss the violation.

4 Q. It was resolved?

5 A. They dismiss the violation and then I went and pay, yeah.

6 And exactly like I tried to do on September 28th when the
7 violation, the three violation was resolved with the special
8 master, I went to pay and they didn't accept it.

9 Q. Right.

10 A. They didn't accept both of them.

11 Q. You went to the cashier, right?

12 A. On October 3, yeah.

13 Q. No. On September 28 you went to the cashier at the finance
14 department?

15 A. No. No.

16 Q. Did you go personally?

17 A. I went to finance, not to the cashier. It's two different
18 windows.

19 Q. Right, and they opened up your screen and still saw open
20 violations?

21 A. Yes.

22 Q. Did you have the agreed order with you? Did you have it
23 with you?

24 A. No, I didn't have it.

25 Q. Right. Was --

1 A. I didn't have that, the agreed order. I had it -- I had
2 agreed order. Rochelle -- I didn't have the agreed order with
3 me.

4 Q. You didn't?

5 A. I didn't have the agreed order with me. I didn't.

6 Q. You didn't have a copy of it?

7 A. I had a copy.

8 Q. You didn't have it with you?

9 A. I didn't have it with me.

10 Q. The clerk at the city finance department said I have no
11 evidence that you have an agreed order, correct?

12 A. So what did -- I don't understand. So I don't think that
13 you going to trick me another two days or something happen. I
14 just thought that I resolved the problem. I come to pay. They
15 tell me you can't pay because you still have the violations.
16 It doesn't -- to something like this, you think it's a matter
17 of one day, you know. So I went Friday -- I think Friday -- it
18 was Thursday or Friday, and then I went again on Tuesday.

19 Q. Sir --

20 A. I went every day. Almost every day I tried to pay.

21 Q. Your license was now over a year old at that point in time,
22 expired, correct?

23 A. After.

24 Q. Right. You had admitted the violations of the hours
25 problems at your stores, correct? You admitted that those

1 violations were valid, correct?

2 A. Yeah.

3 Q. And you never ever wrote a check for --

4 A. They never accept a check for me.

5 Q. My question is --

6 A. They never accept without result of violation. They never
7 accept the check. After September 28, when I was in the
8 finance, they never accept a check from Ocean 9 Liquor.

9 Q. On June 27 --

10 A. Back to June 27?

11 Q. From June 27 --

12 A. Okay.

13 Q. -- until October 6th, you never wrote a check for the
14 \$2,240 that they showed was owing for your BTR just like on the
15 invoice that they gave you on June 27 in person with the late
16 charge? You never, ever wrote that check and handed it to
17 them, did you?

18 A. They never let me hand it.

19 Q. My question is different. You never wrote the check like
20 you wrote the thousand dollar check, you never wrote the
21 2,200 --

22 A. Everybody leave me. The city, the city, the officer in the
23 city, everybody there, Rochelle Malik, Rosen, everybody leave
24 me that I need to resolve the violation in order to pay my BTR.
25 I never, technically I never did it. I never did it. I never

1 did it.

2 Q. Thank you.

3 A. I never did it because -- I never did it because nobody
4 allowed me to pay. Nobody allowed me to pay.

5 Q. I think you have answered my question.

6 A. This is the way, you know, the city set you up. So it's --

7 Q. You never appealed the October 6th, 2017 violation, did
8 you?

9 A. They told me -- no, I never appealed this September 6.

10 Q. October 6.

11 A. October 6 violation.

12 Q. The violation when they closed you down for not having a
13 BTR, you never appealed that according to the city's procedures
14 of filing a written notice of appeal; you never did that, did
15 you?

16 A. I never appealed it.

17 Q. Correct?

18 A. I never appeal it.

19 Q. Right.

20 A. I never appeal. I went to a lawsuit.

21 Q. You have never --

22 A. I went to a lawsuit.

23 Q. You have never --

24 A. I saw that I can't do anything, you know, without lawsuit,
25 without sitting with the city authority and talk to them and

1 try to resolve the problem.

2 Q. You have never filled out an application for a new BTR,
3 correct?

4 THE WITNESS: What shall I --

5 THE COURT: Just answer the question yes or no.

6 A. No.

7 BY MR. PAPPAS:

8 Q. You have never appealed from your claim that the city will
9 not issue you a new BTR, correct?

10 A. I never appeal if you mean on the October 6 violation, I
11 never appeal. I went to a lawsuit.

12 Q. And you have never gone to the city and said you have
13 wrongfully refused my BTR, I want to appeal, correct?

14 A. I had people, professional people, trying to deal with the
15 city every day, every day. Every day talking with the city
16 manager, talking with the city attorney, talking with anybody
17 possible.

18 Q. You have never had a hearing with the city manager
19 regarding your BTR license, correct?

20 A. What? Excuse me?

21 Q. I will rephrase it.

22 A. Okay.

23 Q. You have never had a meeting with the city manager,
24 regarding your BTR license for Ocean 9, 865 Collins Avenue,
25 correct?

1 A. I had a meeting with the city manager.

2 Q. You had a meeting with the city manager. Have you ever had
3 a hearing with the city manager?

4 A. I had a meeting with the city manager. We did
5 professional. We did Rochelle Malik. We tried to resolve the
6 problem to pay the BTR and they didn't accept it.

7 Q. And did you appeal the city manager's refusal to accept
8 your BTR? Did you appeal?

9 A. I didn't appeal. On the violation you are talking about or
10 not accept my payment for the BTR?

11 Q. Yes.

12 A. I don't understand what you are asking me.

13 Q. We are talking about your claim that the city refused --

14 A. What answer I can do? I had three lawyers working on it.

15 Q. Sir --

16 A. With a city manager, with a city attorney, with all the
17 people. You asked me if I didn't appeal.

18 Q. Yes.

19 A. It was obvious that I can't get anything. I can't get
20 anything. It over here that the city attorney order not to
21 issue me any license. It's over here. How can I -- what
22 appeal what? I went to lawsuit. What appeal? You ask me for
23 appeal.

24 Q. Did you ever file a lawsuit in the state court system
25 claiming --

1 THE COURT: You don't need to ask these questions.
2 It's uncontroverted that he never filed any lawsuit.

3 MR. PAPPAS: We don't know that.

4 THE COURT: Stipulate that -- excuse me, sir? Quiet.

5 THE WITNESS: I am sorry, your Honor.

6 THE COURT: Let me tell you something. You are in a
7 court of law. You answer a question when you are asked. This
8 isn't for you to stand on a podium and make announcements.

9 Do you understand?

10 THE WITNESS: Yes. I am sorry.

11 THE COURT: Do you stipulate there has not been a
12 state lawsuit filed in this matter?

13 MR. PAPPAS: Yes.

14 THE COURT: How much more do you have?

15 MR. PAPPAS: None.

16 THE COURT: Redirect.

17 MR. HUDSON: Nothing, your Honor.

18 THE COURT: You can step down, sir.

19 (Witness excused)

20 THE COURT: We are going to take a lunch break.

21 Is the plaintiff calling anybody else?

22 MR. HUDSON: No. We are done.

23 THE COURT: Defendants, who are you calling?

24 MR. ARANA: Manuel Marquez.

25 THE COURT: What about the second person?

1 MR. ARANA: Assistant director of finance, and then
2 probably Hernan Cardeno.

3 THE COURT: How long are they going to take?

4 MR. ARANA: I don't think they are going to take long.
5 A half hour each.

6 THE COURT: For your direct?

7 MR. ARANA: For direct maximum.

8 THE COURT: How long are you going to take?

9 MR. HUDSON: Cross about the same, probably.

10 THE COURT: We will start up again at 2.

11 So far the estimate was this witness was going to be
12 an hour. He took two hours. Let's get a little more focused
13 on the next two witnesses. In fact, let's come back at a
14 quarter to 2. That should give you enough time to grab a
15 sandwich if you want to.

16 (Recess taken in proceedings.)

17 THE COURT: Does the plaintiff have any further
18 evidence or witnesses?

19 MR. HUDSON: No, your Honor.

20 THE COURT: Defendant call their first witness,
21 please.

22 MANUEL MARQUEZ,
23 having been first duly sworn on oath, was examined and
24 testified as follows:

25 THE WITNESS: Manuel Marquez. Last name

1 M-A-R-Q-U-E-Z.

2 DIRECT EXAMINATION

3 BY MR. ARANA:

4 Q. Good afternoon, Mr. Marquez.

5 A. Good afternoon.

6 Q. Do you work for the City of Miami Beach?

7 A. I do.

8 Q. What is your position with the city?

9 A. I am assistant director of the finance department.

10 Q. How long have you served in that capacity?

11 A. Since 2006.

12 Q. I think you submitted an affidavit in this case, which
13 suggests it was from 2011. Is that a typo?

14 A. That is a scrivener error.

15 Q. What is your general duties and responsibilities as
16 assistant director of finance?

17 A. I manage the day-to-day functions of our city's customer
18 service center, which handles business tax receipts, utility
19 billing, lien statements, and other revenue-generating
20 functions of the city.

21 Q. Thank you.

22 And what is a business tax receipt?

23 A. A business tax receipt is what lay people would call an
24 occupational license. It's a tax. For any business engaged in
25 a for profit business, the City of Miami Beach is required to

1 obtain a business tax receipt.

2 Q. Any business in the City of Miami Beach has to have a
3 business tax receipt to operate; is that correct?

4 A. That is correct.

5 Q. Can you briefly describe the process that a business
6 applicant must follow to apply for a new BTR?

7 A. Business tax receipts are governed by Florida statutes 205
8 and our city code section 102. A business that wants to obtain
9 a business tax receipt in the City of Miami Beach has to apply.
10 They can apply online or in person. They are required to fill
11 out an application. That application, you also have to submit
12 a lease or a warranty deed that tells us where you are going to
13 be operating. If the business that you are operating requires
14 a state license, you would also need to submit a state license
15 and you would also need to submit articles of incorporation.

16 Q. Are you familiar with Beach Blitz's BTR license history?

17 A. Yes.

18 Q. I am going to direct you to a few exhibits which are in the
19 black binder in front of you. If you could please look at
20 Exhibit 4, which is in evidence.

21 A. I have Exhibit 4.

22 Q. What is Exhibit 4?

23 A. Exhibit 4 is a business tax receipt for Beach Blitz company
24 located at 865 Collins Avenue for the fiscal year beginning
25 October 1, 2011 through September 30, 2012. It's a BTR,

1 business tax receipt, for liquor sales.

2 Q. And what was the city's procedure for processing this BTR
3 application?

4 A. This BTR application would have been received and it would
5 have been routed to all of our regulatory departments. For
6 this type of business the finance department does the
7 application intake and then we route it electronically to the
8 building department, the fire department, planning department,
9 and the code compliance department.

10 Q. And those departments weigh in on whether to approve the
11 BTR?

12 A. They do.

13 Q. Did Beach Blitz renew its BTR license for fiscal years
14 2012/13, 2013/14, 2014/2015 and 2015/2016?

15 A. They did.

16 Q. Okay. What was Beach Blitz required to do in order to
17 renew its BTR for those years?

18 A. To simply pay the BTR renewal, which is mailed out in July
19 of every year. We mail out the renewal for the upcoming fiscal
20 year.

21 Q. If the company wanted to add a new use, what would happen
22 then?

23 A. A company wanting to add a new use would fill out an
24 application similar to the first application that was filled
25 out for this entity, Beach Blitz. They would fill out an

1 application describing the type of business activity you wanted
2 to partake in and then we would take that application and route
3 it to all of the regulatory departments.

4 Q. So could you take a look at Exhibit 6. What is Exhibit 6?

5 A. Exhibit 6 is a BTR, business tax receipt, for Beach Blitz
6 at 865 Collins Avenue. It is for the time period October 1,
7 2015 through September 30, 2016. It's for all the categories
8 that are listed there in exhibit. They have an ATM machine
9 located at the facility, they are engaged in food sales, liquor
10 sales, merchant sales, and they also have a category for
11 entertainment establishment without dancing.

12 Q. So if we look at pages 2 and 3 of Exhibit 6, is this an
13 application for BTR?

14 A. Yes, it is.

15 Q. And this is Beach Blitz's application for a BTR for the
16 2015 and '16 fiscal year, correct?

17 A. Correct. This is an application where they added these
18 additional categories to their existing BTR.

19 Q. So that was my question. Why did Beach Blitz have to
20 submit a new application for this year?

21 A. Any time you add a category to your BTR, you are required
22 to fill out an application.

23 Q. So Beach Blitz submitted a new application adding the
24 categories and then this application, who routed this
25 application to the various departments. Is that right?

1 A. Correct. We would route it to building, planning, fire and
2 code compliance.

3 Q. And the BTR for 2015, fiscal year 2015 to '16 was issued,
4 correct?

5 A. It was, yes.

6 Q. And when did this BTR expire?

7 A. All BTRs expires September 30th of the year that they were
8 issued. This is by state statute chapter 205.

9 The period for BTR is from October 1th through
10 September 30th of the fiscal year.

11 Q. So did this BTR expire on September 30, 2016?

12 A. It did.

13 Q. And did Beach Blitz submit payment to renew its BTR prior
14 to that date?

15 A. It did. That's why it had this BTR.

16 Q. I am talking about prior to the expiration of this BTR.

17 A. Yes.

18 Q. Did Beach Blitz pay for a license, a BTR license for
19 2016/17?

20 A. They did not.

21 Q. And that's because the license -- because they did not pay
22 for that renewal, correct?

23 A. Correct.

24 Q. So just to clarify, Exhibit 6, which is the 2015/16 BTR,
25 expired on September 30, 2016, correct?

1 A. Correct.

2 Q. Without Beach Blitz having made a payment for the following
3 year, correct?

4 A. Correct.

5 Q. Now if you could take a look at Exhibit 7, please. What is
6 Exhibit 7?

7 A. Exhibit 7 is a printout from our system depicting the date
8 that the renewal for the fiscal year 2016/17, when it was
9 created. This renewal notice was created on July 1, 2016.

10 Q. And this was the renewal notice for Beach Blitz, correct?

11 A. Correct, for Beach Blitz.

12 Q. For the 865 Collins Avenue location, correct?

13 A. Yes, sir.

14 Q. And does the city send its BTR license holder an invoice to
15 renew their BTRs every year?

16 A. We do.

17 Q. And in July of the year in which the license expires, is
18 that the time when --

19 A. That's the time.

20 Q. -- when they are sent?

21 A. Yes. We send it out every July via U.S. Postal Service, we
22 send out renewal notices.

23 Q. But Beach Blitz did not pay its renewal invoice prior to
24 the expiration of the BTR on September 30, 2016, correct?

25 A. They did not. They did not pay for this location.

1 Q. Let's talk about, then, the 2016-17 fiscal year. Would
2 that be from October 1 until September -- I am sorry.
3 October 1 of 2016 to September 30 of 2017?

4 A. That is correct.

5 Q. Is there any process or procedure in your department which
6 would have prevented Beach Blitz from paying this invoice
7 during that fiscal year?

8 A. None whatsoever. They could have paid the invoice at City
9 Hall, 1700 Vintage Center Drive, at our customer service
10 center, 1755 Meridian Avenue, our lockbox. Our lockbox is on
11 our renewal notice. Our renewal notice has a link to our
12 website and you can click on the link and pay online.

13 Additionally, we have a satellite office in North
14 Beach Miami Beach where customers can pay it at our satellite
15 office.

16 Q. Can you explain to the court -- so just to be clear, the
17 city will always accept payment for a BTR, correct?

18 A. Correct. That's why we send out the renewal notices, so we
19 can get paid.

20 Q. Can you explain to the court the city's procedure for
21 actually issuing the BTR in the event that there are
22 outstanding fines or debts owing to the city?

23 A. Sure. In our city code on chapter 102, the city permits us
24 from withholding someone's BTR if it has been paid if a
25 business entity owes the city outstanding monies. So we mail

1 out a renewal notices in July. If a customer does not pay --
2 their period to pay ends September 30th of that fiscal year.
3 That BTR is good for one year, from October 1 through
4 September 30th.

5 THE COURT: If someone pays but they have a violation
6 that's outstanding, what happens then?

7 THE WITNESS: If someone comes to our office and pays
8 for a BTR and they have an outstanding violation, we would
9 notify them, thank you for your payment for the BTR but you
10 have these outstanding violations or you have these outstanding
11 moneys that are owed to the city. You need to remedy these
12 first before we can issue your BTR.

13 Now, if the outstanding violation is a code violation
14 and the customer wishes to challenge the violation, they say
15 this isn't right, I am going to challenge it at the special
16 master level, once they schedule something before a special
17 master and they show us evidence that it's going before the
18 special master, we will release the BTR. That's our standard
19 practice, because they haven't had their day in court, they
20 haven't been adjudicated guilty.

21 BY MR. ARANA:

22 Q. So if a notice of violation is issued and the time for
23 appeal runs, then that violation, that debt becomes due to the
24 city, correct?

25 A. Correct. Yes, sir.

1 Q. You would expect a business owner to pay that before the
2 city, before the city will issue the BTR, correct?

3 A. That is correct. Yes.

4 Q. But the city will accept payment for the BTR, correct?

5 A. Yes, we do. That's part of our practice every single day.

6 Q. And then when the violations are paid, it will go ahead and
7 issue the BTR; is that right?

8 A. Yes.

9 Q. As far as you know, did Beach Blitz during the 2016/17
10 fiscal year ever submit payment to the city for its BTR?

11 A. They did not.

12 Q. And if Beach Blitz had ever submitted payment to the city
13 for its BTR for the 2016/17 fiscal year, would the city have
14 accepted that check?

15 A. We would have accepted the payment.

16 Q. Let me ask you to take a look at Exhibit 15. What is
17 Exhibit 15?

18 A. Exhibit 15 is a reprint of an invoice for fiscal year
19 2016/17. The customer or customer's representative came to our
20 office on June 27 -- that's the invoice date that's on this
21 document -- and asked for a printout of what was owed for the
22 BTR for Beach Blitz at 865 Collins Avenue. One of my staff
23 members printed this and hand delivered it to the person
24 representing Beach Blitz.

25 Q. And if on June 27th Beach Blitz or its representatives had

1 handed the clerk a check for \$2,246.46, would the clerk have
2 accepted that payment?

3 A. The clerk would have accepted that payment. And if there
4 was no outstanding monies owed, we would have issued a BTR
5 there and then.

6 Q. Now, are you aware that Beach Blitz at this time on
7 June 27th had an outstanding violation from December 21 of
8 2016?

9 A. I am now aware that they had an outstanding violation.

10 Q. And you are aware that they were cited on December 21, 2016
11 and never appealed that violation? Correct?

12 A. Correct.

13 Q. So on June 27 when they came in, in addition to owing the
14 money for the BTR, Beach Blitz also owed \$1,000 for the
15 citation, correct?

16 A. Correct. If they would have paid the BTR, the \$2,246.46
17 and the thousand dollars for the violation, we would have
18 issued their BTR on the spot at that moment.

19 Q. Now, are you aware that on June 25th, two days before this
20 invoice was issued, Beach Blitz received two notices of
21 violation?

22 A. I am aware.

23 Q. Would those notices of violation have been due on
24 June 27th?

25 A. They would not have been due on June 27th.

1 Q. Okay. Is that because they are not due until the time for
2 appealing them runs?

3 A. Correct.

4 Q. So those invoices would not have impacted Beach Blitz's
5 ability to pay for and obtain its BTR at that moment, right?

6 A. No.

7 Q. All it had to do was pay \$2,246 plus a six-month-old \$1,000
8 fine?

9 A. Correct.

10 Q. If Beach Blitz had timely appealed those two June 25th
11 violations to a special master, would Beach Blitz have been
12 able to simply pay the BTR and obtain its license --

13 A. Yes.

14 Q. -- at that point?

15 A. Yes. If Beach Blitz timely appealed the two violations and
16 paid for the BTR, we would not withhold the BTR. We would have
17 issued a BTR as soon as we had confirmation of the payment for
18 the BTR.

19 Q. Because if Beach Blitz had timely appealed that, those two
20 citations, they wouldn't be due, correct?

21 A. They are not due until the special master makes a ruling on
22 that case.

23 Q. Okay. Now, we just talked about the June 25th, 2017
24 violation for operating without a BTR.

25 You are aware of that one, right?

1 A. Yes.

2 Q. Does the resolution of the appeal to the special master
3 regarding the fine resolve the issue of payment for the BTR?

4 A. No. They are two independent items. The BTR is a tax for
5 conducting business in Miami Beach that needs to be paid.

6 Q. So does the city expect business owners who are cited for
7 operating without a BTR to come in and pay for the BTR?

8 A. Yes.

9 Q. Independent of whether they choose to appeal that citation?

10 A. Correct. The BTR amount due are still due to the city.

11 Q. Let me ask you to take a look at Exhibit 8. If you could
12 explain to the court what is Exhibit 8.

13 A. Exhibit 8 is a screenshot from our database where we manage
14 our BTRs. This shows the Beach Blitz businesses. They have a
15 business at 1100 Collins Avenue and an additional business at
16 865 Collins Avenue. It shows that they have an active BTR for
17 Beach Blitz at 1100 Collins and a closed BTR at 865 Collins
18 Avenue.

19 Q. What does it mean that the 865, the location of the license
20 status is closed?

21 A. This means that in our database this business has been
22 closed. Their time frame to renew and pay for the renewal has
23 expired. In order for them to get a BTR for that location they
24 would have to reapply. They missed the renewal period.

25 They had approximately nearly 400 days to pay for

1 their BTR renewal since the mailings were sent out in July, and
2 they were due in July of 2016, and they had until
3 September 30th of 2017 to pay for the renewal. So this
4 business in our records has been closed. They didn't renew
5 their license.

6 Q. In any one of those 400 days Beach Blitz could have come in
7 and submitted their payment?

8 A. At any time in any of the payment methods I mentioned
9 before.

10 Q. And the city would have accepted that payment, correct?

11 A. Yes.

12 Q. If there was an outstanding violation that they were not
13 paying, then you would have held that BTR until they paid the
14 fine?

15 A. Correct. We would have advised them of the outstanding
16 violation and instructed them that this needs to be resolved
17 before we can issue your paid BTR.

18 Q. Once an account is closed over a year after the license
19 expires, correct, what does an applicant need to do, a business
20 owner need to do to obtain a BTR?

21 A. It's simple. It's one of our earlier exhibits. You submit
22 an application and the application is routed to all of our
23 regulatory department, building, planning, fire and code, and
24 they would review the application. The application intake
25 would happen in my department, the finance department, and we

1 would route it electronically to all of our regulatory
2 departments.

3 Q. And if you were to submit an application today for a new
4 BTR, is that the process you would follow?

5 A. Yes.

6 Q. And if the result of that application were a denial, does
7 the applicant have an opportunity to appeal that through the
8 city's processes?

9 A. Yes. Chapter 102 of our city code has an appeal process
10 for businesses that are denied BTR. The city manager or
11 designee would process the appeal.

12 Q. And if an application for a new BTR were submitted by Beach
13 Blitz, would you or your department make the decision about
14 whether to grant it in the first place?

15 A. No. My department, just the paper we receive, the
16 application. We are the intake department. We route it to the
17 regulatory departments. Once the regulatory departments have
18 reviewed, they give us the okay. Then we are the ones that
19 collect the money and issue the BTR.

20 THE COURT: They give you the okay or the denial?

21 THE WITNESS: Correct, they give us the okay or the
22 denial electronically in our system.

23 MR. ARANA: Mr. Marquez, I have no further questions.
24 Thank you.

25 THE COURT: Any cross?

1 MR. HUDSON: Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. HUDSON:

4 Q. Let me understand the process first and then we will get
5 into some specifics. I kept hearing counsel say to you that
6 they would have accepted the money had money been tendered; is
7 that correct?

8 A. That is correct.

9 Q. But you wouldn't have -- you will help me with the words --
10 but you wouldn't have issued or released the license if there
11 were a special master proceeding pending or something pending,
12 correct?

13 A. If there were outstanding monies owed to the city, we would
14 withhold the BTR until the outstanding monies are either paid
15 or, if it's a special master case, it's been appealed at the
16 special master level. If it has been appealed at the special
17 master level, we would release the BTR.

18 Q. So payment alone doesn't solve the BTR problem; it's a step
19 in the right direction, correct?

20 A. Normally, typically payment alone solves the BTR problem.
21 Most businesses don't have outstanding violations or monies
22 owed to the city. So the typical practice is you receive a
23 renewal notice, you pay for your renewal notice, and then we
24 issue the BTR.

25 Q. In this case, on June 27th there was an outstanding

1 violation that had dated back to the prior year, 12/16. Are
2 you familiar with that?

3 A. The \$1,000 violation?

4 Q. Correct.

5 A. Okay.

6 Q. There's been testimony by my client that he walked in and
7 tried to get his BTR and he was told he couldn't because there
8 were outstanding violations. Is that inconsistent with how the
9 process works?

10 A. That would be an accurate statement. My staff would have
11 told them you can pay for your BTR or we will not release your
12 BTR until you pay this other outstanding monies owed to the
13 city. But we will accept payment for the BTR.

14 Q. Let's assume nothing changed and the fiscal year clicked
15 over. In other words, they had paid the BTR money on that
16 June 27th day. For whatever reason that violation had not been
17 resolved. The BTR would have expired or closed, as you call
18 it, correct?

19 A. It would have expired September 30. They are good for one
20 fiscal year.

21 Q. And he would have had to apply for a new BTR, correct?

22 A. If he had paid for his BTR and is handling something that's
23 going before the special master, we wouldn't close the BTR at
24 that point because it's an ongoing thing with the special
25 master.

1 Q. So it's your testimony it would have been simply a renewal?

2 A. Our system doesn't renew BTRs unless a payment has been
3 made. If no payment has been made for the BTR, our system
4 won't automatically renew a BTR.

5 Q. I think you testified that a renewal is simply just paying
6 the amount on the renewal notice or any late fee, correct?

7 A. A renewal is a courtesy notice the city sends to customers
8 so they can pay their BTR.

9 Q. Once the payment is made if there are no violations,
10 there's an automatic renewal, correct?

11 A. Correct.

12 Q. That didn't happen here, right?

13 A. That didn't happen here because the customer didn't pay
14 their BTR during the fiscal year.

15 Q. Let's talk about that. I have seen your affidavit. I
16 don't think we need to talk about your affidavit because you
17 testified to this today. You testified as to a process. I
18 understand process. Everybody tries to have process. But
19 process doesn't always work.

20 In this case we have alleged there is an additional
21 motive of the commission, the mayor, the city manager and
22 others to put liquor stores out of business. So we have
23 alleged that the city essentially violated its process by not
24 doing what it would normally do.

25 So in this case when you say in your affidavit and you

1 say under oath today, and I don't mean to put words in your
2 mouth so you tell me if I stated this incorrectly.

3 "I'm sure that they never tried to pay the BTR because
4 we would have accepted the money."

5 Did you interview every one of your -- I don't know
6 what they are called, the people at the desk. Did you
7 interview every one of them and ask them if they had any
8 recollection about this?

9 A. I did not interview every one of my staff members.

10 Q. So when you say I know he didn't pay, what you are really
11 saying is I can tell you what the process is and I could tell
12 you what they should have said, but I wasn't there and I can't
13 tell you what really happened?

14 A. Well, I was there during June 27. If there was a problem,
15 if a customer or any business for that matter came to our
16 office and attempted to pay and couldn't pay, they could have
17 easily called for one of my many supervisors or called for me
18 and I would have immediately gone out and solved whatever the
19 issue is or given some guidance. That did not happen in this
20 case.

21 Q. So since that didn't happen, I don't know, you don't know,
22 the judge doesn't know actually happened on June 27 at that
23 counter?

24 A. What I know is that the customer came in and a reprint of
25 his BTR was provided. It is our practice to tell customers,

1 this is your BTR, it's due, it's late. The penalty charges
2 were already calculated on that June 27th invoice. And we
3 would have instructed the customer as part of our standard
4 operations that here is your invoice, you could pay for it at
5 our window.

6 Q. Now in the context of what actually happened in this case,
7 let's play it out. There was a \$1,000 fine outstanding on a
8 matter from December the prior year, right? So if he had paid
9 that day, you would have accepted the money, but his license
10 would have been -- I am not even sure what the right word is --
11 in suspense?

12 A. If he would have paid the BTR that day and he would have
13 paid the \$1,000 violation and there's nothing else in our
14 system that he owes us any late monies for any other invoices,
15 he would have walked out with a BTR in his hands.

16 Q. But just paying the BTR money that day wouldn't have solved
17 the problem?

18 A. No, not just paying the BTR money. There was a thousand
19 dollar outstanding matter.

20 THE COURT: I thought you had to check with other
21 departments before you issued the BTR.

22 THE WITNESS: No. I check with our departments in a
23 brand new application.

24 THE COURT: Only on new applications.

25 THE WITNESS: This is a renewal notice. So for a

1 renewal notice, it's simply make a payment. If you don't owe
2 the city any money, we release the BTR.

3 BY MR. HUDSON:

4 Q. Turn to Exhibit 7 in the white binder.

5 THE COURT: Tell me the number again.

6 MR. HUDSON: Seven, your Honor. It's the agreed
7 special master order.

8 BY MR. HUDSON:

9 Q. Have you seen this document before?

10 A. I don't recall.

11 Q. On June 27 you testified that there was one outstanding
12 violation that was old. Were you aware that there were two
13 brand new violations that were issued on June 25th?

14 A. I am aware now. I wasn't aware in June 27th because the
15 customer did not speak with me. But I am aware now and since
16 sometime in October.

17 Q. Take a quick look at Exhibit 5, which are those two
18 June 25th violations. I want you to pay attention to the
19 violation numbers because then I want you to go to the special
20 master agreed order, which is Exhibit 7, again.

21 A. I see these violations were issued on June 25th. So I
22 imagine this is what triggered the customer, the business to
23 come to our office on June 27th.

24 Q. And that's what you want to happen, right?

25 A. Yes.

1 Q. You didn't pay your bill, come pay it, correct?

2 A. Yes.

3 Q. Now, by the way, you said notices. Sometimes you would
4 send courtesy notices out. In addition to the original invoice
5 you would send courtesy notices out. Did any courtesy notices
6 go to my client?

7 A. Yes. The renewal notice is a courtesy notice. We call the
8 renewal notice a courtesy notice because there's no requirement
9 by state statute or city code that a renewal notice be sent
10 out.

11 Q. Did my client Beach Blitz Ocean 9, the 865 address, did it
12 receive any other notices relative to the BTR violation?

13 A. It received its notice in July. I am not aware of Beach
14 Blitz receiving any other notices.

15 Q. The July 16 notice, that would have been for '16, '17?

16 A. Correct. This is very similar to like your driver's
17 license. Your driver's license expires on a certain date.
18 Whether you get a renewal notice or not, the expiration date is
19 the expiration date. Similar to tax day, April 15. April 15
20 is the day your IRS taxes are due. Whether you receive a
21 notice or not, that's the due date.

22 It's very similar in our business tax. The business
23 tax BTR is good for one fiscal year, October 1 through
24 September 30th, and most businesses are aware of this because
25 they renew every year. So it's a common thing.

1 Q. Look at the agreed order, which is Exhibit 7.

2 Wouldn't you agree that all three of the violations
3 that were outstanding were dealt with by the special master by
4 the order dated September 28?

5 A. I have to read the order.

6 Q. Sure. I am sorry. Take your time.

7 MR. ARANA: I'm going to object for lack of personal
8 knowledge. The witness is not familiar with this exhibit.

9 THE COURT: Objection is overruled.

10 You can answer.

11 A. This is something that would be done either at a special
12 master or a city attorney's office. It's not a form that I am
13 familiar with. I am not an attorney.

14 Q. I don't mean to cut you off, but I want you to tell me if
15 you can tell if the three outstanding violations for 865, which
16 is the Beach Blitz Ocean 9 business, are the three that were
17 outstanding on June 27th?

18 A. I am reading the citation number, cc 21601704 and cc
19 2170312 and cc 2170313 are hereby affirmed. I have no idea
20 what that means, but that's what I am reading.

21 Q. But by the citation numbers can you tell, as you looked at
22 something earlier either on your direct or speaking to me, that
23 there were three citations? In fact, we showed you Exhibit 5.

24 A. Correct. There was a citation for \$1,000.

25 Q. Look at the citation numbers in Exhibit 5. Those two are

1 the same as in the agreed order.

2 MR. ARANA: I will object. Again, lack of personal
3 knowledge.

4 THE COURT: Overruled. He is testifying to what his
5 company does or his office does. I can just take judicial
6 notice of 02.

7 Is there any objection that these are the three
8 citations we have been talking about?

9 MR. ARANA: No, your Honor.

10 THE COURT: The other two are from June 2017.

11 BY MR. HUDSON:

12 Q. When your office gets an order resolving all outstanding
13 violations, based on what I believe you have said today, now a
14 person can tender the money for the BTR, get the BTR
15 immediately, correct?

16 A. If I receive something from our city manager's office or
17 our city attorney's office saying these violations have been
18 settled, whatever terminology is used, if I receive something
19 from the city attorney's office or city manager's office and
20 the BTR payment has been made, the BTR would have been
21 released.

22 Is that your question?

23 Q. So this order wouldn't have been enough for you. You
24 needed direction either from the city attorney or from the city
25 manager, correct?

1 A. If I didn't understand this order presented to me and I
2 don't understand what I was reading, I would reach out to
3 whoever wrote the order to find out what this deals with.

4 Q. Can you tell from that order who wrote it?

5 A. What was the number of the exhibit again? I am sorry.

6 Q. Seven.

7 A. I see a special master. I can't make out the signature on
8 this special master.

9 Q. How often do you deal with special master orders and in the
10 context of BTRs and violations?

11 A. It's not a regular daily matter. It's not part of my daily
12 job. My job, I am the tax man. I send out bills and collect
13 money for the city.

14 Q. I don't know if I'd admit that in open court.

15 THE COURT: They made a song about that.

16 BY MR. HUDSON:

17 Q. Is it fair to say the people that work in your department
18 that are subordinate to you that are at the counter are
19 probably even less familiar with the special master process and
20 special master agreed orders?

21 A. I wouldn't say that. I have some people that are detached
22 and worked with the special master in prosecuting certain
23 cases.

24 Q. So the simple existence of this September 8th order may not
25 have been sufficient to allow the city to release the BTR?

1 A. If the customer came on this date that you just mentioned
2 with this order and paid for their BTR, we would have processed
3 the payment for the BTR and we would have investigated what is
4 this order all about, does this settle the three outstanding
5 violations. We would have done that if this came to our desk.

6 Q. That's what you would have done, you as the supervisor?

7 A. Correct. That's what our staff would do. They are trained
8 to solve issues, help customers.

9 We want the customer to get the BTR. We don't want
10 the customer not to get the BTR, and we want the customer to
11 pay the BTR.

12 Q. Our allegations in this case are that the city didn't want
13 the customer to get the BTR.

14 MR. ARANA: Objection.

15 BY MR. HUDSON:

16 Q. Let me ask to you look under -- I don't know where it is
17 there. It's a separate piece of paper. It may be in that
18 white binder.

19 THE COURT: Go up there and find it for him. He won't
20 know where it is.

21 Counsel is giving me an extra one.

22 BY MR. HUDSON:

23 Q. Take a look at that.

24 Do you recognize that? Can you tell us what it is?

25 A. It appears --

1 THE COURT: For the record, it's Plaintiff's 17 you
2 are showing him, right?

3 MR. HUDSON: Yes, your Honor.

4 THE COURT: Go ahead.

5 A. This appears to be a screenshot from our system. I can't
6 verify for sure because I didn't produce this document, but it
7 appears to be a screenshot from our system.

8 Q. Let's start with this. What system is this?

9 A. This is our database where we run BTR renewals.

10 Q. So this is under your division finance?

11 A. Correct. We would be the users of this system.

12 Q. Can you tell the date of this document?

13 A. I cannot tell the date of this document.

14 Q. Look at the top. There is a red line. Can you read what's
15 in the red line?

16 A. I read on the red line "active holds exist on this record."

17 Q. What does that mean?

18 A. That means that this record has outstanding -- this means
19 that this partial serial number, the address, has outstanding
20 monies or violations with the city, outstanding monies owed to
21 the city or outstanding violations with the city.

22 Q. Let's go into the white box in the middle. Read that for
23 the record.

24 A. Want me to read out loud?

25 Q. Yes.

1 A. The white box in the middle says, "As per city attorney
2 office, close BTR for nonpayment. Entity cannot reply for
3 liquor sales and/or entertainment at 865 Collins Avenue."

4 Q. Let's start with the first sentence. That's really
5 unnecessary, isn't it, because if the fiscal year had come and
6 gone, that 16/17 BTR is finished, correct?

7 A. That is correct. If the fiscal year came and went and the
8 BTR was not paid, the BTR would be moved to a closed status by
9 my staff.

10 Q. There was no reason for that first sentence, correct? The
11 city attorney didn't need to do that. It would happen as a
12 matter of law, as you testified?

13 A. No. It could have happened. I don't know who typed this
14 or if it even came from our system, but the city attorney could
15 reach out to us and say, hey, by the way, this BTR is in an
16 expired state, remember to close it. That's not within the
17 realm of possibility.

18 Q. Is that the ordinary course?

19 A. No. This case is not the ordinary course, though.

20 Q. I would agree with you.

21 Let's look at the next sentence. "Entity cannot
22 reapply for liquor sales and/or entertainment at 865 Collins
23 Avenue."

24 Any idea why that's there?

25 A. The entity can reapply and my department would accept an

1 application for this entity. Now, this might mean that this
2 type of use is no longer permitted in this area. So it may be
3 it's just giving a heads-up.

4 Now, this note here, if it's from our system, I have
5 no way of knowing who typed this note in. Many departments use
6 this system -- finance, building, planning, fire, code. So I
7 don't know who typed this note in the system. But the entity
8 can reapply. My department would accept the application and we
9 would route it to the regulatory departments. They are the
10 ones that would ultimately say entity cannot reapply for liquor
11 or sales or entertainment at 865 Collins Avenue.

12 Q. So --

13 A. It might be there is a heads-up, this use is no longer
14 permitted at this area because this BTR has expired.

15 Q. If my client was provided this document by somebody at your
16 counter, are you saying it was a mistake to give him this?

17 MR. ARANA: Objection.

18 A. No, I am not. If they came, if the customer came to our
19 office and there is something in our system that pertains to
20 his account, my staff would give them that information. The
21 same way he came on June 27 and we gave him the invoice that
22 was due, we would give him the information pertaining to his
23 account, if indeed this came from my office.

24 BY MR. HUDSON:

25 Q. Okay. One of our frustrations is we can't see the rest of

1 this document, but let's go to the left of the white box about
2 three quarters down. There is a word "violations" in all caps.

3 Do you see that?

4 A. I see that.

5 Q. Is there any way, based on your knowledge of the system and
6 this case, you can help figure out what might be behind that?

7 A. I need to go into our system and see what's there. And
8 this could be a simple box. It could have been moved from
9 somewhere else, it could have been moved and placed on top of
10 that. The system works in Windows so you can minimize and
11 maximize the windows.

12 Q. It looks like it's a regular window someone pulled up?

13 THE COURT: If you look at the next line, it starts
14 out the same, right?

15 THE WITNESS: It could be. If that's a note, you
16 click on that line underneath the violations. When you click
17 on that, this other box pops up. But I can't know for sure
18 unless I'm in the system.

19 BY MR. HUDSON:

20 Q. Sure. But the Judge accurately points out the next line is
21 interesting as well. If you look at it, it also says, "As per
22 the city attorney office, close BTR for nonpayment," and all we
23 can see on the rest of that line is a date on the other side,
24 which was the day they shut our business down, but it was five
25 and a half hours earlier in the day.

1 Is that a fair reading of that document?

2 THE COURT: Which side had that? Were they closed in
3 the morning?

4 MR. HUDSON: Closed at 5:00 p.m. on 10/6, your Honor.
5 It appears, we believe this says 10/6, 11:33 a.m.

6 BY MR. HUDSON:

7 Q. Is that a fair reading of that document of what little we
8 could see?

9 A. Could you repeat that?

10 Q. The second line under the "violations" also indicates the
11 city attorney's office gave a direction in this case to close
12 the BTR.

13 A. You could make that assumption from reading this, but the
14 BTR would have been closed anyway by my staff because it has
15 expired.

16 Q. Exactly. There was no need for that direction. Why would
17 the city attorney then give you the direction?

18 A. I don't know. You should ask the attorney.

19 MR. ARANA: Objection.

20 THE COURT: That's fair. Don't need to know.

21 MR. HUDSON: I'll take it step by step, Judge.

22 BY MR. HUDSON:

23 Q. Have you spoken -- who would the city attorney in this case
24 have been? Would there have been a particular city attorney?

25 A. The city attorney I dealt with --

1 MR. ARANA: I am going to instruct the witness not to
2 disclose attorney-client confidences or object on the grounds
3 that --

4 THE COURT: He can tell us the name of the city
5 attorney. That's not a confidence.

6 MR. HUDSON: I am taking it step by step to be
7 careful.

8 THE COURT: Tell us who the city attorney is.

9 THE WITNESS: Mr. Alex Boxner.

10 BY MR. HUDSON:

11 Q. Is he generally the deputy city attorney responsible for
12 these things?

13 A. I don't know his official title.

14 Q. Okay. Prior to the institution of this lawsuit have you
15 ever had a conversation with attorney Boxner about this case?

16 A. No.

17 MR. ARANA: Objection. Attorney-client privilege.

18 THE COURT: Sustained.

19 MR. HUDSON: I'm sorry, your Honor?

20 THE COURT: Sustained.

21 BY MR. HUDSON:

22 Q. Have you had a conversation with anyone in the city not
23 involving the city attorney about this case prior to the
24 lawsuit?

25 A. With my staff while we were preparing for this lawsuit and

1 preparing exhibits. I have spoken with my staff in providing
2 exhibits and locating exhibits in our database.

3 Q. I'm sorry. Maybe I misspoke.

4 Prior to filing the lawsuit, was this on your radar
5 for any reason?

6 A. No. Usually when something gets to my level it is because
7 there's some sort of issue. So that's how my involvement -- I
8 got involved with this sometime in October.

9 Q. Turn to Exhibit 3 in the white binder. Any idea what these
10 few pages are?

11 A. I can read what it says here, but it's not a document that
12 I am familiar with.

13 Q. I pulled these off the City of Miami Beach website. Does
14 that help refresh your recollection at all?

15 A. No, because I work for the finance department. I don't
16 work for the special master's office, so I wouldn't go into
17 this website.

18 Q. Let's take a look at something anyway and see if you have a
19 comment on it.

20 MR. ARANA: Object on foundation and relevance
21 grounds.

22 THE COURT: Let's see what it is first.

23 BY MR. HUDSON:

24 Q. Turn to the second page. The fourth bold item, "I just
25 received," do you see that?

1 A. Yes.

2 THE COURT: What page? I'm sorry.

3 MR. HUDSON: It is the second page of the exhibit,
4 your Honor. You are looking at Exhibit 3 in the white book.

5 THE COURT: Okay. Go ahead.

6 MR. HUDSON: Exhibit 3, fourth item down. "I just
7 received."

8 THE COURT: Got it.

9 BY MR. HUDSON:

10 Q. I will read it into the record.

11 "I just received a letter from the finance department
12 that my occupational license, certificate of use cannot be
13 renewed because of a special master case. What do I do?"

14 Seems to be an answer. "Call the special master
15 office. We will advise you accordingly."

16 So you are in the finance department, right?

17 A. I am.

18 Q. That's your specialty.

19 It seems that this document suggests that if you have
20 a special master case there may be a hold on your BTR. Is that
21 unfair?

22 A. Yes. This would be a hold on a BTR, how I am reading it.

23 Again, I am not -- this is not a document that was
24 prepared by my office. I received a letter from the finance
25 department that my occupational license, certificate of use

1 cannot be renewed because of a special master case. What do I
2 do. This can very well be there is a violation, the judge has
3 adjudicated guilty, the violation has been set \$1,000 or
4 there's a daily running fine, you need to -- if someone were to
5 come to my office and they have this, we would refer them to
6 the special master office.

7 So this is an accurate statement.

8 Q. Is it accurate or inaccurate?

9 A. It would be an accurate statement. If someone comes to our
10 office and there is a special master -- a special master has
11 adjudicated someone guilty, they owe the city monies. We would
12 refer them to the special master office so the special master
13 can provide them an invoice for the monies that are owed.

14 Q. I'm sorry. Maybe it's the echo in here. I will ask you to
15 spell it. Inaccurate with an I-N or accurate with an A-C-C --

16 A. I believe this --

17 Q. -- statement?

18 A. I believe this statement is accurate.

19 Q. You believe it's accurate?

20 A. Yes.

21 Q. In other words, during a special master proceeding your
22 occupational license cannot be renewed?

23 MR. ARANA: Objection. Mischaracterizing the
24 testimony.

25 THE COURT: Overruled.

1 Answer if you can.

2 A. If a special master has indicated a business guilty, they
3 have gone before the special master, they have been adjudicated
4 guilty, there is a fine. Sometimes there's a daily running
5 fine. You need to get that number. So my finance staff would
6 send someone to the special master office. You need to get an
7 invoice. Let's say they went to pay that special master
8 violation. My finance staff would direct the business to the
9 special master office so the special master office could print
10 an invoice for them so they could go pay at the cashier.

11 Q. Let's talk about this. The agreed order, which is Exhibit
12 7, was entered on Thursday, September 28. The Judge corrected
13 me this morning. The following Monday was October 2nd. So all
14 BTRs in the state, I think you told us earlier, right, expire
15 on September --

16 A. They are good for fiscal year October 1 through
17 September 30.

18 Q. So they expire September 30, 11:59 p.m., which would have
19 been on this date, would have been a Saturday, I believe.

20 A. September 30 was a Saturday, yes.

21 Q. So if the special master order wasn't entered until
22 September 28th, is there any procedure by which that person
23 could have cleared those violations soon enough to preserve a
24 16-17 BTR?

25 A. They could have paid their BTR. They could have paid the

1 fiscal year 2016/17 BTR before the 30th of September.

2 Q. If their testimony was they tried and they were rejected?

3 A. I wouldn't believe that they tried and they were rejected
4 because there's so many mechanisms to pay. They pay it in
5 person with cash, cashier's check or credit card, money order,
6 they could pay online, they could pay at our satellite office,
7 they could mail a payment, mail a payment to the lockbox. So I
8 would say that's a false statement.

9 We would not refuse. If someone came in to pay a BTR
10 we would not refuse payment. It doesn't make sense. It is not
11 our business process.

12 Q. The distinction that I think needs to be made was you would
13 have accepted payment, but that doesn't release the BTR?

14 A. We would not release the BTR. If there's outstanding
15 monies owed to the city, you need to take care of that first.

16 Q. As of September 28, if this agreed order had not been put
17 in the system, would that gentleman have been able to pay the
18 BTR? Would you have accepted the money?

19 A. Correct, we would have accepted the money.

20 Q. But if he hadn't by Friday 5:00 p.m. close of business,
21 either done -- he had to do something else.

22 A. If he had come to my office and said I want my BTR, I need
23 to get my BTR today, here is the money, let me first pay you
24 the BTR, I want to get my BTR, we would look at this document.
25 We would have reached out to special master, the city

1 attorney's office to see what needed to be done to get the BTR.

2 If that did not happen, if he did not come to my
3 office -- I don't recall him ever asking for me or asking for a
4 supervisor. None of my supervisors in preparing for this case
5 ever recall him requesting to speak to a supervisor. Because
6 if there is a problem, I'm here. I want to pay for something,
7 I need to get it and you don't get what you want, I think
8 common sense would dictate to call for a supervisor, and the
9 next person would come in. That did not happen.

10 Q. Common sense would dictate that someone that had a very
11 valuable business wouldn't lose it for \$1,000 either.

12 A. It's not common sense.

13 Q. I think I heard what you said, but let's be clear. You
14 couldn't do it on your own. You had to either go to the
15 special master, try to find him on Thursday afternoon or
16 Friday. They only work on Thursdays, right?

17 A. The special master staff, the clerks of the special masters
18 work at City Hall Monday through Friday during regular business
19 hours.

20 Q. You would have had to go to the special master, and I don't
21 know if it's this one or not but let's use the special master
22 in general for the moment, or the city attorney to get them to
23 clear it?

24 A. Or the city manager.

25 Q. Correct. If they were predisposed not to do so because

1 they wanted to close this liquor store down, you may not have
2 been able to find them within a day. Strike that.

3 THE COURT: Let me ask a question. As I understand
4 it, at least the testimony until now, none of these violation
5 notices were appealed within the 20-day time period that's
6 called for under, I don't know if it's under your code or on
7 the back of the ticket. So taken that for a granted, if -- but
8 the matter was before a special master. Somehow they were able
9 to get it in front of a special master on August --

10 MR. HUDSON: Twenty-eight it appears when the deal was
11 made.

12 THE COURT: If that's in front of a special master but
13 not pursuant to an appeal, but just in front of a special
14 master under some other circumstances, would the BTR be issued
15 if you were aware it was in front of a special master?

16 THE WITNESS: If we are aware it was in front of a
17 special master being appealed or being negotiated, we would
18 release the BTR if the BTR had been paid.

19 THE COURT: And assuming that the special master had
20 ruled and imposed a fine, once the special master rules and
21 imposes a fine, then the fine needs to be paid before you
22 release the BTR.

23 THE WITNESS: Yes, sir.

24 MR. HUDSON: Judge, just give me a moment. I am
25 almost there.

1 BY MR. HUDSON:

2 Q. Beach Blitz ultimately did pay online for the BTR, correct?

3 A. They paid online sometime in mid-October or first week of
4 October, approximately.

5 Q. October 11.

6 Would it surprise you if they testified that they
7 tried to pay online before and that was the first time at which
8 the system would accept the payment?

9 A. Yes, that would surprise me.

10 Q. If they had paid on October 11 of '17, was that a payment
11 for the old BTR that's now gone?

12 A. That's a payment that's in suspense right now. We are
13 waiting for the outcome of this either to refund the money or
14 see what the judge determines. But that payment is in
15 suspense. It can't be applied to 2017 because that permit has
16 expired.

17 Q. Cannot, correct?

18 A. Cannot, correct.

19 Q. So --

20 A. We were wondering, perhaps, if he intends to reapply, it
21 could be applied, reapplied to his new application.

22 Q. Well, if the city's internal system already said don't
23 reapply per the city attorney, what's point in reapplying?

24 A. That's not -- the case, if he comes in and reapplies, we
25 accept his application, then we route it to the regulatory

1 department. The regulatory department, we are the ones that
2 make that determination -- planning and zoning, building, fire,
3 or code compliance.

4 That's not my finance department to say whether or not
5 that business gets approved or rejected.

6 Q. One last question. I know I have asked it, but I want to
7 ask it one more time because it's important.

8 THE COURT: It's like asking for an objection.

9 MR. ARANA: Asked and answered.

10 MR. HUDSON: I am explaining in advance. I am trying
11 to get covered.

12 THE COURT: Go ahead.

13 BY MR. HUDSON:

14 Q. You testified as to the policies and procedures, and I get
15 that. This case, as you said, is not the normal case. We
16 agree with you. You do not have personal knowledge that
17 anybody at a counter told Mr. Doar, the owner of Beach Blitz,
18 that he was not able to get a BTR on the several times that he
19 and his hired professionals went down there to try to get one,
20 correct?

21 A. Please repeat the question.

22 Q. You have no personal knowledge of what the people at the
23 counter told Mr. Doar; is that correct?

24 A. I don't have any personal knowledge. I know what our staff
25 are trained to do and what they are trained to say to all of

1 our customers.

2 Q. Thank you.

3 MR. HUDSON: No further questions.

4 MR. ARANA: Could I have two questions?

5 THE COURT: Yes.

6 REDIRECT EXAMINATION

7 BY MR. ARANA:

8 Q. Counsel asked you whether you know whether staff may have
9 disregarded your procedures and refused payment of the BTR,
10 correct?

11 A. Yes.

12 Q. Can you testify for certain that the online system does not
13 shut anyone out from making a payment because there is an
14 outstanding violation?

15 A. The online system does not shut anybody out from making a
16 payment because there is a violation. On the contrary, we
17 accept payments. If there's an invoice, the online system will
18 accept payments for that invoice number at any time.

19 Q. And the online system can't disregard your instructions,
20 correct?

21 A. Correct. It's an automated system.

22 Many businesses when they are issued violations, they
23 go online and they immediately pay. Just because there's a
24 violation doesn't prevent them from making an online payment
25 for a BTR.

1 Q. At any time from July of 2016 until September 30 of 2017,
2 Beach Blitz could have made an online payment for its BTR,
3 correct?

4 A. Correct. Yes, sir.

5 Q. If it had done that, then, when it's outstanding, its
6 outstanding violations were paid, the BTR would have issued?

7 A. We would have issued it, yes.

8 Q. That's the case even if the outstanding violations were
9 paid in October of 2017, correct?

10 A. Come again.

11 Q. The BTR would issue even if the outstanding violations were
12 not paid until early October?

13 A. Correct, yes.

14 Q. Because the payment was made during the fiscal year?

15 A. During the fiscal year, correct.

16 MR. ARANA: Thank you.

17 THE COURT: Sir, thank you. You may step down. You
18 are excused.

19 (Witness excused)

20 THE COURT: The defendants can call their next
21 witness, please.

22 HERNAN CARDENO,
23 having been first duly sworn on oath, was examined and
24 testified as follows:

25 THE WITNESS: Cardeno, C-A-R-D-E-N-O, Hernan,

1 H-E-R-N-A-N.

2 DIRECT EXAMINATION

3 BY MR. BYERS:

4 Q. Good afternoon. Could you please tell us what your
5 occupation is.

6 A. Director of the code compliance department for the City of
7 Miami Beach.

8 Q. And how long have you been at that position?

9 A. Since 2014.

10 Q. Does code enforcement issue BTRs?

11 A. No, they do not.

12 Q. Does code enforcement decide whether to issue a BTR?

13 A. No, they do not.

14 Q. And if you could go to the black book there. Those are
15 defendants' exhibits which already have been admitted by the
16 court.

17 Look to tab 2, which is Defendants' Exhibit 2.

18 Are you there?

19 A. Yes.

20 Q. Did you prepare an affidavit in this case?

21 A. Yes, I did.

22 Q. And is Exhibit 2 that affidavit?

23 A. Yes, it is.

24 Q. Is there anything you need to clarify or correct in that
25 affidavit?

1 A. Yes, there is. On page 2, paragraph 6.

2 Q. Can you explain what that clarification or correction is?

3 A. It says here: "Beach Blitz did not cease operations or
4 apply for or pay for a BTR license. Instead, Beach Blitz
5 appealed all three citations to the special master. On
6 September 28, 2017, the special master entered an agreed order
7 in which Beach Blitz admitted to the violations and agreed to
8 pay \$1,000 to resolve all three citations."

9 It's really just a matter of clarification. It still
10 is in appeal, but it wasn't a normal appeal through the regular
11 protocol or procedures. Meaning it didn't go through the
12 special master, clerk of the court. Rather, it was directly
13 with the city attorney's office, and then agreed order was
14 placed on the docket calendar for the special master to hear
15 and ratify.

16 Q. Is there anything else you need to correct or clarify in
17 that affidavit?

18 A. I don't believe so.

19 Q. If you could turn to Exhibit 10, which is also tab 10.

20 A. Yes.

21 Q. Do you recognize this document?

22 A. Yes, I do. This is a civil infraction code violation form.

23 Q. What is the violation for?

24 A. So this violation is dated December 21, 2016. The
25 violation is for selling alcoholic beverages outside of the

1 approved hours by ordinance.

2 Q. And was that a violation in the city code on December 21,
3 2016 to sell liquor before 10:00 a.m.?

4 A. Yes, it was.

5 Q. If we go to page 2 of that document. Is there a procedure
6 there for an appeal?

7 A. Yes. It says, "fines may be appealed within 20 days of
8 receipt of this notice."

9 Q. To your knowledge, did Beach Blitz appeal within 20 days of
10 that notice?

11 A. No.

12 Q. I want to move next to Exhibit 11.

13 A. Yes.

14 Q. Do you recognize this document?

15 A. Yes, I do.

16 Q. What is it?

17 A. This is another civil citation form issued by the code
18 compliance department for sales of alcohol outside of the
19 prescribed hours.

20 Q. Was that a violation of the city code on June 25, 2017?

21 A. Yes.

22 Q. And there's an appeal process listed on that citation as
23 well?

24 A. Yes, there is. Within ten days of receipt of the notice.

25 Q. Did Beach Blitz appeal, to your knowledge, within ten days

1 of the notice?

2 A. No.

3 Q. We now move to Exhibit 12.

4 Do you recognize this document?

5 A. Yes.

6 Q. What is it?

7 A. This is a notice of violation for failing to obtain a
8 business tax receipt.

9 Q. And to your knowledge, did Beach Blitz possess a business
10 tax receipt on June 25, 2017?

11 A. No, they did not.

12 Q. And the violation states that fines may be appealed within
13 ten days; is that correct?

14 A. Yes.

15 Q. And did Beach Blitz appeal within the ten days?

16 A. No, they did not.

17 Q. Now, I want to look at the notice of violation. Does this
18 notice of violation state "cease immediately until you obtain a
19 business tax receipt from the City of Miami Beach?"

20 A. Yes.

21 THE COURT: Where is that?

22 MR. BYERS: First line right underneath "reference,"
23 your Honor. Center of the page.

24 THE COURT: I see it. Okay.

25

1 BY MR. BYERS:

2 Q. When issuing these violations, does code enforcement expect
3 that the business will cease operations immediately and attempt
4 to obtain a BTR?

5 THE COURT: For the record, it says "cease." I
6 thought you said seize, as in take.

7 BY MR. BYERS:

8 Q. Cease operations immediately.

9 A. Yes, sir.

10 Q. I will ask that again.

11 When code enforcement issues these citations, does it
12 expect that the business will cease operations until it obtains
13 a BTR?

14 A. Yes.

15 Q. To your knowledge, did Beach Blitz cease operations?

16 A. No.

17 Q. To your knowledge, did Beach Blitz obtain a BTR for the
18 fiscal year of 2016/2017 at any time thereafter?

19 A. They did not.

20 Q. We now move to Exhibit 14, sir.

21 A. Yes.

22 Q. Do you recognize this document?

23 A. Yes. This is a notice of violation, issued on October 6,
24 2017, for failing to obtain a business tax receipt as required
25 by ordinance.

1 Q. And to your knowledge, on October 6, 2017 did Beach Blitz
2 have a BTR license?

3 A. No, they did not.

4 Q. Does this state they have an ability to appeal within ten
5 days of violation?

6 A. Yes.

7 Q. To your knowledge, did any appeal take place?

8 A. No, they did not.

9 Q. The notice again says, "cease immediately until you obtain
10 a business tax receipt from the City of Miami."

11 A. Yes.

12 Q. Did code enforcement close Beach Blitz's operations down on
13 October 6, 2017?

14 A. Yes.

15 Q. Why was it closed?

16 A. Well, because they still did not have a business tax
17 receipt to operate the business, and so they were closed until
18 they could obtain the business tax receipt.

19 Q. Did the City of Miami Beach code require that a business
20 have a BTR in order to operate in the City of Miami Beach?

21 A. Yes, they do.

22 MR. BYERS: No further questions.

23 THE COURT: Any cross?

24 Actually, I have a question for you. Maybe counsel
25 can help me out. Number 12. It says, "amendment, notice of

1 violation." Was there an initial violation that was
2 handwritten?

3 THE WITNESS: Usually, your Honor, there is a
4 handwritten violation that's written out in the field, and then
5 this is the computer-generated letter that is sent out.

6 THE COURT: This is mailed to the offender?

7 THE WITNESS: Sometimes it's mailed, sometimes it's
8 hand delivered.

9 THE COURT: Do you know what was the case with this
10 one?

11 THE WITNESS: I believe this one was hand delivered.

12 THE COURT: Why do you believe that?

13 THE WITNESS: Because it's signed by a manager at the
14 bottom.

15 THE COURT: That's a manager of the business; is that
16 what it is?

17 THE WITNESS: Yes.

18 THE COURT: I see. Okay. Good enough. Thanks.

19 CROSS-EXAMINATION

20 BY MR. HUDSON:

21 Q. Was it hand delivered by the two police officers, by the
22 code enforcement gentleman around 5:00 p.m. on October 6?

23 THE COURT: The one I was referring to was the one
24 issued on June 25. I think you are referring to Exhibit
25 14.

1 BY MR. HUDSON:

2 Q. Let me turn to Exhibit 14, please.

3 A. Yes, this one was also hand delivered.

4 Q. Okay. Was it hand delivered in this format or was there a
5 typical citation, handwritten citation?

6 A. It was this form itself, which is also signed in this
7 particular case by the business owner.

8 Q. This was prepared in advance by someone at the city?

9 A. Yes.

10 Q. Why did it happen this way as opposed to the standard
11 handwritten version?

12 A. They are both notices of violation. So if we don't have
13 anyone at the business that we contact, we send out the letter
14 certified return receipt requested. In this particular case
15 they went ahead and printed the notice of violation and hand
16 delivered it.

17 Q. Can you tell me from this document or any other knowledge
18 you have when this document was prepared?

19 A. I would say it was probably prepared on the same day,
20 October 6, 2017.

21 Q. But you don't know that for sure. Sir, do you know that
22 for sure?

23 A. I do not.

24 THE COURT: Do you mind if I ask some questions.

25 On this notice of violation and the other one it says

1 ten days, but on the handwritten one it says 20 days to appeal.
2 Is there a reason why there is a difference, or is there a
3 statute that allows for ten if it's a --

4 THE WITNESS: You know what, your Honor, it may be
5 because of the amendment to the ordinance for the appeal time.
6 So that may be why there is a difference.

7 THE COURT: What do you mean? An amendment to what
8 ordinance?

9 THE WITNESS: When the ordinance was amended where
10 business tax receipts could be appealed, the ten days' language
11 was included there.

12 THE COURT: Well, if we look at 12, the June 25 one,
13 that one says ten days. This is the amendment notice of
14 violation dated June 25th.

15 MR. BYERS: Your Honor, I can state that there was an
16 amendment in that time period between December and the next
17 citation in July -- I'm sorry, June 25, where it was moved from
18 20 days to ten days.

19 THE COURT: Where is the June 25 citation in here?

20 MR. BYERS: Exhibit 11.

21 THE COURT: Of which one?

22 MR. BYERS: Defendants' black book. And you will see
23 both citations on --

24 THE COURT: I see.

25 MR. BYERS: -- June 25. Both are ten days.

1 THE COURT: I got it. I was thinking 20 days. I
2 guess we had only discussed the old one. Okay. I got it. No
3 problem.

4 Go ahead, counsel. I'm sorry.

5 BY MR. HUDSON:

6 Q. Let's look at 14 again in the black book.

7 A. Yes.

8 Q. The business was open and operating at the time, correct?

9 A. Yes.

10 Q. So is there anywhere on this document where the person
11 receiving the violation was warned that their business could be
12 closed down immediately without further notice?

13 A. Well, it does say under the reference section "cease
14 immediately until you obtain a business tax receipt."

15 Q. But there's nothing that says if you don't cease
16 immediately we will come shut you down without further notice,
17 correct?

18 A. No.

19 Q. What was the authority of code enforcement and two Miami
20 Beach police officers that code enforcement relied on to shut
21 that gentleman's business down that afternoon at 5:00 p.m.?

22 A. That authority would be the City of Miami Beach Code of
23 Laws and Ordinances. I believe it's Section 102-377(e).

24 Q. I am going to read to you --

25 MR. HUDSON: May I read that statute, as I understand

1 it, into the record at the moment so that the witness can hear
2 it.

3 THE COURT: Yes. I know somebody filed a copy of the
4 code, I think.

5 MR. BYERS: It's Exhibit 16 of defendants' exhibits in
6 the black book. Go to page 35.

7 THE COURT: Page 35 of the document?

8 MR. BYERS: Of the document itself.

9 THE COURT: Page 35 of 69 you are talking about?

10 MR. BYERS: I am 36 of 69, your Honor.

11 BY MR. HUDSON:

12 Q. Sir, while we are all trying to find this, would your
13 department or you -- you are the head of the department, right?

14 A. Yes.

15 Q. Would you rely on your own interpretation of how to read
16 these statutes or would you have to go to the city attorney's
17 office on how to read these statutes if there was an issue?

18 A. The answer is it depends.

19 Q. Depends on what?

20 A. Well, there is several codes of laws and ordinances. Some
21 that we handle more frequently than others. So in those, in
22 those particular cases, we would confer with the city
23 attorney's office. On the more complex investigations, then of
24 course, yes, we would seek guidance from the city attorney's
25 office.

1 Q. So let me read this for the record. It's Section 102-377
2 of the Miami Beach Code of Ordinances, subsection (e), as in
3 Edward: "As an additional means of enforcement and
4 supplemental to the above, if any person carries on or conducts
5 any business for which a tax receipt is required by this
6 article without first obtaining such tax receipt, then the city
7 may prevent the business from operating until the required tax
8 receipt is obtained."

9 Do you see that?

10 A. Yes.

11 Q. So if you go back up to (b), as in boy, in the same
12 section, there are enforcement mechanisms for failure to pay a
13 BTR. But those mechanisms require notices and potential
14 hearings and so forth, correct?

15 A. Yes.

16 Q. In your view, can you just jump to (e) and rely on (e) or
17 do you have to go through the notices in (b) first?

18 MR. BYERS: Objection. First, this is a legal
19 argument.

20 THE COURT: Overruled.

21 A. So the way I am reading subsection (b), that applies to
22 violations of any other provision of this article, and so
23 because it's subsection (b), the only other section before it
24 of course is (a), which is a business who carries on operations
25 without first obtaining a business tax receipt.

1 Q. So let's go to (a). What are the procedural protections in
2 (a)?

3 MR. BYERS: Same objection. Legal conclusion.

4 THE COURT: Overruled.

5 A. Did you say procedural protections?

6 Q. Yes.

7 You have dealt with (a) before. I am sure you
8 probably deal with it on a daily basis, right?

9 A. Yes.

10 Q. So under (a), is it your understanding, or any of the
11 ordinances that are referenced in (a), aren't there notice
12 requirements before folks can be fined or bad things can happen
13 to them under the code?

14 A. Usually there is a notice of violation that will trigger
15 some type of process, whether that is a fine or some action
16 that the violator has to take to cure.

17 Q. Right. Typically the first step would be a notice. The
18 second step would be, sometimes alternative, that you can
19 either pay or you can elect a hearing or you can do that,
20 right? That's the way it normally works, correct?

21 A. Generally, yes.

22 Q. In this case what actions under either (a) or (b) did the
23 city take before it went to (e)?

24 A. In this particular case I believe the business had already
25 received at least one notice of violation for operating without

1 a business tax receipt.

2 Q. Turn to Exhibit 7 in the white binder. Do you see that?
3 Obviously you have seen that because the first thing your
4 counsel asked to you do was to clarify a statement in your
5 affidavit filed in this case under oath, right? So you have
6 seen this order?

7 A. Yes.

8 Q. And what was that clarification again?

9 A. The clarification was that under paragraph 6 of my
10 affidavit, that the way the word appeal is used is that it
11 wasn't the normal protocols, that it was appealed to the
12 special master, clerk of the court but, rather, they went to
13 the state, city attorney's office and then arrived at this
14 agreed order which was placed before the special master.

15 Q. So the City of Miami Beach, based on your testimony, agreed
16 to some sort of different process from the standard process,
17 right? Fair statement?

18 A. I wouldn't say it's standard because there is a lot of
19 stipulated agreements and agreed orders that are entered into
20 on violations. So --

21 Q. But it didn't go the normal way it would go, correct?

22 A. It didn't go the way through the special master, clerk's
23 office.

24 Q. But it did end up in a special master proceeding, didn't
25 it?

1 A. Yes.

2 Q. And the City of Miami Beach participated in that, didn't
3 it?

4 A. Yes.

5 Q. So the City of Miami Beach waived all of its other
6 procedural protections by doing the special process and
7 procedure, didn't it?

8 MR. BYERS: Objection, your Honor. Legal conclusion.

9 THE COURT: Sustained.

10 BY MR. HUDSON:

11 Q. Do know why the city attorney has a different path than the
12 normal path in this case?

13 MR. BYERS: I would suggest not to discuss any
14 attorney-client communications you may or may not have had with
15 the city attorney.

16 MR. HUDSON: I will amend the question to exclude any
17 conversations he's had with the city attorney or his defense
18 attorneys, your Honor.

19 THE COURT: All right.

20 A. So, your Honor, in my experience when we have stipulated
21 agreements or agreed orders, it's through a variety of
22 different forms that it comes to us. Sometimes, for example,
23 the special master will ask the violator to meet with the city
24 attorney's office and see if they can come to an agreement and
25 then later schedule it for another date with a stipulated or

1 agreed order. So there is different formats of how it could
2 have arrived at this agreed order.

3 BY MR. HUDSON:

4 Q. Have you had any conversations with Deputy City Attorney
5 Boxner prior to filing this lawsuit?

6 MR. BYERS: Objection.

7 THE COURT: I will allow you to answer whether or not
8 or require you to answer if you had conversations without
9 revealing the content of the conversation.

10 A. Regarding this lawsuit?

11 BY MR. HUDSON:

12 Q. No, about Beach Blitz 865(d) prior to the filing of this
13 lawsuit?

14 MR. BYERS: Same objection.

15 THE COURT: Overruled.

16 A. Yes.

17 BY MR. HUDSON:

18 Q. What were those conversations about?

19 MR. BYERS: Objection.

20 THE COURT: Sustained.

21 BY MR. HUDSON:

22 Q. When were those conversations?

23 MR. BYERS: Objection.

24 A. Probably --

25 THE COURT: That objection is overruled.

1 A. Probably around October 6th.

2 Q. That's the day that Beach Blitz was shut down, right?

3 A. Yes.

4 Q. Did the city attorney's office direct code enforcement to
5 shut Beach Blitz down?

6 MR. BYERS: Objection.

7 THE COURT: Sustained.

8 Your objection, by the way, is attorney-client
9 privilege, am I correct?

10 MR. BYERS: Yes, your Honor.

11 THE COURT: Okay. Sustained.

12 BY MR. HUDSON:

13 Q. See the blue piece of paper in front of you, blue and
14 white?

15 A. Yes.

16 Q. That's been marked as Plaintiff's 17. Take a look at that
17 and tell me, tell the court, if you can tell us what this is.

18 A. It looks to be some type of notes entered on our city
19 enterprise system.

20 Q. Read the first sentence that's contained in the white
21 rectangle in the center of the page.

22 MR. BYERS: Objection for lack of personal knowledge
23 of this document.

24 THE COURT: Overruled.

25 A. "As per city attorney's office, close BTR for nonpayment.

1 Entity cannot reapply for liquor sales and/or entertainment at
2 865 Collins Avenue."

3 Q. What system are we looking at, do you know? What's the
4 program that we are looking at here?

5 A. I believe this is the city's enterprise system, which is
6 known as EnerGov.

7 Q. Do you have access to this system?

8 A. I do have access to this system.

9 Q. Any idea what that note means?

10 A. No.

11 Q. Have you ever seen that note before?

12 A. No.

13 Q. Any idea why the city attorney would suggest that the BTR
14 be closed for nonpayment when it happened automatically?

15 MR. BYERS: Objection. Speculation.

16 THE COURT: Overruled.

17 BY MR. HUDSON:

18 Q. You can answer it, sir.

19 A. No.

20 Q. Had Beach Blitz applied for a new BTR for fiscal 17/18,
21 given this note in the system would it have been denied?

22 MR. BYERS: Objection. He testified that they don't
23 issue BTRs or deny them. We put on our other witness who was
24 from finance.

25 THE COURT: Overruled.

1 Answer, if you can.

2 A. Your Honor, just as a separation of checks and balances,
3 code compliance is really just the enforcement arm for several
4 departments. We don't do any permitting. That's different
5 entities.

6 Q. I understand. I asked if you know. If you don't, that's
7 fine.

8 Do you know?

9 A. No.

10 Q. How many other times do you recall the City of Miami Beach
11 sending police officers and code enforcement to a business for
12 shutting down for not having a BTR?

13 A. Several.

14 Q. How many a year?

15 A. It varies. I am not certain. More than four, more than
16 five.

17 Q. In a year. How many businesses are in Miami Beach?

18 A. Well --

19 Q. If you know.

20 A. I don't.

21 Q. That's fair.

22 THE COURT: And how many don't pay their BTR.

23 THE WITNESS: Well, licensed or unlicensed businesses,
24 I don't know. With the advent of the short-term rental
25 enforcements, you know, those are businesses that have no BTR

1 and those are shut down and vacated with police officers also.
2 So I couldn't be certain.

3 MR. HUDSON: Nothing further, your Honor.

4 THE COURT: Any redirect?

5 MR. BYERS: A couple.

6 REDIRECT EXAMINATION

7 BY MR. BYERS:

8 Q. To your knowledge, Beach Blitz was operating without a
9 license for more than 370 days; is that correct?

10 A. Yes.

11 Q. Opposing counsel talked to you about Section 102.377(e).
12 If you could turn to that again. That's Exhibit 16 and, again,
13 it's page 35 at the bottom and page 36 of 69 at the top.

14 A. Yes.

15 Q. It says that "As additional means of enforcement and
16 supplemental to the above, if a person carries on or conducts
17 any business for which a tax receipt is required by this
18 article without first obtaining such tax receipt, then the city
19 may prevent the business from operating until the required tax
20 receipt is obtained."

21 Did I read that correctly?

22 A. Yes.

23 Q. If a business is shut down for failure to have a BTR, does
24 code compliance tell them they need to go get a BTR?

25 A. Yes. That's the procedure. They usually tell the operator

1 or the violator how they can cure.

2 Q. And is that also stated in the notice of violations for
3 failure to have a BTR?

4 A. Yes.

5 Q. And if the said business were to obtain a BTR, they then
6 can open up and operate, correct?

7 A. Yes.

8 MR. BYERS: No further questions.

9 THE COURT: Thank you, sir. You can step down.

10 THE WITNESS: Thank you, your Honor.

11 THE COURT: This witness is excused, I take it. You
12 can go back to Miami Beach.

13 (Witness excused)

14 THE COURT: Defendants have any other witnesses?

15 MR. ARANA: No further witnesses.

16 THE COURT: Any further evidence?

17 MR. ARANA: No, your Honor.

18 MR. HUDSON: No.

19 THE COURT: Okay.

20 MR. ARANA: I'm sorry, your Honor. We have one
21 exhibit that we wanted to just introduce for the record.

22 THE COURT: What is that?

23 MR. ARANA: It is an ordinance.

24 THE COURT: Have you shown it to opposing counsel?

25 MR. ARANA: Yes.

1 MR. HUDSON: No objection.

2 MR. ARANA: Defendants' Exhibit 18.

3 THE COURT: That ordinance is what. So the clerk can
4 describe it.

5 MR. BYERS: 2016-4062.

6 THE COURT: Okay.

7 MR. BYERS: First may we approach and add these to the
8 books?

9 THE COURT: Yes. Give me one and give the clerk.
10 Mr. Hudson, what do you say?

11 MR. HUDSON: Your Honor, my story hasn't changed.

12 THE COURT: It is my story and I am going to stick to
13 it?

14 MR. HUDSON: That's probably the good news. My
15 closing has changed, though.

16 THE COURT: I wonder why that is.

17 MR. HUDSON: Although we are going to get to the same
18 place.

19 What we have learned today from the City of Miami
20 folks was there was nothing normal about this deal. Claims
21 that should have been appealed timely that may not have been
22 appealed timely ultimately ended up in some sort of appellate
23 process by special something. We don't know. City attorneys
24 making notes on files that don't need to be made. City
25 attorneys staying on top of cases and we wonder why they are

1 staying on top of particular cases. Nothing is right about
2 this.

3 The city relies on statute 137 or 377-102377(e) which
4 is supplemental to other statutes, meaning something else must
5 come first. And (e) on its face doesn't have any due process
6 involved at all. Again, something different.

7 One of our arguments, your Honor, is the application
8 of (e) to shut him down as it applied in this case a minimum
9 lacks procedural due process. My client stood before you and
10 emotionally testified that he tried everything he could try
11 from June 25 when he was in Israel, coming back two days later,
12 to pay. He went there. We have evidence that he was there.
13 We have pieces of paper that he was there. He tried to pay
14 multiple times.

15 They say he didn't pay, but they say he didn't pay
16 because the process. They would never have allowed him to do
17 that. But they weren't there. That may be the process.

18 THE COURT: They said the process wouldn't allow him
19 to pay. I think everyone is in agreement that he didn't pay.

20 MR. HUDSON: The evidence in this record, the witness
21 is the only person in the courtroom who was there on multiple
22 occasions and had the most to lose. The city has nothing to do
23 to lose here.

24 THE COURT: Why didn't he pay the extra thousand
25 dollars then if he had nothing to loss? What did he owe, 2600

1 for the BTR? He could have paid the thousand on the December
2 thing and been done with it.

3 MR. HUDSON: Your Honor --

4 THE COURT: It would have been cheaper than him hiring
5 Ms. Aiken and hiring Mr. Rosen or hiring Mr. Shir.

6 MR. HUDSON: That may be clear as we all sit here, and
7 this group has spent a month figuring it out and we have given
8 a presentation to you after a month of that, and they have had
9 their internal folks tell them this and that, but that wasn't
10 clear to him at the time. Because how many times did he say to
11 you I would not have put my business at risk for a thousand
12 dollars.

13 THE COURT: I think he made clear he didn't want -- he
14 knew that if he paid -- I have to look back. I am sure if he
15 knew it was one violation. But he certainly knew if he paid
16 those three violations, he could pay his BTR. That's what I
17 recall.

18 MR. HUDSON: Right, but he exercised his
19 constitutional right and his ordinance right to appeal. Then
20 the city agreed to waive all of those other things by let's do
21 this other appeal.

22 Now, they are going to say we did him a favor. We are
23 going to say you set us up. So the essence of my argument,
24 Judge, and then can you ask me more specifics about various
25 things if you want, but the essence of my argument is very

1 simple.

2 Nobody followed any procedures correctly here. The
3 result was this gentleman has lost his business, that is one of
4 the most valuable liquor store businesses in the country
5 because of where it is, because it is half a block from Ocean
6 Drive. The mayor wanted him out of business. They wanted
7 Mangos out of business. They are malignant tumors. All the
8 motivations were there. We know why they did it. We know why
9 they had the special process. They set him up.

10 So what's the result of that? All I am asking to do
11 today, Judge, is to open him up, let him generate revenue while
12 we litigate this case. As we know, the balance that the old
13 scales of justice have -- I am sure they are around here
14 somewhere. Get them out. That's what you do in preliminary
15 injunction hearings. What's harm to the city in letting him
16 open, generating revenue, so he can defend himself and pay for
17 his family and his kids until we make this decision? Because
18 right now what we all know from today is that nothing happened
19 the way it was supposed to happen in this case and we wonder
20 why. I have my views, but you know what. Hopefully I have the
21 next two years to convince you that I am right.

22 They set him up, your Honor. What is the downside at
23 this point? We know you can't open a new liquor store in Miami
24 Beach. There is your irreparable harm right there, in addition
25 to all the others we cited. Losing a business is an

1 irreparable harm. It is a property right. The U.S. and
2 Florida constitutions protect property rights. Ownership
3 interests in business is a property right. They used the
4 weapon of the BTR to take it away from him.

5 So in our view they are trying to change the narrative
6 and say, oh, you don't have a property right in this license.
7 The State of Florida gave us a license and told us we could
8 operate. The City of Miami Beach can't shut us down. We
9 allege and we believe we can prove and we believe the record
10 today suggests we have a reasonable chance of proving because
11 everything was done wrong in this case and everything was done
12 different, and nobody relied on anything. Now they are relying
13 on statutes and ordinances and technical stuff to try to say
14 you are done. That alone demonstrates our entitlement to this,
15 your Honor.

16 Give us a chance to defend ourselves and prove to you
17 and to this court that we were wronged and we did not get any
18 process. They did not tell you, not one of those witnesses
19 told you today that he got process. They showed up on his door
20 at 5:00 o'clock and you are closed. They used 377(e) to do
21 that. 377 (e) has to come with two things before it, and they
22 didn't do that in our view.

23 So there is no record evidence that they followed
24 their procedure. They used a supplemental thing that says they
25 may close him down. Every other thing in the ordinance, every

1 other situation in the Miami Beach code, where they are trying
2 to go after business requires a lawsuit, an administrative
3 hearing, something. We know why. Because that's due process.
4 They didn't give him due process.

5 Fundamental rights, the right in this country to start
6 your own business and operate it consistent with the law, there
7 are very few fundamental rights more important than that.

8 We have filed a First Amendment retaliation claim
9 under 1983. First Amendment is the First Amendment. It's the
10 most fundamental right in some people's views.

11 Mr. Doar's lawyer showed up on Thursday to have a
12 meeting with the city's attorney office.

13 THE COURT: Your first claim is very, very thin. That
14 someone had a conversation where they said let's talk about
15 this and then he gets shut down, that's -- it wasn't like he
16 was standing in front of the City of Miami Beach screaming that
17 they were unfair. He was actually in the process of
18 negotiation.

19 MR. HUDSON: But now that we have learned going
20 backwards, we knew the system was rigged.

21 THE COURT: Well, I mean that might be true, but
22 that's not because of the statement he made or his agents made
23 to the city attorney.

24 MR. HUDSON: We don't know.

25 THE COURT: Well --

1 MR. HUDSON: I would agree with you.

2 THE COURT: If there was a motion to dismiss on, I
3 would say that's out because there's no plausibility to that.

4 MR. HUDSON: I would agree with you that that's not my
5 best count, but I am telling you, we are dealing with
6 fundamental rights, the right to go start a business.

7 This gentleman obviously isn't from the United States
8 originally. He wanted to start a business. He has a family.
9 He has a young family. He is trying to do everything he can.

10 We all know you can take judicial notice of all the
11 articles and the recent referendum and everything else. We
12 know that this commission or the last commission as of a week
13 ago wanted these folks gone.

14 So what do we have, Judge, in summation?

15 We have they wanted him gone. They are using the old
16 what I call anaconda technique. They are making the hour
17 shorter, making them shorter, making them shorter. Somebody
18 discovered Ocean 9 didn't have a BTR. That's interesting. So
19 our view of the story is they did everything they could to get
20 one of four. Now they got one of four.

21 THE COURT: If they really wanted to do everything
22 they could, they wouldn't have issued that citation. They
23 would have just let the clock run out.

24 Why would they put him on notice in June if they are
25 trying to set the guy up. By the way, you haven't gotten your

1 BTR. They would have never said it. September 30 they would
2 have said sorry, or October 1.

3 MR. HUDSON: Until I am entitled to get some discovery
4 and get behind this white rectangular box -- you can never
5 prove a conspiracy at this stage, ever. That's what happened
6 here. So all I am asking to you do, Judge, is open him up
7 temporarily, let him generate business so he can defend himself
8 and operate his business. There's no harm, no harm to the city
9 as a result of that. We will see where we are in a year or
10 two. Otherwise, Judge, this is one of the most unjust cases I
11 have ever seen in my life.

12 Thank you.

13 THE COURT: What do the defendants say?

14 MR. ARANA: I have rarely been in an argument where
15 the other side doesn't cite a single case.

16 THE COURT: They cited cases.

17 MR. ARANA: There is not a single case cited for the
18 proposition that operating a business is a property right
19 protectable by the Fourteenth Amendment. The reason he can't
20 cite that is because it's all to the contrary.

21 Again, in our initial brief we cited all of the cases
22 which say that an expired -- there is no property right in an
23 expired license. There is a series of cases that we cite.
24 Vaster v. Citroen. Business owner had no property interest in
25 an expired liquor license.

1 Lockhart v. Matthew, Third Circuit. Natural
2 expiration of the license negates any claim that it is a
3 property interest protected by the due process clause.

4 Lappen v. Costello. When an ordinance provides for
5 the issuance of a license, a party has no due process right for
6 a renewal or issuance of the license.

7 THE COURT: Due process right because of the way his
8 business was closed?

9 MR. ARANA: No, because the issue is, is there a
10 property interest that is at issue that's being affected. The
11 interest that they are claiming was first the license, but they
12 didn't have a license. So they don't have a property interest
13 to protect. Now they are saying their property interest is the
14 business. Okay. The operation of the business. It was
15 improper to shut them down.

16 The 11th Circuit, Baltimore Air Transport v. Jackson,
17 419 Fed.Appx. 932. No constitutional -- sorry. No
18 constitutional right is implicated by a complaint that asserts
19 a property interest in maintaining a business or earning a
20 profit. Because the complaint fails to state a claim for
21 procedural due process, the district court properly dismissed
22 it.

23 So there isn't a property interest at issue that would
24 give rise to a procedural due process claim to begin with. The
25 law is crystal clear on that.

1 What about substantive due process? Substantive due
2 process is clear there is no fundamental right at issue here
3 that gives rise to a substantive due process claim.

4 I would cite Friedman v. Town of Eatonville. That's a
5 case where a nightclub was closed down for noise and
6 disturbances, and the plaintiff brought a procedural due
7 process and a substantive due process claim. The Eleventh
8 Circuit in that case affirmed the dismissal of that complaint
9 on the grounds there was no procedural due process claim
10 because there was a state law claim for damages.

11 You don't even have to present the procedure that the
12 city has in place. It's enough if there's a state law remedy
13 for damages.

14 Here, the city has a procedure for appealing a denial,
15 which we have talked about, that the plaintiffs have not
16 pursued. But in any event, they certainly would have a claim
17 in state court.

18 Now the court goes on to say: "To the extent
19 plaintiffs assert a violation of substantive due process, we
20 decline to extend the concept of fundamental constitutional
21 rights to encompass plaintiff's claims."

22 In other words, running a business is not a property
23 interest or a fundamental right protected by the federal
24 constitution.

25 If they have a state law claim, they can pursue a

1 state law claim. This is a state permitting a licensing issue.
2 That's what we are talking about here. We spent an entire
3 afternoon in federal court talking about the city's processes
4 and the plaintiff's efforts to get a new BTR license. We think
5 the record is clear. The only reason we are here is because
6 the plaintiff, one, let his license expire without paying for
7 it; then he was cited for it nine months later, and he still
8 didn't pay for the license. He could have gone into the city
9 and paid it that very day. The only thing he had to do was pay
10 an outstanding fine that was six months old. It was six months
11 old and he had never appealed it.

12 Then the plaintiff didn't appeal the new violations on
13 June 25th either. He had a process for doing that. He didn't
14 do that either. And if at any point he had paid for his BTR
15 and paid the outstanding fines, they would have given him the
16 BTR on the spot.

17 THE COURT: But he did eventually appeal the three
18 violations. He says it was on appeal to the special master.

19 MR. ARANA: What he did, he hired an attorney long
20 after the time for appeal had run and he contacted the city
21 attorney's office. The city attorney worked with him, and the
22 plaintiff, one, admitted the violations and, two, agreed to pay
23 the thousand dollar fine, which he never paid the BTR during
24 that entire year. He never tendered a check. He could have
25 paid it online.

1 Once those violations were resolved -- I think the
2 reason, if the plaintiff had filed a timely appeal of those
3 violations, then they probably wouldn't have even shown up as
4 due on the system.

5 THE COURT: That's what your witness says.

6 MR. ARANA: Since he didn't appeal them through the
7 process, they were still technically due. He wasn't going to
8 get his BTR issued until he resolved the outstanding fine.

9 THE COURT: He does that on August 28. His attorney
10 and the city attorney come to an agreement, you are going to
11 pay \$1,000 and everything is going to go away. What happens
12 between August 28 and September 28? Why does it take a month
13 to have a simple order that says you are going to pay 1,000
14 bucks and everything is over?

15 MR. ARANA: As I understand it, the special master has
16 a hearing every week or so in the City of Miami Beach and
17 addresses these things. This was right in the middle of the
18 hurricane, is my understanding. There was no hearing on
19 September 7th or September 14. So it was brought before the
20 special master on the 28th.

21 THE COURT: What happened on the 21st?

22 MR. ARANA: I don't know if there was a hearing or
23 not. Maybe they didn't hear these issues on that date. That's
24 not in the record at this point.

25 But the point is that the plaintiff pursued this

1 process to try and avoid paying those fines. He admitted the
2 violations, but he had a reduced fine. In any event --

3 THE COURT: Doesn't this seem kind of inequitable?
4 This fellow didn't pay \$2,000 and he's losing -- I have no idea
5 what his business is worth, but he's losing a million dollar
6 business all because he didn't pay \$2,000. It was clear six
7 days later or two weeks later he was willing to pay after
8 everything got cleared.

9 The way I see it, he didn't realize, I think, because
10 it just doesn't make sense if he did realize it. He could have
11 paid that money to the city and it would have been held in --
12 the BTR just simply would not have been issued, as I understand
13 it. It would have existed, but they would not have given him
14 the piece of paper to hang up in his business. If he had done
15 that, then he would have been fine.

16 Even if he took care of those fines the next fiscal
17 year, he would have been fine, according to the testimony of
18 the fellow from the finance department. Right?

19 MR. ARANA: Yes, your Honor.

20 THE COURT: So the punishment is for that is --
21 shouldn't the city have some kind of equity and say of course
22 we know you want to continue to do your business and we are not
23 going to close you down because of \$2,500. That would be
24 ridiculous.

25 MR. ARANA: I think the point, your Honor, is that the

1 plaintiff can make these arguments to the city through the
2 administrative process. He can make this exact case if he
3 wants to.

4 It's inequitable that he was trying to pay, that he
5 didn't understand he could have submitted the payment, if
6 that's what his testimony is. He didn't understand that he
7 could have tendered the check. He could make all those
8 arguments through the city process. He hasn't done that.

9 So now we are in federal court, and the question is
10 does he have a likelihood of success on a federal claim. He
11 doesn't because he has no federally protected property interest
12 at stake. There is no substantive due process claim. There is
13 no procedural due process claim. There is no claim that the
14 ordinance that says you can be prevented from operating if you
15 don't have a BTR license is vague.

16 You are not supposed to operate without a license.
17 Everybody knows that. It's clear. The ordinance says that.

18 So our view of it is that, frankly, the plaintiff
19 didn't pay for his license for more than a year. But if he has
20 some argument, if he has an argument that, look, I should be
21 allowed to be grandfathered in or I should be allowed to get it
22 at this point because of everything that happened, that's an
23 argument he needs to take up through the adequate state court
24 system. Otherwise, can you imagine the number of cases that
25 you would be inundated with if every time somebody got was

1 involved in a state court permitting system and didn't like the
2 outcome --

3 THE COURT: What makes this a little different is that
4 his business is closed. If you said, okay, take this up on the
5 city and keep running your business, but know when you lose
6 this thing we are going to close you down if the city doesn't
7 give you some relief through the special master or whoever you
8 appeal to.

9 MR. ARANA: And I can understand that point, but the
10 question is whether he is in the right forum. We don't --

11 THE COURT: Your main argument then is the forum
12 argument, not the facts.

13 MR. ARANA: No, I think --

14 THE COURT: Other than the facts, the facts relate to
15 the forum.

16 MR. ARANA: Well, we have heard the facts today. I
17 think the city's process is clear and it was fair. All he had
18 to do was either renew his license timely or pay it any time
19 during the year and he would have had it.

20 If he thinks that he should be entitled to a new BTR,
21 he should apply for one. I think the facts show that the city
22 didn't do anything wrong and that the process is fair and that
23 he just needs to follow through with it.

24 But in addition to that, we are in federal court on
25 federal claims that he doesn't have. So what the court can say

1 is, look, you don't have a likelihood of success on the merits
2 because you don't have federal claims. In fact, they are going
3 to be dismissed. Go through the state court procedure, file an
4 application for a BTR, and if the city says you are not
5 entitled to one, take that before the city manager and make the
6 case they are making.

7 That's what they could have done. They could have
8 done that a month ago. But you can't open the door to federal
9 court just because it's unfortunate that they're out of
10 business, and it is.

11 I will note that the case law makes it clear that,
12 first of all, lost profits is generally not considered
13 irreparable harm. They have more than one location. If they
14 were to successfully make a claim down the road, they could
15 calculate lost profits. So I don't think they even
16 establish --

17 THE COURT: Does the second location sell liquor too?

18 MR. HUDSON: Beer and wine. Only beer and wine.

19 THE COURT: But the one we are talking about is a true
20 liquor store.

21 MR. HUDSON: Right, full liquor.

22 MR. ARANA: So I don't think they established
23 irreparable harm. I think money damages is money damages. If
24 they are right on this -- I don't think they are -- but if they
25 are right, they can pursue a claim for money damages.

1 Also the case law is clear that irreparable harm is
2 not enough to get an injunction alone.

3 We know we are not supposed to be in federal court.
4 We don't have a claim. We don't even have a case to cite to
5 suggest we have one. It's really unfortunate for us that we
6 are closed down. That's not enough.

7 For all those reasons we would ask that the court deny
8 the motion. Thank you.

9 THE COURT: Briefly, Mr. Hudson.

10 MR. HUDSON: We absolutely believe we have federal
11 claims. We only had two days to brief this thing. If you need
12 some more, we are happy to give you more. I am sure these
13 young folks will be spending some time on it. We absolutely
14 have federal claims here.

15 There is no state court remedy for us. That's exactly
16 why we have federal claims. There is no state court remedy.
17 Because you have seen the internal notes in the system say
18 don't give this guy the license when he opens up. You call it
19 futility. Call it whatever you want. If we hadn't filed that
20 application, it would have taken six months, a year, whatever,
21 whatever. We are not obligated to do that much.

22 Specifically there is an exception in 1983 cases for
23 exhausting administrative remedies. We don't have one, as I
24 think you learned today. We don't have one because they forced
25 us into a new application. This is not an appeal. This is a

1 new application, which we know from what we have seen today,
2 the evidence, the uncontroverted evidence, that it's going to
3 be denied.

4 So that's exactly what a 1983 claim is and that's
5 exactly why --

6 THE COURT: But there is a process if it's denied for
7 to you appeal within the city. Even if I take for granted that
8 it's going to be denied, then you have a process within the
9 city to appeal that.

10 MR. HUDSON: 1983 says I don't have to do that if I
11 choose not to. We have chosen not to because we believe that
12 we will not be around by the time that process is accomplished
13 because of everything that you heard today. Everything was
14 different, nothing that you could normally rely upon. They are
15 asking him to rely on stuff, yet they did everything
16 differently in this case, your Honor.

17 THE COURT: But I don't see why you say they did
18 everything differently. I think they did everything by the
19 book, at least from the testimony I heard.

20 MR. HUDSON: The special master proceeding, there was
21 nothing by the book. The good news is there was a special
22 master proceeding because they have waived all those other
23 arguments and appellate dates and deadlines.

24 THE COURT: I agree the special master was somewhat
25 unusual. He said it happens occasionally, but that he didn't

1 file the appeal on the back of the ticket or the front of the
2 ticket but, rather, his lawyer convinced the city attorney to
3 allow the --

4 MR. HUDSON: Correct, and his lawyers are telling him
5 we are now in the process, don't worry, we will take care of
6 it. So he's good to go. Then when they tell him we are good
7 to go, give me the check, we gave him the check. All of the
8 sudden we have a month delay. The hurricane, I can't argue
9 with that, but there is still another day. There's too many
10 coincidences.

11 THE COURT: Shouldn't he be suing his advisers and his
12 lawyers? Shouldn't his advisers and lawyers have been saying,
13 hey, you have got to go down there or we have to go down there
14 and write a check to \$2,265 and give it to that clerk because
15 no matter what happens with these things, you are going to be
16 protected. Your license, you are not going to lose your BTR.

17 MR. HUDSON: I can't comment on that. Harold Rosen
18 has been on the beach forever. He is a well-known lawyer. I
19 know Guy Shir as well. I can't speculate. That's speculation,
20 Judge.

21 I want to address these claims. There is no question
22 in our view we have procedural due process. There was no due
23 process here. You were right. I believe you are absolutely
24 right. What due process did he have before they shut him down
25 on the 6th. None. Zero.

1 I believe -- Judge, tell me if you want a couple more
2 cases.

3 THE COURT: I do want cases, yes. I could be wrong,
4 and I asked the defendant. He said he is relying on both. But
5 to me it seems like his strongest argument is that you
6 shouldn't be in federal court. There is no property interest
7 in the license or in the running of a business.

8 MR. HUDSON: There is no question under the Fourteenth
9 Amendment, your Honor, we are entitled to be here. There is
10 concurrent jurisdiction in 1938 cases. We will give you more
11 case law.

12 THE COURT: When are you going to do that?

13 MR. HUDSON: I will ask you.

14 THE COURT: It's up to you. I know you want to move
15 quickly.

16 MR. HUDSON: Absolutely.

17 THE COURT: Your problem is that if I don't rule on
18 this thing, you then have a report and recommendation that goes
19 to Judge Ungaro. Then you have two weeks to object. So every
20 day you have to add at least two weeks on to that and then two
21 weeks to respond. So you are talking about a long period of
22 time.

23 MR. HUDSON: We were a little heartbroken. I am happy
24 to meet you, but we were heartbroken when we saw it come in
25 because we knew it would take us Monday. I will try to get it

1 before Monday.

2 THE COURT: Don't get before Monday because I am not
3 looking at it before Monday.

4 MR. HUDSON: I thought we were Wednesday. We are
5 Friday.

6 THE COURT: We are Friday.

7 MR. HUDSON: If I can get it to you sooner, I will.
8 But Wednesday I will get you more.

9 You want it on federal jurisdiction essentially.

10 THE COURT: Yes.

11 By Wednesday, file something.

12 You folks don't need to, but if you want to respond,
13 respond by Friday. If it's just a response -- that's right,
14 Thursday and Friday is Thanksgiving. Next week the court is
15 closed on Friday. So if you get it to me by Wednesday, there
16 is no point. If you file it by Sunday night or Monday morning
17 because the court is closed.

18 MR. HUDSON: Your Honor, do you have the ability to
19 shorten the briefing time or only Judge Ungaro on the R&R?

20 THE COURT: I can recommend that that be done.

21 MR. HUDSON: Could you recommend that, please.

22 THE COURT: I will consider that, yes.

23 MR. HUDSON: Thank you.

24 THE COURT: Anything else anybody thinks should be
25 briefed?

1 MR. ARANA: No, your Honor.

2 THE COURT: I don't want 80 pages on this thing.

3 MR. HUDSON: No, I won't have time to do 80. We will
4 do ten good pages.

5 THE COURT: Thanks, everybody, for your hard work
6 today. I will try to get something out quickly.

7 Court is in recess.

8 Thank you, all. Have a good Thanksgiving.

9 MR. HUDSON: Thank you for giving us a quick hearing.
10 We appreciate it.

11 C E R T I F I C A T E

12
13 I hereby certify that the foregoing is an accurate
14 transcription of the proceedings in the above-entitled matter.

15
16
17 November 22, 2017 /s/ Jill M. Felicetti
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<p>BY MR. ARANA: [3] 88/2 95/20 128/6</p> <p>BY MR. BYERS: [4] 130/2 133/24 134/6 149/6</p> <p>BY MR. HUDSON: [45] 15/1 20/20 23/7 25/10 27/14 27/23 28/21 29/7 33/21 35/8 37/15 39/2 39/19 43/11 43/23 44/9 45/25 102/2 107/2 107/7 110/10 111/15 112/14 112/21 115/23 116/18 117/5 117/21 118/9 118/20 119/22 120/8 125/25 127/12 136/19 136/25 139/4 140/10 144/9 145/2 145/10 145/16 145/20 146/11 147/16</p> <p>BY MR. PAPPAS: [21] 47/8 49/9 49/22 51/15 53/17 58/17 59/7 61/6 62/16 63/5 63/19 64/24 66/4 66/19 67/2 67/25 68/8 71/11 77/3 77/11 84/6</p>	<p>MR. ARANA: [55] 3/9 9/15 9/23 10/2 10/16 11/16 11/25 12/4 12/17 12/24 13/8 13/12 13/21 13/24 14/3 28/12 35/24 86/23 86/25 87/3 87/6 101/22 109/6 110/1 110/8 112/13 115/16 117/18 117/25 118/16 119/19 121/22 127/8 128/3 129/15 150/14 150/16 150/19 150/22 150/24 151/1 158/13 158/16 159/8 161/18 162/5 162/14 162/21 163/18 163/24 165/8 165/12 165/15 166/21 171/25</p> <p>MR. BYERS: [27] 36/14 133/21 135/21 138/14 138/19 138/21 138/24 140/4 140/7 140/9 141/17 142/2 144/7 144/12 145/5 145/13 145/18 145/22 146/5 146/9 146/21 147/14 147/21 149/4 150/7</p>	<p>151/4 151/6</p> <p>MR. HUDSON: [101] 3/5 3/13 3/17 3/23 4/21 5/7 5/13 5/18 6/2 7/1 7/18 8/13 14/17 20/11 20/18 24/25 25/4 25/9 27/20 27/22 29/5 33/15 35/7 35/22 36/5 36/13 36/20 36/24 37/4 37/12 38/19 38/22 38/24 39/18 42/18 42/24 43/21 47/2 49/6 58/14 59/4 62/13 63/1 64/15 64/20 65/17 65/22 68/6 71/8 86/16 86/21 87/8 87/18 101/25 107/5 113/2 117/3 117/20 118/5 118/18 120/2 120/5 125/9 125/23 127/9 128/2 139/24 144/15 149/2 150/17 150/25 151/10 151/13 151/16 152/19 153/2 153/5 153/17 156/18 156/23 156/25 157/3 158/2 166/17 166/20 167/9 168/9 168/19 169/3 169/16 170/7</p>
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	\$	0
MR. HUDSON:...	\$1,000 [13] 13/8	0050 [1] 1/19
[10] 170/12 170/15	31/20 70/24 97/14	01 [1] 1/6
170/22 171/3 171/6	98/7 103/3 106/7	02 [2] 42/22 110/6
171/17 171/20	106/13 109/24 121/3	03 [1] 42/23
171/22 172/2 172/8	124/11 131/8 162/11	08S27 [2] 1/24
MR. PAPPAS: [16]	\$10,000 [1] 77/1	172/18
27/10 33/12 42/13	\$100 [3] 28/3 28/16	1
43/3 43/10 44/5 44/7	74/20	1,000 [1] 162/13
47/4 49/7 51/14	\$2,000 [3] 44/22	10 [10] 18/6 40/11
62/24 63/16 66/18	163/4 163/6	40/11 40/21 42/1
86/2 86/12 86/14	\$2,240 [1] 82/14	49/12 49/21 61/3
THE COURT:	\$2,246 [2] 70/12	131/19 131/19
[229]	98/7	10/13 [1] 43/17
THE DEPUTY	\$2,246.46 [3] 71/15	10/18/2017 [1] 33/9
CLERK: [3] 36/23	97/1 97/16	10/4 [2] 42/12 43/17
37/2 37/13	\$2,265 [1] 169/14	10/6 [2] 117/4 117/5
THE WITNESS:	\$2,500 [1] 163/23	100 [1] 1/17
[33] 14/22 20/7	\$3,000 [1] 34/12	102 [9] 2/9 21/1 21/3
22/15 22/22 23/3	\$5,000 [1] 77/1	26/5 42/4 42/9 89/8
28/17 29/3 45/23	\$570 [2] 70/5 70/7	94/23 101/9
53/10 53/14 53/16	\$966 [1] 39/22	102-377 [2] 139/23
84/3 86/4 86/9 87/24	,	141/1
95/6 101/20 106/21	'16 [4] 26/8 91/16	102.372 [1] 14/10
106/24 116/14 118/8	92/3 108/15	102.377 [1] 149/11
125/15 125/22	'17 [5] 19/18 32/2	102.384 [1] 14/12
129/24 136/2 136/6	58/21 108/15 126/10	102.385 [1] 14/12
136/10 136/12	/	102377 [1] 152/3
136/16 138/3 138/8	/s [1] 172/17	103 [3] 21/2 21/5
148/22 150/9		26/5
		10:00 a.m [5] 18/1

1	12/16 [1] 103/1	17-CV-23958 [1]
10:00 a.m... [4] 30/9	128 [1] 2/10	1/2
43/23 71/4 132/3	12:00 a.m [1] 18/2	17/18 [1] 147/20
10:00 p.m [1] 30/13	13 [2] 43/17 90/14	1700 [1] 94/9
10E [1] 49/11	130 [1] 2/12	173 [1] 1/7
10th [1] 78/1	1344 [1] 51/3	1755 [1] 94/10
11 [40] 15/18 15/19	13441 [1] 55/11	18 [3] 22/4 147/20
15/21 16/2 18/12	136 [1] 2/13	151/2
19/14 19/16 39/15	137 [1] 152/3	1938 [1] 170/10
40/2 40/12 40/15	14 [6] 90/14 134/20	1983 [4] 156/9
41/20 41/20 41/23	136/25 137/2 139/6	167/22 168/4 168/10
42/1 47/25 48/14	162/19	1st [4] 13/6 38/19
48/20 48/23 50/8	149 [1] 2/14	39/1 44/14
56/2 56/10 56/24	14th [1] 78/16	1th [1] 92/9
57/9 57/13 57/22	15 [10] 2/5 53/3	
57/25 58/6 58/9	69/17 69/19 71/16	2
58/21 58/25 60/25	96/16 96/17 96/18	2,200 [1] 82/21
79/6 79/10 79/19	108/19 108/19	20 [11] 62/13 62/22
79/23 126/5 126/10	15th [1] 16/23	63/7 72/21 74/2
132/12 138/20	16 [12] 48/12 48/22	74/12 132/7 132/9
1100 [9] 47/25 48/20	49/1 49/19 61/4	138/1 138/18 139/1
55/9 55/13 55/15	70/18 76/14 92/24	20-day [1] 125/5
55/17 56/2 99/15	103/1 108/15 140/5	200 [1] 1/13
99/17	149/12	2006 [1] 88/11
11:02 [1] 3/2	16-17 [1] 122/24	2011 [4] 52/1 53/24
11:33 a.m [1] 117/5	16/17 [1] 114/6	88/13 89/25
11:59 p.m [1]	16th [1] 16/23	2012 [4] 16/10 53/3
122/18	17 [14] 1/4 37/1	53/24 89/25
11th [1] 159/16	45/11 92/19 93/8	2012/13 [1] 90/14
12 [6] 17/12 18/3	94/1 96/9 96/13	2013 [1] 53/24
43/13 133/3 135/25	96/19 113/1 114/6	2013/14 [1] 90/14
138/12	122/24 123/1 146/16	2014 [2] 53/24 130/9
		2014/2015 [1] 90/14

2	69/25 72/14 72/25	107/18 107/21
2015 [5] 90/14 91/7	74/12 74/17 78/22	138/14 161/13
91/16 92/3 92/3	83/7 94/3 98/23	26 [1] 10/4
2015/16 [1] 92/24	100/3 110/10 126/15	2600 [1] 152/25
2015/2016 [1] 90/14	129/1 129/9 131/6	27 [22] 21/9 21/25
2016 [41] 9/19 9/25	132/20 133/10	25/20 60/12 66/18
12/19 19/18 43/21	134/18 134/24 135/1	68/5 68/8 68/11 70/2
48/12 48/22 49/1	135/13 137/20	72/14 76/15 80/2
49/17 49/20 49/24	172/17	82/9 82/10 82/11
50/4 55/3 56/3 56/24	205 [2] 89/7 92/8	82/15 96/20 97/13
57/5 57/13 57/23	21 [15] 49/16 49/22	105/14 105/22
57/24 58/21 59/4	49/24 50/4 61/6 61/8	107/11 115/21
61/8 61/15 64/9	61/8 61/15 63/11	27th [22] 60/8 60/9
68/14 71/8 72/15	64/9 68/14 97/7	65/4 66/15 66/19
76/14 90/14 91/7	97/10 131/24 132/2	66/22 68/3 68/10
92/11 92/25 93/9	21601704 [1] 109/18	69/25 71/7 75/20
93/24 94/3 97/8	2170312 [1] 109/19	76/7 96/25 97/7
97/10 100/2 129/1	2170313 [1] 109/19	97/24 97/25 102/25
131/24 132/3	21st [2] 50/2 162/21	103/16 106/2 107/14
2016-17 [1] 94/1	22 [2] 30/8 172/17	107/23 109/17
2016-4062 [1] 151/5	23958 [1] 1/2	28 [21] 25/20 32/2
2016/17 [6] 92/19	24 [2] 61/18 61/20	33/1 34/13 34/21
93/8 96/9 96/13	25 [16] 60/10 60/13	35/2 36/16 39/16
96/19 123/1	63/15 63/16 72/25	77/13 78/24 78/25
2016/2017 [4] 44/13	73/7 74/12 75/24	79/6 80/13 82/7
56/3 56/10 134/18	132/20 133/10	109/4 122/12 123/16
2017 [41] 1/4 10/4	136/24 138/12	131/6 162/9 162/12
19/21 19/25 27/1	138/17 138/19	162/12
28/23 29/2 30/24	138/25 152/11	28th [12] 29/19
31/1 31/4 31/17 33/9	25th [12] 63/10 65/4	29/20 31/15 35/10
35/2 36/17 44/13	73/3 74/17 97/19	35/12 39/7 78/22
44/14 56/3 56/10	98/10 98/23 107/13	78/22 79/19 80/6

2	374-3330 [1] 1/14	7
28th... [2] 122/22	377 [4] 139/23 141/1	704 [1] 43/14
162/20	155/20 155/21	7th [2] 78/12 162/19
29 [2] 33/1 78/25	377-102377 [1]	8
29th [4] 35/10 35/12	152/3	80 [2] 172/2 172/3
36/16 39/9	4	85 percent [1] 48/11
2nd [4] 39/4 39/11	400 [4] 1/24 99/25	865 [24] 47/24 48/18
45/23 122/13	100/6 172/18	49/16 50/10 50/14
3	4062 [1] 151/5	52/9 52/10 54/23
30 [23] 9/19 9/25	419 [1] 159/17	55/17 84/24 89/24
10/14 12/16 12/19	4200 [1] 1/18	91/6 93/12 96/22
54/9 56/24 57/5	47 [1] 2/6	99/16 99/17 99/19
57/23 57/24 59/4	5	108/11 109/15 114/3
89/25 91/7 92/11	527 [1] 10/25	114/22 115/11
92/25 93/24 94/3	530-0050 [1] 1/19	145/12 147/2
103/19 122/17	5:00 o'clock [3] 46/6	88 [1] 2/8
122/18 122/20 129/1	46/9 155/20	8:00 a.m [1] 18/2
158/1	5:00 p.m [5] 7/10	8:00 p.m [1] 18/1
305 [2] 1/14 1/19	117/4 123/20 136/22	8:33 [1] 71/4
30th [9] 54/2 57/13	139/21	8:39 [2] 49/17 50/2
92/7 92/10 95/2 95/4	5th [2] 51/3 55/11	8th [1] 111/24
100/3 108/24 123/1	6	9
33128 [2] 1/25	666 [1] 11/1	90 percent [1] 5/20
172/19	69 [3] 140/9 140/10	932 [1] 159/17
33131 [2] 1/13 1/18	149/13	9th [1] 78/1
3330 [1] 1/14	6th [11] 36/17 45/25	A
35 [4] 140/6 140/7	46/2 46/3 46/5 46/6	A-C-C [1] 121/15
140/9 149/13	46/9 82/13 83/7	a.m [9] 3/2 18/1
36 [2] 140/10 149/13	146/1 169/25	18/2 18/2 30/9 43/23
3600 [1] 1/13		71/4 117/5 132/3
370 [1] 149/9		

A	above [4] 59/15 141/4 149/16 172/14 above-entitled [1] 172/14 absence [2] 4/5 5/15 absent [1] 8/25 absolute [1] 4/5 absolutely [4] 167/10 167/13 169/23 170/16 accept [23] 28/7 28/16 70/19 73/20 74/9 80/8 80/10 82/4 82/6 82/7 82/8 85/6 85/7 85/10 94/17 96/4 103/13 114/25 115/8 126/8 126/25 128/17 128/18 accepted [12] 63/3 96/14 96/15 97/2 97/3 100/10 102/6 105/4 106/9 123/13 123/18 123/19 access [3] 42/20 147/7 147/8 accomplish [3] 24/7 24/8 25/23 accomplished [1] 168/12 according [4] 59/10 74/16 83/13 163/17 accordingly [1]	120/15 account [3] 100/18 115/20 115/23 accurate [8] 103/10 121/7 121/8 121/9 121/15 121/18 121/19 172/13 accurately [1] 116/20 across [1] 75/19 action [1] 142/15 actions [1] 142/22 active [2] 99/16 113/16 activity [5] 10/23 11/2 11/3 11/6 91/1 actually [9] 36/16 40/19 79/18 79/18 94/21 105/22 106/6 135/24 156/17 ADA [1] 61/25 add [6] 36/1 90/21 90/23 91/21 151/7 170/20 added [1] 91/17 adding [1] 91/23 addition [4] 97/13 108/4 154/24 165/24 additional [5] 91/18 99/15 104/20 141/3 149/15 Additionally [1]
----------	--	---

A	affected [1] 159/10	120/23 129/10
Additionally... [1]	affidavit [10] 88/12	134/10 135/9 139/6
94/13	104/15 104/16	143/8 149/12 149/12
address [13] 6/5	104/25 130/20	152/6 158/21
48/15 48/17 51/3	130/22 130/25	agents [1] 156/22
51/21 54/5 54/23	131/17 143/5 143/10	ago [3] 18/17 157/13
54/25 55/1 74/10	affirmed [2] 109/19	166/8
108/11 113/19	160/8	agree [10] 5/11 25/5
169/21	after [41] 3/23 8/9	34/12 71/1 109/2
addresses [1]	9/8 20/2 21/3 25/20	114/20 127/16 157/1
162/17	28/6 29/9 30/10	157/4 168/24
adequate [1] 164/23	30/13 32/16 33/23	agreed [27] 34/8
adjudicated [4]	34/1 36/16 41/22	46/13 71/22 80/22
95/20 121/3 121/11	42/5 42/5 42/7 45/24	81/1 81/2 81/2 81/5
122/3	50/6 53/16 55/25	81/11 107/6 107/20
administrative [9]	55/25 57/14 57/16	109/1 110/1 111/20
7/17 11/18 12/9	58/1 58/3 58/4 58/6	122/11 123/16 131/6
12/13 13/21 14/1	58/6 72/14 72/23	131/7 131/13 143/14
156/2 164/2 167/23	78/16 79/3 81/23	143/15 143/19
admissible [1] 43/8	82/7 100/18 153/8	144/21 145/1 145/2
admit [2] 32/18	156/2 161/20 163/7	153/20 161/22
111/14	afternoon [7] 46/9	agreeing [1] 76/17
admitted [7] 36/14	88/4 88/5 124/15	agreement [7] 30/2
81/24 81/25 130/15	130/4 139/21 161/3	31/7 31/11 34/10
131/7 161/22 163/1	afterwards [1]	144/24 152/19
advance [3] 40/8	36/13	162/10
127/10 137/8	again [27] 5/10 9/11	agreements [2]
advent [1] 148/24	10/16 34/25 35/14	143/19 144/21
advise [1] 120/15	37/18 53/10 65/3	ahead [9] 27/14 34/5
advised [1] 100/15	73/1 74/13 78/10	63/16 96/6 113/4
advisers [2] 169/11	81/18 87/10 107/5	120/5 127/12 137/15
169/12	107/20 110/2 111/5	139/4

A	154/18 154/25	126/22 130/15
Aiken [1] 153/5	157/10 157/10 158/6	142/24
Air [1] 159/16	158/20 158/21 163/6	also [24] 11/6 18/12
alcohol [5] 21/3	164/7 165/17 166/12	21/18 21/19 27/18
30/13 49/2 49/17	167/7 168/22 169/7	28/1 29/13 30/23
132/18	172/8	31/1 40/20 41/19
alcoholic [1] 131/25	allegations [1]	89/11 89/14 89/15
Alex [4] 32/21 32/23	112/12	91/10 97/14 116/21
32/24 118/9	allege [2] 11/24	117/10 131/19 137/3
all [85] 5/8 5/24 6/7	155/9	137/6 149/1 150/2
6/10 6/18 7/22 9/10	alleged [2] 104/20	167/1
10/2 10/17 14/16	104/23	alternative [1]
16/6 20/10 20/17	allegedly [1] 77/14	142/18
24/23 27/7 30/19	alleging [1] 6/15	Although [2] 4/2
30/20 30/22 31/8	allow [11] 11/25	151/17
31/11 31/11 41/13	23/5 23/10 35/17	always [13] 19/16
41/13 42/13 42/16	36/11 56/7 79/7	19/17 19/18 19/19
43/25 44/15 47/16	111/25 145/7 152/18	19/20 26/17 56/21
49/4 50/10 50/18	169/3	57/18 57/20 58/7
52/6 54/13 62/20	allowed [7] 11/20	70/11 94/17 104/19
65/16 66/1 68/3	45/5 83/4 83/4	am [90] 4/7 5/20
68/13 68/22 75/2	152/16 164/21	7/23 8/8 8/12 9/21
75/7 76/2 76/17	164/21	10/17 12/25 13/13
78/19 85/16 90/5	allows [1] 138/3	14/14 15/8 17/15
91/3 91/7 92/7 98/7	almost [3] 48/10	19/24 20/19 22/25
100/22 101/1 109/2	81/20 125/25	24/17 25/1 25/6 26/7
110/12 112/4 116/2	alone [4] 102/18	28/10 31/9 32/12
116/22 119/14	102/20 155/14 167/2	38/10 41/24 46/15
122/13 127/25 131/5	along [1] 77/11	46/16 50/17 57/3
131/8 140/12 144/5	already [11] 7/24	57/21 61/20 65/9
144/19 152/6 153/6	14/5 23/23 24/4 71/6	65/9 66/12 66/17
153/20 154/7 154/10	72/14 76/10 106/2	68/8 69/1 69/2 69/6

A		
am... [52] 70/23	and/or [3] 114/3	76/12 76/12 76/21
72/12 73/5 73/5	114/22 147/1	76/21 85/21 86/2
78/17 86/5 86/10	announcements [1]	87/17 88/24 89/2
88/9 89/18 92/16	86/8	91/21 94/5 100/6
94/2 95/15 97/9	another [15] 20/8	100/8 100/8 101/25
97/22 106/10 107/14	40/16 40/20 65/5	104/6 105/7 105/15
107/15 108/13 109/6	75/8 75/9 75/9 75/24	106/14 106/14 107/2
109/12 109/13	76/25 77/3 78/9	108/5 108/12 108/14
109/18 109/20 111/5	81/13 132/17 144/25	110/7 114/24 116/5
111/12 115/18 118/1	169/9	119/5 119/9 122/22
118/6 119/12 120/17	answer [23] 33/19	127/24 128/18 129/1
120/22 120/23	53/10 58/19 64/24	134/18 135/7 135/23
125/24 127/10	65/2 65/24 66/3 76/4	137/17 141/4 141/5
127/10 139/24	76/5 76/6 76/10 77/2	141/22 142/10
140/10 141/21 142/7	84/5 85/14 86/7	144/13 144/16 145/4
146/9 148/15 151/12	109/10 120/14 122/1	147/9 147/13 148/4
153/14 154/10	140/18 145/7 145/8	149/4 149/17 150/14
154/13 154/21 157/5	147/18 148/1	150/16 152/5 154/2
158/3 158/6 167/12	answered [6] 58/15	155/17 159/2 160/16
170/23 171/2	65/19 65/20 67/2	161/14 163/2 165/18
amend [1] 144/16	83/5 127/9	anybody [8] 3/19
amended [1] 138/9	answers [3] 25/3	3/21 41/12 84/16
amendment [10]	25/4 58/17	86/21 127/17 128/15
135/25 138/5 138/7	any [85] 5/25 8/20	171/24
138/13 138/16 156/8	12/18 13/21 14/8	anyone [4] 54/15
156/9 156/9 158/19	14/10 18/19 18/22	118/22 128/13
170/9	18/22 18/23 31/10	137/13
amount [2] 99/10	33/10 34/13 34/16	anything [18] 3/12
104/6	38/18 39/4 39/10	12/1 20/18 21/16
anaconda [1]	43/16 46/20 46/24	21/24 31/18 56/21
157/16	47/4 47/23 48/16	72/8 75/9 75/9 83/24
	48/23 48/24 75/2	85/19 85/20 130/24

A	95/23 99/2 99/9	100/19 101/7
anything... [4]	101/7 101/9 101/11	application [41]
131/16 155/12	125/13 131/10	7/23 14/11 52/12
165/22 171/24	131/10 132/6 132/9	52/13 53/4 84/2
anyway [2] 117/14	132/22 132/25	89/11 89/11 90/3
119/18	133/15 135/4 135/7	90/4 90/7 90/24
anywhere [1]	138/1 138/5 143/10	90/24 91/1 91/2
139/10	153/19 153/21	91/13 91/15 91/17
apologies [2] 49/24	161/12 161/17	91/20 91/22 91/23
63/17	161/18 161/20 162/2	91/24 91/25 100/22
apologize [1] 9/24	162/6 165/8 167/25	100/22 100/24
appeal [95] 11/14	168/7 168/9 169/1	100/24 101/3 101/6
11/16 11/17 13/15	appealed [25] 62/22	101/12 101/16
13/18 14/6 14/9	63/7 71/8 73/14 83/7	106/23 115/1 115/8
14/15 21/20 23/15	83/9 83/13 83/16	126/21 126/25 152/7
24/19 24/22 24/24	84/8 97/11 98/10	166/4 167/20 167/25
26/1 28/4 28/4 28/16	98/15 98/19 102/15	168/1
28/21 61/25 62/5	102/16 125/5 125/17	applications [2]
62/6 62/12 62/19	131/5 132/7 133/12	54/16 106/24
63/8 64/10 68/20	138/10 143/11	applied [4] 126/15
71/22 72/17 72/19	151/21 151/22	126/21 147/20 152/8
72/20 72/20 72/21	161/11	applies [1] 141/21
72/22 72/23 72/24	appealing [4] 7/16	apply [15] 7/4 8/3
73/11 73/19 73/20	24/24 98/2 160/14	11/11 12/14 13/19
73/20 73/24 74/7	APPEARANCES	13/20 45/1 45/7 45/8
74/8 74/11 74/16	[2] 1/11 3/5	89/6 89/9 89/10
74/19 74/19 74/20	appears [6] 36/2	103/21 131/4 165/21
74/20 74/25 76/16	112/25 113/5 113/7	applying [1] 12/13
83/14 83/18 83/20	117/5 125/10	appreciate [1]
84/10 84/11 84/13	appellate [3] 7/20	172/10
85/7 85/8 85/9 85/17	151/22 168/23	approach [3] 36/25
85/22 85/22 85/23	applicant [3] 89/6	47/6 151/7

A	arnstein.com [1]	149/15 152/8 153/6
appropriate [1] 9/1	1/14	154/12 157/12 158/9
approve [1] 90/10	around [7] 3/22	162/3 162/15 163/12
approved [2] 127/5	10/15 12/23 136/22	167/23 169/19
132/1	146/1 154/13 168/12	ask [34] 23/4 23/15
approximately [2]	arrested [1] 46/16	25/24 31/18 38/6
99/25 126/4	arrived [2] 143/13	41/12 43/2 45/5
April [2] 108/19	145/2	49/19 53/9 65/3 66/9
108/19	article [3] 141/6	66/10 67/4 69/9
April 15 [2] 108/19	141/22 149/18	69/15 75/22 76/21
108/19	articles [2] 89/15	85/22 86/1 96/16
ARANA [4] 1/16	157/11	99/11 105/7 112/16
2/8 2/10 3/10	as [71] 3/24 3/24	117/18 121/14 125/3
are [250]	4/22 6/4 7/9 7/21 9/4	127/7 134/10 137/24
area [4] 4/25 77/3	9/25 14/22 15/23	144/23 153/24 167/7
115/2 115/14	16/25 20/13 24/11	170/13
aren't [2] 61/23	26/1 26/8 37/1 38/6	asked [19] 24/8
142/11	39/11 39/14 43/17	24/19 25/23 31/19
argue [1] 169/8	45/11 47/7 58/15	35/17 42/22 56/15
argument [18] 6/6	59/3 59/12 73/8	58/15 65/18 67/2
7/14 7/20 7/22 8/13	87/24 88/15 96/9	85/17 86/7 96/21
11/19 12/7 12/9	96/9 98/17 98/17	127/6 127/9 128/8
141/19 153/23	103/17 104/17 106/3	143/4 148/6 170/4
153/25 158/14	109/21 110/1 112/6	asking [11] 4/11
164/20 164/20	114/1 114/11 114/12	33/12 57/21 61/17
164/23 165/11	116/21 116/21	85/12 124/3 124/3
165/12 170/5	123/16 125/3 127/14	127/8 154/10 158/6
arguments [5] 12/5	127/15 129/24	168/15
152/7 164/1 164/8	132/22 134/6 134/24	assert [1] 160/19
168/23	137/10 139/25 141/2	asserts [1] 159/18
arm [1] 148/3	141/3 141/11 146/16	assets [1] 11/1
Arnstein [1] 1/12	146/25 147/6 148/2	assist [2] 25/21

<p>A</p> <p>assist... [1] 30/23</p> <p>assistant [3] 87/1 88/9 88/16</p> <p>associated [1] 54/15</p> <p>assume [3] 33/17 68/16 103/14</p> <p>assumed [2] 68/18 68/19</p> <p>assuming [2] 13/20 125/19</p> <p>assumption [1] 117/13</p> <p>ATM [1] 91/8</p> <p>attack [2] 76/2 76/24</p> <p>attacked [1] 76/17</p> <p>attacking [1] 72/6</p> <p>attempt [1] 134/3</p> <p>attempted [2] 40/24 105/16</p> <p>attention [1] 107/18</p> <p>attorney [39] 27/25 32/22 84/16 85/16 85/20 109/13 110/24 114/1 114/11 114/14 116/22 117/17 117/18 117/23 117/24 117/25 118/2 118/5 118/8 118/11 118/15 118/17 118/23 124/22</p>	<p>126/23 144/11 144/14 144/15 144/17 145/4 146/8 147/13 156/12 156/23 161/19 161/21 162/9 162/10 169/2</p> <p>attorney's [14] 109/12 110/17 110/19 117/11 124/1 131/13 140/16 140/23 140/24 143/13 144/24 146/4 146/25 161/21</p> <p>attorney-client [4] 118/2 118/17 144/14 146/8</p> <p>attorneys [3] 144/18 151/23 151/25</p> <p>August [12] 29/19 29/20 31/15 32/2 33/1 33/1 34/13 34/20 77/13 125/9 162/9 162/12</p> <p>August 28 [6] 32/2 33/1 34/13 77/13 162/9 162/12</p> <p>August 28th [3] 29/19 29/20 31/15</p> <p>August 29 [1] 33/1</p> <p>authorities [1] 10/24</p>	<p>authority [3] 83/25 139/19 139/22</p> <p>automated [1] 128/21</p> <p>automatic [1] 104/10</p> <p>automatically [3] 6/17 104/4 147/14</p> <p>Avenue [20] 1/24 16/23 49/16 50/14 54/23 55/9 84/24 89/24 91/6 93/12 94/10 96/22 99/15 99/16 99/18 114/3 114/23 115/11 147/2 172/18</p> <p>avoid [1] 163/1</p> <p>aware [15] 46/24 97/6 97/9 97/10 97/19 97/22 98/25 107/12 107/14 107/14 107/15 108/13 108/24 125/15 125/16</p> <p>away [4] 8/20 10/12 155/4 162/11</p> <p>B</p> <p>back [29] 3/23 4/1 13/5 21/8 21/23 25/13 26/15 27/8 33/5 48/22 56/23 60/19 61/2 61/2 61/3</p>
---	--	--

B	42/3 42/7 46/16	7/16 15/4 15/7 15/8
back... [14] 62/1	54/14 57/3 59/19	15/11 15/11 15/13
62/21 65/7 67/20	62/22 64/1 65/21	16/16 16/17 16/25
80/2 82/10 87/13	87/11 89/13 94/2	17/12 17/19 19/12
103/1 125/7 141/11	94/16 98/20 99/5	23/1 23/10 23/19
150/12 152/11	100/16 103/10 108/9	23/19 24/5 29/13
153/14 169/1	109/11 112/17 113/5	31/7 31/20 32/17
backwards [1]	113/7 113/11 114/8	32/19 33/8 34/11
156/20	115/2 115/13 116/6	34/11 37/6 39/22
bad [2] 42/17	116/8 116/15 118/6	40/22 42/3 43/8
142/12	120/12 120/14	44/12 44/23 45/2
balance [1] 154/12	120/20 120/22 121/1	45/16 46/10 46/24
balances [1] 148/2	121/2 121/9 121/22	47/23 48/2 48/24
ball [1] 51/14	123/12 124/1 124/13	49/2 49/15 50/5
Baltimore [1]	125/14 125/21	50/14 50/23 51/23
159/16	126/15 126/21 132/7	52/7 52/7 53/5 53/25
Bank [1] 10/25	133/12 138/4 138/6	54/15 57/8 64/2 65/6
Bar [1] 16/17	138/10 139/11	73/24 73/25 73/25
base [2] 5/16 48/8	139/22 142/12	78/21 88/6 88/25
based [3] 110/13	142/17 142/18	89/2 89/9 89/16
116/5 143/15	146/18 147/14 149/2	89/23 90/13 90/16
basically [1] 36/7	151/24 152/17 153/6	90/25 91/5 91/15
basis [3] 4/14 4/14	156/21 163/23	91/19 91/23 92/13
142/8	164/14 164/20	92/18 93/2 93/10
Baxter [1] 32/21	164/21 164/21	93/11 93/23 94/6
be [106] 3/24 4/6	164/25 165/20 166/3	94/14 94/14 96/9
4/13 4/17 4/19 5/23	167/3 167/13 168/3	96/12 96/22 96/24
5/24 7/16 7/16 8/9	168/8 168/12 169/11	96/25 97/6 97/14
11/11 11/20 12/18	169/15 170/3 170/6	97/20 98/4 98/10
16/21 18/1 18/7 19/2	170/9 171/20 171/24	98/11 98/15 98/19
25/7 29/12 34/15	beach [146] 1/3 1/6	99/5 99/14 99/17
36/2 36/8 36/14 37/8	3/7 3/8 4/12 6/22	100/6 101/12 108/11

B	72/23 73/21 73/22	20/13 24/4 33/8
beach... [41] 108/13	73/22 73/23 73/23	37/22 38/2 44/17
109/16 119/13 126/2	74/2 76/16 79/9	44/19 70/6 72/15
127/17 129/2 130/7	81/15 83/3 83/3	86/11 87/23 90/4
131/3 131/4 131/7	92/21 92/21 95/19	90/5 94/24 95/20
132/9 132/25 133/9	98/1 98/19 103/7	97/23 97/25 98/11
133/15 133/19	103/24 104/13	99/21 100/4 102/6
134/15 134/17 135/1	104/16 105/3 107/14	102/15 102/16 103/6
135/12 135/19	107/19 108/8 108/24	103/16 104/1 104/2
135/20 139/20	113/6 114/5 115/14	104/3 106/10 108/15
139/22 141/2 143/15	117/14 119/6 119/15	110/8 110/17 110/20
144/2 144/5 145/12	120/13 121/1 123/4	110/20 110/23
146/2 146/5 147/20	124/5 124/25 126/15	111/25 116/8 116/9
148/10 148/17 149/8	127/7 128/13 128/16	117/14 117/24
150/12 154/24 155/8	128/23 129/14	117/24 121/3 122/3
156/1 156/16 162/16	135/16 136/13 138/5	122/19 122/19
169/18	141/23 143/3 143/18	123/16 123/17 125/2
Beach's [2] 61/23	152/16 153/10 154/5	125/18 129/23 130/8
74/17	154/5 154/17 155/10	130/15 146/16
because [123] 4/4	156/3 156/22 157/3	147/21 151/21
4/15 4/15 6/20 6/23	158/20 159/7 159/9	151/21 153/2 153/4
7/4 7/20 8/4 8/9 9/5	159/20 160/10 161/5	158/14 163/11
9/20 9/21 9/22 11/21	163/6 163/9 163/23	163/12 163/15
12/14 12/19 14/2	164/11 164/22 166/2	163/17 169/12
18/16 19/3 19/22	166/9 167/17 167/24	169/18
22/18 28/1 28/9	168/11 168/13	beer [5] 16/3 16/4
35/22 39/15 41/5	168/22 169/14	18/23 166/18 166/18
41/6 43/9 45/3 52/7	170/25 171/2 171/17	before [71] 1/9 3/12
55/10 55/20 57/8	becomes [1] 95/23	12/16 12/21 20/3
63/3 65/13 65/14	been [73] 6/17 10/6	24/18 25/17 29/2
66/7 66/22 68/17	10/7 14/5 14/11	30/9 34/7 43/23
69/3 70/5 71/1 72/21	14/21 16/9 18/3	44/13 46/25 47/11

B	6/21 7/5 8/22 18/7	bit [1] 29/21
before... [57] 48/12	18/9 18/10 18/11	black [11] 49/11
48/22 48/25 48/25	18/25 36/9 44/12	50/11 61/3 69/17
50/4 52/8 54/9 54/9	45/2 45/3 50/9	69/18 69/18 89/19
56/7 56/23 57/2 57/2	110/13 117/5 121/16	130/14 138/22 139/6
57/4 57/13 57/18	121/18 121/19	140/6
57/22 57/24 57/25	122/19 123/3 131/18	BLITZ [71] 1/3 3/7
61/22 62/9 67/24	136/11 136/12	3/8 15/5 15/7 15/8
69/4 71/4 78/7 78/8	139/23 142/24 147/5	15/11 15/12 15/13
78/8 95/12 95/16	155/9 155/9 167/10	34/11 44/13 44/23
95/17 96/1 96/2	168/11 169/23 170/1	46/24 47/23 48/2
97/19 100/9 100/17	besides [1] 47/24	50/23 51/23 52/7
103/23 106/21 107/9	best [5] 21/22 23/16	52/7 54/15 89/23
122/3 123/1 125/8	44/11 48/15 157/5	90/13 90/16 90/25
125/21 126/7 132/3	better [1] 37/6	91/5 91/19 91/23
141/23 142/7 142/12	between [6] 18/1	92/13 92/18 93/2
142/23 143/14	32/14 34/10 44/11	93/10 93/11 93/23
147/11 152/9 155/21	138/16 162/12	94/6 96/9 96/12
162/19 166/5 169/24	beverages [1]	96/22 96/24 96/25
171/1 171/2 171/3	131/25	97/6 97/14 97/20
began [1] 3/2	big [1] 25/5	98/10 98/11 98/15
begin [1] 159/24	bill [8] 40/12 40/12	98/19 99/14 99/17
beginning [3] 52/1	40/15 56/15 56/16	100/6 101/13 108/11
56/3 89/24	56/18 80/1 108/1	108/14 109/16 126/2
behalf [3] 3/6 3/11	billing [1] 88/19	127/17 129/2 131/3
46/24	bills [1] 111/12	131/4 131/7 132/9
behind [3] 23/9	binder [12] 20/14	132/25 133/9 133/15
116/6 158/4	20/16 20/22 34/6	134/15 134/17 135/1
being [6] 50/11 64/2	49/11 50/11 61/4	145/12 146/2 146/5
65/5 125/17 125/17	89/19 107/4 112/18	147/20 149/8
159/10	119/9 143/2	Blitz's [4] 89/16
believe [34] 4/3 4/9	Biscayne [1] 1/13	91/15 98/4 135/12

B	86/20	19/10 19/12 20/4
block [2] 16/16	brief [7] 3/14 3/24	21/5 23/21 27/10
154/5	5/9 37/4 37/4 158/21	29/14 40/25 46/16
blue [2] 146/13	167/11	72/7 75/14 88/18
146/13	briefed [1] 171/25	88/22 88/23 88/24
bold [1] 119/24	briefing [1] 171/19	88/25 89/1 89/2 89/3
book [11] 31/23	briefly [3] 16/13	89/5 89/7 89/8 89/9
39/21 69/17 69/18	89/5 167/9	89/13 89/23 90/1
120/4 130/14 138/22	bring [2] 56/14	90/6 91/1 91/5 94/25
139/6 140/6 168/19	56/20	96/1 99/5 99/6 99/15
168/21	broken [1] 47/15	99/15 99/21 100/4
bookkeeping [1]	brought [3] 73/13	100/19 104/22
60/21	160/6 162/19	105/15 107/22
books [1] 151/8	BTR [299]	108/22 108/22
boom [2] 66/24	BTRs [15] 19/14	109/16 116/24 122/2
66/24	19/16 19/19 25/17	122/8 123/11 123/20
both [7] 35/11 57/6	55/24 57/6 58/5 92/7	124/11 124/18 127/5
80/10 137/12 138/23	93/15 99/14 104/2	133/8 133/9 133/19
138/25 170/4	111/10 122/14	134/3 134/12 134/24
bottom [4] 61/25	130/10 147/23	135/10 135/16
62/2 136/14 149/13	bucks [1] 162/14	135/17 135/18
Boulevard [1] 1/13	building [5] 90/8	135/19 136/15 137/7
box [6] 113/22 114/1	92/1 100/23 115/6	137/13 138/10 139/8
116/1 116/8 116/17	127/2	139/11 139/14
158/4	bunch [2] 5/6 5/7	139/21 141/5 141/7
Boxner [6] 32/23	Burt [1] 1/16	141/24 141/25
32/24 32/25 118/9	business [129] 4/5	142/24 143/1 148/11
118/15 145/5	4/16 4/19 4/24 5/15	149/17 149/19
boy [1] 141/11	5/16 5/17 7/13 8/7	149/23 150/5 153/11
brand [2] 106/23	9/3 10/22 10/23 11/1	154/3 154/6 154/7
107/13	11/2 11/3 11/6 14/11	154/25 155/3 156/2
break [3] 3/22 29/21	16/9 16/14 19/7	156/6 157/6 157/8

B	15/18 64/1 105/6	110/14 111/4 112/24
business... [17]	105/17 105/17 125/6	113/12 113/14
158/7 158/8 158/18	calling [3] 41/19	114/25 115/8 116/6
158/24 159/8 159/14	86/21 86/23	116/10 116/23 118/4
159/14 159/19	calls [2] 41/14 59/5	119/11 121/2 121/13
160/22 163/5 163/6	came [23] 21/8	122/1 128/12 129/20
163/14 163/22 165/4	21/23 46/7 46/10	131/2 135/25 137/17
165/5 166/10 170/7	60/19 69/8 69/8	138/15 140/1 141/16
businesses [14]	69/11 69/12 69/12	142/12 142/12
47/23 48/2 48/12	96/19 97/13 105/15	142/18 142/19
57/6 58/5 99/14	105/24 112/1 112/5	142/19 144/24
101/10 102/21	114/7 114/14 115/18	146/17 147/18 148/1
108/24 128/22	115/18 115/21	150/1 150/6 150/9
148/17 148/23	115/23 123/9	150/12 151/3 153/24
148/25 154/4	can [108] 5/4 5/24	154/16 155/9 157/9
BYERS [4] 1/21	5/25 11/8 11/11	157/10 158/4 158/7
2/12 2/14 3/10	11/14 11/17 11/19	160/25 164/1 164/2
C	11/20 12/5 13/19	164/14 164/24 165/9
C-A-R-D-E-N-O [1]	14/6 14/9 18/22	165/25 166/25 171/7
129/25	27/20 29/21 31/9	171/20
cafes [1] 7/10	37/4 37/9 43/7 47/21	can't [31] 3/20 5/4
calculate [1] 166/15	47/22 49/8 56/18	7/21 8/4 14/7 26/21
calculated [1] 106/2	62/12 64/17 64/24	37/7 37/7 37/9 38/7
calendar [2] 39/2	65/2 65/17 66/2	43/5 53/7 67/22
131/14	66/10 69/7 75/9	81/15 83/24 85/19
call [13] 14/17 38/5	75/10 78/17 85/14	85/19 105/12 111/7
52/8 87/20 88/23	85/21 86/18 89/5	113/5 115/25 116/17
103/17 108/7 120/14	89/10 94/12 94/14	126/15 128/19
124/8 129/20 157/16	94/16 94/19 94/20	154/23 155/8 158/19
167/18 167/19	95/12 100/17 103/11	166/8 169/8 169/17
called [8] 7/9 15/9	104/8 105/11 109/10	169/19
	109/15 109/21 110/5	cannot [16] 29/5

C	127/15 129/8 130/20	135/9 139/13 139/15
cannot... [15] 29/18	136/9 137/7 137/14	center [6] 16/16
37/25 65/12 66/7	142/22 142/24 143/5	88/18 94/9 94/10
68/15 113/13 114/2	144/12 152/8 154/12	133/23 146/21
114/21 115/10	154/19 155/11	certain [6] 5/11
120/12 121/1 121/22	158/15 158/17 160/5	108/17 111/22
126/17 126/18 147/1	160/8 164/2 166/6	128/12 148/15 149/2
capability [1] 38/16	166/11 167/1 167/4	certainly [3] 7/6
capacity [1] 88/10	168/16 170/11	153/15 160/16
caps [1] 116/2	cases [22] 5/6 5/6	certificate [2]
card [2] 56/21 123/5	5/7 5/9 5/21 5/25 6/3	120/12 120/25
CARDENO [4] 2/11	10/20 75/4 111/23	certified [1] 137/14
87/2 129/22 129/25	140/22 151/25 152/1	certify [1] 172/13
care [6] 22/24 51/1	158/10 158/16	cetera [1] 6/11
74/24 123/15 163/16	158/21 158/23	cfjblaw.com [1]
169/5	164/24 167/22 170/2	1/19
careful [1] 118/7	170/3 170/10	challenge [2] 95/14
Carlton [2] 1/16	cash [3] 23/3 59/15	95/15
3/11	123/5	chance [2] 155/10
carries [3] 141/4	cashier [6] 66/14	155/16
141/24 149/16	74/1 80/11 80/13	change [11] 4/23
case [54] 1/2 4/7	80/17 122/10	6/20 7/5 8/5 17/19
4/11 6/5 6/13 10/10	cashier's [1] 123/5	19/9 30/10 44/22
14/4 15/5 88/12	categories [3] 91/7	67/22 76/19 155/5
98/22 102/15 102/25	91/18 91/24	changed [3] 103/14
104/20 104/25	category [2] 91/10	151/11 151/15
105/20 106/6 112/12	91/21	changes [1] 17/25
114/19 116/6 117/11	cc [3] 109/18 109/18	changing [2] 72/9
117/23 118/15	109/19	76/18
118/23 120/13	cease [10] 131/3	chapter [3] 92/8
120/20 121/1 124/4	133/18 134/3 134/5	94/23 101/9
126/24 127/15	134/8 134/12 134/15	charge [3] 26/25

C	Cindy [1] 28/19	civil [2] 131/22
charge... [2] 70/5	Circuit [5] 10/24	132/17
82/16	11/5 159/1 159/16	claim [23] 74/24
charges [2] 57/15	160/8	84/8 85/13 156/8
106/1	circumstances [1]	156/13 159/2 159/20
cheaper [1] 153/4	125/14	159/24 160/3 160/7
check [40] 23/3	citation [22] 13/6	160/9 160/10 160/16
28/15 31/19 31/25	48/23 49/1 49/15	160/25 161/1 164/10
32/2 32/6 32/13 33/3	50/1 50/5 72/15	164/12 164/13
33/5 33/11 33/23	72/18 76/15 97/15	164/13 166/14
34/1 34/14 41/22	99/9 109/18 109/21	166/25 167/4 168/4
44/1 54/12 56/14	109/24 109/25	claiming [2] 85/25
56/18 60/24 74/20	132/17 132/22 137/5	159/11
77/17 77/20 82/3	137/5 138/17 138/19	claims [8] 151/20
82/4 82/7 82/8 82/13	157/22	160/21 165/25 166/2
82/16 82/19 82/20	citations [9] 21/6	167/11 167/14
96/14 97/1 106/20	50/8 98/20 109/23	167/16 169/21
106/22 123/5 161/24	110/8 131/5 131/8	clarification [4]
164/7 169/7 169/7	134/11 138/23	131/2 131/9 143/8
169/14	cite [5] 158/15	143/9
checkbook [7] 56/20	158/20 158/23 160/4	clarify [4] 92/24
69/5 70/10 70/11	167/4	130/24 131/16 143/4
75/21 76/7 79/25	cited [8] 10/3 97/10	clause [1] 159/3
checks [4] 23/24	99/6 154/25 158/16	clear [17] 10/10
27/6 28/3 148/2	158/17 158/21 161/7	54/14 57/3 94/16
Cheerios [1] 5/4	Citroen [1] 158/24	124/13 124/23 153/6
choice [1] 56/5	city [238]	153/10 153/13
choose [2] 99/9	city's [12] 11/17	159/25 160/2 161/5
168/11	62/12 83/13 88/17	163/6 164/17 165/17
chose [1] 71/13	90/2 94/20 101/8	166/11 167/1
chosen [1] 168/11	126/22 147/5 156/12	cleared [3] 33/25
Christmas [1] 63/18	161/3 165/17	122/23 163/8

C		
clerk [15] 62/22 68/12 69/5 71/13 75/19 76/7 81/10 97/1 97/1 97/3 131/12 143/12 151/3 151/9 169/14	117/14 135/15 135/17 139/12 147/14 155/20 159/8 160/5 165/4 167/6 171/15 171/17	49/16 50/14 54/23 55/9 84/24 89/24 91/6 93/12 96/22 99/15 99/16 99/17 99/17 114/3 114/22 115/11 147/2
clerk's [1] 143/22	closer [1] 26/20	come [32] 3/23
clerks [2] 60/16 124/17	closing [2] 42/4 151/15	14/19 18/14 19/21 61/2 62/10 67/6 71/25 72/1 75/3 75/25 75/25 75/25 76/23 81/14 87/13 99/7 100/6 107/23 108/1 114/5 121/5 123/22 124/2 124/9 129/10 139/16 144/24 152/5 155/21 162/10 170/24
click [3] 94/12 116/16 116/16	CO [1] 1/3	comes [4] 95/7 121/9 126/24 144/22
clicked [1] 103/14	code [43] 8/5 14/10 46/6 46/9 50/7 69/14 76/22 76/24 80/3 89/8 90/9 92/2 94/23 95/13 100/23 101/9 108/9 115/6 125/6 127/3 130/6 130/10 130/12 131/22 132/2 132/17 132/20 134/2 134/11 135/12 135/19 136/22 139/19 139/20 139/22 140/4 141/2 142/13 146/4 148/3 148/11 149/24 156/1	coming [1] 152/11
client [13] 4/15 6/8 7/23 8/16 103/6 108/6 108/11 115/15 118/2 118/17 144/14 146/8 152/9	codes [1] 140/20	command [1] 4/12
clock [1] 157/23	coincidences [1] 169/10	comment [2] 119/19 169/17
close [15] 46/18 68/23 76/23 103/23 114/2 114/16 116/22 117/11 123/20 125/1 135/12 146/25 155/25 163/23 165/6	collect [2] 101/19 111/12	commission [3] 104/21 157/12 157/12
closed [31] 17/6 36/8 42/12 42/17 42/23 42/23 43/3 43/9 43/16 83/12 99/17 99/20 99/22 100/4 100/18 103/17 114/8 117/2 117/4	College [1] 10/24	common [4] 108/25 124/8 124/10 124/12
	Collins [21] 16/23 47/24 47/25 48/18	communications [1] 144/14
		company [5] 16/11

C		
company... [4] 89/23 90/21 90/23 110/5	confuse [1] 52/7	continued [1] 41/12
competition [1] 19/3	confused [3] 11/22	contrary [2] 128/16
complaint [3] 159/18 159/20 160/8	24/17 50/17	158/20
complete [1] 4/5	confusion [1] 68/7	control [1] 26/17
completed [1] 3/21	consider [1] 171/22	convenience [2]
complex [1] 140/23	considered [1] 166/12	15/22 76/21
compliance [7] 90/9	consistent [2] 41/8	conversation [6]
92/2 127/3 130/6	156/6	22/17 66/13 118/15
132/18 148/3 149/24	conspicuously [2] 59/12 59/20	118/22 145/9 156/14
computer [2] 78/9	conspiracy [2] 8/1	conversations [5]
136/5	158/5	144/17 145/4 145/8
computer-generated	constitution [1]	145/18 145/22
[1] 136/5	160/24	convince [1] 154/21
concept [1] 160/20	constitutional [4] 153/19 159/17	convinced [1] 169/2
conclusion [4] 59/6	159/18 160/20	copy [8] 37/13 47/6
62/14 142/3 144/8	constitutions [1] 155/2	61/14 61/16 61/19
concurrent [1]	contact [3] 21/24	81/6 81/7 140/3
170/10	46/24 137/13	corner [2] 50/23
conducting [1] 99/5	contacted [1] 161/20	69/22
conducts [2] 141/4	contained [1] 146/20	corporation [1] 15/8
149/16	contend [1] 10/6	correct [183]
confer [1] 140/22	content [1] 145/9	corrected [1] 122/12
confidence [1] 118/5	context [2] 106/6 111/10	correcting [1] 7/3
confidences [1] 118/2	continue [2] 29/6 163/22	correction [1] 131/2
confirm [1] 36/3		correctly [2] 149/21
confirmation [1] 98/17		154/2
		cost [1] 44/21
		Costello [1] 159/4
		could [72] 8/10 9/5
		13/15 13/18 14/5
		14/15 18/14 26/18
		26/20 37/18 40/5

C		
could... [61] 49/6 56/3 56/11 66/22 67/1 80/1 89/19 91/4 93/5 94/8 99/11 100/6 105/11 105/16 106/4 114/13 114/14 116/8 116/8 116/9 116/15 117/8 117/9 117/13 122/9 122/10 122/23 122/25 122/25 123/6 123/6 123/7 126/21 128/4 129/2 130/4 130/14 131/19 135/18 138/10 139/11 145/1 149/12 152/10 153/1 153/16 155/7 157/19 157/22 161/8 161/24 163/10 164/5 164/7 164/7 166/7 166/7 166/14 168/14 170/3 171/21	counter [12] 22/5 22/6 22/11 22/15 23/10 35/15 64/17 105/23 111/18 115/16 127/17 127/23 counties [1] 6/11 country [3] 21/8 154/4 156/5 couple [4] 21/13 58/16 149/5 170/1 course [15] 14/13 21/18 27/10 38/18 41/1 44/25 52/10 56/21 59/25 78/18 114/18 114/19 140/24 141/24 163/21 court [56] 1/1 1/24 3/3 4/10 4/11 7/18 9/1 10/24 11/9 12/6 12/7 12/9 16/13 16/21 20/24 21/22 22/3 23/16 24/1 38/20 39/11 41/20 51/3 55/12 85/24 86/7 94/16 94/20 95/19 99/12 111/14 130/16 131/12 143/12 146/17 155/17 159/21 160/17 160/18 161/3	164/9 164/23 165/1 165/24 165/25 166/3 166/9 167/3 167/7 167/15 167/16 170/6 171/14 171/17 172/7 172/18 Court's [1] 25/12 courtesy [6] 104/7 108/4 108/5 108/5 108/7 108/8 courtroom [2] 65/22 152/21 courts [1] 12/11 covered [1] 127/11 create [2] 71/24 72/8 created [2] 93/9 93/9 Creating [1] 68/7 credit [2] 56/21 123/5 critical [2] 5/15 9/18 cross [13] 2/6 2/9 2/13 36/20 47/4 47/8 51/11 51/13 87/9 101/25 102/2 135/23 136/19 cross-examination [6] 36/20 47/4 47/8 51/13 102/2 136/19 cross-examine [1] 51/11

C		
CRR [2] 1/23	damages [5] 160/10	96/5 103/16 106/9
172/17	160/13 166/23	106/12 106/16
crystal [1] 159/25	166/23 166/25	108/19 108/20
CSR [2] 1/23 172/17	dancing [1] 91/11	116/24 116/25 125/2
cure [2] 142/16	DANIEL [1] 1/16	125/5 137/19 146/2
150/1	database [4] 99/13	161/9 169/9 170/20
current [3] 6/9	99/21 113/9 119/2	day-to-day [1]
17/21 19/22	date [25] 12/21	88/17
custom [1] 27/10	31/18 32/16 40/18	days [31] 21/14 26/1
customer [19] 5/16	49/21 52/1 55/18	62/13 62/22 63/8
48/8 88/17 94/9 95/1	57/7 58/4 66/18 79/2	67/24 72/21 74/2
95/14 96/19 104/13	92/14 93/7 96/20	74/12 81/13 97/19
105/15 105/24 106/3	108/17 108/18	99/25 100/6 132/7
107/15 107/22 112/1	108/19 108/21 112/1	132/9 132/24 132/25
112/9 112/10 112/10	113/12 113/13	133/13 133/15 135/5
112/13 115/18	116/23 122/19	138/1 138/1 138/13
customer's [1]	144/25 162/23	138/18 138/18
96/19	dated [9] 36/16 37/8	138/25 139/1 149/9
customers [5] 94/14	37/10 55/2 69/25	152/11 163/7 167/11
104/7 105/25 112/8	103/1 109/4 131/24	days' [1] 138/10
128/1	138/14	deadlines [1] 168/23
cut [2] 28/10 109/14	dates [5] 21/21	deal [12] 17/18
CV [1] 1/2	44/16 56/1 68/6	25/25 28/2 34/15
D	168/23	62/11 71/1 75/4
D-O-A-R [1] 14/23	day [39] 23/9 33/2	84/14 111/9 125/10
d/b/a [2] 15/11	33/4 36/10 39/10	142/8 151/20
15/12	40/3 40/5 41/13	dealing [8] 20/9
daily [5] 111/11	41/13 42/16 42/17	23/19 25/25 26/11
111/11 121/4 122/4	42/24 46/25 55/24	26/18 29/13 30/16
142/8	81/17 81/20 81/20	157/5
	84/15 84/15 84/15	deals [1] 111/3
	88/17 88/17 95/19	dealt [3] 109/3

D	50/4 61/6 61/8 61/8	defendants' [17]
dealt... [2] 117/25	61/15 63/11 64/9	49/21 50/12 50/19
142/7	68/14 97/7 97/10	51/25 52/12 52/14
debt [1] 95/23	131/24 132/2	54/20 54/21 61/3
debts [1] 94/22	December 21st [1]	69/17 69/19 71/16
December [48] 26/8	50/2	130/15 130/17
30/8 43/21 48/12	December 22 [1]	138/22 140/5 151/2
48/22 49/1 49/16	30/8	defense [1] 144/17
49/19 49/22 49/24	December 25 [1]	delay [1] 169/8
50/2 50/4 61/4 61/6	63/16	deliver [1] 32/13
61/8 61/8 61/15	December 25th [1]	delivered [10] 32/17
63/10 63/11 63/16	63/10	33/2 34/14 96/23
64/9 65/7 66/15	December 27 [1]	136/8 136/11 136/21
67/12 67/24 68/3	68/8	137/3 137/4 137/16
68/8 68/14 68/19	December 27th [2]	demonstrate [1] 4/9
69/6 70/15 70/18	66/15 68/3	demonstrates [1]
70/24 71/4 71/8	decide [1] 130/12	155/14
72/15 73/4 73/8	decides [1] 11/14	denial [4] 101/6
73/17 75/23 76/14	decision [9] 7/25	101/20 101/22
97/7 97/10 106/8	11/15 13/14 13/15	160/14
131/24 132/2 138/16	13/18 14/6 14/9	denied [9] 7/18 8/23
153/1	101/13 154/17	11/11 14/11 101/10
December 1 [1]	decline [1] 160/20	147/21 168/3 168/6
67/24	deed [1] 89/12	168/8
December 16 [7]	defend [3] 154/16	deny [2] 147/23
48/12 48/22 49/1	155/16 158/7	167/7
49/19 61/4 70/18	defendant [5] 1/7	department [39]
76/14	1/16 9/12 87/20	23/1 63/22 63/25
December 2016 [3]	170/4	64/3 64/13 66/16
43/21 71/8 72/15	defendants [6] 3/9	66/21 68/12 75/20
December 21 [15]	3/11 86/23 129/20	80/14 81/10 88/9
49/16 49/22 49/24	150/14 158/13	90/6 90/8 90/8 90/8

D	desk [2] 105/6 112/5	78/13 78/24 79/7
department... [23]	destroy [1] 75/14	80/8 80/10 80/24
90/9 94/5 100/23	destroyed [1] 4/19	81/1 81/2 81/4 81/5
100/25 100/25	destruction [1] 4/4	81/5 81/6 81/8 81/9
101/13 101/15	detached [1] 111/21	85/6 85/9 85/17
101/16 111/17	determination [1]	100/4 104/12 104/13
114/25 115/8 119/15	127/2	104/13 105/10
120/11 120/16	determine [1] 36/12	105/21 108/1 111/1
120/25 127/1 127/1	determines [1]	112/12 113/6 114/11
127/4 130/6 132/18	126/14	131/11 143/21
140/13 140/13	dictate [2] 124/8	143/22 143/24 144/2
163/18	124/10	144/7 152/15 152/15
departments [12]	did [189]	152/19 152/24
90/5 90/10 91/3	didn't [113] 10/15	153/13 155/22 156/4
91/25 101/2 101/17	10/16 11/21 13/6	157/18 159/12 161/8
101/17 106/21	13/14 19/23 19/24	161/12 161/13 162/6
106/22 115/5 115/9	22/12 24/19 26/22	162/23 163/4 163/6
148/4	27/5 28/7 28/10	163/9 164/5 164/6
depends [2] 140/18	28/16 30/25 39/15	164/19 165/1 165/22
140/19	40/6 40/9 46/14	168/25
depicting [1] 93/7	46/20 49/5 53/13	difference [3] 27/14
deposit [1] 33/11	55/17 55/18 55/20	138/2 138/6
deposited [1] 33/8	56/4 56/15 57/10	different [19] 5/22
deprived [1] 10/8	57/12 60/2 60/2 60/4	21/8 25/2 28/20
deputy [3] 32/21	60/4 60/5 60/25	58/16 62/19 62/19
118/11 145/4	61/13 63/9 67/10	63/11 80/17 82/19
describe [4] 22/3	67/14 68/20 68/21	143/16 144/11
22/10 89/5 151/4	70/3 70/10 70/16	144/22 145/1 148/4
describing [1] 91/1	70/19 71/5 72/20	152/6 155/12 165/3
description [1] 37/4	72/21 72/21 72/22	168/14
designee [2] 11/18	73/20 74/9 74/20	differently [3] 64/18
101/11	74/21 76/8 76/11	168/16 168/18

D	128/9	140/8 146/23
direct [14] 2/5 2/8	distinction [2] 25/6	does [36] 13/20 16/2
2/12 15/1 60/5 64/5	123/12	16/6 17/6 33/18 45/4
87/6 87/7 88/2 89/18	distinctly [1] 68/2	47/23 75/25 87/17
109/22 122/8 130/2	district [15] 1/1 1/1	90/6 93/14 95/1 99/2
146/4	11/13 16/19 16/21	99/6 99/19 100/19
direction [5] 102/19	16/25 17/1 17/4	101/6 110/5 110/5
110/24 117/11	17/14 17/21 18/12	112/4 113/17 119/13
117/16 117/17	18/14 18/20 18/24	128/12 128/15
directly [1] 131/12	159/21	130/10 130/12
director [4] 87/1	disturbances [1]	133/17 134/2 134/11
88/9 88/16 130/6	160/6	135/4 139/13 149/23
disagree [2] 5/8 10/9	division [1] 113/10	162/9 162/12 164/10
disclose [1] 118/2	do [182]	166/17
discovered [1]	DOAR [12] 2/4 3/8	doesn't [21] 13/20
157/18	14/18 14/19 14/20	27/13 33/17 65/23
discovery [1] 158/3	14/23 25/12 47/6	71/24 76/23 81/16
discuss [3] 3/12 3/20	47/10 51/1 127/17	102/18 104/2 104/19
144/13	127/23	105/22 123/10
discussed [1] 139/2	Doar's [1] 156/11	123/13 128/24 152/5
dismiss [6] 79/13	docket [1] 131/14	158/15 163/3 163/10
79/15 79/15 80/3	document [32]	164/11 165/6 165/25
80/5 157/2	20/23 32/10 34/7	dog [1] 5/25
dismissal [1] 160/8	36/1 42/3 42/3 45/10	doing [9] 11/2 11/6
dismissed [2]	45/15 96/21 107/9	25/7 47/12 71/21
159/21 166/3	113/6 113/12 113/13	72/12 104/24 144/6
display [1] 59/11	115/15 116/1 117/1	161/13
dispute [3] 10/20	117/7 119/11 120/19	dollar [6] 71/23 72/1
12/18 12/20	120/23 123/24	82/20 106/19 161/23
disregard [1]	131/21 132/5 132/14	163/5
128/19	133/4 134/22 137/17	dollars [8] 70/15
disregarded [1]	137/18 139/10 140/7	71/14 72/2 76/25

D		
dollars... [4] 77/1	74/15 75/6 76/12	155/11 155/14
97/17 152/25 153/12	76/13 79/2 79/18	163/14 164/8 166/7
don't [163] 3/16	81/12 81/12 85/12	166/8 171/20
4/20 5/7 5/11 5/22	86/1 86/3 87/4	door [5] 16/16 46/15
6/4 7/11 8/8 8/11	102/21 104/16 105/1	46/18 155/19 166/8
8/13 9/11 9/13 9/21	105/5 105/21 105/21	doors [1] 46/21
9/21 10/12 11/7	107/1 107/10 109/14	DORAN [6] 2/4 3/7
12/14 12/18 18/16	111/2 111/14 112/9	14/18 14/20 14/23
19/10 20/3 20/13	112/16 114/13 115/7	51/1
20/18 22/16 22/20	117/18 117/20	doubt [2] 50/1 59/3
30/8 33/15 33/15	118/13 119/15 124/3	down [66] 7/23 9/9
33/21 34/1 34/16	124/7 124/20 125/6	9/15 13/7 24/11
36/21 37/14 40/16	126/22 127/24	25/13 26/25 29/21
40/17 42/20 43/9	131/18 137/12	33/24 34/25 35/10
43/10 43/19 43/19	137/21 139/15	35/14 37/17 38/8
44/5 44/15 45/3 47/1	147/22 148/4 148/6	38/13 39/5 39/12
47/16 49/3 50/6	148/20 148/22	46/12 46/21 54/11
51/12 52/5 53/17	148/24 151/23	54/16 56/17 57/21
53/23 54/13 55/20	151/24 155/6 156/24	58/6 63/21 63/24
55/21 55/23 56/6	159/12 160/11	65/4 78/5 78/6 78/10
56/18 56/18 57/12	162/22 164/15	78/11 78/13 78/15
57/14 57/24 57/25	165/10 166/1 166/2	78/21 79/25 83/12
58/4 58/10 58/11	166/15 166/22	86/18 116/2 116/24
58/12 58/20 58/21	166/24 167/4 167/4	120/6 125/1 127/19
58/22 59/1 59/1 59/2	167/18 167/23	129/17 135/12
59/24 60/23 61/1	167/24 168/10	139/12 139/16
61/1 63/19 64/11	168/17 169/5 170/17	139/21 146/2 146/5
65/14 65/25 66/4	171/2 171/12 172/2	148/12 149/1 149/23
66/13 68/5 68/16	done [18] 6/15 13/9	150/9 152/8 155/8
68/17 69/3 69/10	86/22 109/11 112/5	155/25 156/15
71/17 74/1 74/8	112/6 123/21 124/1	159/15 160/5 163/23
	129/5 153/2 155/11	165/6 166/14 167/6

D	duties [1] 88/15 dyslexia [1] 63/17	161/13 161/14 165/18
down... [3] 169/13 169/13 169/24	E	elect [1] 142/19
downside [1] 154/22	each [3] 51/11 54/1 87/5	electronically [3] 90/7 101/1 101/22
drink [1] 78/17	earana [1] 1/19	elements [1] 4/10
Drive [4] 16/16 16/24 94/9 154/6	earlier [6] 24/1 43/20 100/21 109/22 116/25 122/14	Eleven [2] 41/25 42/3
driver's [2] 108/16 108/17	early [3] 49/2 49/17 129/12	Eleventh [3] 10/24 11/5 160/7
due [41] 4/5 4/6 8/15 8/20 11/23 95/23 97/23 97/25 98/1 98/20 98/21 99/10 99/10 100/2 106/1 108/20 108/21 115/22 152/5 152/9 156/3 156/4 159/3 159/5 159/7 159/21 159/24 160/1 160/1 160/3 160/6 160/7 160/9 160/19 162/4 162/7 164/12 164/13 169/22 169/22 169/24	earning [1] 159/19 easily [1] 105/17 east [1] 16/24 Eatonville [1] 160/4 echo [1] 121/14 Education [1] 10/25 Edward [1] 141/3 effect [2] 10/21 11/12 effort [1] 12/21 efforts [1] 161/4 eight [1] 125/10 either [24] 11/7 20/8 27/3 35/5 35/12 35/12 37/17 48/12 48/23 52/23 71/19 102/14 109/11 109/22 110/24 123/21 124/11 124/14 126/13 142/19 142/22	else [12] 20/7 38/2 41/12 54/15 86/21 106/13 116/9 123/21 131/16 152/4 157/11 171/24 emailing [1] 28/1 EMERGENCY [1] 1/9 emotionally [1] 152/10 encompass [1] 160/21 end [5] 8/2 8/3 25/14 29/17 143/24 ended [1] 151/22 ending [2] 26/5 42/9 ends [1] 95/2 EnerGov [1] 147/6 enforcement [21] 46/6 46/10 50/7 69/14 76/22 76/24 80/3 130/10 130/12
duly [3] 14/21 87/23 129/23		
during [13] 4/14 14/13 39/5 94/7 96/9 104/14 105/14 121/21 124/18 129/14 129/15 161/23 165/19		

E	165/20 166/5 170/9	eventually [1]
enforcement... [12]	172/14	161/17
134/2 134/11 135/12	entitlement [1]	ever [19] 48/23 50/5
136/22 139/19	155/14	61/21 72/24 74/11
139/20 141/3 141/12	entity [11] 15/4 15/9	74/12 75/5 82/3
146/4 148/3 148/11	90/25 94/25 114/2	82/16 85/2 85/24
149/15	114/21 114/25 115/1	96/10 96/12 118/15
enforcements [1]	115/7 115/10 147/1	124/3 124/5 147/11
148/25	equity [1] 163/21	158/5 158/11
engaged [2] 88/24	error [1] 88/14	EVERETT [1] 1/21
91/9	ESQ [4] 1/12 1/16	every [23] 41/13
English [3] 47/15	1/21 1/22	41/13 60/24 72/11
47/17 47/21	essence [2] 153/23	78/7 81/20 81/20
enough [7] 87/14	153/25	84/15 84/15 84/15
110/23 122/23	essentially [4] 4/9	90/19 93/15 93/21
136/18 160/12 167/2	9/3 104/23 171/9	96/5 105/5 105/7
167/6	establish [1] 166/16	105/9 108/25 155/25
ENRIQUE [2] 1/16	established [2] 43/5	155/25 162/16
3/10	166/22	164/25 170/19
entered [5] 122/12	establishment [1]	everybody [7] 29/21
122/21 131/6 143/19	91/11	82/22 82/23 82/23
146/18	estimate [1] 87/11	104/18 164/17 172/5
enterprise [2]	et [1] 6/11	everyone [1] 152/19
146/19 147/5	even [16] 18/16 71/5	everything [19] 41/8
entertainment [5]	71/13 76/22 78/6	75/16 75/18 152/10
91/11 114/3 114/22	106/10 111/19	155/11 155/11 157/9
115/11 147/1	114/14 129/8 129/11	157/11 157/19
entire [2] 161/2	160/11 162/3 163/16	157/21 162/11
161/24	166/15 167/4 168/7	162/14 163/8 164/22
entities [1] 148/5	evening [1] 18/1	168/13 168/13
entitled [8] 12/6	event [4] 46/25	168/15 168/18
12/7 13/18 158/3	94/21 160/16 163/2	168/18

E	exclude [1] 144/16	138/20 140/5 143/2
evidence [15] 4/8	exclusively [1]	149/12 150/21 151/2
7/11 11/19 12/2	48/10	exhibits [12] 6/21
20/17 81/11 87/18	excuse [9] 29/1	20/17 47/6 49/4 49/6
89/20 95/17 150/16	30/25 34/18 44/18	89/18 100/21 119/1
152/12 152/20	73/1 77/7 77/7 84/20	119/2 119/2 130/15
155/23 168/2 168/2	86/4	140/5
evident [1] 9/4	excused [5] 86/19	exist [1] 113/16
exact [5] 55/18	129/18 129/19	existed [1] 163/13
55/24 57/7 73/3	150/11 150/13	existence [1] 111/24
164/2	exercised [1] 153/18	existing [2] 10/11
exactly [28] 5/19	exhausting [1]	91/18
22/16 22/20 23/1	167/23	expect [4] 96/1 99/6
33/16 46/14 57/13	exhibit [63] 20/13	134/2 134/12
58/20 66/4 66/6	26/2 36/1 36/7 37/2	experience [1]
66/13 68/22 69/3	39/18 39/19 40/11	144/20
69/10 71/17 72/12	40/11 40/21 41/20	expiration [5] 92/16
72/21 73/8 74/1 74/9	41/20 42/1 42/5	93/24 108/18 108/19
75/14 78/13 79/2	43/13 69/17 71/16	159/2
80/6 117/16 167/15	89/20 89/21 89/22	expire [6] 54/1 92/6
168/4 168/5	89/23 91/4 91/4 91/5	92/11 122/14 122/18
examination [14]	91/8 91/12 92/24	161/6
2/3 15/1 36/20 47/4	93/5 93/6 93/7 96/16	expired [31] 7/21
47/8 51/13 60/5 64/5	96/17 96/18 99/11	9/19 9/19 10/1 10/11
88/2 102/2 128/6	99/12 99/13 107/4	10/13 10/19 11/10
130/2 136/19 149/6	107/17 107/20 109/1	12/19 13/2 54/9
examine [1] 51/11	109/8 109/23 109/25	55/18 55/24 57/5
examined [3] 14/21	111/5 119/9 120/3	57/6 59/4 60/1 60/2
87/23 129/23	120/4 120/6 122/11	70/6 81/22 92/25
example [1] 144/22	130/17 130/22	99/23 103/17 103/19
except [1] 19/18	131/19 132/12 133/3	114/16 115/14
exception [1] 167/22	134/20 136/24 137/2	117/15 126/16

E	failing [2] 133/7 134/24 fails [1] 159/20 failure [3] 141/12 149/23 150/3 fair [11] 18/5 32/9 48/8 111/17 117/1 117/7 117/20 143/17 148/21 165/17 165/22 false [1] 123/8 familiar [13] 8/12 15/4 15/9 15/18 17/11 17/15 61/22 89/16 103/2 109/8 109/13 111/19 119/12 family [3] 154/17 157/8 157/9 far [2] 87/11 96/9 favor [1] 153/22 Fed.Appx [1] 159/17 federal [16] 11/8 13/2 160/23 161/3 164/9 164/10 165/24 165/25 166/2 166/8 167/3 167/10 167/14 167/16 170/6 171/9 federally [2] 10/19 164/11 fee [4] 57/15 57/18	70/7 104/6 felicetti [5] 1/23 1/25 172/17 172/17 172/19 fellow [3] 51/11 163/4 163/18 few [11] 4/18 17/25 18/17 22/7 23/22 24/15 26/1 32/18 89/18 119/10 156/7 field [1] 136/4 Fields [2] 1/16 3/11 Fifth [1] 16/22 figure [1] 116/6 figuring [1] 153/7 file [7] 72/17 72/24 85/24 166/3 169/1 171/11 171/16 filed [11] 63/8 73/19 73/20 74/16 86/2 86/12 140/3 143/5 156/8 162/2 167/19 files [1] 151/24 filing [4] 83/14 119/4 145/5 145/12 fill [4] 89/10 90/23 90/25 91/22 filled [2] 84/2 90/24 finance [33] 22/2 22/19 23/1 63/21 63/25 64/2 64/13 66/14 66/16 66/21
expired... [3] 158/22 158/23 158/25 expires [4] 92/7 93/17 100/19 108/17 explain [5] 23/16 94/16 94/20 99/12 131/2 explaining [1] 127/10 explanation [1] 69/2 extend [1] 160/20 extent [2] 59/5 160/18 extra [3] 70/15 112/21 152/24 extremely [1] 25/3		
F		
face [5] 64/1 64/2 66/21 66/21 152/5 facility [1] 91/9 facing [1] 53/12 fact [11] 7/14 8/18 8/19 9/18 14/13 18/25 41/15 64/6 87/13 109/23 166/2 facts [7] 8/11 13/5 165/12 165/14 165/14 165/16 165/21 factual [1] 9/25		

F	first [53] 3/5 5/8 6/7	floor [2] 22/4 35/15
finance... [23] 68/12	12/9 14/17 14/21	FLORIDA [16] 1/1
69/12 75/20 80/13	20/23 21/6 22/4	1/3 1/6 1/13 1/18
80/17 81/10 82/8	27/22 34/17 34/19	1/25 6/9 6/10 6/10
87/1 88/9 88/16 90/6	35/15 50/15 50/16	10/25 15/8 16/6 89/7
100/25 113/10 115/6	52/4 60/6 63/12 65/7	155/2 155/7 172/19
119/15 120/11	70/7 70/7 72/21	flsd.uscourts.gov [2]
120/16 120/24 122/5	87/20 87/23 90/24	1/25 172/19
122/8 127/4 147/24	95/12 101/14 102/4	focus [1] 25/12
163/18	114/4 114/10 119/22	focused [1] 87/12
financial [3] 38/16	123/15 123/23 126/3	folder [2] 59/17
38/18 44/23	126/7 129/23 133/22	59/18
find [9] 63/10 63/12	141/6 141/17 141/18	folks [7] 24/1 142/12
69/12 69/13 111/3	141/25 142/17 143/3	151/20 153/9 157/13
112/19 124/15 125/2	146/20 149/18 151/7	167/13 171/12
140/12	152/5 156/8 156/9	follow [3] 89/6
fine [18] 98/8 99/3	156/9 156/13 159/11	101/4 165/23
100/14 106/7 121/4	166/12	followed [2] 154/2
122/4 122/5 125/20	fiscal [27] 19/18	155/23
125/21 125/21	89/24 90/13 90/19	following [6] 3/2
142/15 148/7 161/10	91/16 92/3 92/10	39/4 39/10 45/24
161/23 162/8 163/2	93/8 94/1 94/7 95/2	93/2 122/13
163/15 163/17	96/10 96/13 96/18	follows [4] 9/25
fined [1] 142/12	103/14 103/20	14/22 87/24 129/24
fines [6] 94/22 132/7	104/14 108/23 114/5	food [2] 5/25 91/9
133/12 161/15 163/1	114/7 122/16 123/1	forced [1] 167/24
163/16	129/14 129/15	foregoing [1] 172/13
finish [3] 3/23 15/15	134/18 147/20	forever [1] 169/18
58/19	163/16	forged [2] 53/3 53/4
finished [1] 114/6	five [8] 3/16 9/13	forgot [1] 13/7
fire [5] 90/8 92/1	46/15 46/18 60/12	form [6] 73/4 73/8
100/23 115/6 127/2	76/20 116/24 148/16	109/12 131/22

<p>F</p> <p>form... [2] 132/17 137/6</p> <p>format [1] 137/4</p> <p>formats [1] 145/1</p> <p>former [2] 23/18 29/12</p> <p>forms [1] 144/22</p> <p>forth [1] 141/14</p> <p>forum [3] 165/10 165/11 165/15</p> <p>found [2] 24/3 60/6</p> <p>foundation [5] 33/13 42/14 43/4 44/8 119/20</p> <p>four [10] 4/10 7/8 8/6 17/5 17/5 19/5 76/20 148/15 157/20 157/20</p> <p>Fourteenth [2] 158/19 170/8</p> <p>fourth [2] 119/24 120/6</p> <p>frame [1] 99/22</p> <p>frankly [1] 164/18</p> <p>frequently [1] 140/21</p> <p>Friday [18] 35/5 35/13 37/18 38/9 39/7 46/3 46/22 81/17 81/17 81/18 123/20 124/16</p>	<p>124/18 171/5 171/6 171/13 171/14 171/15</p> <p>Friedman [1] 160/4</p> <p>front [13] 26/3 31/23 32/18 76/6 89/19 125/9 125/12 125/13 125/15 125/16 146/13 156/16 169/1</p> <p>frustrations [1] 115/25</p> <p>full [5] 15/25 17/3 18/15 32/8 166/21</p> <p>functions [2] 88/17 88/20</p> <p>fundamental [7] 156/5 156/7 156/10 157/6 160/2 160/20 160/23</p> <p>further [11] 47/3 87/17 101/23 128/3 135/22 139/12 139/16 149/3 150/8 150/15 150/16</p> <p>futility [1] 167/19</p> <p>future [1] 4/17</p> <hr/> <p>G</p> <p>GARY [3] 1/22 3/10 47/10</p> <p>gave [12] 13/8 32/19 32/21 32/25 33/23</p>	<p>45/10 77/20 82/15 115/21 117/11 155/7 169/7</p> <p>general [4] 48/7 67/5 88/15 124/22</p> <p>generally [4] 17/11 118/11 142/21 166/12</p> <p>generate [2] 154/11 158/7</p> <p>generated [1] 136/5</p> <p>generating [2] 88/19 154/16</p> <p>gentleman [4] 123/17 136/22 154/3 157/7</p> <p>gentleman's [1] 139/21</p> <p>get [92] 3/12 4/1 6/18 7/12 7/21 8/2 8/4 8/9 8/21 10/7 10/7 11/21 12/12 13/6 13/7 13/16 14/14 24/8 24/8 24/25 25/3 25/14 26/20 27/1 27/7 29/1 29/5 30/23 31/1 31/2 34/25 35/17 39/5 39/12 44/13 49/5 61/8 64/19 65/24 67/17 68/4 68/6 69/2 69/8 72/6 75/3 75/12</p>
---	--	---

G		
get... [45] 75/13	40/4 40/6 40/6 40/9	48/14 49/9 51/11
75/21 76/8 85/19	40/17 40/19 40/19	51/25 54/11 54/15
85/19 87/12 94/19	40/20 45/2 45/8	56/23 61/3 63/10
99/23 102/4 103/7	45/20 46/11 46/18	63/16 67/2 69/13
108/18 110/14 112/9	47/6 56/15 56/16	70/23 72/11 77/10
112/10 112/13 122/5	56/25 62/10 62/10	78/21 78/24 79/3
122/6 123/23 123/24	70/25 70/25 71/3	79/5 80/16 96/6
124/1 124/7 124/7	71/15 71/23 71/23	107/19 108/6 112/19
124/22 125/9 127/11	71/25 76/24 87/14	113/4 113/22 116/1
127/14 127/18	101/18 101/20	116/7 119/16 120/5
127/19 149/24	101/21 115/16	122/10 124/14
151/17 154/14	115/20 115/22	124/20 127/12
155/17 157/19 158/3	117/17 125/24 151/9	128/23 130/14
158/4 161/4 162/8	151/9 155/16 156/4	131/11 132/5 139/4
164/21 167/2 170/25	159/24 165/7 167/12	140/6 140/16 141/11
171/2 171/7 171/8	167/18 169/7 169/14	141/17 142/1 143/21
171/15 172/6	170/10	143/21 143/22
gets [5] 7/17 110/12	given [15] 3/25	149/24 150/12 156/2
119/6 127/5 156/15	36/10 36/22 40/3	157/6 162/11 166/3
getting [9] 13/5	40/14 40/21 45/15	169/6 169/7 169/13
27/17 28/12 28/23	45/19 48/7 58/16	169/13
30/15 31/4 50/17	105/19 147/21 153/7	goes [3] 27/8 160/18
61/18 76/17	161/15 163/13	170/18
Gil [1] 3/7	gives [1] 160/3	going [60] 4/7 5/3
give [68] 6/19 10/16	giving [4] 72/7	6/21 7/24 7/25 8/9
13/11 13/17 14/8	112/21 115/3 172/9	8/10 8/15 8/16 9/2
14/15 20/15 23/2	go [76] 4/8 7/18 8/3	9/7 9/15 9/21 14/15
23/2 23/3 25/24 27/3	9/12 14/2 22/5 23/24	19/2 20/19 25/8
27/5 28/20 31/19	24/11 25/13 27/14	26/25 35/21 36/22
31/19 32/12 34/1	33/23 34/3 34/24	43/1 45/8 46/16 69/1
34/22 37/11 37/18	35/10 38/6 39/5	69/1 72/8 76/1 76/1
	39/12 39/14 48/14	76/2 81/13 86/20

G	157/25	H
going... [29] 87/3 87/4 87/8 87/11 89/12 89/18 95/15 95/17 103/23 109/7 118/1 139/24 151/12 151/17 153/22 153/23 156/19 162/7 162/10 162/11 162/13 163/23 165/6 166/2 168/2 168/8 169/15 169/16 170/12 gone [8] 84/12 105/18 114/6 122/3 126/11 157/13 157/15 161/8 good [17] 5/16 14/16 15/3 88/4 88/5 95/3 103/19 108/23 122/16 130/4 136/18 151/14 168/21 169/6 169/6 172/4 172/8 got [25] 7/15 8/2 8/5 8/24 14/6 20/6 21/7 22/18 27/11 51/10 53/10 57/9 57/9 64/1 67/24 75/21 119/8 120/8 139/1 139/2 155/19 157/20 163/8 164/25 169/13 gotten [2] 13/9	governed [1] 89/7 government [1] 39/2 governments [1] 6/10 grab [1] 87/14 grandfathered [2] 9/5 164/21 grant [2] 7/25 101/14 granted [2] 125/7 168/7 great [3] 67/11 67/13 67/15 grounds [5] 11/12 36/4 118/2 119/21 160/9 group [1] 153/7 guess [1] 139/2 guidance [2] 105/19 140/24 guilty [5] 95/20 121/3 121/11 122/2 122/4 guy [10] 21/19 27/18 27/22 27/25 28/1 74/19 74/23 157/25 167/18 169/19 guys [2] 8/12 13/8	H-E-R-N-A-N [1] 130/1 had [137] 3/15 6/17 10/6 13/9 13/16 18/3 19/16 19/18 19/19 20/24 24/1 24/3 24/3 25/16 28/2 28/21 29/19 29/20 30/2 31/6 31/10 32/16 34/14 36/2 37/22 38/1 38/16 39/16 40/8 41/6 42/13 44/23 48/22 50/4 50/8 52/4 56/5 58/6 59/22 61/16 61/18 61/21 61/21 64/7 64/14 65/6 65/7 65/11 65/13 66/13 66/22 67/16 67/25 68/3 68/13 68/21 70/6 70/10 70/12 70/15 72/11 72/15 73/11 73/20 79/19 79/22 81/1 81/1 81/7 81/24 84/14 84/18 84/23 85/1 85/2 85/2 85/4 85/14 92/15 95/19 96/12 96/25 97/7 97/9 98/7 98/10 98/17 98/19 99/25 100/2 102/6 103/1

H		
had... [45] 103/15 103/16 103/21 103/22 105/7 106/8 106/20 114/5 117/2 118/15 118/22 123/16 123/21 123/22 124/10 124/14 124/20 125/18 125/19 126/10 129/5 139/2 142/24 144/14 144/17 145/4 145/8 147/20 152/22 152/25 153/8 154/9 156/14 158/24 161/9 161/11 161/13 161/14 161/20 162/2 163/2 163/14 165/17 165/19 167/11	handed [7] 21/18 21/19 24/18 24/21 70/2 82/16 97/1 handle [1] 140/21 handles [1] 88/18 handling [1] 103/22 hands [1] 106/15 handwriting [6] 32/6 52/14 52/16 52/18 53/20 53/22 handwritten [5] 136/2 136/4 137/5 137/11 138/1 hang [1] 163/14 happen [14] 81/13 90/21 100/25 104/12 104/13 105/19 105/21 107/24 114/11 124/2 124/9 137/10 142/12 154/19 happened [22] 10/15 20/3 20/5 22/10 46/5 55/21 55/21 56/6 60/13 75/15 77/25 78/7 78/8 105/13 105/22 106/6 114/13 147/14 154/18 158/5 162/21 164/22 happening [1] 72/13 happens [5] 64/19	95/6 162/11 168/25 169/15 happy [3] 5/9 167/12 170/23 hard [5] 18/10 21/22 28/2 68/24 172/5 harm [9] 8/17 154/15 154/24 155/1 158/8 158/8 166/13 166/23 167/1 Harold [6] 29/10 29/11 30/5 41/19 79/5 169/17 has [56] 3/19 6/8 6/10 6/11 10/8 14/1 14/11 16/9 17/12 20/14 25/8 37/6 39/11 51/3 51/13 59/19 70/5 86/11 89/2 89/9 94/11 94/24 99/21 99/22 100/4 101/9 102/16 104/2 104/3 110/20 113/18 113/19 115/14 117/14 121/2 121/3 121/10 122/2 126/15 142/16 144/11 151/15 152/22 153/7 154/3 155/21 157/8 157/9 159/5 160/12 160/14 162/15 164/11

H		
has... [3] 164/19 164/20 169/18	14/12 84/18 85/3 102/5 142/19 156/3 162/16 162/18 162/22 172/9	152/23 153/6 154/2 154/13 158/6 160/2 160/14 161/2 161/5 167/14 169/23 170/9
hasn't [4] 43/4 65/20 151/11 164/8	hearings [2] 141/14 154/15	hereby [2] 109/19 172/13
have [350]	Hearsay [1] 43/7	HERNAN [4] 2/11
haven't [6] 5/6 36/2 62/9 95/19 95/20 157/25	heartbroken [2] 170/23 170/24	87/2 129/22 129/25
having [10] 14/21 21/5 30/14 46/11 65/14 83/12 87/23 93/2 129/23 148/12	held [2] 100/13 163/11	hey [3] 24/20 114/15 169/13
he [224]	help [10] 17/18 23/23 24/4 24/5 31/1 102/9 112/8 116/6 119/14 135/25	him [62] 7/13 7/25 8/20 8/24 8/25 9/2 13/11 13/17 14/3 14/5 20/15 24/18 24/22 25/3 25/7 28/20 29/17 29/17 31/1 31/2 34/1 36/10 43/2 43/8 43/10 64/17 65/24 112/19 113/2 115/16 115/21 115/22 124/3 124/5 124/15 152/8 152/16 152/18 153/4 153/10 153/22 154/6 154/9 154/11 154/11 154/15 154/22 155/4 155/25 156/4 157/15 157/24 158/6 158/7 161/15 161/21 163/13 168/15 169/4 169/6 169/7 169/24
he's [10] 4/16 14/6 58/16 65/18 65/19 65/24 144/17 163/4 163/5 169/6	helped [1] 24/2	himself [2] 154/16
head [1] 140/13	helping [1] 23/20	
heads [2] 115/3 115/13	her [19] 23/14 23/15 23/22 24/8 24/11 24/19 24/19 24/21 25/23 25/24 25/24 25/24 26/24 27/3 27/4 27/5 27/6 38/6 38/7	
heads-up [2] 115/3 115/13	here [38] 3/9 4/1 6/4 6/8 6/14 7/16 9/16 10/9 43/8 56/9 59/3 66/24 76/8 85/20 85/21 104/12 104/13 106/4 115/4 119/11 121/14 123/23 124/6 131/3 138/19 147/4	
hear [16] 8/8 8/11 8/13 8/15 8/16 9/2 9/7 9/11 25/8 26/21 43/11 53/7 53/13 131/14 140/1 162/23		
heard [6] 8/11 9/10 124/13 165/16 168/13 168/19		
hearing [11] 3/4		

H	hold [4] 16/6 67/21 120/20 120/22	hour [7] 6/14 21/3 51/10 63/11 87/5 87/12 157/16
himself... [1] 158/7	holder [1] 93/14	hours [16] 6/13 17/13 17/21 17/25 18/4 18/4 18/8 61/18 61/20 76/22 81/24 87/12 116/25 124/19 132/1 132/19
hire [5] 25/21 29/17 29/17 31/1 75/2	holds [1] 113/16	how [48] 16/9 17/3 23/2 23/4 23/5 23/22 24/16 30/4 37/9 40/5 44/11 44/17 44/19 44/21 47/12 50/8 51/13 52/20 56/18 56/19 66/9 67/11 69/2 69/3 69/15 75/21 76/8 76/19 79/18 85/21 86/14 87/3 87/8 88/10 103/8 111/9 119/7 120/22 130/8 140/15 140/17 145/1 148/10 148/14 148/17 148/22 150/1 153/10
hired [13] 9/8 17/18 24/1 24/11 25/16 29/23 30/5 31/2 74/4 74/6 74/24 127/19 161/19	home [1] 54/5	HUDSON [8] 1/12 2/5 2/9 2/13 3/6 7/22 151/10 167/9
hiring [3] 153/4 153/5 153/5	honest [1] 37/8	human [2] 64/2 65/5
his [50] 4/18 5/20 8/20 11/18 24/17 36/8 51/13 67/22 67/24 71/10 103/7 103/22 105/25 106/9 106/15 110/4 110/5 115/20 115/22 118/13 126/21 126/25 127/19 144/17 153/16 153/18 153/19 154/3 154/17 154/17 155/19 156/22 158/8 159/7 161/6 161/14 162/8 162/9 163/5 163/14 164/6 164/19 165/4 165/18 169/2 169/4 169/11 169/11 169/12 170/5	Honor [65] 3/8 3/25 4/11 4/18 4/24 5/9 5/14 6/3 7/12 8/7 8/14 9/3 9/16 10/10 10/23 20/12 20/19 33/13 35/23 35/25 36/15 36/25 42/14 42/19 47/5 58/15 62/15 62/25 65/18 65/24 71/9 86/5 86/17 87/19 107/6 110/9 113/3 117/4 118/19 120/4 133/23 136/3 138/4 138/15 140/10 144/8 144/18 144/20 146/10 148/2 149/3 150/10 150/17 150/20 151/11 152/7 153/3 154/22 155/15 163/19 163/25 168/16 170/9 171/18 172/1	hung [1] 49/5
history [2] 9/25 89/16	HONORABLE [1] 1/9	hurricane [5] 78/3 78/4 78/16 162/18
	Hopefully [1] 154/20	

H	important [8] 4/4	163/3 164/4
hurricane... [1] 169/8	25/3 61/25 62/4 62/5 62/6 127/7 156/7	information [3] 62/1 115/20 115/22
I	imposed [1] 125/20	infraction [1] 131/22
I'd [2] 20/12 111/14	imposes [1] 125/21	initial [2] 136/1 158/21
I'll [1] 117/21	impossible [2] 36/18 46/13	injunction [7] 1/9 3/4 4/1 4/10 9/1 154/15 167/2
I'm [14] 7/2 45/5 49/20 105/3 109/7 116/18 118/19 119/3 120/2 121/14 124/6 138/17 139/4 150/20	improper [1] 159/15	instance [1] 5/18
I-N [1] 121/15	inaccurate [2] 121/8 121/15	instead [4] 8/10 73/25 74/1 131/4
idea [12] 33/10 34/13 34/16 43/16 44/3 77/17 109/19 114/24 119/9 147/9 147/13 163/4	inappropriate [1] 64/21	institution [1] 118/14
identify [1] 14/7	include [2] 17/6 67/23	instruct [1] 118/1
III [1] 1/12	included [1] 138/11	instructed [2] 100/16 106/3
imagine [2] 107/22 164/24	including [2] 25/17 30/21	instruction [2] 28/20 28/21
immediately [11] 4/12 105/18 110/15 128/23 133/18 134/3 134/8 135/9 139/12 139/14 139/16	inconsistent [1] 103/8	instructions [1] 128/19
impacted [1] 98/4	incorporation [1] 89/15	intake [3] 90/7 100/24 101/16
impeachment [1] 36/7	incorrectly [1] 105/2	intended [1] 7/13
implicated [1] 159/18	indeed [1] 115/23	intends [1] 126/20
	independent [2] 99/4 99/9	intentional [1] 7/5
	indicate [2] 31/6 37/21	interest [17] 4/21 6/1 10/18 10/19 11/7 11/8 158/24 159/3 159/10 159/11 159/12 159/13
	indicated [4] 4/2 4/22 39/11 122/2	
	indicates [1] 117/10	
	inequitable [2]	

I	106/4 108/4 115/21	85/21 95/12 96/2
interest... [5] 159/19	121/13 122/7 122/10	96/7 99/3 100/17
159/23 160/23	128/17 128/18	101/19 102/24
164/11 170/6	invoices [2] 98/4	105/19 119/7 129/11
interested [1] 8/9	106/14	130/10 130/12
interesting [2]	invoke [1] 3/18	140/17 147/23 159/9
116/21 157/18	involved [5] 24/9	159/10 159/23 160/2
interests [2] 5/12	30/16 119/8 152/6	161/1
155/3	165/1	issued [25] 49/16
internal [4] 6/22	involvement [2]	50/1 50/13 72/15
126/22 153/9 167/17	15/7 119/7	92/3 92/8 95/22 97/4
internally [1] 36/8	involves [1] 4/4	97/18 97/20 98/17
interpretation [1]	involving [1] 118/23	102/10 106/21
140/15	Irma [3] 78/3 78/4	107/13 107/21
interrupting [1]	78/16	125/14 128/22 129/6
9/24	irreparable [6] 8/17	129/7 132/17 134/23
interview [3] 105/5	154/24 155/1 166/13	136/24 157/22 162/8
105/7 105/9	166/23 167/1	163/12
introduce [1]	irreplaceable [3]	issues [4] 24/5 112/8
150/21	5/1 8/18 8/18	134/11 162/23
inundated [1]	IRS [1] 108/20	issuing [2] 94/21
164/25	is [462]	134/2
investigated [1]	isn't [6] 8/22 86/8	it [432]
112/3	95/15 114/5 157/7	it's [138] 4/3 4/24
investigations [1]	159/23	4/24 4/24 5/2 7/6 7/7
140/23	Israel [5] 21/8 21/11	8/18 8/18 9/4 9/4
invoice [24] 39/22	60/13 60/17 152/11	14/5 15/22 16/15
55/2 56/25 69/23	issuance [2] 159/5	16/17 16/22 18/8
70/16 70/18 76/14	159/6	18/10 18/16 19/2
82/15 93/14 93/23	issue [29] 4/12 5/2	20/3 20/8 21/3 22/4
94/6 94/8 96/18	5/10 6/14 7/7 12/15	22/6 23/22 23/25
96/20 97/20 106/2	30/21 35/21 84/9	25/3 26/17 26/17

I	136/13 138/3 139/23 140/5 141/1 141/23 143/18 144/21 149/13 156/9 158/20 160/12 164/4 164/17 166/9 167/5 168/2 168/6 168/8 170/14 171/13 item [2] 119/24 120/6 items [1] 99/4 its [16] 90/13 90/17 92/13 93/14 93/23 96/10 96/13 96/25 98/5 98/12 104/23 108/13 129/2 129/5 144/5 152/5 itself [2] 137/6 140/8	38/25 47/3 51/15 105/22 116/20 117/21 121/2 122/12 125/24 126/14 153/24 154/11 157/14 158/6 158/10 169/20 170/1 170/19 171/19 judicial [4] 35/6 38/20 110/5 157/10 July [17] 27/1 29/17 29/18 29/23 53/25 55/2 90/18 93/9 93/17 93/21 95/1 100/1 100/2 108/13 108/15 129/1 138/17 July 1 [2] 55/2 93/9 July 16 [1] 108/15 jump [2] 24/23 141/16 jumping [1] 34/5 June [80] 10/4 12/23 12/25 13/6 20/2 21/9 21/23 21/25 22/8 25/14 25/20 27/1 53/3 60/8 60/9 60/10 60/13 63/15 65/4 65/4 66/18 66/19 66/22 68/5 68/10 68/11 69/25 70/2 71/7 72/14 72/25 73/3 73/6 73/7 73/18
it's... [108] 27/10 34/10 35/5 36/7 36/12 36/15 37/8 37/9 39/25 40/2 40/16 42/5 42/9 42/17 43/9 43/23 46/13 49/4 49/9 49/22 51/13 54/19 56/22 57/20 60/4 62/10 62/19 62/20 63/17 64/21 64/21 66/18 68/16 68/24 68/25 68/25 69/2 69/3 69/22 69/25 71/6 71/23 71/23 77/1 80/17 81/16 83/6 85/21 86/2 88/24 89/25 91/7 95/17 100/21 100/21 102/15 102/15 102/18 103/24 104/1 106/1 106/1 107/1 107/6 108/22 108/25 109/12 111/11 111/11 112/17 113/1 115/3 115/4 116/12 119/11 121/14 121/19 124/12 124/21 125/6 127/7 127/8 128/21 129/5 131/9 136/7 136/7	J Jackson [1] 159/16 Jennin [1] 3/7 jill [5] 1/23 1/25 172/17 172/17 172/19 job [3] 41/15 111/12 111/12 JOHN [1] 1/9 Jorden [1] 1/16 journal [1] 60/23 judge [28] 1/10 7/2 7/6 7/17 9/1 25/5 29/6 35/8 36/22	

J	98/10 98/23 107/13 107/18 107/21 138/14 161/13 June 26 [1] 10/4 June 27 [18] 21/9 21/25 25/20 66/18 68/5 68/11 70/2 72/14 76/15 82/9 82/11 82/15 96/20 97/13 105/14 105/22 107/11 115/21 June 27th [20] 60/8 60/9 65/4 66/19 66/22 68/10 69/25 71/7 75/20 76/7 96/25 97/7 97/24 97/25 102/25 103/16 106/2 107/14 107/23 109/17 jurisdiction [3] 63/3 170/10 171/9 just [51] 20/22 39/11 42/22 46/20 48/7 49/5 49/6 50/10 58/6 59/12 71/14 71/15 71/25 72/1 72/2 73/11 73/15 75/16 76/25 76/25 80/1 81/14 82/14 84/5 92/24 94/16 98/23 101/15 104/5 106/16 106/18 110/5	112/1 115/3 119/24 120/6 120/11 125/13 125/24 128/23 131/9 141/16 148/2 148/3 150/21 157/23 163/10 163/12 165/23 166/9 171/13 justice [1] 154/13
June... [45] 74/12 74/17 75/20 75/24 76/7 76/15 80/2 82/9 82/10 82/11 82/15 96/20 96/25 97/7 97/13 97/19 97/24 97/25 98/10 98/23 102/25 103/16 105/14 105/22 106/2 107/11 107/13 107/14 107/18 107/21 107/23 109/17 110/10 115/21 132/20 133/10 136/24 138/12 138/14 138/17 138/19 138/25 152/11 157/24 161/13 June 15 [1] 53/3 June 1st [1] 13/6 June 2017 [1] 110/10 June 25 [13] 60/10 60/13 63/15 72/25 73/7 74/12 75/24 132/20 133/10 138/12 138/19 138/25 152/11 June 25th [11] 65/4 73/3 74/17 97/19	K keep [3] 5/24 66/17 165/5 kept [1] 102/5 kicking [1] 63/17 kids [1] 154/17 kind [7] 5/22 18/22 18/23 23/24 62/20 163/3 163/21 knew [14] 55/18 55/22 55/24 60/24 71/20 72/17 72/18 73/11 78/15 153/14 153/15 153/15 156/20 170/25 know [114] 4/7 5/22 6/4 8/11 8/11 9/21 10/2 14/6 16/19 17/22 19/4 20/11 20/13 21/21 23/21 27/6 28/18 28/21 33/15 33/15 33/17 33/20 33/21 34/5 36/12 36/21 37/9	

K	knowing [2] 6/19 115/5	152/11 161/7 163/7 163/7
know... [87] 38/8 41/11 41/21 42/12 43/10 43/19 51/12 53/23 56/15 56/19 57/15 57/17 59/19 62/12 62/19 63/19 68/16 68/21 69/3 71/5 71/25 72/3 72/8 72/22 74/1 74/8 75/4 76/19 76/23 78/11 78/13 79/2 81/17 83/6 83/24 86/3 96/9 105/5 105/10 105/21 105/21 105/22 105/24 111/14 112/16 112/20 114/13 115/7 116/17 117/18 117/20 118/13 124/21 125/6 127/6 127/24 128/8 136/9 137/21 137/21 138/4 140/3 144/11 147/3 148/6 148/8 148/19 148/24 148/25 151/23 154/8 154/8 154/12 154/18 154/20 154/23 156/3 156/24 157/10 157/12 162/22 163/22 165/5 167/3 168/1 169/19 170/14	knowledge [17] 23/17 109/8 110/3 116/5 127/16 127/22 127/24 132/9 132/25 133/9 134/15 134/17 135/1 135/7 137/17 146/22 149/8 known [2] 147/6 169/18 knows [3] 43/2 43/7 164/17	law [16] 7/17 10/10 12/6 12/8 46/6 86/7 114/12 156/6 159/25 160/10 160/12 160/25 161/1 166/11 167/1 170/11 laws [2] 139/23 140/20 lawsuit [16] 83/20 83/22 83/24 84/11 85/22 85/24 86/2 86/12 118/14 118/24 118/25 119/4 145/5 145/10 145/13 156/2 lawyer [6] 21/19 27/19 29/12 156/11 169/2 169/18 lawyers [4] 85/14 169/4 169/12 169/12 lay [1] 88/23 lead [3] 20/11 29/18 64/19 leading [6] 24/18 27/11 27/13 28/13 44/6 64/21 learn [1] 19/5 learned [3] 151/19 156/19 167/24 lease [1] 89/12 least [5] 39/1 125/4
	L	
	lack [4] 37/6 109/7 110/2 146/22 lacks [1] 152/9 language [1] 138/10 Lappen [1] 159/4 last [11] 10/14 14/23 18/3 18/17 19/5 21/1 29/2 76/20 87/25 127/6 157/12 lasted [1] 44/3 late [16] 21/23 22/8 29/23 54/10 54/11 57/15 57/18 70/5 70/7 73/21 73/22 73/23 82/15 104/6 106/1 106/14 later [9] 10/3 10/5 12/25 21/14 144/25	

L	113/22 114/4 114/21	56/8 57/22 57/22
least... [3] 142/25	116/1 119/18 119/22	59/11 59/18 59/19
168/19 170/20	122/7 122/11 124/13	59/22 60/24 64/14
leave [3] 3/20 82/22	124/21 139/6 142/1	65/8 65/12 65/17
82/23	153/20 156/14	66/3 66/7 67/6 70/3
left [3] 50/22 50/23	letter [7] 28/3 28/4	70/5 70/13 75/12
116/1	28/6 120/11 120/24	75/13 81/21 84/19
left-hand [1] 50/23	136/5 137/13	84/24 85/21 88/24
legal [6] 8/25 59/6	letting [1] 154/15	89/14 89/14 89/16
62/14 141/18 142/3	level [4] 95/16	90/13 92/18 92/18
144/8	102/16 102/17 119/6	92/21 93/14 93/17
legally [1] 7/15	license [137] 4/13	98/12 99/19 100/5
legion [1] 10/20	4/24 5/2 5/5 5/18	100/18 102/10 106/9
Lehr [1] 1/12	5/24 6/4 6/8 6/8 6/16	108/17 108/17
less [3] 9/13 19/3	6/18 6/19 6/23 7/6	120/12 120/25
111/19	7/7 7/21 7/23 7/25	121/22 131/4 135/2
let [22] 9/20 22/12	8/4 8/4 8/20 9/19	149/9 155/6 155/7
26/24 36/12 61/2	9/23 10/1 10/4 10/11	158/23 158/25 159/2
71/24 76/1 79/20	10/12 10/16 10/19	159/5 159/6 159/11
82/18 86/6 96/16	11/10 11/21 11/25	159/12 161/4 161/6
99/11 102/4 112/16	12/6 12/8 12/13	161/8 164/15 164/16
123/23 125/3 137/2	12/14 12/19 13/1	164/19 165/18
141/1 154/11 157/23	13/2 13/4 13/10	167/18 169/16 170/7
158/7 161/6	13/12 13/17 13/18	licensed [2] 5/23
let's [37] 7/19 9/12	13/20 13/20 13/22	148/23
21/21 24/16 25/13	13/24 14/14 16/6	licenses [7] 5/11
29/21 34/3 43/11	19/8 19/9 19/11	5/14 5/17 5/21 5/22
46/2 50/4 50/10	20/10 21/5 22/12	6/1 6/7
50/22 63/10 67/2	23/6 23/11 23/23	licensing [3] 5/1
77/3 77/10 87/12	24/21 25/14 36/8	24/5 161/1
87/13 94/1 103/14	40/2 45/1 45/2 45/7	lien [1] 88/19
104/15 106/7 113/8	45/8 45/9 52/8 55/10	life [1] 158/11

L	18/23 18/23 18/25	lockbox [3] 94/10
like [32] 13/15 19/8	19/19 30/9 45/9 55/1	94/10 123/7
20/12 23/20 23/20	75/14 76/21 82/8	Lockhart [1] 159/1
29/14 43/9 55/6 58/6	90/1 91/9 104/22	long [8] 16/9 87/3
59/15 59/17 66/6	114/3 114/22 115/10	87/4 87/8 88/10
66/24 66/24 66/25	125/1 132/3 147/1	130/8 161/19 170/21
71/16 72/2 72/2	154/4 154/23 158/25	longer [2] 115/2
72/17 73/11 73/15	166/17 166/20	115/13
80/2 80/6 81/16	166/21	look [40] 20/23
82/14 82/19 108/16	Liquors [2] 15/25	20/24 31/24 33/5
116/12 127/8 156/15	18/7	37/11 40/18 42/23
165/1 170/5	list [2] 32/9 36/2	45/10 53/9 53/10
likelihood [2]	listed [2] 91/8	55/6 61/11 61/13
164/10 166/1	132/22	69/22 75/20 89/19
line [14] 22/6 32/8	listen [1] 46/18	91/4 91/12 93/5
63/2 70/7 70/7	litigate [1] 154/12	96/16 99/11 107/17
113/14 113/15	litigation [1] 4/14	109/1 109/25 112/16
113/16 116/13	little [7] 24/17 29/21	112/23 113/14
116/16 116/20	47/15 87/12 117/7	114/21 116/13
116/23 117/10	165/3 170/23	116/21 119/18
133/22	live [2] 51/8 51/17	123/24 130/17
link [2] 94/11 94/12	lives [1] 51/6	133/17 138/12 139/6
liquor [59] 4/25 5/5	LLP [1] 1/12	146/16 153/14
5/5 5/18 5/20 5/21	located [3] 16/15	164/20 166/1
6/4 6/7 6/8 6/8 6/12	89/24 91/9	looked [1] 109/21
6/23 7/8 8/6 11/13	locating [1] 119/2	looking [6] 41/24
15/10 15/11 15/12	location [14] 16/13	42/8 120/4 147/3
15/13 15/18 15/25	16/18 48/7 52/9	147/4 171/3
16/2 16/7 16/13	52/10 55/5 59/12	looks [2] 116/12
16/15 17/3 17/3 17/5	74/25 93/12 93/25	146/18
17/8 17/13 18/15	99/19 99/23 166/13	Lord [1] 13/7
18/19 18/22 18/22	166/17	lose [7] 5/15 5/24

L	main [1] 165/11	Malik's [2] 41/15
lose... [5] 124/11	maintaining [1]	53/22
152/22 152/23 165/5	159/19	man [1] 111/12
169/16	make [23] 11/19	manage [2] 88/17
losing [3] 154/25	12/5 12/8 13/14	99/13
163/4 163/5	27/14 56/18 66/24	manager [17] 11/18
loss [1] 152/25	72/2 74/15 86/8	11/20 84/16 84/18
lost [3] 154/3 166/12	101/13 107/1 111/7	84/23 85/1 85/2 85/3
166/15	117/13 123/10 127/2	85/4 85/16 101/10
lot [2] 68/25 143/18	154/17 163/10 164/1	104/21 110/25
loud [1] 113/24	164/2 164/7 166/5	124/24 136/13
lunch [2] 3/22 86/20	166/14	136/15 166/5
M	makes [4] 18/25	manager's [3] 85/7
M-A-R-Q-U-E-Z [1]	98/21 165/3 166/11	110/16 110/19
88/1	making [11] 6/25	Mangos [2] 16/17
machine [1] 91/8	11/3 29/25 128/13	154/7
made [18] 7/1 7/24	128/15 128/24	MANUEL [4] 2/7
8/18 12/20 93/2	151/24 157/16	86/24 87/22 87/25
104/3 104/3 104/9	157/17 157/17 166/6	many [21] 16/17
110/20 111/15	malignant [2] 7/9	17/3 24/16 30/4
123/12 125/11 129/2	154/7	44/11 44/15 44/15
129/14 151/24	Malik [30] 20/9	44/15 44/16 76/10
153/13 156/22	21/18 21/24 22/23	76/19 105/17 115/5
156/22	23/16 23/18 24/3	123/4 128/22 148/10
MAGISTRATE [1]	24/18 24/20 24/21	148/14 148/17
1/10	24/23 24/24 25/16	148/22 153/10 169/9
mail [5] 51/19 90/19	25/21 26/15 26/22	mark [1] 37/1
94/25 123/7 123/7	26/25 27/16 32/15	marked [3] 20/13
mailed [3] 90/18	38/6 38/8 41/11	45/11 146/16
136/6 136/7	44/12 54/19 66/11	market [11] 15/19
mailings [1] 100/1	66/12 74/22 74/23	15/21 16/2 18/12
	82/23 85/5	19/14 19/16 40/2

M	131/6 131/12 131/14	23/24 30/9 33/17
market... [4] 40/13	143/12 143/14	37/8 43/8 57/14 58/4
40/15 47/25 58/21	143/22 143/24	63/18 68/18 72/20
markets [1] 48/7	144/23 161/18	73/25 74/1 76/20
markings [1] 36/16	162/15 162/20 165/7	119/3 121/14 135/24
MARQUEZ [6] 2/7	168/20 168/22	162/23
86/24 87/22 87/25	168/24	mayor [4] 7/9 23/18
88/4 101/23	master's [2] 73/14	104/21 154/6
master [78] 7/17	119/16	me [141] 7/3 9/14
28/20 29/19 29/20	masters [2] 29/14	9/14 9/15 15/15 20/3
30/3 30/16 63/3	124/17	20/8 20/11 22/12
77/14 78/8 80/8	matter [14] 4/3 4/4	22/19 23/1 23/20
95/16 95/17 95/18	10/15 81/16 86/12	23/23 23/25 24/25
98/11 98/21 99/2	105/15 106/8 106/19	26/17 26/24 27/7
102/11 102/15	111/11 114/12 125/8	27/14 29/1 29/18
102/16 102/17	131/9 169/15 172/14	30/25 31/19 33/12
103/23 103/25 107/7	Matthew [1] 159/1	34/18 35/21 35/21
107/20 109/3 109/12	maximize [1]	36/12 38/3 39/16
111/7 111/8 111/9	116/11	40/6 40/6 40/9 40/17
111/19 111/20	maximum [1] 87/7	40/19 40/19 40/20
111/22 120/13	may [30] 6/23 7/4	44/18 45/6 45/8
120/14 120/20 121/1	11/11 13/9 14/11	45/20 46/11 46/12
121/6 121/10 121/10	29/6 36/25 47/6	46/14 46/15 46/18
121/12 121/12	62/25 111/24 112/17	46/19 46/20 49/13
121/21 122/2 122/3	115/2 120/20 125/1	49/19 51/7 52/7 53/9
122/6 122/7 122/9	128/8 129/17 132/7	53/10 54/19 56/7
122/9 122/21 123/25	133/12 138/4 138/6	56/15 56/16 61/2
124/15 124/17	139/25 141/7 144/14	61/17 63/14 65/9
124/20 124/21 125/8	144/14 149/19 151/7	65/10 65/12 66/4
125/9 125/12 125/14	151/21 152/17 153/6	67/5 67/18 68/24
125/15 125/17	155/25	70/11 70/21 71/3
125/19 125/20 131/5	maybe [18] 23/24	71/18 71/24 72/6

M		
me... [67] 73/1 74/13 75/11 75/11 75/12 75/13 75/13 76/1 76/2 76/25 77/7 77/7 78/18 79/3 79/5 79/7 79/9 81/3 81/5 81/9 81/13 81/15 82/4 82/18 82/22 82/24 83/4 83/4 83/9 84/20 85/12 85/17 85/21 85/22 86/4 86/6 96/16 99/11 102/4 102/9 105/2 105/17 107/5 107/15 109/14 109/22 111/1 112/16 112/21 113/24 122/13 123/23 124/3 125/3 125/24 126/9 135/25 137/2 137/17 141/1 146/17 151/9 153/24 169/7 170/1 170/5 171/15	meaning [2] 131/11 152/4 means [7] 99/21 109/20 113/18 113/18 141/3 147/9 149/15 meant [1] 63/15 mechanisms [3] 123/4 141/12 141/13 meet [4] 47/13 47/14 144/23 170/24 meeting [6] 32/14 84/23 85/1 85/2 85/4 156/12 members [2] 96/23 105/9 mentioned [2] 100/8 112/1 merchant [1] 91/10 Meridian [2] 22/4 94/10 merits [1] 166/1 met [4] 47/11 64/1 65/5 77/14 methods [1] 100/8 Miami [82] 1/3 1/6 1/13 1/17 1/18 1/24 1/25 4/12 6/22 7/16 16/25 17/12 17/19 19/12 23/1 23/10 23/19 23/19 24/5 29/13 31/7 31/20	32/17 32/19 33/8 34/11 37/5 39/22 40/22 42/3 43/8 45/2 45/16 46/10 48/24 49/2 49/15 50/5 50/13 53/5 53/25 55/2 57/8 61/22 64/2 65/6 73/24 73/25 73/25 73/25 74/17 77/23 78/21 88/6 88/25 89/2 89/9 94/14 99/5 119/13 130/7 133/19 135/10 135/19 135/20 139/19 139/22 141/2 143/15 144/2 144/5 148/10 148/17 150/12 151/19 154/23 155/8 156/1 156/16 162/16 172/18 172/19 microphone [4] 26/20 36/24 40/1 53/7 mid [1] 126/3 mid-October [1] 126/3 middle [4] 37/7 113/22 114/1 162/17 might [4] 115/1 115/13 116/6 156/21 million [1] 163/5

M	124/18 170/25 171/1	161/10 161/10
mind [3] 48/17 72/4	171/2 171/3 171/16	167/20
137/24	money [37] 11/24	more [26] 8/8 8/9
mine [4] 46/20 49/8	12/2 13/16 23/2	8/13 19/2 19/2 26/7
49/9 49/9	24/20 27/3 27/5 27/7	33/11 51/10 68/23
minimize [1] 116/10	41/3 44/21 57/20	86/14 87/12 127/7
minimum [1] 152/8	69/6 70/12 70/19	140/21 140/23
minutes [5] 3/16	76/12 76/12 97/14	148/15 148/15 149/9
9/13 9/16 46/15	101/19 102/6 102/6	153/24 156/7 164/19
46/18	103/15 105/4 106/9	166/13 167/12
Mischaracterizes [1]	106/16 106/18 107/2	167/12 170/1 170/10
71/9	110/14 111/13 123/5	171/8
Mischaracterizing	123/18 123/19	morning [10] 15/3
[1] 121/23	123/23 126/13	18/2 36/1 49/17
misconstruing [1]	163/11 166/23	49/18 50/2 71/5
9/18	166/23 166/25	117/3 122/13 171/16
misled [1] 11/22	moneys [1] 95/11	most [7] 60/22
missed [1] 99/24	monies [12] 94/25	102/21 108/24
misspoke [1] 119/3	97/4 102/13 102/14	152/22 154/4 156/10
mistake [2] 30/8	102/21 103/12	158/10
115/16	106/14 113/20	motion [3] 1/9 157/2
mistaken [1] 26/7	113/20 121/11	167/8
mistakes [3] 61/1	121/13 123/15	motivations [1]
61/1 74/15	month [13] 4/18	154/8
moment [8] 19/2	18/17 19/5 24/15	motive [1] 104/21
35/23 72/4 97/18	33/11 34/4 34/13	mouth [1] 105/2
98/5 124/22 125/24	98/7 153/7 153/8	move [9] 51/15
140/1	162/12 166/8 169/8	72/11 77/3 77/10
Monday [16] 38/19	months [14] 10/3	78/9 132/12 133/3
38/22 39/10 45/21	10/5 12/21 12/25	134/20 170/14
45/21 45/22 45/23	17/12 18/3 60/1 60/3	moved [4] 114/8
45/24 79/16 122/13	70/6 72/14 161/7	116/8 116/9 138/17

M	29/16 29/23 29/25	multiple [3] 9/9
movement [1] 75/3	30/15 31/6 31/10	152/14 152/21
moving [1] 51/14	32/12 32/14 32/14	municipalities [1]
Mr [14] 2/5 2/6 2/8	32/16 33/23 34/14	6/11
2/9 2/10 2/12 2/13	34/22 41/11 44/12	must [3] 62/21 89/6
2/14 14/19 25/12	77/5 77/13 77/18	152/4
28/8 47/6 88/4	153/5	MXE [10] 16/19
101/23	Mr. Shir [8] 28/12	16/21 16/22 16/25
Mr. [37] 3/7 7/22	28/19 28/23 29/1	17/4 17/14 17/21
28/12 28/19 28/23	29/9 41/11 44/12	18/12 18/14 18/24
29/1 29/9 29/16	153/5	my [111] 3/7 4/15
29/23 29/25 30/15	Ms [2] 24/3 26/25	6/8 8/16 13/6 15/15
31/6 31/10 32/12	Ms. [14] 21/24	20/4 22/17 24/20
32/14 32/14 32/16	25/16 25/21 26/15	24/25 25/12 31/2
32/25 33/23 34/14	27/16 38/6 38/8	39/2 39/15 41/22
34/22 41/11 41/11	41/11 41/15 44/12	46/10 46/12 47/10
44/12 44/12 47/10	53/22 74/22 74/23	47/15 48/17 48/22
77/5 77/13 77/18	153/5	49/24 50/7 53/15
118/9 127/17 127/23	Ms. Aiken [1] 153/5	56/21 61/8 63/17
151/10 153/5 153/5	Ms. Malik [11]	66/7 67/6 67/11
156/11 167/9	21/24 25/16 25/21	67/18 67/19 68/15
Mr. Alex [1] 118/9	26/15 27/16 38/6	68/15 69/5 69/7 69/8
Mr. Boxner [1]	38/8 41/11 44/12	69/11 69/13 69/13
32/25	74/22 74/23	70/11 70/19 70/21
Mr. Doar [3] 47/10	Ms. Malik's [2]	70/25 70/25 71/21
127/17 127/23	41/15 53/22	75/4 75/13 75/14
Mr. Doar's [1]	much [19] 3/17 8/8	75/18 75/21 75/21
156/11	8/13 19/2 19/2 23/2	76/4 76/6 76/7 77/2
Mr. Doran [1] 3/7	23/4 23/5 27/14 40/5	82/5 82/19 82/24
Mr. Hudson [3]	44/17 44/19 44/21	83/5 84/13 85/10
7/22 151/10 167/9	56/19 69/15 75/21	91/19 96/22 100/25
Mr. Rosen [19]	76/8 86/14 167/21	101/15 103/6 103/10

M	near [1] 4/17	20/3 26/23 47/11
my... [43] 105/9	nearly [1] 99/25	55/6 55/7 55/8 63/7
105/17 108/6 108/11	necessary [2] 4/10	63/8 70/18 71/8
111/11 111/12 114/9	4/13	73/14 73/19 74/14
114/25 115/8 115/15	need [45] 3/12 3/20	74/16 82/3 82/4 82/6
115/20 115/23	4/9 5/5 7/11 10/16	82/6 82/8 82/13
117/14 118/25 119/1	12/8 19/11 20/18	82/16 82/18 82/19
119/6 119/7 120/12	25/3 37/13 40/1	82/20 82/25 82/25
120/24 120/25 121/5	53/13 65/21 67/5	82/25 82/25 83/3
122/5 122/8 123/22	67/18 68/21 70/21	83/3 83/7 83/9 83/13
123/22 123/23	71/18 71/22 78/17	83/14 83/16 83/18
123/24 124/2 124/4	82/24 86/1 89/14	83/20 83/21 83/23
127/4 143/9 144/20	89/15 95/11 100/19	84/2 84/8 84/10
151/11 151/12	100/20 104/16	84/11 84/12 84/18
151/14 152/9 153/11	114/11 116/7 117/16	84/23 86/2 97/11
153/23 153/25	117/20 121/4 122/5	105/3 152/16 158/1
154/20 157/4 158/11	122/6 123/15 123/22	158/4 161/11 161/23
162/18	124/7 130/24 131/16	161/24
N	149/24 151/24	new [52] 6/18 6/19
name [13] 14/23	167/11 171/12	6/23 7/23 7/25 8/4
15/4 19/9 20/9 27/20	needed [2] 110/24	8/4 10/7 10/8 11/11
27/22 27/25 47/10	124/1	12/8 12/13 12/14
50/23 52/25 52/25	needs [7] 25/4 99/5	13/4 13/7 13/20
87/25 118/4	100/16 123/12	13/20 18/15 18/16
named [1] 28/19	125/21 164/23	18/19 30/10 45/1
narrative [2] 4/23	165/23	45/2 45/3 45/7 45/8
155/5	negates [1] 159/2	63/11 68/17 71/24
Natural [1] 159/1	negotiated [1]	71/25 72/9 84/2 84/9
naturally [3] 9/19	125/17	89/6 90/21 90/23
10/13 11/10	negotiation [1]	91/20 91/23 101/3
nature [1] 9/3	156/18	101/12 103/21
	never [57] 4/17 6/19	106/23 106/24

N		
new... [9] 107/13	23/4 24/15 26/14	157/3 158/8 158/8
126/21 147/20	28/24 31/5 33/21	158/22 158/24 159/5
154/23 161/4 161/12	38/18 38/24 40/6	159/9 159/17 159/17
165/20 167/25 168/1	40/9 42/14 43/4 44/3	160/2 160/9 162/18
news [2] 151/14	44/5 44/8 45/7 45/24	163/4 164/11 164/12
168/21	47/3 48/1 49/22 50/1	164/13 164/13
next [26] 16/16	52/17 52/19 52/22	165/13 167/15
23/13 27/17 28/25	52/24 53/21 53/23	167/16 169/15
29/9 30/12 37/2	59/3 62/24 63/9	169/21 169/22 170/6
38/19 38/22 39/10	64/20 66/12 76/18	170/8 171/16 172/1
42/16 42/23 42/24	77/16 77/17 78/2	172/3
45/24 62/8 87/13	79/13 80/13 80/15	nobody [8] 9/5
114/21 116/13	80/15 80/24 81/10	18/22 51/12 72/9
116/20 124/9 129/20	83/9 84/5 84/6 86/22	83/3 83/4 154/2
132/12 138/16	87/19 97/4 98/6 99/4	155/12
154/21 163/16	101/15 101/23 104/3	noise [3] 66/24
171/14	104/9 106/18 106/22	66/25 160/5
Nice [2] 47/13 47/14	108/8 109/19 110/9	none [5] 86/15 94/8
night [2] 18/2	114/10 114/13	124/4 125/4 169/25
171/16	114/19 115/2 115/5	nonpayment [4]
nightclub [1] 160/5	115/13 115/18	114/2 116/22 146/25
nine [8] 10/3 10/4	117/16 118/16 119/6	147/14
12/21 12/25 60/1	119/15 127/22 128/3	normal [6] 127/15
60/3 70/6 161/7	130/11 130/13	131/10 143/11
no [145] 1/2 4/15	132/11 133/2 133/11	143/21 144/12
7/15 7/19 8/21 8/25	133/16 134/16 135/3	151/20
9/21 10/13 10/15	135/8 135/22 139/2	normally [4] 102/20
10/17 10/18 10/18	139/18 145/12	104/24 142/20
10/20 11/20 12/21	147/10 147/12	168/14
13/2 13/17 13/22	147/19 148/9 148/25	North [1] 94/13
13/23 14/1 22/25	150/8 150/15 150/17	Northwest [2] 51/3
	150/18 151/1 155/23	55/11

N	142/17 142/25 150/2 157/10 157/24 notices [18] 53/25 54/7 60/16 93/22 94/18 95/1 97/20 97/23 108/3 108/4 108/5 108/5 108/12 108/14 125/5 137/12 141/13 141/17 notify [2] 18/21 95/9 notifying [1] 54/1 November [2] 1/4 172/17 now [51] 5/1 7/4 8/3 9/4 11/10 13/4 13/19 15/25 16/22 17/25 24/23 25/7 33/24 46/19 47/23 54/20 63/10 67/2 75/16 76/22 76/22 79/25 81/21 93/5 95/13 97/6 97/9 97/19 98/23 106/6 107/14 107/15 108/3 110/13 115/1 115/4 125/4 126/11 126/12 133/3 133/17 134/20 153/22 154/18 155/12 156/19 157/20 159/13 160/18 164/9 169/5 number [19] 5/12	9/6 9/7 18/4 21/1 22/6 42/5 42/6 50/19 61/4 64/1 107/5 109/18 111/5 113/19 122/5 128/18 135/25 164/24 numbers [3] 107/19 109/21 109/25
not [217] note [9] 32/8 115/4 115/5 115/7 116/15 147/9 147/11 147/21 166/11 notes [3] 146/18 151/24 167/17 nothing [12] 86/17 103/14 106/13 139/15 149/3 151/20 152/1 152/22 152/25 154/18 168/14 168/21 notice [53] 35/7 38/20 57/9 57/10 60/2 60/5 72/24 74/6 74/11 83/14 93/9 93/10 94/11 94/11 95/22 102/23 102/23 104/6 104/7 106/25 107/1 108/7 108/7 108/8 108/8 108/9 108/13 108/15 108/18 108/21 110/6 132/8 132/10 132/24 133/1 133/7 133/17 133/18 134/23 135/9 135/25 137/15 137/25 138/13 139/12 139/16 142/11 142/14	O o'clock [3] 46/6 46/9 155/20 O'SULLIVAN [1] 1/9 oath [6] 14/21 56/9 87/23 105/1 129/23 143/5 object [8] 27/11 36/4 63/2 109/7 110/2 118/2 119/20 170/19 objected [1] 17/16 objecting [1] 64/22 objection [30] 36/15 42/14 59/5 62/14 64/16 64/23 65/18 71/9 109/9 110/7 112/14 115/17 117/19 118/17 121/23 127/8 141/18 142/3 144/8 145/6 145/14 145/19 145/23 145/25 146/6	

O	16/2 16/6 16/9 16/13	46/6 46/9 52/1 56/3
objection... [5]	16/15 16/16 16/24	57/16 79/23 79/24
146/8 146/22 147/15	17/6 18/7 18/12	80/12 82/13 83/7
147/22 151/1	19/14 19/16 19/19	83/10 83/11 84/10
obligated [3] 13/11	39/15 40/2 40/12	89/25 91/6 92/9 94/2
13/13 167/21	40/15 40/25 41/23	94/3 95/3 107/16
obtain [16] 33/24	44/13 44/23 47/24	108/23 119/8 122/13
61/14 89/1 89/8 98/5	47/25 48/14 48/14	122/16 126/3 126/4
98/12 100/20 133/7	48/18 48/20 48/23	126/5 126/10 129/9
133/18 134/4 134/17	48/23 49/1 49/16	129/12 134/23 135/1
134/24 135/9 135/18	50/4 50/5 50/8 52/4	135/13 136/22
139/14 150/5	55/1 55/17 56/2 56/4	137/20 146/1 158/2
obtained [2] 141/8	56/10 56/11 56/24	October 1 [13] 8/24
149/20	56/25 57/9 57/10	38/23 52/1 56/3
obtaining [3] 141/6	57/13 57/22 57/25	57/16 89/25 91/6
141/25 149/18	58/6 58/8 58/9 58/21	94/2 94/3 95/3
obtains [1] 134/12	58/22 58/25 58/25	108/23 122/16 158/2
obvious [1] 85/19	59/4 60/7 60/24	October 11 [2]
obviously [2] 143/3	60/25 69/22 79/6	126/5 126/10
157/7	79/10 79/19 79/22	October 1st [3]
occasionally [1]	80/2 82/8 84/24	38/19 39/1 44/14
168/25	108/11 109/16 154/5	October 1th [1]
occasions [1] 152/22	157/18	92/9
occupation [2] 19/9	October [63] 8/24	October 2 [1] 38/24
130/5	29/2 36/17 38/19	October 2nd [4]
occupational [6]	38/23 38/24 39/1	39/4 39/11 45/23
19/8 52/8 88/24	39/4 39/11 39/13	122/13
120/12 120/25	39/13 39/14 40/4	October 3 [9] 39/13
121/22	40/9 40/10 40/15	39/13 39/14 40/4
Ocean [78] 15/9	40/22 44/3 44/14	40/15 40/22 79/23
15/12 15/13 15/18	45/20 45/21 45/23	79/24 80/12
15/19 15/21 15/25	45/25 46/2 46/3 46/5	October 6 [7] 83/10

O	officer [2] 66/14 82/22	one [88] 5/12 6/13 6/21 8/6 8/16 9/6 10/8 10/12 11/25 14/8 20/15 21/21 26/7 30/8 30/9 30/12 30/12 30/13 35/23 40/17 42/13 43/20 43/25 43/25 44/3 45/12 55/9 60/16 60/25 64/11 67/24 69/18 69/18 69/19 72/2 75/8 75/8 75/9 75/9 81/17 95/3 96/22 98/25 100/6 100/21 103/19 105/5 105/7 105/9 105/17 107/11 108/23 112/21 115/25 124/21 127/6 127/7 127/19 136/10 136/11 136/23 136/23 137/3 137/25 138/1 138/12 138/13 138/21 139/2 142/25 150/20 151/9 152/7 153/15 154/3 155/18 157/20 157/20 158/10 161/6 161/22 165/21 166/5 166/13 166/19 167/5 167/23 167/24 one-year [1] 11/25
October 6... [6] 83/11 84/10 134/23 135/1 135/13 137/20	officers [4] 136/21 139/20 148/11 149/1	
October 6th [10] 36/17 45/25 46/2 46/3 46/5 46/6 46/9 82/13 83/7 146/1	official [3] 1/24 118/13 172/18	
October 9 [1] 40/10	often [1] 111/9	
off [4] 28/10 49/8 109/14 119/13	oh [1] 155/6	
offender [1] 136/6	okay [46] 23/7 25/13 26/15 26/17 28/11 30/4 37/11 38/19 38/25 40/21 42/5 47/23 48/5 49/15 49/24 52/11 54/20 55/9 58/11 61/3 61/5 63/10 65/22 67/7 69/17 82/12 84/22 90/16 98/1 98/23 101/18 101/20 101/21 103/5 115/25 118/14 120/5 133/24 136/18 137/4 139/2 146/11 150/19 151/6 159/14 165/4	
office [50] 22/13 23/14 73/15 73/24 74/7 78/9 78/9 94/13 94/15 95/7 96/20 105/16 107/23 109/12 110/5 110/12 110/16 110/17 110/19 110/19 114/2 115/19 115/23 116/22 117/11 119/16 120/15 120/24 121/5 121/6 121/10 121/12 122/6 122/9 122/9 123/6 123/22 124/1 124/3 131/13 140/17 140/23 140/25 143/13 143/23 144/24 146/4 146/25 156/12 161/21	old [9] 81/21 98/7 107/12 126/11 139/2 154/12 157/15 161/10 161/11	
	once [10] 10/14 12/23 35/14 37/18 95/16 100/18 101/17 104/9 125/20 162/1	

O		
ones [4] 5/13 101/18 115/10 127/1	operating [14] 10/4 13/1 17/9 89/13 89/13 98/24 99/7 139/8 141/7 142/25 149/8 149/19 158/18 164/14	110/1 110/12 110/23 111/1 111/3 111/4 111/24 112/2 112/4 122/11 122/21 123/5 123/16 131/6 131/13 135/20 143/6 143/14 145/1 145/2 162/13
ongoing [1] 103/24	operation [2] 17/13 159/14	orders [4] 111/9 111/20 143/19 144/21
online [14] 89/10 94/12 123/6 126/2 126/3 126/7 128/12 128/15 128/17 128/19 128/23 128/24 129/2 161/25	operations [8] 106/4 131/3 134/3 134/8 134/12 134/15 135/12 141/24	ordinance [30] 6/20 6/24 8/19 11/12 18/17 18/18 18/21 21/3 30/10 45/3 45/4 71/5 71/24 71/25 72/9 72/9 76/18 76/19 132/1 134/25 138/5 138/8 138/9 150/23 151/3 153/19 155/25 159/4 164/14 164/17
only [17] 6/13 16/4 19/5 42/12 48/2 58/5 68/13 106/24 124/16 139/2 141/23 152/21 161/5 161/9 166/18 167/11 171/19	operator [1] 149/25	ordinances [9] 17/11 17/16 17/19 18/4 139/23 140/20 141/2 142/11 155/13
open [17] 3/3 18/14 18/22 41/6 41/7 68/24 76/23 79/19 80/19 111/14 139/8 150/6 154/11 154/16 154/23 158/6 166/8	opportunity [5] 10/9 20/24 36/3 36/13 101/7	ordinary [3] 11/4 114/18 114/19
opened [2] 78/14 80/19	opposed [2] 43/17 137/10	original [2] 50/13 108/4
opening [2] 3/14 18/19	opposing [2] 149/11 150/24	originally [1] 157/8
opens [1] 167/18	order [56] 29/20 34/8 34/9 34/10 34/15 34/17 34/19 34/20 34/20 46/13 64/14 65/7 67/6 67/16 67/19 68/14 71/6 71/19 75/13 79/3 80/22 81/1 81/2 81/2 81/5 81/11 82/24 85/20 90/16 99/23 107/7 107/20 109/1 109/4 109/5	other [45] 3/19 5/3 6/10 11/6 13/19
operate [9] 19/12 89/3 135/17 135/20 150/6 155/8 156/6 158/8 164/16		
operates [1] 48/3		

O		
other... [40] 18/11 21/24 25/16 39/14 40/25 47/23 53/13 68/17 68/18 69/19 72/5 88/19 103/12 103/15 106/14 106/20 108/12 108/14 110/10 116/17 116/23 121/21 125/14 137/17 137/25 141/22 141/23 144/5 147/23 148/10 150/14 152/4 153/20 153/21 155/25 156/1 158/15 160/22 165/14 168/22 others [3] 104/22 140/21 154/25 Otherwise [2] 158/10 164/24 our [74] 4/5 6/16 7/7 10/22 10/22 42/19 49/4 73/20 88/17 89/8 90/5 93/7 94/9 94/10 94/10 94/11 94/11 94/11 94/14 94/23 95/7 95/18 96/5 96/19 99/13 99/14 99/21 100/4 100/21 100/22 101/1	101/9 101/22 104/2 104/3 105/15 105/25 106/3 106/5 106/13 106/22 107/23 108/22 110/16 110/17 112/5 112/7 112/12 113/5 113/7 113/9 114/14 115/4 115/18 115/19 115/25 116/7 116/24 119/2 121/9 123/6 123/11 127/24 128/1 146/18 147/23 152/7 155/5 155/14 155/22 157/19 158/21 164/18 169/22 ours [1] 49/7 ourselves [1] 155/16 out [61] 4/15 7/13 8/6 24/3 42/12 42/17 42/23 42/23 43/3 43/9 43/16 60/6 63/10 63/12 69/12 69/13 72/6 84/2 89/11 90/18 90/19 90/23 90/25 90/25 91/22 93/21 93/22 94/18 95/1 100/1 104/22 105/18 106/7 106/15 108/4 108/5 108/10 111/2 111/3 111/7 111/12 113/24	114/15 116/6 116/14 116/20 123/25 128/13 128/15 135/25 136/4 136/5 137/13 153/7 154/6 154/7 154/14 157/3 157/23 166/9 172/6 outcome [2] 126/13 165/2 outline [1] 4/7 outset [1] 9/17 outside [3] 4/18 131/25 132/18 outstanding [46] 30/4 64/7 65/6 65/13 66/23 68/13 71/8 94/22 94/25 95/6 95/8 95/10 95/10 95/13 97/4 97/7 97/9 100/12 100/15 102/13 102/14 102/21 102/25 103/8 103/12 106/7 106/19 107/11 109/3 109/15 109/17 110/12 112/4 113/18 113/19 113/20 113/21 123/14 128/14 129/5 129/6 129/8 129/11 161/10 161/15 162/8 over [12] 17/11 22/7 22/17 62/8 66/14

O	29/15 99/6	106/13 112/2 114/8
over... [7] 66/24	Ownership [1]	122/25 122/25
81/21 85/20 85/21	155/2	125/18 125/21 126/3
100/18 103/15	owns [1] 48/2	126/10 129/6 129/9
162/14	P	129/12 153/1 153/14
overruled [17]	P.A [1] 1/16	153/15 161/9 161/14
33/14 43/7 59/7	p.m [8] 7/10 18/1	161/15 161/23
62/16 63/5 64/23	30/13 117/4 122/18	161/25 163/11
71/11 109/9 110/4	123/20 136/22	paper [11] 40/6 40/8
121/25 141/20 142/4	139/21	46/17 46/20 68/22
145/15 145/25	package [2] 11/13	68/25 101/15 112/17
146/24 147/16	47/24	146/13 152/13
147/25	page [23] 2/3 20/23	163/14
overseas [1] 21/7	33/5 34/6 39/17	papers [3] 7/22 8/12
owe [5] 75/21 76/8	39/18 42/23 52/12	59/10
107/1 121/11 152/25	52/13 52/20 62/8	PAPPAS [4] 1/22
owed [11] 69/15	119/24 120/2 120/3	2/6 3/11 47/10
95/11 96/21 97/4	131/1 132/5 133/23	paragraph [2] 131/1
97/14 102/13 102/22	140/6 140/7 140/9	143/9
103/12 113/20	146/21 149/13	paragraph 6 [2]
121/13 123/15	149/13	131/1 143/9
owes [2] 94/25	pages [5] 1/7 91/12	paralegal [1] 3/7
106/14	119/10 172/2 172/4	part [9] 8/1 25/25
owing [3] 82/14	paid [45] 27/4 32/8	27/13 31/3 42/19
94/22 97/13	40/15 41/22 42/13	44/9 96/5 106/3
own [8] 15/13 15/22	43/25 58/20 70/18	111/11
15/23 47/23 58/5	71/14 79/16 94/8	partake [1] 91/2
124/14 140/15 156/6	94/19 94/24 96/6	partial [1] 113/19
owner [7] 15/8 48/5	97/16 98/16 99/5	participated [1]
96/1 100/20 127/17	100/13 100/17	144/2
137/7 158/24	102/14 103/15	particular [7] 5/9
owners [3] 23/21	103/22 106/8 106/12	117/24 137/7 137/14

P		
particular... [3] 140/22 142/24 152/1	98/7 98/12 99/7 99/22 99/25 100/3 102/23 103/11 103/12 104/8 104/13 105/3 105/10 105/16 105/16 106/4 107/18 108/1 108/1 112/11 122/7 122/10 123/4 123/4 123/6 123/6 123/9 123/17 123/23 124/6 126/2 126/7 128/23 131/4 131/8 141/12 142/19 148/22 152/12 152/13 152/15 152/15 152/19 152/19 152/24 153/16 154/16 161/8 161/9 161/22 162/11 162/13 163/4 163/6 163/7 164/4 164/19 165/18	100/7 100/8 100/10 102/18 102/20 103/13 104/2 104/3 104/9 107/1 110/20 112/3 123/7 123/7 123/10 123/13 126/8 126/10 126/12 126/14 128/9 128/13 128/16 128/24 129/2 129/14 164/5
parties [1] 3/20		payments [2] 128/17 128/18
party [1] 159/5		pays [2] 95/5 95/7
past [3] 17/12 29/2 41/8		penalty [1] 106/1
path [2] 144/11 144/12		pending [3] 4/14 102/11 102/11
pay [128] 21/25 22/17 22/19 23/4 23/5 23/24 24/11 26/24 26/24 27/6 34/2 40/5 40/24 44/23 54/12 56/22 57/2 64/14 65/7 65/16 66/2 66/9 67/6 67/12 67/19 69/6 69/7 69/8 69/11 70/12 70/15 70/20 70/21 70/24 71/7 71/13 71/19 72/1 72/3 76/12 76/13 76/14 76/15 76/25 76/25 79/3 79/5 79/12 79/22 80/1 80/5 80/8 81/14 81/15 81/20 82/24 83/4 83/4 85/6 90/18 92/18 92/21 93/23 93/25 94/12 94/14 95/1 95/2 96/1 98/5		people [19] 20/11 23/20 29/14 62/11 64/13 69/2 70/25 71/1 71/21 72/11 73/13 84/14 84/14 85/17 88/23 105/6 111/17 111/21 127/22
	paying [9] 6/18 25/17 94/6 100/13 104/5 106/16 106/18 161/6 163/1	people's [1] 156/10
	payment [43] 9/22 39/25 56/22 85/10 92/13 93/2 94/17 95/9 96/4 96/10 96/12 96/15 97/2 97/3 98/17 99/3	per [4] 114/1 116/21 126/23 146/25
		percent [2] 5/20 48/11
		perfect [3] 47/18 47/19 47/22
		perhaps [1] 126/20

P	3/6	26/20 31/23 31/23
period [8] 11/25	phone [1] 41/13	34/6 35/17 39/19
91/6 92/9 95/2 99/24	physically [4] 22/1	39/21 41/20 45/10
125/5 138/16 170/21	22/3 40/14 40/21	46/8 65/3 66/3 87/21
permit [1] 126/15	piece [3] 112/17	89/19 93/5 127/21
permits [1] 94/23	146/13 163/14	129/21 130/4 137/2
permitted [2] 115/2	pieces [1] 152/13	171/21
115/14	place [5] 16/15	plenty [1] 70/12
permitting [3] 148/4	101/14 135/7 151/18	plus [1] 98/7
161/1 165/1	160/12	pmhudson [1] 1/14
person [22] 14/10	placed [3] 116/9	podium [1] 86/8
22/14 22/15 61/12	131/14 143/14	point [25] 6/5 7/20
63/22 63/24 65/5	plaintiff [17] 1/4	10/9 10/18 14/7 14/8
68/10 78/24 79/25	1/12 3/5 3/6 11/14	19/23 19/25 20/12
82/15 86/25 89/10	15/5 20/13 86/21	21/16 27/12 31/6
96/23 110/14 122/22	87/17 160/6 161/6	64/5 81/21 98/14
123/5 124/9 139/10	161/12 161/22 162/2	103/24 126/23
141/4 149/16 152/21	162/25 164/1 164/18	154/23 161/14
personal [7] 61/13	plaintiff's [6] 1/9	162/24 162/25
109/7 110/2 127/16	49/12 113/1 146/16	163/25 164/22 165/9
127/22 127/24	160/21 161/4	171/16
146/22	plaintiffs [4] 11/10	points [1] 116/20
personally [15] 9/8	36/1 160/15 160/19	police [4] 136/21
21/23 22/8 25/13	planning [5] 90/8	139/20 148/11 149/1
33/23 34/24 35/14	92/1 100/23 115/6	policeman [1] 46/10
35/17 39/12 47/16	127/2	policemen [1] 46/11
54/11 61/11 63/21	Plantation [1] 51/4	policies [1] 127/14
74/4 80/16	plausibility [1]	policy [1] 62/12
pertaining [1]	157/3	pops [1] 116/17
115/22	play [1] 106/7	position [3] 4/16
pertains [1] 115/19	please [24] 14/17	88/8 130/8
PHILLIP [2] 1/12	15/15 20/24 21/22	possess [1] 133/9

P	132/19	87/2 87/9 111/19
possibility [1]	presence [1] 77/7	137/19 142/8 145/24
114/17	present [3] 77/5	146/1 151/14 162/3
possible [7] 3/25	77/13 160/11	problem [30] 20/1
18/8 18/10 18/16	presentation [1]	24/3 25/17 26/16
19/3 60/4 84/17	153/8	26/19 26/23 29/14
Postal [1] 93/21	presented [2] 35/25	31/2 34/12 36/22
posted [3] 59/15	111/1	38/18 42/19 56/22
59/19 59/22	presently [2] 17/3	58/17 75/4 75/7 75/7
PostSecondary [1]	17/8	75/10 76/12 76/13
10/25	preserve [1] 122/23	81/14 84/1 85/6
potential [1] 141/13	prevent [4] 18/19	102/18 102/20
potentially [1] 36/6	128/24 141/7 149/19	105/14 106/17 124/6
power [2] 75/16	prevented [4] 6/15	139/3 170/17
75/18	6/17 94/6 164/14	problems [2] 23/21
practice [4] 95/19	previously [1] 25/16	81/25
96/5 102/22 105/25	principal [1] 3/8	procedural [11] 4/6
predicate [1] 20/18	print [1] 122/9	142/1 142/5 144/6
predisposed [1]	printed [3] 52/25	152/9 159/21 159/24
124/25	96/23 137/15	160/6 160/9 164/13
preempted [2] 6/10	printout [2] 93/7	169/22
6/12	96/21	procedure [13]
preliminary [5] 1/9	prior [11] 24/2	12/10 12/13 90/2
3/4 4/1 4/10 154/14	92/13 92/16 93/23	94/5 94/20 122/22
Prepaid [1] 10/25	103/1 106/8 118/14	132/5 144/7 149/25
prepare [1] 130/20	118/23 119/4 145/5	155/24 160/11
prepared [5] 34/15	145/12	160/14 166/3
120/24 137/8 137/18	privilege [2] 118/17	procedures [6]
137/19	146/9	74/17 83/13 127/14
preparing [3]	probably [16] 22/19	128/9 131/11 154/2
118/25 119/1 124/4	31/2 38/3 69/10	proceed [1] 20/20
prescribed [1]	69/10 69/11 72/16	proceeding [5]

P	169/24	155/6 158/18 158/22
proceeding... [5]	processed [1] 112/2	158/24 159/3 159/10
102/11 121/21	processes [2] 101/8	159/12 159/13
143/24 168/20	161/3	159/19 159/23
168/22	processing [1] 90/2	160/22 164/11 170/6
proceedings [3] 3/2	produce [1] 113/6	proposition [1]
87/16 172/14	professional [18]	158/18
process [70] 4/6 4/6	9/8 9/8 20/9 62/11	prosecuting [1]
6/16 8/15 8/21 11/15	69/2 70/25 71/1	111/22
11/18 11/23 14/2	71/21 72/11 73/13	protect [3] 11/8
24/2 89/5 94/5 101/4	74/3 74/6 75/2 75/2	155/2 159/13
101/9 101/11 102/4	75/6 75/8 84/14 85/5	protectable [2] 5/12
103/9 104/17 104/18	professionals [4]	158/19
104/18 104/19	17/18 69/4 74/24	protected [7] 10/19
104/23 105/11	127/19	10/23 11/7 159/3
111/19 123/11	profit [3] 11/3 88/25	160/23 164/11
132/22 142/15	159/20	169/16
143/16 143/16 144/6	profitable [3] 16/11	protections [3]
151/23 152/5 152/9	16/12 19/3	142/1 142/5 144/6
152/16 152/17	profits [2] 166/12	protective [1] 4/20
152/18 154/9 155/18	166/15	protocol [1] 131/11
155/19 156/3 156/4	program [1] 147/4	protocols [1] 143/11
156/17 159/3 159/5	progress [1] 29/25	prove [3] 155/9
159/7 159/21 159/24	prohibited [1] 58/24	155/16 158/5
160/1 160/2 160/3	prohibits [1] 11/13	provide [2] 25/4
160/7 160/7 160/9	prominently [1]	121/13
160/19 161/13 162/7	59/11	provided [2] 105/25
163/1 164/2 164/8	properly [1] 159/21	115/15
164/12 164/13	property [25] 4/21	provides [1] 159/4
165/17 165/22 168/6	6/1 10/18 10/19 11/2	providing [1] 119/1
168/8 168/12 169/5	11/3 11/7 11/8 13/2	proving [1] 155/10
169/22 169/23	155/1 155/2 155/3	provision [1] 141/22

P	questions [10] 25/12 25/12 47/3 86/1 101/23 128/3 128/4 135/22 137/24 150/8 quick [2] 107/17 172/9 quickly [2] 170/15 172/6 Quiet [1] 86/4 quo [2] 4/2 4/15	117/1 117/7 117/13 120/22 141/21 ready [2] 69/6 78/18 real [1] 72/10 realize [5] 19/25 20/2 20/4 163/9 163/10 realized [2] 13/1 19/21 really [9] 8/13 11/20 105/10 105/13 114/4 131/9 148/3 157/21 167/5 realm [1] 114/17 reapplied [1] 126/21 reapplies [1] 126/24 reapply [9] 6/23 99/24 114/22 114/25 115/8 115/10 126/20 126/23 147/1 reapplying [1] 126/23 reason [15] 20/4 22/19 28/6 28/9 48/24 74/2 74/8 74/21 103/16 114/10 119/5 138/2 158/19 161/5 162/2 reasonable [1] 155/10 reasons [3] 39/14 76/18 167/7
pulled [2] 116/12 119/13 punishment [1] 163/20 purpose [1] 38/13 pursuant [1] 125/13 pursue [2] 160/25 166/25 pursued [2] 160/16 162/25 put [12] 4/8 4/15 7/13 8/6 60/4 60/4 104/22 105/1 123/16 147/23 153/11 157/24	R radar [1] 119/4 rarely [1] 158/14 rather [4] 25/9 131/12 143/12 169/2 ratify [1] 131/15 reach [2] 111/2 114/15 reached [2] 31/10 123/25 read [24] 5/6 8/12 37/9 47/16 47/18 47/18 47/21 47/22 62/8 68/25 109/5 113/14 113/16 113/22 113/24 119/11 120/10 139/24 139/25 140/15 140/17 141/1 146/20 149/21 reading [9] 32/9 109/18 109/20 111/2	
Q quarter [1] 87/14 quarters [1] 116/2 question [33] 15/15 19/24 42/17 42/22 47/15 48/22 53/9 57/21 64/24 65/3 65/20 66/1 66/3 74/13 76/4 76/6 77/2 82/5 82/19 83/5 84/5 86/7 91/19 110/22 125/3 127/6 127/21 135/24 144/16 164/9 165/10 169/21 170/8 questioning [1] 63/2		

R	48/23 49/1 50/5 50/8	100/4
rebuttal [1] 36/6	55/7 55/9 61/21 90/4	rectangle [2] 37/6
recall [14] 19/10	97/20 108/13 119/25	146/21
35/4 35/10 43/21	120/7 120/11 120/24	rectangular [1]
43/23 45/18 47/2	142/25	158/4
55/20 68/2 107/10	receiving [2] 108/14	red [3] 113/14
124/3 124/5 148/10	139/11	113/15 113/16
153/17	recent [1] 157/11	redirect [6] 2/10
receipt [36] 14/11	recess [2] 87/16	2/14 86/16 128/6
19/7 19/10 21/5 40/7	172/7	149/4 149/6
40/14 40/16 40/20	recognize [10] 49/19	reduced [4] 17/13
41/22 88/22 88/23	49/25 53/19 53/19	18/4 18/8 163/2
89/1 89/3 89/9 89/23	72/9 112/24 131/21	refer [2] 121/5
90/1 91/5 132/8	132/14 133/4 134/22	121/12
132/24 133/8 133/10	recognized [1]	reference [2] 133/22
133/19 134/24	65/21	139/13
135/10 135/17	recognizes [1] 16/25	referenced [1]
135/18 137/14	recollection [2]	142/11
139/14 141/5 141/6	105/8 119/14	referendum [1]
141/8 141/25 143/1	recommend [2]	157/11
149/17 149/18	171/20 171/21	referring [3] 74/3
149/20	recommendation [1]	136/23 136/24
receipts [3] 88/18	170/18	refresh [1] 119/14
89/7 138/10	record [19] 6/22	refund [1] 126/13
receive [16] 20/2	20/17 36/2 36/7	refusal [1] 85/7
51/19 53/24 54/20	36/12 113/1 113/16	refuse [2] 123/9
55/6 55/8 55/11	113/18 113/23	123/10
55/11 61/11 61/13	120/10 134/5 140/1	refused [11] 9/22
101/15 102/22	141/1 150/21 152/20	11/24 41/2 41/3 41/4
108/12 108/20	155/9 155/23 161/5	71/7 76/14 76/15
110/16 110/18	162/24	84/13 85/13 128/9
received [16] 34/24	records [2] 42/20	regarding [8] 31/7

R		
regarding... [7] 34/11 42/4 42/9 84/19 84/24 99/3 145/10	relies [1] 152/3 reloader [1] 44/9 rely [4] 140/15 141/16 168/14 168/15	19/23 22/12 22/12 22/17 23/5 23/10 23/23 29/19 37/25 38/7 38/9 39/15 39/16 45/5 54/8
register [1] 59/15	relying [2] 155/12	54/12 54/13 54/14
regular [5] 15/22	170/4	54/16 55/17 56/5
111/11 116/12	remained [1] 78/15	56/5 56/7 56/10
124/18 131/10	remedies [1] 167/23	56/24 57/12 57/13
regulation [1] 6/12	remedy [7] 8/21	57/16 57/18 57/24
regulatory [9] 90/5	8/22 11/23 95/11	57/25 58/6 58/7 58/8
91/3 100/23 101/1	160/12 167/15	64/14 65/7 65/12
101/17 101/17 115/9	167/16	65/17 66/2 66/7
126/25 127/1	remember [45]	66/10 66/22 67/1
rejected [3] 123/2	21/22 22/16 22/20	68/14 68/15 69/7
123/3 127/5	24/22 34/1 40/16	70/3 79/6 79/20
relate [1] 165/14	40/16 40/17 44/15	90/13 90/17 92/13
Related [1] 51/23	49/3 50/6 53/17	93/15 99/22 100/4
relative [1] 108/12	54/13 55/21 55/23	104/2 104/4 108/25
relatively [1] 4/17	56/1 56/7 57/12	165/18
release [9] 95/18	57/14 58/4 58/10	renewal [37] 6/16
102/17 103/11 107/2	58/11 58/12 58/20	53/25 54/7 55/5
111/25 123/13	58/21 58/22 59/1	55/20 57/9 57/10
123/14 125/18	59/1 59/2 60/2 64/11	90/18 90/19 92/22
125/22	65/14 65/23 65/25	93/8 93/9 93/10
released [2] 102/10	66/4 66/13 69/10	93/22 93/23 94/11
110/21	71/17 77/25 78/3	94/11 94/18 95/1
relevance [1] 119/20	78/4 78/5 79/2 79/18	99/22 99/24 100/1
relevant [2] 6/13 7/7	114/16	100/3 102/23 102/23
relied [2] 139/20	renew [66] 8/20	104/1 104/5 104/6
155/12	8/24 10/7 11/25	104/7 104/10 106/25
relief [2] 8/25 165/7	12/16 12/20 12/21	107/1 108/7 108/8

R		
renewal... [3] 108/9 108/18 159/6	representing [1] 96/24	84/1 85/5 99/3 131/8
renewals [1] 113/9	reprint [2] 96/18 105/24	resolved [12] 26/22 37/22 63/3 71/14
renewed [16] 6/17 36/9 55/10 55/15 55/17 56/2 56/4 56/10 56/24 57/22 58/9 58/25 79/22 120/13 121/1 121/22	request [1] 62/22	80/1 80/4 80/7 81/14
renewing [6] 6/16 25/17 25/20 38/13 38/16 58/25	requested [1] 137/14	100/16 103/17 162/1 162/8
rental [1] 148/24	requesting [1] 124/5	resolving [1] 110/12
reopen [1] 8/25	require [3] 135/19 141/13 145/8	respond [3] 170/21 171/12 171/13
repay [1] 27/4	required [9] 88/25 89/10 90/16 91/21 134/24 141/5 141/7 149/17 149/19	response [2] 37/24 171/13
repeat [4] 31/9 53/13 117/9 127/21	requirement [1] 108/8	responsibilities [1] 88/15
rephrase [2] 73/2 84/21	requirements [1] 142/12	responsible [1] 118/11
replied [1] 36/9	requires [2] 89/13 156/2	rest [3] 32/6 115/25 116/23
reply [1] 114/2	requiring [1] 6/18	restored [1] 4/16
report [2] 26/15 170/18	resolution [2] 31/7 99/2	result [6] 7/21 82/6 101/6 154/3 154/10 158/9
reported [2] 1/23 27/16	resolve [29] 21/17 23/21 26/16 26/18 26/22 29/5 29/14 29/18 31/2 34/12 67/6 67/11 67/16 67/18 67/20 67/25 68/3 68/13 68/15 70/16 70/21 70/24 71/18 75/10 82/24	retained [3] 27/25 29/16 30/23
Reporter [2] 1/24 172/18		retaliation [1] 156/8
representative [1] 96/19		return [1] 137/14
representatives [1] 96/25		returned [1] 21/13
		revealing [1] 145/9
		revenue [3] 88/19 154/11 154/16
		revenue-generating [1] 88/19
		review [1] 100/24

R	96/7 98/5 98/25	23/18 26/22 28/2
reviewed [1] 101/18	102/19 104/12 106/8	32/14 38/3 54/19
revoked [1] 8/22	106/10 107/24 113/2	66/11 66/12 81/2
revoking [1] 10/11	116/14 120/16	82/23 85/5
ridiculous [1]	122/14 124/16	rolled [2] 10/15
163/24	126/12 133/22	12/23
rigged [1] 156/20	140/13 142/8 142/17	Rosen [25] 29/10
right [129] 7/15	142/20 143/5 143/17	29/11 29/16 29/23
7/20 7/22 13/3 14/16	144/19 146/2 152/1	29/25 30/5 30/15
16/22 17/25 24/3	153/18 153/19	31/6 31/10 32/12
42/5 45/10 46/19	153/19 154/18	32/14 32/14 32/16
47/11 47/12 48/10	154/21 154/24 155/1	33/23 34/14 34/22
49/2 50/1 50/2 50/10	155/3 155/6 156/5	41/11 41/19 44/12
50/18 51/17 51/25	156/10 157/6 158/18	77/5 77/13 77/18
52/6 53/6 56/2 56/4	158/22 159/5 159/7	82/23 153/5 169/17
59/15 59/16 59/20	159/18 160/2 160/23	route [7] 90/7 91/2
59/22 60/19 60/23	162/17 163/18	92/1 101/1 101/16
61/4 61/19 61/25	165/10 166/21	115/9 126/25
62/2 62/6 62/21	166/24 166/25	routed [3] 90/5
63/21 65/16 66/9	169/23 169/24	91/24 100/22
67/17 68/2 68/20	171/13	RPR [2] 1/23 172/17
69/22 70/8 70/13	right-hand [2]	rule [2] 3/18 170/17
71/16 71/23 72/5	51/25 69/22	ruled [1] 125/20
72/5 72/10 72/12	rights [6] 13/21	rules [1] 125/20
72/15 72/18 72/18	155/2 156/5 156/7	ruling [1] 98/21
72/20 72/22 73/9	157/6 160/21	run [3] 113/9 157/23
75/17 76/7 76/22	rise [2] 159/24 160/3	161/20
76/22 77/21 77/25	risk [1] 153/11	running [5] 121/4
78/11 79/4 79/22	road [1] 166/14	122/4 160/22 165/5
80/1 80/2 80/9 80/11	Rochelle [18] 20/9	170/7
80/19 80/25 81/24	21/18 22/13 22/21	runs [2] 95/23 98/2
83/19 91/25 95/15	22/23 23/14 23/16	

S	145/14 151/17	153/22 153/23 155/6
S.E [1] 1/17	sandwich [1] 87/15	155/13 157/3 158/13
said [49] 9/4 9/22	satellite [3] 94/13	158/22 160/18
13/6 13/16 13/17	94/14 123/6	163/21 165/25
14/7 14/14 24/20	Saturday [2] 122/19	167/17 168/17
24/21 24/22 28/16	122/20	saying [20] 5/25
28/17 28/18 29/23	save [2] 57/18 57/20	7/15 8/3 10/14 10/17
33/1 33/4 41/25	saved [1] 36/19	12/25 24/22 51/12
53/10 53/12 53/14	Savings [1] 10/25	57/1 58/8 58/24
53/16 57/2 61/21	saw [6] 21/7 21/8	67/21 67/22 67/23
63/15 65/23 69/11	21/13 80/19 83/24	74/7 105/11 110/17
71/14 73/22 73/23	170/24	115/16 159/13
75/16 77/10 81/10	say [70] 4/20 4/24	169/12
84/12 105/12 108/3	5/5 5/6 5/21 6/1 9/21	says [46] 6/22 7/22
110/13 123/22	9/21 10/22 11/20	9/20 11/1 11/5 14/1
124/13 126/22	11/22 13/23 23/5	14/8 14/10 32/8 39/2
127/15 134/6 150/5	24/19 25/8 25/8 25/9	51/1 52/25 59/12
152/18 156/14 158/1	30/9 32/25 34/12	59/19 60/23 61/25
158/2 165/4 168/25	37/24 39/18 48/8	62/3 62/21 64/20
170/4	48/11 53/8 53/10	65/24 71/16 72/17
sale [2] 6/14 17/21	54/14 67/11 67/13	73/12 73/15 114/1
sales [11] 5/20 6/13	67/15 69/5 69/10	116/21 117/5 119/11
90/1 91/9 91/10	74/3 74/22 75/20	131/3 132/7 134/5
91/10 114/3 114/22	76/7 77/9 95/14	135/9 135/25 137/25
115/11 132/18 147/1	102/5 104/25 105/1	138/1 138/13 139/15
same [22] 9/13 11/5	105/10 111/17	149/15 155/24
27/18 40/24 42/17	111/21 114/15	161/18 162/5 162/13
55/18 55/24 57/7	115/10 122/7 123/8	164/14 164/17 166/4
62/20 65/19 72/4	127/4 127/25 137/19	168/10
73/3 73/8 87/9 110/1	139/13 142/5 143/18	scales [1] 154/13
115/21 116/14	151/10 152/15	schedule [3] 3/22
137/19 141/11 142/3	152/15 153/10	95/16 144/25

S	143/2 144/24 146/13	sent [11] 20/22
SCOTT [2] 1/21	158/9 163/9 168/17	21/10 28/15 60/16
3/10	seek [2] 14/12	74/6 74/8 74/25
screaming [1]	140/24	93/20 100/1 108/9
156/16	seem [2] 25/7 163/3	136/5
screen [1] 80/19	seems [5] 32/9 33/8	sentence [4] 114/4
screenshot [4] 37/5	120/14 120/19 170/5	114/10 114/21
99/13 113/5 113/7	seen [10] 34/7 61/21	146/20
scrivener [1] 88/14	104/15 107/9 143/3	separate [2] 17/1
second [15] 1/17	143/6 147/11 158/11	112/17
30/13 33/5 48/13	167/17 168/1	separation [2] 21/4
52/11 52/13 61/2	seize [1] 134/6	148/2
67/21 72/2 86/25	self [1] 9/4	September [62]
117/10 119/24 120/3	self-evident [1] 9/4	9/19 9/25 10/14
142/18 166/17	sell [8] 5/3 5/4 5/25	12/16 12/19 34/4
section [8] 14/10	16/2 16/6 17/3 132/3	34/21 35/2 36/16
89/8 139/13 139/23	166/17	39/16 54/2 54/9
141/1 141/12 141/23	selling [7] 21/3 30/9	56/24 57/5 57/14
149/11	30/13 49/2 49/17	57/23 57/24 58/2
Sections [1] 14/12	71/4 131/25	59/4 77/23 78/1
see [41] 6/22 12/4	send [18] 7/22 28/3	78/12 78/16 78/22
21/1 21/6 33/6 34/17	28/6 73/23 73/24	78/22 78/24 79/6
34/19 34/20 37/7	74/19 74/19 74/19	79/19 80/6 80/13
46/20 50/24 52/12	74/20 93/14 93/21	82/7 83/9 89/25 91/7
52/13 62/2 62/23	93/22 94/18 108/4	92/7 92/10 92/11
71/21 72/12 107/21	108/5 111/12 122/6	92/25 93/24 94/2
111/7 115/25 116/3	137/13	94/3 95/2 95/4 100/3
116/4 116/7 116/23	sending [1] 148/11	103/19 108/24 109/4
117/8 119/18 119/22	sends [1] 104/7	111/24 122/12
119/25 124/1 126/14	sense [7] 11/2 11/4	122/15 122/17
133/24 136/18	123/10 124/8 124/10	122/18 122/20
138/22 138/24 141/9	124/12 163/10	122/22 123/1 123/16

S		
September... [6] 129/1 131/6 158/1 162/12 162/19 162/19	September 7th [2] 78/12 162/19 September 8th [1] 111/24 September 9th [1] 78/1 serial [1] 113/19 series [3] 17/11 18/3 158/23 served [1] 88/10 service [4] 18/15 88/18 93/21 94/9 serving [1] 7/10 set [11] 20/18 75/11 75/11 75/13 78/19 83/6 121/3 153/23 154/9 154/22 157/25 settle [1] 112/4 settled [1] 110/18 Seven [2] 107/6 111/6 several [5] 29/5 127/18 140/20 148/3 148/13 shall [1] 84/4 shame [2] 77/6 77/10 shareholder [1] 48/5 she [22] 20/9 20/10 20/11 23/18 23/19 23/21 23/23 23/24	23/24 24/14 26/11 26/15 26/17 26/18 26/20 26/22 27/4 27/6 27/6 27/16 28/20 41/18 she's [1] 26/18 Shir [15] 21/19 27/18 27/25 28/1 28/12 28/19 28/23 29/1 29/9 41/11 44/12 74/19 74/23 153/5 169/19 short [1] 148/24 short-term [1] 148/24 shorten [1] 171/19 shorter [3] 157/17 157/17 157/17 should [18] 7/16 7/18 11/20 36/19 42/3 42/7 57/8 59/18 76/5 87/14 105/12 117/18 151/21 164/20 164/21 165/20 165/21 171/24 shouldn't [4] 163/21 169/11 169/12 170/6 show [10] 7/11 7/24 12/3 22/19 46/17 65/9 65/10 68/22 95/17 165/21

S	79/11 136/13 137/6	sitting [9] 60/1
showed [7] 64/6	similar [4] 90/24	66/15 66/15 66/21
65/6 65/11 82/14	108/16 108/19	67/4 69/5 75/19 76/6
109/23 155/19	108/22	83/25
156/11	simple [6] 4/3	situation [13] 54/13
showing [2] 36/17	100/21 111/24 116/8	55/23 57/12 58/10
113/2	154/1 162/13	58/20 58/21 58/23
shown [2] 150/24	simply [7] 67/4	59/1 59/2 71/17
162/3	90/18 98/12 104/1	72/22 74/2 156/1
shows [5] 36/7 42/16	104/5 107/1 163/12	six [7] 18/4 72/14
52/1 99/14 99/16	since [7] 10/6 88/11	98/7 161/10 161/10
shut [22] 46/12	100/1 105/21 107/15	163/6 167/20
46/21 78/5 78/6 78/9	130/9 162/6	six-month-old [1]
78/11 78/13 78/15	single [3] 96/5	98/7
116/24 128/13	158/15 158/17	small [1] 23/21
128/15 139/16	sir [44] 15/15 20/22	so [194]
139/20 146/2 146/5	21/16 37/17 39/24	sole [2] 48/5 48/5
149/1 149/23 152/8	40/18 42/1 42/8	solve [3] 31/11
155/8 156/15 159/15	43/19 44/11 53/8	102/18 112/8
169/24	53/9 57/15 61/9 63/7	solved [2] 105/18
shutting [2] 46/15	64/24 65/2 65/16	106/16
148/12	66/1 66/2 69/18	solves [1] 102/20
side [5] 51/25 53/6	70/23 76/4 76/6 76/9	some [41] 7/16
116/23 117/2 158/15	77/5 77/7 78/11	19/23 19/25 20/4
sign [4] 46/20 74/11	81/19 85/15 86/4	22/19 22/20 23/24
74/13 79/3	86/18 93/13 95/25	24/4 28/6 28/9 29/25
signature [11] 32/4	102/1 125/23 129/4	30/2 31/6 68/23
52/20 52/21 52/23	129/17 134/9 134/20	68/23 68/24 74/3
53/3 53/4 53/15	137/21 140/12	74/21 75/3 78/17
53/19 53/20 53/22	147/18 150/9	79/11 79/15 102/5
111/7	sit [3] 9/15 59/3	105/19 111/21 119/7
signed [4] 34/15	153/6	125/14 137/24

S	sometime [6] 29/23 54/10 58/4 107/16 119/8 126/3	speak [4] 36/24 46/8 107/15 124/5
some... [13] 140/20 142/15 142/15 143/16 146/18 151/22 156/10 158/3 163/21 164/20 165/7 167/12 167/13	sometimes [9] 21/21 23/24 54/11 108/3 122/4 136/7 136/7 142/18 144/22	speaking [2] 28/19 109/22
somebody [5] 20/7 115/15 140/3 157/17 164/25	somewhat [1] 168/24	special [87] 7/17 16/18 18/25 28/20 29/13 29/19 29/20 30/3 30/15 63/3 73/14 77/14 78/8 80/7 95/15 95/16 95/18 98/11 98/21 99/2 102/11 102/15 102/16 102/16 103/23 103/24 107/7 107/19 109/3 109/11 111/7 111/8 111/9 111/19 111/20 111/22 119/16 120/13 120/14 120/20 121/1 121/6 121/10 121/10 121/12 121/12 121/21 122/2 122/3 122/6 122/7 122/9 122/9 122/21 123/25 124/15 124/17 124/17 124/20 124/21 125/8 125/9 125/12 125/13 125/15 125/17 125/19 125/20 131/5 131/6 131/12 131/14
Somehow [1] 125/8	somewhere [4] 59/19 60/23 116/9 154/14	
someone [20] 18/14 21/10 23/9 40/22 43/8 45/15 53/3 53/3 64/17 95/5 95/7 116/12 121/4 121/9 121/11 122/6 123/9 124/10 137/8 156/14	song [1] 111/15	
someone's [1] 94/24	soon [2] 98/17 122/23	
something [36] 15/9 15/18 22/5 38/2 40/3 43/9 53/12 53/16 56/6 59/15 59/17 66/6 66/24 66/25 71/4 81/13 81/16 86/6 95/16 102/11 103/22 109/11 109/22 110/16 110/18 115/19 119/6 119/18 123/21 124/6 151/23 152/4 152/6 156/3 171/11 172/6	sooner [1] 171/7	
	sorry [28] 7/2 14/14 19/24 28/10 31/9 32/12 42/2 49/20 53/17 66/17 68/8 73/5 77/8 78/17 86/5 86/10 94/2 109/6 111/5 118/19 119/3 120/2 121/14 138/17 139/4 150/20 158/2 159/17	
	sort [4] 66/6 119/7 143/16 151/22	
	South [2] 1/13 16/16	
	SOUTHERN [1] 1/1	
	southwest [1] 16/23	

S	118/25 119/1 122/5 122/8 124/17 127/24 128/8 stage [1] 158/5 stake [1] 164/12 stand [5] 6/4 22/6 64/22 65/21 86/8 standard [5] 95/18 106/3 137/10 143/16 143/18 standing [1] 156/16 start [10] 21/21 42/17 50/4 50/22 87/10 113/8 114/4 156/5 157/6 157/8 started [3] 3/13 12/24 24/18 starting [2] 39/4 39/11 starts [1] 116/13 state [37] 6/9 6/9 7/18 11/15 12/5 12/6 12/8 12/9 12/9 12/10 12/11 16/6 85/24 86/12 89/14 89/14 92/8 108/9 114/16 122/14 133/18 135/4 138/15 143/13 155/7 159/20 160/10 160/12 160/17 160/25 161/1 161/1 164/23 165/1 166/3	167/15 167/16 stated [2] 105/2 150/2 statement [10] 6/25 103/10 121/7 121/9 121/17 121/18 123/8 143/4 143/17 156/22 statements [1] 88/19 states [5] 1/1 1/10 21/13 133/12 157/7 status [4] 4/2 4/15 99/20 114/8 statute [6] 7/5 92/8 108/9 138/3 139/25 152/3 statutes [5] 89/7 140/16 140/17 152/4 155/13 stay [2] 8/19 41/15 staying [2] 151/25 152/1 step [10] 86/18 102/18 117/21 117/21 118/6 118/6 129/17 142/17 142/18 150/9 stick [1] 151/12 still [10] 4/2 69/4 80/19 81/15 99/10 131/9 135/16 161/7 162/7 169/9 stipulate [2] 86/4
----------	---	---

S		
stipulate... [1] 86/11	subject [1] 36/11	120/19 155/10
stipulated [3]	submit [8] 89/11	suing [1] 169/11
143/19 144/20	89/14 89/15 91/20	Suite [4] 1/13 1/18
144/25	92/13 96/10 100/21	1/24 172/18
stood [1] 152/9	101/3	summation [1]
stop [4] 5/3 27/13	submitted [6] 88/12	157/14
75/25 76/1	91/23 96/12 100/7	Sunday [2] 39/1
store [27] 4/25 5/24	101/12 164/5	171/16
15/11 15/13 15/22	subordinate [1]	supervisor [4] 112/6
15/25 17/5 18/15	111/18	124/4 124/5 124/8
18/22 18/22 18/23	subsection [3] 141/2	supervisors [2]
18/23 18/25 46/10	141/21 141/23	105/17 124/4
46/12 47/24 50/2	substantially [2]	supplemental [4]
50/7 59/22 59/24	17/13 18/8	141/4 149/16 152/4
75/14 76/21 76/21	substantive [7] 4/6	155/24
125/1 154/4 154/23	160/1 160/1 160/3	supposed [4] 59/13
166/20	160/7 160/19 164/12	154/19 164/16 167/3
stores [11] 7/8 8/6	success [2] 164/10	Supreme [1] 10/24
11/13 17/3 17/8	166/1	sure [21] 5/21 13/13
17/14 18/11 18/19	successful [5] 24/14	25/1 38/10 56/6
60/21 81/25 104/22	28/23 29/25 30/15	61/20 65/9 65/9
story [3] 151/11	31/4	94/23 105/3 106/10
151/12 157/19	successfully [1]	109/6 113/6 116/17
Street [3] 1/17 16/23	166/14	116/20 137/21
16/23	such [2] 141/6	137/22 142/7 153/14
strike [5] 18/11	149/18	154/13 167/12
36/13 47/2 48/13	sudden [2] 24/23	surprise [2] 126/6
125/2	169/8	126/9
strongest [1] 170/5	sufficient [1] 111/25	survive [2] 4/17
stuff [3] 23/20	suggest [3] 144/13	18/7
155/13 168/15	147/13 167/5	surviving [1] 20/4
	suggests [3] 88/13	suspended [1] 8/23

S	12/2 20/23 22/6 22/24 35/6 36/13 38/20 41/3 75/13 86/20 87/3 87/4 87/8 91/2 91/4 93/5 96/16 99/11 107/17 109/6 110/5 112/23 117/21 119/18 123/15 134/6 135/7 142/16 142/23 146/16 150/11 155/4 157/10 162/12 164/23 165/4 166/5 168/7 169/5 170/25	75/23 84/15 84/16 84/16 85/9 85/13 92/16 110/8 140/9 161/2 161/3 166/19 170/21
suspense [3] 106/11 126/12 126/15	targeted [3] 7/8 7/9 7/10	targeting [1] 7/12
Sustained [8] 28/14 44/7 118/18 118/20 144/9 145/20 146/7 146/11	tax [37] 14/11 19/7 19/10 21/5 88/18 88/22 88/23 88/24 89/1 89/3 89/7 89/9 89/23 90/1 91/5 99/4 108/19 108/22 108/23 111/12 133/8 133/10 133/19 134/24 135/10 135/16 135/18 138/10 139/14 141/5 141/6 141/7 141/25 143/1 149/17 149/18 149/19	taxes [1] 108/20
sworn [3] 14/21 87/23 129/23	talk [14] 7/19 8/10 40/1 46/2 46/17 48/15 50/10 53/7 83/25 94/1 104/15 104/16 122/11 156/14	technical [1] 155/13
system [41] 23/22 38/1 38/3 85/24 93/7 101/22 104/2 104/3 106/14 113/5 113/7 113/8 113/11 114/14 115/4 115/6 115/7 115/19 116/5 116/7 116/10 116/18 123/17 126/8 126/22 128/12 128/15 128/17 128/19 128/21 146/19 147/3 147/5 147/7 147/8 147/21 156/20 162/4 164/24 165/1 167/17	taken [4] 33/10 87/16 125/7 167/20	technically [2] 82/25 162/7
T	taking [7] 7/6 7/6 10/12 24/20 46/19 68/25 118/6	technique [1] 157/16
tab [9] 20/22 31/23 39/21 42/7 49/11 50/11 54/21 130/17 131/19	talked [3] 98/23 149/11 160/15	tell [53] 9/14 9/15 16/13 16/21 18/18 20/24 22/14 22/15 23/1 31/10 31/14
take [45] 3/22 9/16 9/22 11/19 11/24	talking [30] 6/7 22/25 26/2 28/15 31/25 39/6 53/6 57/3 57/4 57/4 58/14 66/12 66/16 70/23 73/17 74/22 75/8	

T	term [1] 148/24	101/24 128/2 129/16
tell... [42] 32/16	terminology [1]	129/17 150/9 150/10
32/19 35/20 35/21	110/18	158/12 167/8 171/23
37/7 37/9 40/5 40/11	terms [1] 11/8	172/8 172/9
41/4 41/20 49/13	testified [16] 14/22	Thanks [2] 136/18
68/12 74/13 78/18	24/24 60/5 63/24	172/5
81/15 86/6 105/2	64/5 87/24 104/5	Thanksgiving [2]
105/11 105/11	104/17 104/17	171/14 172/8
105/13 105/25 107/5	107/11 114/12 126/6	that [715]
109/14 109/15	127/14 129/24	that's [107] 4/18 5/2
109/21 111/4 112/24	147/22 152/10	6/9 7/7 7/25 8/15 9/1
113/12 113/13 118/4	testify [4] 36/9	9/14 10/23 19/11
118/8 130/4 137/17	36/22 64/18 128/12	20/4 28/17 28/18
146/17 146/17	testifying [4] 56/9	33/4 36/21 38/3
146/17 149/24	58/13 64/17 110/4	38/24 39/1 42/1
149/25 153/9 155/18	testimony [19] 3/20	42/11 42/25 43/20
169/6 170/1	3/21 8/9 23/11 24/17	45/11 49/21 50/18
telling [4] 25/7 68/2	56/12 57/11 67/23	51/17 52/18 52/23
157/5 169/4	67/25 71/10 103/6	54/15 56/11 57/11
tells [1] 89/12	104/1 121/24 123/2	61/4 61/16 63/24
temporarily [1]	125/4 143/15 163/17	64/19 67/8 67/13
158/7	164/6 168/19	69/18 75/12 75/14
temporary [1] 4/14	than [18] 3/19 5/22	92/15 92/21 93/19
ten [14] 61/4 68/23	13/19 21/24 25/9	94/18 95/6 95/18
132/24 132/25	28/21 63/11 68/23	96/5 96/20 96/20
133/13 133/15 135/4	140/21 144/11	103/22 107/24
138/1 138/3 138/10	148/15 148/15 149/9	108/21 109/20 112/6
138/13 138/18	153/4 156/7 164/19	112/7 114/4 114/16
138/25 172/4	165/14 166/13	114/24 116/15
tender [1] 110/14	thank [19] 3/24 7/2	117/20 118/5 119/7
tendered [4] 13/16	15/17 35/8 38/25	120/18 123/8 125/5
102/6 161/24 164/7	83/2 88/21 95/9	125/12 126/11

T	23/2 23/4 30/18	149/18 150/5 152/25
that's... [40] 126/12	30/19 30/20 30/22	153/19 153/24
126/12 126/24 127/4	37/21 46/12 46/17	156/15 161/7 161/12
129/8 136/4 136/15	46/17 48/15 49/8	162/3 163/15 165/11
142/20 146/2 146/16	56/15 68/2 73/11	168/8 169/6 170/18
146/20 148/4 148/6	80/10 82/17 83/25	170/19 170/20
148/21 149/12	95/9 98/2 99/23	there [166] 4/15 5/5
149/25 151/14	100/15 100/16	5/7 5/11 5/23 6/1 6/3
153/16 154/14 156/3	103/11 105/7 105/7	7/19 8/21 8/22 8/22
156/15 156/22 157/3	115/20 121/5 121/12	8/25 10/13 10/18
157/4 157/18 158/5	121/13 122/10	10/23 11/12 12/12
159/10 160/4 161/2	124/22 125/2 128/24	12/18 17/8 18/3
162/5 162/23 164/6	142/13 147/23	19/21 19/25 20/25
164/22 166/7 167/6	149/24 153/9 154/14	22/5 22/7 22/17 25/5
167/15 168/4 168/4	157/17 157/17	26/8 33/5 36/17 38/8
169/19 171/13	159/15 162/6	38/13 42/21 46/19
their [32] 7/20 7/21	then [65] 8/10 11/19	49/13 49/13 51/6
7/22 8/19 11/23	12/10 12/10 13/18	52/12 52/25 54/14
11/24 12/2 12/7	23/5 23/13 24/8	59/3 60/1 61/9 66/14
12/16 37/24 38/1	36/12 51/3 54/7 62/8	66/15 66/16 67/4
87/20 91/18 93/15	75/24 75/24 76/23	68/10 68/11 69/5
95/2 95/19 97/18	76/24 77/1 77/1 78/9	69/20 70/2 77/15
99/22 100/1 100/5	79/16 79/22 79/22	77/21 77/22 82/23
100/7 104/8 104/14	80/5 81/18 87/1 90/7	86/11 91/8 94/5
112/2 122/25 123/2	90/22 91/2 91/24	94/21 97/3 97/5
129/20 139/11	94/1 95/6 95/23 96/6	100/12 102/10
148/22 153/9 155/24	97/5 100/13 101/18	102/13 102/25 103/7
159/13	102/4 102/23 107/19	104/9 104/20 105/12
them [53] 10/8	117/17 125/21	105/14 105/14 106/7
10/12 10/16 11/25	126/25 129/5 131/13	106/18 107/11
12/12 12/15 21/13	136/4 140/23 141/6	107/12 109/23
21/18 21/19 23/2	143/13 144/25	109/24 110/7 112/17

T	169/13 169/13	thing [13] 11/5
there... [86] 112/19	169/21 169/22 170/6	72/12 103/24 108/25
113/14 114/10	170/8 170/9 171/15	143/3 153/2 155/24
114/24 115/13	there's [25] 5/25 6/4	155/25 161/9 165/6
115/19 116/2 116/5	6/5 10/18 10/20	167/11 170/18 172/2
116/7 117/16 117/24	10/20 36/16 43/4	things [12] 6/12
120/20 121/2 121/10	103/6 104/10 106/13	8/16 22/7 25/2 25/16
122/4 122/22 124/6	108/8 119/7 121/4	118/12 142/12
125/25 127/19	122/4 123/4 123/14	153/20 153/25
128/13 128/16	128/17 128/23	155/21 162/17
130/14 130/18	132/22 139/15 157/3	169/15
130/24 131/1 131/16	158/8 160/12 169/9	think [64] 3/15
132/5 132/6 132/24	thereafter [2] 12/22	12/18 12/23 17/25
136/1 136/3 137/4	134/18	18/16 22/4 25/2
138/2 138/2 138/2	therefore [2] 6/18	32/21 34/20 42/1
138/6 138/11 138/15	36/17	42/9 43/20 44/22
139/10 140/17	Thereupon [1] 3/1	45/20 45/20 45/20
140/20 141/12	these [33] 7/8 20/17	45/21 45/21 49/8
142/11 142/14	21/6 21/10 21/17	50/6 50/6 50/21 52/5
143/18 145/1 151/20	51/12 62/8 63/4	54/22 57/24 57/25
152/12 152/12	76/17 86/1 91/17	60/18 61/10 63/15
152/13 152/17	95/10 95/10 95/11	63/16 65/14 69/16
152/21 154/8 154/24	107/21 110/7 110/17	72/4 78/6 79/21
154/24 155/23 156/6	118/12 119/9 119/13	81/12 81/16 81/17
157/2 158/17 158/22	125/4 134/2 134/11	83/5 87/4 88/12
158/23 159/9 159/23	140/16 140/17 151/7	104/5 104/16 122/14
160/2 160/9 160/10	157/13 162/17	123/12 124/7 124/13
162/18 162/22	162/23 164/1 167/12	136/24 140/4 152/19
164/12 164/12	169/15 169/21	153/13 161/4 162/1
164/13 167/15	they [368]	163/9 163/25 165/13
167/16 167/22 168/6	they're [1] 166/9	165/17 165/21
168/20 168/21 169/9	thin [1] 156/13	166/15 166/22

T	61/21 81/14 106/20	37/17 38/8 39/7 78/5
think... [4] 166/23	134/6 171/4	78/7 78/22 78/24
166/24 167/24	thousand [14] 70/15	81/18 122/12 124/15
168/18	71/14 71/22 72/1	156/11 171/14
thinking [3] 49/24	72/2 76/25 77/1	Thursdays [1]
63/18 139/1	82/20 97/17 106/18	124/16
thinks [4] 14/4 14/5	152/24 153/1 153/11	ticket [13] 62/2
165/20 171/24	161/23	62/13 62/21 63/7
third [6] 26/8 30/14	three [36] 6/12 17/5	63/8 64/9 64/15 73/3
42/25 43/2 52/20	17/8 19/5 21/1 30/6	73/12 73/15 125/7
159/1	30/16 30/18 30/19	169/1 169/2
this [305]	30/20 31/12 32/9	tickets [7] 24/19
those [44] 5/6 5/8	34/11 42/13 42/16	24/21 24/24 24/25
5/13 5/14 5/17 6/3	42/21 43/25 63/4	65/4 73/6 73/8
12/5 17/16 17/19	65/18 65/19 65/23	time [77] 3/17 10/6
30/7 30/16 30/17	68/3 68/13 80/7	13/10 13/12 14/7
48/2 48/7 54/7 81/25	85/14 109/2 109/15	19/21 21/21 21/24
90/10 90/17 97/23	109/16 109/23 110/7	24/2 24/2 24/4 27/7
98/4 98/10 98/19	112/4 116/2 131/5	27/18 28/2 29/5 30/4
100/6 107/17 109/25	131/8 153/16 161/17	30/11 31/10 33/2
122/23 130/14	through [25] 4/8	34/24 37/21 38/17
140/21 140/22	11/15 11/17 15/13	38/18 39/4 40/24
141/13 145/18	51/11 89/25 91/7	41/13 41/13 42/13
145/22 148/25 149/1	92/9 95/3 101/7	43/25 50/10 57/3
153/16 153/20	108/23 122/16	60/6 61/14 62/19
155/18 162/1 162/2	124/18 131/10	63/12 64/5 68/22
163/1 163/16 164/7	131/11 141/17	69/1 71/13 73/11
167/7 168/22	143/22 144/21 162/6	75/3 75/7 76/10
though [5] 55/9	164/1 164/8 164/23	76/18 76/19 76/19
71/13 77/21 114/19	165/7 165/23 166/3	76/21 81/21 87/14
151/15	Thursday [17] 35/2	91/6 91/21 93/18
thought [6] 49/19	35/3 35/5 35/6 35/12	93/19 95/22 97/6

T	two [49] 6/5 8/16 9/7 9/16 21/1 21/6 25/2 30/10 30/16 33/2 33/4 44/3 46/6 46/9 46/10 48/2 57/6 58/5 58/5 58/7 67/24 68/17 80/17 81/13 87/12 87/13 97/19 97/20 98/10 98/15 98/19 99/4 107/12 107/17 109/25 110/10 128/4 136/21 139/19 152/11 154/21 155/21 158/10 161/22 163/7 167/11 170/19 170/20 170/20	ultimately [3] 115/10 126/2 151/22 unable [1] 38/11 uncontroverted [2] 86/2 168/2
try... [9] 75/10 84/1 124/15 127/19 152/10 155/13 163/1 170/25 172/6	trying [19] 4/23 4/23 8/21 10/6 10/7 24/8 25/6 27/1 65/24 69/2 70/3 84/14 127/10 140/12 155/5 156/1 157/9 157/25 164/4	under [20] 12/6 12/8 14/12 26/17 56/9 105/1 112/16 113/10 117/10 125/6 125/6 125/14 139/13 142/10 142/13 142/22 143/5 143/9 156/9 170/8
Tuesday [2] 79/17 81/18	tumor [1] 7/9	underneath [2] 116/16 133/22
tumors [1] 154/7	turn [24] 16/17 20/22 31/23 34/6 39/17 41/20 43/13 49/5 49/6 49/11 50/11 52/6 52/11 52/11 54/20 62/8 69/17 107/4 119/9 119/24 131/19 137/2 143/2 149/12	understand [44] 7/14 9/12 11/21 16/21 16/22 18/21 19/11 19/24 25/10 26/1 28/17 29/4 29/22 30/25 34/9 34/10 38/1 38/2 46/14 47/1 66/7 67/5 67/8 67/10 68/5 68/15 69/1 74/9 75/6 81/12 85/12 86/9 102/4 104/18 111/1 111/2 125/3 139/25 148/6 162/15 163/12 164/5 164/6 165/9
turning [1] 40/11	typed [3] 114/13 115/5 115/7	understanding [8] 18/18 19/6 27/4 27/5
Twenty [2] 60/12 125/10	types [3] 5/11 5/17 16/6	
Twenty-eight [1] 125/10	typical [2] 102/22 137/5	
Twenty-five [1] 60/12	typically [2] 102/20 142/17	
	typo [1] 88/13	
	U	
	U.S [4] 11/1 21/10 93/21 155/1	

U	17/25 68/15 82/13 94/2 98/1 98/21 100/2 100/13 102/14 103/12 122/21 125/4 129/1 129/12 133/18 134/12 135/9 135/17 139/14 141/7 149/19 154/17 158/3 162/8 unusual [1] 168/25 up [37] 13/6 14/19 46/8 49/6 50/22 61/2 64/22 65/21 75/11 75/12 75/13 80/19 83/6 87/10 112/19 115/3 115/13 116/12 116/17 141/11 143/24 150/6 151/22 153/23 154/9 154/11 154/22 155/19 156/11 157/25 158/6 162/3 163/14 164/23 165/4 167/18 170/14 upcoming [1] 90/19 updated [2] 38/2 38/4 upon [1] 168/14 upper [3] 50/22 50/23 69/22 us [38] 6/15 6/17 6/18 6/19 18/18 22/10 32/18 40/11 71/24 72/6 72/6 72/7	72/8 77/20 89/12 94/23 95/17 101/18 101/21 106/14 112/24 114/15 118/4 118/8 122/14 130/4 144/22 146/17 153/23 155/7 155/7 155/8 155/16 167/5 167/15 167/25 170/25 172/9 use [8] 90/21 90/23 115/2 115/5 115/13 120/12 120/25 124/21 used [7] 18/1 29/12 110/18 143/10 155/3 155/20 155/24 users [1] 113/11 using [3] 42/20 66/17 157/15 usually [18] 20/6 20/8 20/11 21/1 22/24 23/23 54/3 57/9 59/14 59/17 59/23 61/1 61/1 62/10 119/6 136/3 142/14 149/25 utility [1] 88/18
understanding... [4] 27/6 27/8 142/10 162/18 understood [2] 8/14 68/19 unequivocally [1] 10/10 unfair [2] 120/21 156/17 unfortunate [2] 166/9 167/5 Ungaro [2] 170/19 171/19 unique [12] 4/25 4/25 4/25 8/17 8/17 9/3 9/4 9/5 16/15 16/18 19/1 19/2 UNITED [4] 1/1 1/10 21/13 157/7 unjust [1] 158/10 unless [2] 104/2 116/18 unlicensed [1] 148/23 unnecessary [1] 114/5 unpaid [1] 9/23 unsuccessful [5] 25/20 27/16 28/12 29/9 41/18 until [26] 3/21 7/10	V vacated [1] 149/1 vague [1] 164/15 valid [2] 6/9 82/1	

V	20/10 22/18 22/20	85/9 95/5 95/8 95/13
valuable [2] 124/11	25/25 26/1 26/5 26/7	95/13 95/14 95/22
154/4	26/8 26/13 26/23	95/23 97/7 97/9
varies [1] 148/15	28/3 28/4 29/5 29/18	97/11 97/17 97/21
variety [1] 144/21	30/2 30/8 30/14	97/23 98/24 100/12
various [2] 91/25	34/12 37/25 39/16	100/16 103/1 103/3
153/24	42/4 42/9 42/12	103/16 106/13
Vaster [1] 158/24	43/14 43/16 43/18	107/12 107/19
verify [1] 113/6	43/23 46/11 46/13	108/12 121/2 121/3
version [1] 137/11	60/16 61/4 61/11	122/8 125/4 128/14
very [25] 4/3 4/3 4/3	61/16 61/18 61/23	128/16 128/24
7/22 8/18 14/16	62/10 63/11 64/7	131/22 131/23
16/12 16/15 16/18	65/6 65/11 65/13	131/24 131/25 132/2
46/19 46/19 50/16	65/17 66/2 66/23	132/20 133/7 133/12
57/3 57/21 68/24	67/11 67/16 67/20	133/17 133/18
70/7 108/16 108/22	67/22 68/14 68/16	134/23 135/5 136/1
121/2 124/10 153/25	68/19 68/21 68/22	136/1 136/4 137/12
156/7 156/13 156/13	68/23 68/24 68/24	137/15 137/25
161/9	68/25 69/6 69/13	138/14 139/11
vet [1] 5/24	69/13 70/22 70/23	142/14 142/25
veterinarian [1]	70/24 71/2 71/3 71/3	153/15 160/19
5/23	71/8 71/15 71/18	violations [90] 9/23
via [1] 93/21	71/19 71/22 72/1	21/1 21/17 21/20
view [8] 4/5 7/7	72/4 72/5 72/7 72/7	23/14 23/20 25/18
141/16 155/5 155/22	72/7 73/4 75/23	25/24 26/2 28/1 28/5
157/19 164/18	75/24 75/24 76/16	29/13 30/1 30/4 30/7
169/22	76/24 79/9 79/10	31/8 31/11 32/9
views [2] 154/20	79/11 79/12 79/13	33/24 35/22 37/21
156/10	79/15 79/19 80/1	41/5 41/6 41/7 42/13
Vintage [1] 94/9	80/3 80/5 80/7 80/7	42/21 43/25 61/22
violated [1] 104/23	82/6 82/24 83/7	62/20 63/4 63/22
violation [157] 20/2	83/11 83/12 84/10	63/25 65/15 66/8

V	W	
violations... [56] 66/9 67/6 67/18 67/21 67/23 68/4 68/13 68/23 72/25 73/3 74/12 74/17 76/2 76/17 80/20 81/15 81/24 82/1 95/10 96/6 98/11 98/15 102/21 103/8 104/9 107/13 107/18 107/21 109/2 109/15 110/13 110/17 111/10 112/5 113/20 113/21 116/2 116/16 117/10 122/23 128/22 129/6 129/8 129/11 131/7 134/2 141/22 143/20 150/2 153/16 161/12 161/18 161/22 162/1 162/3 163/2 violator [3] 142/16 144/23 150/1 vis [6] 13/22 13/22 13/23 13/23 13/25 13/25 Vis-a-vis [3] 13/22 13/23 13/25 visits [1] 45/18 Volume [1] 1/6 voluntarily [1] 71/7	wait [2] 15/15 58/14 waited [1] 64/1 waiting [1] 126/13 waive [3] 72/20 72/22 153/20 waived [3] 72/18 144/5 168/22 walked [2] 103/6 106/15 want [61] 3/14 3/16 3/17 5/3 5/10 6/5 8/8 8/13 9/11 9/13 9/13 10/16 11/22 12/10 12/14 12/15 13/4 25/8 36/1 39/15 46/14 46/20 46/20 48/15 48/16 49/5 51/11 54/14 57/3 61/3 65/21 74/15 84/13 87/15 107/18 107/19 107/24 109/14 112/9 112/9 112/10 112/12 113/24 123/22 123/24 124/6 124/7 127/6 132/12 133/17 153/13 153/25 163/22 167/19 169/21 170/1 170/3 170/14 171/9 171/12 172/2	wanted [14] 8/6 12/15 24/7 67/14 90/21 91/1 125/1 150/21 154/6 154/6 157/8 157/13 157/15 157/21 wanting [1] 90/23 wants [2] 89/8 164/3 warned [1] 139/11 warranty [1] 89/12 was [249] wasn't [20] 8/22 8/23 8/23 38/12 42/25 43/2 43/5 71/1 72/5 72/5 76/16 77/22 105/12 107/14 122/21 131/10 143/11 153/9 156/15 162/7 water [1] 78/17 way [29] 7/18 8/11 8/25 11/8 12/12 28/17 48/15 48/16 53/13 60/21 65/19 71/19 83/6 108/3 114/15 115/5 115/21 116/5 137/10 141/21 142/20 143/10 143/21 143/22 146/8 154/19 157/25 159/7 163/9 ways [1] 6/5

W	165/16 169/18	54/11 60/13 64/6
we [289]	169/19	67/4 68/10 69/4 70/2
weapon [1] 155/4	well-known [1]	73/3 73/8 75/19 76/6
website [3] 94/12	169/18	77/5 77/7 77/13
119/13 119/17	went [59] 9/8 13/7	77/14 77/23 82/1
Wednesday [5] 78/6	20/6 21/25 22/1 22/8	92/7 97/10 100/1
171/4 171/8 171/11	22/13 22/17 22/18	100/2 100/12 101/3
171/15	22/20 22/22 23/14	101/6 101/12 102/11
week [10] 30/10	24/18 24/20 24/21	102/13 103/8 106/2
39/4 39/5 39/6 39/10	25/13 27/18 29/10	107/12 107/12
78/8 126/3 157/12	34/1 35/14 37/17	107/13 107/21 109/3
162/16 171/14	38/8 38/13 45/5	109/3 109/16 109/23
weekend [1] 77/25	45/18 56/17 57/21	117/2 118/25 121/4
weeks [7] 4/18 30/10	58/5 63/21 63/24	123/2 123/3 124/25
44/3 163/7 170/19	63/25 65/4 66/11	125/5 125/8 125/15
170/20 170/21	69/4 71/21 78/25	126/20 129/6 129/8
weigh [1] 90/10	79/2 79/3 79/16	129/11 135/17
welcome [2] 3/16	79/25 80/5 80/8	145/18 145/22 150/5
51/12	80/11 80/13 80/17	154/8 155/17 156/17
well [37] 3/15 4/22	81/17 81/18 81/20	162/1 162/7 166/14
10/22 10/23 11/11	83/20 83/22 84/11	169/23 170/23
12/8 12/23 13/23	85/22 114/7 122/7	170/24 171/4
15/23 24/12 26/8	127/19 137/15	weren't [2] 77/21
36/11 38/6 39/14	142/23 143/12	152/17
47/7 49/4 54/14	152/12	west [1] 16/24
57/15 58/15 58/16	were [84] 9/23 10/3	what [250]
60/11 105/14 116/21	11/21 13/1 21/10	what's [16] 11/23
121/2 126/22 132/23	22/11 22/25 25/20	20/13 48/15 55/21
135/16 138/12	30/4 30/7 33/24	55/21 69/1 72/8
139/13 140/20	35/25 38/5 38/11	72/12 75/14 78/7
148/18 148/23	40/4 40/4 42/16	113/14 116/7 126/23
156/21 156/25	42/21 45/1 53/12	147/3 154/10 154/15

W		
<p> whatever [10] 4/13 11/22 12/16 14/6 103/16 105/18 110/18 167/19 167/20 167/21 whatsoever [3] 42/15 59/3 94/8 when [101] 7/17 10/10 13/23 19/10 19/21 20/23 21/6 21/7 21/8 21/23 22/10 22/25 24/2 24/7 25/20 27/16 30/15 31/14 32/12 32/25 33/2 34/14 34/17 34/19 34/20 34/24 37/8 37/9 38/5 40/4 40/15 49/1 49/13 53/9 53/12 54/14 55/17 56/2 56/9 56/17 56/23 57/12 58/8 58/20 58/25 62/10 64/19 65/4 68/10 68/11 68/25 70/2 71/20 74/3 74/22 75/19 75/25 75/25 76/1 76/2 76/6 76/23 76/23 77/13 78/13 78/13 78/18 79/14 79/22 80/6 82/7 </p>	<p> 83/12 86/7 92/6 93/8 93/18 93/20 96/6 97/13 104/25 105/10 110/12 116/16 119/6 125/10 128/22 129/5 134/2 134/11 137/18 138/9 144/20 145/22 147/14 152/11 159/4 165/5 167/18 169/6 170/12 170/24 where [30] 8/24 14/7 17/12 20/15 22/1 22/3 42/25 51/8 51/17 62/24 67/12 69/7 89/12 91/17 94/14 99/13 112/16 112/20 113/9 133/21 138/9 138/17 138/19 139/10 154/5 156/1 156/14 158/9 158/14 160/5 whether [19] 4/6 4/13 4/17 6/4 13/13 26/15 38/8 90/10 99/9 101/14 108/18 108/20 127/4 128/8 128/8 130/12 142/15 145/7 165/10 which [52] 5/13 6/16 15/5 17/6 20/2 21/19 27/18 28/16 39/6 45/4 45/18 49/16 </p>	<p> 64/11 67/23 68/20 68/22 71/5 71/8 88/12 88/18 89/18 89/20 90/18 92/24 93/17 94/5 107/17 107/20 109/1 109/15 116/24 117/2 122/11 122/18 122/22 126/7 130/15 130/17 131/7 131/19 137/6 138/21 141/5 141/24 143/14 147/5 149/17 152/3 158/22 160/15 161/23 168/1 while [8] 9/23 11/1 21/10 67/4 69/4 118/25 140/12 154/11 white [13] 20/22 69/18 107/4 112/18 113/22 114/1 116/1 119/9 120/4 143/2 146/14 146/20 158/4 who [24] 3/9 11/16 11/18 20/6 23/3 23/16 29/11 32/19 51/6 54/18 67/13 77/18 86/23 91/24 99/6 111/4 114/13 115/5 115/7 117/23 118/8 141/24 147/23 152/21 </p>

W	84/8 84/21 87/10	63/7 74/12 114/16
whoever [2] 111/3	94/17 95/18 96/2	125/2 125/5 132/7
165/7	96/4 96/6 102/4	132/9 132/24 132/25
Whom [1] 32/12	102/9 103/11 103/13	133/12 133/15 135/4
whose [1] 14/11	110/2 120/10 120/15	168/7 168/8
why [43] 8/17 9/1	121/14 128/17 134/3	without [24] 8/20
9/3 33/10 33/21	134/10 134/12	10/4 12/13 13/1 29/4
34/13 36/8 41/4	138/22 139/16	29/18 72/8 82/6
42/12 42/22 43/2	142/14 144/16	83/24 83/25 91/11
43/16 44/3 55/17	144/23 145/7 158/9	93/2 98/24 99/7
55/18 55/20 55/21	166/11 167/13	139/12 139/16 141/6
76/5 79/8 91/19	168/12 169/5 170/10	141/25 142/25 145/8
92/15 94/18 114/24	170/13 170/25 171/7	149/8 149/18 161/6
117/16 135/15	171/8 171/22 172/3	164/16
136/12 137/10 138/2	172/6	witness [20] 3/19
138/6 144/11 147/13	willing [1] 163/7	14/17 20/12 36/9
151/16 151/25	window [2] 106/5	36/25 37/11 43/6
152/24 154/8 154/8	116/12	86/19 87/11 87/20
154/20 156/3 157/24	windows [3] 80/18	109/8 118/1 129/19
162/12 167/16 168/5	116/10 116/11	129/21 140/1 147/23
168/17	wine [5] 16/3 16/4	150/11 150/13
wife [1] 23/18	18/23 166/18 166/18	152/20 162/5
will [71] 3/18 3/22	wishes [1] 95/14	witnesses [5] 87/13
3/23 3/24 4/8 4/17	withheld [2] 14/2	87/18 150/14 150/15
4/19 5/16 7/11 9/16	14/5	155/18
11/19 12/2 12/4	withhold [2] 98/16	woke [1] 13/6
12/18 12/20 14/8	102/14	woman [3] 20/8
35/6 36/9 36/11	withholding [1]	22/23 28/19
36/13 36/14 37/1	94/24	won [1] 8/5
38/20 49/5 49/9	within [21] 11/25	won't [3] 104/4
49/11 50/11 51/15	33/2 33/4 46/15	112/19 172/3
61/8 63/2 71/15 73/2	61/18 62/13 62/22	wonder [3] 151/16

W	67/23 88/23 89/14	123/8 123/9 123/10
wonder... [2] 151/25	89/15 90/4 90/4	123/12 123/14
154/19	90/21 90/23 90/25	123/17 123/18
wondering [1]	91/2 92/1 94/1 94/6	123/19 123/24
126/20	95/8 96/1 96/13	123/25 124/8 124/9
word [4] 37/6	96/15 97/1 97/3 97/4	124/10 124/20
106/10 116/2 143/10	97/16 97/17 97/23	125/14 125/17 126/6
words [7] 5/3 11/6	97/25 98/4 98/11	126/8 126/9 129/6
102/9 103/15 105/1	98/16 98/16 99/24	129/7 129/11 137/19
121/21 160/22	100/10 100/13	139/22 140/12
work [17] 20/7	100/15 100/24	140/15 140/16
23/22 59/24 59/25	100/25 101/1 101/4	140/22 140/24
59/25 69/3 69/3	101/11 101/13 102/6	142/17 142/18
74/21 76/1 88/6	102/13 102/17	143/21 144/13
104/19 111/17	103/10 103/10	147/13 147/21
119/15 119/16	103/17 103/19	152/16 153/4 153/11
124/16 124/18 172/5	103/21 104/1 104/24	157/1 157/3 157/4
worked [2] 111/22	105/4 105/18 106/3	157/23 157/24 158/1
161/21	106/9 106/10 106/12	158/1 159/23 160/4
working [4] 23/22	106/12 106/15 108/3	160/16 161/15
24/4 79/18 85/14	108/5 108/15 109/11	163/11 163/12
works [3] 103/9	110/20 111/2 112/2	163/13 163/13
116/10 142/20	112/3 112/5 112/6	163/15 163/17
worry [1] 169/5	112/7 113/11 114/8	163/23 164/25
worth [1] 163/5	114/11 114/20	165/19 167/7 167/20
would [169] 6/16	114/25 115/8 115/9	170/25
6/19 13/14 18/7	115/10 115/20	wouldn't [18] 9/20
18/19 23/10 27/4	115/22 117/14	56/25 79/20 98/20
33/10 44/17 44/19	117/16 117/23	102/9 102/10 103/23
44/21 45/2 48/11	117/24 120/22 121/5	106/16 109/2 110/23
54/1 54/7 54/11	121/9 121/11 122/5	111/21 119/16 123/3
54/15 56/5 57/18	122/8 122/18 122/19	124/11 143/18

<p>W</p> <p>wouldn't... [3] 152/18 157/22 162/3</p> <p>write [3] 32/2 60/25 169/14</p> <p>writing [2] 73/11 73/14</p> <p>written [9] 62/22 63/8 72/17 72/24 73/19 74/11 74/16 83/14 136/4</p> <p>wrong [12] 11/24 12/1 66/17 72/11 73/24 74/7 74/9 74/25 76/16 155/11 165/22 170/3</p> <p>wronged [1] 155/17</p> <p>wrongfully [2] 14/2 84/13</p> <p>wrote [10] 60/24 64/6 82/3 82/13 82/16 82/19 82/20 82/20 111/3 111/4</p>	<p>8/2 8/3 10/15 11/25 14/13 18/17 29/2 29/3 31/16 52/4 54/1 55/24 55/25 55/25 56/3 56/10 57/10 58/6 58/6 58/7 60/24 61/8 76/20 81/21 89/24 90/19 90/20 91/16 91/20 92/3 92/7 92/10 93/3 93/8 93/15 93/17 94/1 94/7 95/2 95/3 96/10 96/13 96/18 100/18 103/1 103/14 103/20 104/14 106/8 108/23 108/25 114/5 114/7 122/16 123/1 129/14 129/15 134/18 148/14 148/17 158/9 161/24 163/17 164/19 165/19 167/20</p> <p>year-to-year [1] 4/13</p> <p>years [7] 19/18 23/23 27/8 53/24 90/13 90/17 154/21</p> <p>yes [247]</p> <p>yesterday [6] 3/15 3/25 4/2 4/22 9/10 9/14</p> <p>yet [4] 20/14 42/13</p>	<p>65/20 168/15</p> <p>you [1038]</p> <p>young [2] 157/9 167/13</p> <p>your [226]</p> <p>yours [2] 49/7 49/7</p> <p>Z</p> <p>Zero [1] 169/25</p> <p>zoning [2] 17/1 127/2</p>
<p>Y</p> <p>yeah [16] 31/3 35/3 37/23 39/15 42/9 55/11 58/4 59/10 60/10 61/10 62/7 74/23 79/21 80/5 80/12 82/2</p> <p>year [68] 4/13 4/13</p>		

EXHIBIT L

IN AND BEFORE THE SPECIAL MASTER OF
THE CITY OF MIAMI BEACH

CODE VIOLATION CASE NOS. CC2016-01704
CC2017-03102
CC2017-03103

BEACH BLITZ, CO. c/o
DOAR, DORON,

Petitioner,

vs.

CITY OF MIAMI BEACH,

Respondent.

AGREED ORDER

This cause came before the Special Master of the City of Miami Beach, upon stipulation and agreement of Harold Rosen, Esquire, on behalf of Beach Blitz, Co. c/o Doar, Doron, 865 Collins Avenue, #D, Miami Beach (hereinafter referenced as the "Petitioner"), and Deputy City Attorney, Aleksandr Boksner, counsel to Respondent, the City of Miami Beach (hereinafter referenced as the "City"), regarding the above-styled appeal before the Special Master of certain violation(s) against the real property which is located at 865 Collins Avenue, #D, Miami Beach, Florida (the "Property") and the Code Enforcement matter referenced below in this Agreed Order. Respective counsel to City and the Petitioner having agreed to the terms of this Order,


IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. Petitioner, Beach Blitz Co. c/o Doron Doar admit to the legitimacy of the violation charged under Citation/Violation Nos. CC2016-01704, CC2017-03102 and CC2017-03103, and recognize that the violation was properly issued by the City of Miami Beach.

2. Citation/Violation Nos. CC2016-01704, CC2017-03102 and CC2017-03103 are hereby AFFIRMED. The Parties stipulate that a factual basis exists to establish this offense violation by the appropriate legal standard for this proceeding, and the City shall not need to establish the legitimacy.

3. The Petitioner shall be assessed a fine in the amount of One Thousand (\$1,000.00) Dollars, which shall be due within thirty (30) days of the entry of this Agreed Order.

DONE AND ORDERED by the Special Master of the City of Miami Beach, this 20th day of September, 2017.



SPECIAL MASTER
As Special Master for the City of Miami Beach

Copies furnished to:

Aleksandr Boksner, First Assistant City Attorney at sandracaba@miamibeachfl.gov
Harold Rosen, 407 Lincoln Road, Suite 2A, Miami Beach, Florida 33139

8.22.17
PAID
CH # 2238
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Case Number	Address	Type	Status	District	Opened	Closed	Project
CC2017-03102	865 COLLINS AVE	City Code Violation	Closed	MXE	06/25/2017	10/04/2017	

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Case Number	Address	Type	Status	District	Opened	Closed	Project
CC2017-03103	865 COLLINS AVE	City Code Violation	Closed	MXE	06/25/2017	10/04/2017	

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Search Results

Case Number	Address	Type	Status	District	Opened	Closed	Project
CC2016-01704	865 COLLINS AVE	City Code Violation	Fine Paid	MXE	12/22/2016	10/13/2017	

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EXHIBIT O

Code Compliance Department
555 - 17th Street
Miami Beach, Florida 33139
Tele: 305.673.7555
Fax: 305.673.7012

Notice of Violation

Violation Notice Date:	Date 10/6/2017	Time 5:00 PM	Case Number CC2017-03686
Address of Violation:	865 COLLINS AVE		
Parcel Number:	0242032560040		
Legal Description:	THE SKYLARK CONDO UNIT D UNDIV 3 167% INT IN COMMON ELEMENTS OFF REC 20580-1711		
Violator Name:	Beach Blitz Co. DSA Ocean 9 Liquor O/O Doron Dear		
Mailing Address:	13441 NW 5th Court	City and State Ft. Lauderdale, FL	Zip Code 33325

The City of Miami Beach Code Compliance Department has determined that the above Property has violated the Miami Beach Code of Laws and Ordinances (the "City Code"). This violation is the 2nd offense, and this Notice of Violation carries a fine (and other monetary charges) of \$500.00. Specifically, Code Compliance Officer Manny Bastos has found there to be a violation(s) of the City Code, which is/are:

Article V, Section 102-377. Any person failing to obtain a Business Tax Receipt as required by this article.

Reference: Failing to obtain Business Tax Receipt, 2nd Offense

Cease immediately until you obtain a Business Tax Receipt from the City of Miami Beach.

A Violation of this Section shall be subject to the following fines:

Any person who shall carry on or conduct any business for which a tax receipt is required by this article without first obtaining such tax receipt shall be issued a violation for the first offense which shall have a civil fine of \$1000.00. The enhanced enforcement for this violation shall be pursuant to subsection 102-377(d).

In addition to the above a continued violation of subsection 102-377(a) for a period of thirty (30) days or more without first obtaining a tax receipt shall be punished by imprisonment not to exceed 60 days or by imposition of a fine not to exceed \$500.00 or both.

Failure to comply will result in your prosecution before the City of Miami Beach Special Master. The Special Master may impose fines of up to \$1,000.00 per day for noncompliance and up to \$5,000.00 per day for recurring violations. Failure to pay imposed fines will lead to placement of liens upon the real and personal property of violators which will be foreclosed upon or otherwise collected as provided by this code.

If you are aggrieved by the decision of the Code Inspector in issuing this notice of violation, you may appeal. To appeal the violations submit an application for appeal within **Ten (10)** days of receipt of this notice of violation to the appropriate board or the Office of the Special Master 1700 Convention Center Dr., Miami Beach, FL 33139. A check for \$100 (administrative charges) must accompany the request along with the case number.

Issuing Code Compliance Officer	Name	Manny Bastos	Badge #	704	Phone and Extension	(305) 673-7555 ext. 6803
	Ema.	EmmanuelBastos@miamibeachfl.gov				
Received By:	Compliance Date	10/06/2017	Received Date	5:00 PM	Fax:	305.673.7012

ADA Information

To request this material in accessible format, sign language interpreters, information on access for persons with disabilities, and/or any accommodation to review any document or participate in any City-sponsored proceeding, please contact 305.604.2489 (voice), 305.673.7524 (fax) or 305.673.7218 (TTY) five (5) days in advance to initiate your request. TTY users may also call 711 (Florida Relay Service).

Manny Bastos

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

CASE NO: _____

BEACH BLITZ CO., a Florida
Corporation d/b/a OCEAN 9 LIQUOR, and
d/b/a as OCEAN 11 MARKET,

Plaintiff,

v.

CITY OF MIAMI BEACH, FLORIDA,
a municipal corporation of the State of Florida,
PHILIP LEVINE, an individual, JIMMY
MORALES, an individual, MICKEY
STEINBERG, an individual, RICKY ARRIOLA,
an individual, MICHAEL GREICO, an individual,
JOY MALAKOFF, an individual, KRISTEN
ROSEN GONZALEZ, an individual,
JOHN ELIZABETH ALEMAN, an individual,
RAUL J. AGUILA, an individual, and
ALEKSANDR BOKSNER, an individual

Defendants.

_____ /

COMPLAINT

Plaintiff, BEACH BLITZ CO., a Florida corporation d/b/a OCEAN 9 LIQUOR and d/b/a as OCEAN 11 MARKET, through undersigned counsel, sues Defendants, CITY OF MIAMI BEACH, FLORIDA, a municipal corporation of the State of Florida, PHILIP LEVINE, an individual, JIMMY MORALES, an individual, MICKEY STEINBERG, an individual, RICKY ARRIOLA, an individual, MICHAEL GREICO, an individual, JOY MALAKOFF, an individual, KRISTEN ROSEN GONZALEZ, an individual, JOHN ELIZABETH ALEMAN, an individual, RAUL J. AGUILA, an individual and ALEKSANDR BOKSNER, an individual, and alleges:

INTRODUCTION AND NATURE OF ACTION

Approximately two years ago, principally through the actions of Mayor Philip Levine and

Commissioner Ricky Arriola, the City of Miami Beach, commenced coordinate process to address the chronic crime problem on Miami Beach and in particular the area known worldwide as South Beach. South Beach has been an entertainment and party mecca known internationally for over thirty (30) years. That reputation has created hundreds of millions, if not billions of dollars in revenue for the State of Florida and most particularly, Miami-Dade County and the City of Miami Beach. South Beach remains a worldwide go to party destination to this day.

Allegedly based upon the complaints of citizens of Miami Beach¹, a series of meetings occurred internally within the City that included various commissioners, the Mayor, the City Manager, the City Attorney, the Chief of Police, code enforcement officials, and other relevant participants and stakeholders. The result of those meetings includes a targeted plan to materially restrict liquor sales within the MXE district, the heart of South Beach, as well as the CD-2 district which is immediately adjacent to and west of the MXE district.²

Unfortunately, what started as a legislatively legitimate attempt to control crime (albeit through a process not directly related to controlling crime, but to severely restrict the sale of alcohol) has resulted in an intentional, malicious and now illegal campaign against certain specific establishments that sell liquor including targeted clubs and all four package stores in the MXE district.

In fact, Mayor Philip Levine was quoted by the Miami Herald in the Opinion published by the Herald on October 26, 2017, calling certain businesses on South Beach that sell liquor “malignant tumors.” The Mayor’s malicious intent is clear. The Herald recognized that maliciousness in its Opinion, without directly saying so, opining that the advocates for alcohol sales restrictions (the Mayor and the Commissioners) were overreaching and the effect was “legally shaky”. In fact, the Herald recommended that the citizens of Miami Beach vote against a referendum arranged by Mayor Levine and Commissioner Arriola, to reduce the hours of

¹ Relatively few actual citizens live in South Beach as the area is primarily a venue for businesses, *e.g.* hotels, restaurants, entertainment venues and retail stores.

² See Definition of MXE district at ¶¶19-21, below.

operation of outdoor café components of nightclubs from 5:00 a.m. to 2:00 a.m. A copy of the Herald's Opinion is attached as Exhibit "A".

In addition to the referendum directed to Mayor Levine's "malignant tumors", the Mayor and certain commissioners along with staff,³ have internally targeted four package liquor stores within the MXE district and peppered those stores with improper code enforcement violations, intentional police blockades restricting access to certain of those stores, and most recently an egregious forced closing of one of those stores, Plaintiff's Ocean 9 Liquor, without due process. The cessation of operations by Ocean 9 Liquor was accomplished by overt threat by two Miami Beach police officers and one code enforcement officer, to place the owner of the store in jail if he did not voluntarily close his store because of an alleged dispute over a several hundred dollar Business Tax Receipt ("**BTR**"), otherwise known as an occupational license fee. That store remains closed today – 24 days later.

Over 15 employees are left without jobs and the City has no defense or excuse other than Ocean 9 Liquor was allegedly a few months delinquent in paying a few hundred dollar occupational license fee the City itself affirmatively prevented from being paid because of the pendency of a special master proceeding dealing with the very violation and thereafter, an inability to timely update its "system". After preventing payment, the City refused to issue a current BTR even though that very violation was resolved through the City's special master process. Plaintiff attempted on multiple occasions to obtain the BTR, once having resolved all pending violations. In spite of a valid and binding resolution of the BTR issue and others by Agreed Order dated September 28, 2017, Plaintiff's principal was physically prevented from obtaining a BTR until he was threatened with jail if he did not close the store at 865 Collins Ave on Friday, October 6, 2017.

Even more telling, the closure was one day after a meeting by Plaintiff's counsel with a Deputy City Attorney to voice objection to the ongoing, systematic reduction of business hours

³ Staff includes all employees of the City which are not elected.

for the sale of the alcohol by package stores in the MXE district. According to Deputy City Attorney Boksner, the closure that Friday was not likely coincidental. An interesting admission.

Mayor Levine's overzealous campaign, countenanced to date by the Commission cannot be allowed. The result as applied to Plaintiff is in violation of federal and state laws and results in an improper taking without due process and other intentional, malicious and irreparably harmful acts as more fully set forth herein below. As such, Plaintiff files the instant complaint seeking redress (1) for the City's wrongful and unconstitutional closing of one of Plaintiff's locations and (2) to declare invalid and enjoin the City's arbitrary, capricious and unreasonable ordinances designed to bankrupt the four package stores in the MXE district.

JURISDICTION AND VENUE

1. This is an action for declaratory and injunctive relief and damages, pursuant to the Fourteenth Amendment of the United States Constitution and 42 U.S.C §1983.

2. This Court has original jurisdiction pursuant to 28 U.S.C. 1331 and 1343 over Plaintiff's causes of action under the Constitution of the United States, 42 U.S.C. §1983 and Declaratory Judgment Act, 28 U.S.C §2201 and 2202.

3. This Court has personal jurisdiction over Defendants in that they are located and/or reside in the Southern District of Florida

4. Venue is proper in the Southern District of Florida pursuant to 28. U.S.C. 1391(a) in that Defendants are subject to personal jurisdiction within the Southern District of Florida and the events which give rise to this action occurred within the Southern District of Florida.

THE PARTIES

5. Plaintiff, BEACH BLITZ CO., is a Florida corporation with its principal place of business in Miami Beach, Florida. Plaintiff does business as OCEAN 9 LIQUOR and OCEAN 11 MARKET and services South Beach, Florida, with a wide variety of packaged beer, wine, liquor, and related supplies. Plaintiff's locations are at 865 Collins Avenue and 1100 Collins Avenue. Plaintiff offers free delivery to the surrounding area of hotels, residences, and the beach. In addition OCEAN 9 LIQUOR maintains a live disc jockey on the premises and has at

all times relevant been licenses to so. Plaintiff is a package store⁴ providing sales of packaged liquor. Plaintiff has been operated at its locations since approximately 2003 pursuant to written lease agreements which require the operation of a retail liquor store. Doron Doar is Plaintiff's principal and was threatened with imprisonment if he refused to close the store located at 865 Collins Avenue on October 6, 2017.

6. Defendant, CITY OF MIAMI BEACH, FLORIDA (the “City”) is a municipal corporation organized under the laws of the State of Florida. It is governed by the laws and constitution of the United States of America, the laws and constitution of the State of Florida and by its municipal Charter and Code. Pursuant to applicable law, the City regulates the location, size, hours of operation, and minimum patron age for alcoholic beverage establishments within its borders.

7. Defendant, PHILIP LEVINE, is an adult individual, the Mayor of the City, and otherwise *sui juris*. Mayor Levine is a principal leader in the City's goal to terminate the sale of alcohol in the MXE district and other parts of the City. The City's goal appears to be limitless as it includes putting small businesses (“malignant tumors”) out of business.

8. JIMMY MORALES is an adult individual, the City Manager, and otherwise *sui juris*.

9. Defendant, MICKEY STEINBERG is an adult individual, a Commissioner for the City and otherwise *sui juris*.

10. Defendant, RICKY ARRIOLA is an adult individual, a Commissioner for the City and otherwise *sui juris*.

11. Defendant, MICHAEL GREICO is an adult individual, a Commissioner for the City and otherwise *sui juris*. Commissioner Greico recently resigned his commission set but was a Commissioner at all times relevant.

12. Defendant JOY MALAKOFF is an adult individual, a Commissioner for the City

⁴ The City defines a package store as any store primarily engaged in the business of selling alcoholic beverages for off-premises consumption and that has a license for package sales from the State Division of Beverages and Tobacco in the classification of 1-APS, 2-APS, or PS.

and otherwise *sui juris*.

13. Defendant KRISTEN ROSEN GONZALEZ is an adult individual, a Commissioner for the City and otherwise *sui juris*.

14. Defendant JOHN ELIZABETH ALEMAN is an adult individual, a Commissioner for the City and otherwise *sui juris*.

15. Defendant RAUL J. AGUILA is an adult individual, the City Attorney for the City and otherwise *sui juris*.

16. Defendant, ALEKSANDR BOKSNER, is an adult individual, a Chief Deputy City Attorney for the City and otherwise *sui juris*. Mr. Boksner is a principal player in the actions resulting in the unlawful closure of Plaintiff's store at 865 Collins Avenue.

17. At all relevant times described herein, the Commission as an expression of municipal policy and on behalf of the City adopted the Code Sections and Ordinances discussed below acting through its duly authorized agents, Mayor Levine, Manager Morales and the Commissioner Defendants, and Alek Boksner.

18. At all times alleged herein, the City and its officials, employees and agents were acting under color of state and local law.

GENERAL ALLEGATIONS

A. The MXE District

19. The MXE Mixed Use Entertainment ("MXE") district is characterized by a variety of uses, ranging in intensity from apartment buildings and retail stores to restaurants and entertainment establishments, which attract a large volume of pedestrians and vehicular traffic. Comparatively, few actual citizens of Miami Beach reside in the MXE district.

20. The MXE district was designed by the City to encourage the substantial restoration of existing structures, allow for new construction and the coexistence of multiple private businesses and entertainment uses.

21. The MXE district is composed of the area between Ocean Drive to Washington Avenue on the east and west side and 5th Street to 15th Street on the north and south side. Said

otherwise, the MXE district is the heart of South Beach as it is known worldwide. See Exhibit B.

22. Plaintiff operates 2 package stores within the MXE district.

23. There are 2 other package stores in the MXE district, other than Plaintiff's stores.

B. Ocean 9 and the Neighborhood

24. Plaintiff's store at 865 Collins Avenue is located directly across the street from the residence of Mitch Novick, a principal in a well-known, vocal opponent of the sale of liquor on South Beach. Mr. Novick and Mayor Levine are well-known to one another.

25. Upon information and belief, Mr. Novick has made at least 6 unsubstantiated noise complaints with respect to Plaintiff's business from the period of May 2016 to September 2017, and numerous "informal" complaints directly to some of the Defendants and the City police department.

26. Access to Plaintiff's store at 865 Collins Avenue is routinely impaired by the City and its officers, agents and employees. Specifically, 9th street between Collins Avenue and Ocean Drive is routinely shut down not allowing vehicle or pedestrian traffic. The shutdown occurs without explanation and is only affected on 9th street, the street coincidentally which Mr. Novick's residence overlooks. No other streets are routinely barricaded.

C. The City's Action Plan against Liquor Stores and Sales

27. Beginning in 2016, the City commenced a campaign to limit and/or severely curtail the sale of alcohol in the MXE district. According to the City, the package sales of alcoholic beverages in the MXE district encourage individuals to consume alcoholic beverages in the City's parks, and on the City's streets and sidewalks. The alleged basis for the proposed restrictions was to reduce crime in the MXE district and South Beach in general.

28. Regulation of the sale of alcoholic beverages is a legitimate legislative province so long as any such ordinance is not arbitrary or capricious and is reasonable in the context of its implementation and effect. Cities may only regulate certain aspects of the sale of alcohol and said regulation may not otherwise impair state law on the sale of alcohol.

29. The City apparently concluded that the consumption of open containers of

alcoholic beverages in public places disturbs the quiet enjoyment of the community, causes undesirable noise, and contributes to litter, noxious odors, and the general degradation of the City. There is no direct finding that the four package stores in the MXE district are a causal link to any crime in that district. Nor is there actual support that eliminating one or such packages stores will improve the crime problem. None of those package stores are in violation of any law that would impair their right to operate.

30. The City concluded it was in its best interest and to serve the health, safety, and welfare of its residents and visitors, to prohibit package stores and package sales of alcoholic beverages in the MXE district. As such, the Commission passed an ordinance that determined that going forward from the effective date of Ordinance No. 2016-4047 no new package stores would be allowed in the MXE district. The 4 existing stores were unaffected, including Plaintiff's stores.

31. Little did Plaintiff or the other package store owners know at that time that a trap was being set.

32. Further forward with the plan against alcohol sales, the City concluded that it was in its best interest and to serve the health, safety, and welfare of its residents and visitors, to substantially reduce the allowable time periods during which alcohol could be sold. Thus, began the systematic passage of a series of overreaching, unreasonable ordinances designed to bankrupt the four package stores by systematically reducing their legal hours of sale. In less than a year, the proposed reduction will be a reduction from a 16 hour period to a 10 hour period. Most hours being eliminated are at peak sale time.

D. The City's Code Relative to the Business Tax Receipt

33. All business owners operating within City are required to obtain a Business Tax Receipt (formerly known as an Occupational License) (a "BTR"). A BTR license is essentially a tax on the operation of a business.

34. A BTR license is valid from October 1st to September 30th of the following year and must be renewed prior to the commencement of the new fiscal year on October 1, 2017.

35. The Code provides penalties for failure to obtain a valid BTR license, including routine fines. There are enhanced penalties for multiple violations regarding operating without a valid BTR that include incarceration and/or proceedings to enjoin operation of the business.⁵ Section 102.377, Miami Beach City Code.

36. The Code also states that the City may prevent a business from operating until the required tax receipt is obtained.

37. On or before October 1, 2015, Plaintiff applied for and obtained a BTR license identified as RL-10005692 for the store located at 865 Collins Avenue.

38. Since approximately June 2017, when Plaintiff discovered it needed to renew its BTR license, Plaintiff has been attempting to renew the BTR for the store on 865 Collins Avenue.

39. Plaintiff has been intentionally thwarted by the City from doing so as more fully described below.

40. The City has intentionally, unilaterally and arbitrarily refused to renew Plaintiff's BTR license for its store at 865 Collins Avenue, despite accepting and retaining all fees relative to same. The City continued to cite Plaintiff for not having its BTR license for the store located at 865 Collins Avenue even after Plaintiff tendered payment of the licensee fee and penalties for being tardy.

41. That refusal is now the basis for the City's position that Plaintiff may never reopen because his "new" proposed use as a package store is a non-conforming use pursuant to 2016 Ordinance No. 2016-4047. The trap is sprung. One store down; three to go.

42. The City intentionally prevented Plaintiff from updating his license yet now says that because Plaintiff didn't timely update its license it is barred from future operation. Those actions are not only unlawful and in bad faith, they are unconstitutional on their face. It is a well-known principal of law that a party may not relay on a failed legal condition when that

⁵ Such actions, of course, would require Constitutional due process.

party caused the very failure relief upon.

E. The City's Code relative to the Sale of Alcohol

43. Chapter 6 of the City Code establishes minimum regulations for the sale and consumption of alcoholic beverages throughout the City, and district-specific alcoholic beverage regulations are set forth in Chapter 142.

44. In its current form, the Code allows package stores to sell alcoholic beverages, whether as a permitted main or accessory use, for off-premises consumption between the hours of 9:00 a.m. and 10:00 p.m.⁶ Section 6-3 City Code.

45. As more fully discussed below the time periods during which package stores may sell alcoholic beverages has changed at least over 3 times in the course of six months

F. The Ordinances Designed to Restrict the Sale of Alcohol⁷

46. On October 19, 2016, the Mayor and the City Commission adopted Ordinance No. 2016-4047, which altered the allowed uses within the MXE district. Specifically, Ordinance No. 2016-4047 prohibits package stores and package sales of alcoholic beverages by any retail store or alcoholic beverage establishment with in the MXE district.⁸ Additionally, the Ordinance prohibits entertainment in package stores.⁹ See Exhibit C.

47. On November 9, 2016, the Mayor and City Commission adopted Ordinance No. 2016-4058, which prohibited package liquor sales at retail stores (including package, grocery, convenience, and any other retail stores, as well as gasoline stations/service stations) and alcoholic beverage establishments before 10:00 a.m. (instead of 8:00 a.m.) each day. See Exhibit D.

⁶ These restrictions appear not apply to big chain stores such as Walgreens which operates in the MXE district and the MXE district seems to specifically change direction to exclude another Walgreens location.

⁷ The ordinances discussed in this section are collectively referred to as "Ordinances".

⁸ All legal package stores in operation at the time the Ordinance was passed were grandfathered in as a matter of law.

⁹ Plaintiff's store at 865 Collins Avenue operated on that date and lawfully provided entertainment in that store as it was licensed by the City to do.

48. On March 1, 2017, the City Commission reviewed a prior version of this Ordinance, which proposed to prohibit package liquor sales before 9:00 a.m. However, following discussion on this item, the City Commission directed staff to revise the proposed Ordinance to prohibit package liquor sales before 8:00 a.m.

49. On April 26, 2017, the Mayor and City Commission reviewed the revised ordinance and directed the City Attorney's Office to prepare a revised draft ordinance that further restricted the hours of package liquor sales in the MXE district and citywide between 10:00 a.m. and 10:00 p.m.

50. On June 7 2017, Ordinance No. 2017-4101 was enacted again changing the hours of package liquor sales in the MXE district and specifically differentiating the rights of persons in the MXE district when compared to those in other districts. There is no rational nexus between the ordinance and the problem sought to be solved, crime.

51. Specifically Ordinance No. 2017-4101 provided that retail package stores could sell alcohol between the hours of 8:00 a.m. and midnight. See Exhibit E.

52. However, Ordinance No. 2017-4101 specifically stated that notwithstanding the citywide hours, package stores within the MXE district would only be permitted to sell alcoholic beverages between the hours 10:00 a.m. and 10:00 p.m. Id.

53. Approximately 3 months later, the City passed Ordinance No. 2017-4131 which further restricted the sale of alcohol by package stores in the MXE district. See Exhibit F. Ordinance No. 2017-4131 now set the time period as the hours between 9:00 am. and 10:00 p.m.

54. Apparently unhappy with the restrictions, in September 2017, Defendants proposed again attempted to change the hours of package liquor sales in the MXE district. See Exhibit G. Specifically, the September Ordinance proposed that package stores within the MXE district would only be permitted to sell alcoholic beverages between the hours 10:00 a.m. and 8:00 p.m.

55. A first reading of the September Ordinance was held on September 13, 2017.

56. A second reading of the September Ordinance is currently scheduled for October

31, 2017. If passed, the hours of package liquor sales in the MXE district will be restricted to between 10:00 a.m. and 8 p.m.

57. If passed, the September Ordinance would be the 4th change to the hours of package liquor sales in the MXE district in the span of 10 months

G. The Alleged Code Violations by Plaintiff Giving Rise to Closure of Plaintiff's Store

a. December 2016

58. On Wednesday, December 21, 2016 at 8:39 a.m. a Code Compliance officer presented Plaintiff with a notice of violation alleging a violation of Section 6-3(1)(A) of the City Code. In the notice, the City Code Compliance officer states that the violation was based upon Plaintiff's sale of alcoholic beverages between the hours of midnight and 10:00 a.m. The violation was identified as Case Number 2016-11719. See Exhibit H.

59. Subsequently, Plaintiff was provided a different sheet of paper for the December violation. See Exhibit I. This paper identified the Case Number as CC2016-01704 but maintained a violation of Section 6-3(1)(A) of the City Code. Id.

60. In this notice, the violation stated that Section 6-3(1)(A) of the City Code provides that retail stores in the MXE district for package sales only may make sales of alcohol for off-premises consumption between the hours of 8:00 a.m. and midnight.

61. The violation was issued at 8:39 a.m. – thus within the then existing lawful time periods for sale.

62. As more fully discussed below, Plaintiff appealed the December violation, invoking the jurisdiction of the Special Master.

b. June 2017

63. On Sunday, June 25, 2017 at 11:30 p.m., a Code Compliance Officer presented the following notices of violation to Plaintiff:

- Violation identified as Code Case Number CC2017-03102. This violation alleged that Plaintiff had violated . See Exhibit J.
- Violation identified as Code Case Number CC2017-03103. This

violation alleged that Plaintiff had violated Article V, Section 102-377 of the City Code by failing to obtain a Business Tax Receipt. See Exhibit K.

64. The June BTR notice provided that it was a 1st offense and carried a fine (and other monetary charges) of \$1,000.00. Id.

65. The June BTR notice further set forth the following penalties:

- a 1st violation – a civil fine of \$1000.00
- enhanced enforcement pursuant to subsection 102-377(d)¹⁰
- imprisonment not to exceed 60 days or by imposition of a fine not to exceed \$500.00 or both if the violation continued for a period of thirty (30) days or more.

Id.

66. Significantly, the June notices set forth that “failure to comply will result in your prosecution before the City of Miami Beach Special Master. The Special Master may impose fines of up to \$1,000 per day for noncompliance and up to \$5,000 per day for recurring violations. Failure to pay imposed fines will lead to placement of liens upon the real and personal property of violators which will be foreclosed on otherwise collected as provided the City code.” Id.

67. The June notice provides that “fines and/or violations may be appealed within ten (10) days of receipt of the notice of violation. To appeal a fine and/or violation submit a written request for an appeal to the Clerk of the Special Master....”

68. The June notice does not provide that failure to comply will result in the immediate closing of the package store by the City Code Compliance Officer. Id.

i. Plaintiff appeals the fines and/or violations of the December and June notices

69. Consistent with the Code and as set forth in the violation notices, Plaintiff

¹⁰ Subsection 102-377(d) of the City Code provides “In addition to the above, a continued violation of subsection 102-377(a) for a period of 30 days or more without first obtaining a tax receipt, shall be punished by imprisonment not to exceed 60 days or by imposition of a fine not to exceed \$500.00 or both.”

appealed the December and June violations to the Special Master. The Special Master accepted jurisdiction and proceeded in the ordinary course.

70. A hearing was held on the appeal to the Special Master on August 28, 2017. At that time, the parties advised the Special Master that they had reached an agreement which would resolve the violations. The agreement required Plaintiff to pay a fine in the sum of One Thousand (\$1,000.00) Dollars. The Special Master approved the agreement.

71. As a result, on the very same day, Plaintiff issued Check No. 2738 in the sum of \$1,000.00. However, because a written order had not been issued by the Special Master, the City would not accept the payment as an order had not been submitted and entered into the “system”. This entry into the “system” is necessary to lift the restriction on tendering payment to, *inter alia*, renew the BTR license.

72. On Thursday, September 28, 2017, a full month after reaching an agreement, the Special Master issued an agreed order affirming Citations CC2016-01704, CC2017-03102 and CC2017-03103. See Exhibit L.

73. In its agreed order the Special Master assed a fine in the amount of One Thousand (\$1,000.00) Dollars against Plaintiff. Id. The order required Plaintiff to pay the fine within thirty (30) days of the entry of the agreed order – to wit: October 28, 2017. Id.

74. From Thursday, September 28, 2017 through and including Wednesday, October 4, 2017, Plaintiff repeatedly presented payment to the City to comply with the Special Master’s order and to obtain its BTR.

75. From Thursday, September 28, 2017 through and including Wednesday, October 4, 2017, the City provided a series of reasons of why payment could not be accepted. For example, the City claimed that it could not accept payment because the Special Master’s order had not yet been put into the system.

76. Finally, on Wednesday, October 4, 2017, the City accepted Plaintiff’s payment of the \$1,000 fine.

77. The City also accepted late fees relative to the BTR; however it refused to accept

the payment to renew the BTR.

78. This fact is confirmed by the on-line registry which shows that violations CC2017-03102 and CC2017-03103 were closed on October 4, 2017. See Exhibit M.

79. Significantly, although paid the same day as the other violations, the on-line registry shows that violation CC2016-01704 was closed on October 13, 2017 (9 days after the City accepted Plaintiff's check, 16 days after the Special Master's order and 46 days after the parties had agreed to a resolution of the issues raised by the 3 violations). See Exhibit N.

80. Despite accepting the payment which was in compliance with the Special Master's order, the City has refused to allow the issuance of Plaintiff's BTR that Plaintiff had been trying to obtain since notice of the violation in June 2017.

c. October 2017

81. On Friday, October 6, 2017 at 5:00 p.m., quite remarkably, a Code Compliance Officer again presented a notice of violation to Plaintiff alleging that Plaintiff had violated Article V, Section 102-377 of the City Code by failing to obtain a Business Tax Receipt. See Exhibit O. The Code Case Number was set forth at CC2017-03686.

82. The October notice provided that it was 2nd offense and carried a fine (and other monetary charges) of \$500.00. Id.

83. The October notice further set forth the following penalties:

- a 1st violation – a civil fine of \$1000.00
- enhanced enforcement pursuant to subsection 102-377(d)¹¹
- imprisonment not to exceed 60 days or by imposition of a fine not to exceed \$500.00 or both if the violation continued for a period of thirty (30) days or more.

84. Significantly, the October notice sets forth that “failure to comply will result in your prosecution before the City of Miami Beach Special Master. The Special Master may

¹¹ Subsection 102-377(d) provides “In addition to the above, a continued violation of subsection 102-377(a) for a period of 30 days or more without first obtaining a tax receipt, shall be punished by imprisonment not to exceed 60 days or by imposition of a fine not to exceed \$500.00 or both.”

impose fines of up to \$1,000 per day for noncompliance and up to \$5,000 per day for recurring violations. Failure to pay imposed fines will lead to placement of liens upon the real and personal property of violators which will be foreclosed on otherwise collected as provided the City code.”

85. The October notice does not provide that failure to comply will result in the immediate closing of the package store by the City Code Compliance Officer.

86. The October notice was issued during the period allowed for payment of the Special Master’s fine relative to, in part, a violation of Article V, Section 102-377 of the City Code (failing to obtain a Business Tax Receipt) and after Plaintiff had made the payment required by the Special Master to resolve three violations, one of which was failure to obtain a Business Tax Receipt.

G. Plaintiff is Closed Down by Code Enforcement for Failing to Have a BTR License

87. On Friday, October 6, 2017 (the very same day the October notice was issued to Plaintiff), Code enforcement¹² coerced Plaintiff’s principal, Doron Doar, by threat of immediate imprisonment, to close Plaintiff’s business due to Plaintiff’s alleged failure to obtain a BTR.

88. The City did not serve Plaintiff with a written administrative complaint prior to closing Plaintiff’s business due to its alleged failure to obtain a BTR. Such written, administrative complaint is required by Section 102-383.

89. The City did not set a hearing or hold a hearing prior to closing down Plaintiff’s business. As such, Plaintiff was given no due process for the closure and taking of his business.

90. Since that time, the City has refused to allow Plaintiff to obtain a BTR, stating that, pursuant to Ordinance No. 2016-4047, package stores and package sales of alcoholic beverages by any retail store or alcoholic beverage establishment within the MXE district are prohibited.

H. Plaintiff’s plight with respect to its package store at 865 Collins Avenue

¹² At that time, the Code enforcement office was accompanied by two City police officers.

91. Plaintiff has been operating Ocean 9 Liquor as a liquor store at its location on 865 Collins Avenue (half a block from Ocean Drive on 9th Street) since 2011.

92. The entrance to this package store is approximately 50 feet from the entrance to Mangos, a well-known and popular night club on South Beach.¹³

93. Plaintiff retained the undersigned law firm in late August or early September, 2017, relative to recent passage of ordinances restricting the sale of liquor by package stores within the MXE district.

94. At that time, Plaintiff had recently become aware of the reduction in hours for sales by package stores. The allowed period had been changed from 8:00 am to midnight to, 10:00 a.m. to 10:00 p.m., by virtue of Ordinance No. 2017-4101 becoming effective on June 7, 2017

95. Shortly after being retained, the undersigned firm, through primarily the efforts of Miguel Diaz de la Portilla, a lawyer and well-known lobbyist, it became apparent that a second ordinance was in process designed to further restrict the hours from 10:00 a.m. to 8:00 p.m.

96. Such a reduction would be catastrophic for the four package stores in the MXE district as it would effectively reduce their hours of operation by approximately 28% and lead to the likely reduction in revenue of approximately 50%.

97. Mr. Diaz de la Portilla quickly arranged meetings with the City Manager, Deputy City Attorney, Commissioner Arriola (the sponsor of the subject ordinances) and other commissioners.

98. A meeting with Deputy City Attorney, Eve A. Boutsis, was scheduled for Thursday, October 5, 2017 at 1:00 p.m., and a call with Commissioner Arriola¹⁴ was scheduled, for Friday, October 6, 2017 at 2:00 p.m.

¹³ Upon information, Plaintiff believes Mangos is one of the so-called “malignant tumors” referred to by Mayor Levine.

¹⁴ Commissioner Arriola chose not to have an in-person meeting.

99. The meeting with Deputy City Attorney Boutsis occurred and lasted for approximately an hour. The meeting was positive and allowed Mr. Diaz de la Portilla to gain further information about the City's concerns. Mr. Diaz de la Portilla advised the Deputy City Attorney that Plaintiff would be happy to meet with all of the individuals and stakeholders within the City over the course of the next 60 days to discuss how Plaintiff could assist the City in its crime prevention efforts without the passage of the more restrictive hour of operation which it was argued, were arbitrary, capricious, unreasonable and designed to force the package stores out of business in the MXE district.

100. On Friday, October 6th at 1:45 p.m., fifteen minutes before the scheduled call with Commissioner Arriola, the Commissioner's office called and abruptly canceled the call without explanation and without making provision for a further meeting. The writing was on the wall.

101. Approximately an hour later, the undersigned received a call from Plaintiff's principal indicating that a City code compliance officer and two policemen came to Plaintiff's store at 865 Collins Avenue and threatened to imprison Plaintiff's principal if he did not close the store immediately. Plaintiff also advised that it was cited for failure to have a BTR.

102. Mr. Diaz de la Portilla called Deputy City Attorney Boksner on the following Monday. Deputy City Attorney Boksner advised that the City's actions of the past few days were not likely coincidental and a long time coming. Evidence of the scheme and its perpetrators begins to emerge.

103. As of October 6, 2017, the City once again prohibited both Plaintiff and its agents from paying the BTR until the Special Master process (which took over 6 months) was concluded and in the system.¹⁵ Had the City allowed payments as tendered multiple times before October 6, no violation could have been issued and Plaintiff would be operating today.

¹⁵ As previously discussed, the Agreed Order was not executed by the Special Master until Thursday, September 28, 2017. The Order was not recorded in the City's system until late the following week, effectively giving Plaintiff no time to pay the fees/fines before being closed on October 6, 2017. The Agreed Order allowed Plaintiff 30 days to pay the fees/fines. See Exhibit L.

104. On October 11, 2017, for the first time since being cited for a BTR violation, Plaintiff was actually able to pay¹⁶ the appropriate fines and the fees for its BTR.

105. Those amounts remain paid to date and have not been refunded. Yet, the City refuses to issue Plaintiff a BTR now suggesting that it no longer has a conforming use because in 2016, the City passed Ordinance No. 2016-4047 prohibiting package stores from selling alcohol in the MXE district. The City reasons that since there was no “current” BTR, it cannot renew the BTR because of the conforming use ordinance. Clearly, the City dithered on allowing Plaintiff to renew his BTR for fiscal year 2016-2017 to get past the date necessary to spring its trap.

106. Said otherwise, the City intentionally ambushed Plaintiff as it was a specific target of the City, the Mayor, Commissioner Arriola and certain citizens, including Mitchell Novick who owns the building directly across the street and lives directly across the street from the entrance to Plaintiff’s store at 865 Collins Avenue.

107. All conditions precedent to the commencement and maintenance of this action have been satisfied, performed, waived, or otherwise discharged.

108. Plaintiff has retained the undersigned counsel as its attorney in this matter and is obligated to pay them a reasonable fee for their services.

COUNT I
DECLARATORY JUDGMENT/INJUNCTIVE RELIEF
(Wrongful Closure)

109. Plaintiff realleges and reincorporates by reference paragraphs 1 through 108 as if fully set forth herein.

110. On October 6, 2017, Defendants wrongfully threatened and wrongfully coerced through the threat of imprisonment, Doron Doer, Plaintiff’s principal to shut down Plaintiff’s business operations at 865 Collins Avenue.

111. Said threats and resulting closure are inconsistent with federal, state and local laws and ordinances.

¹⁶ Plaintiff made such payment through the City’s online system.

112. Said threats and resulting closure are unconstitutional and lacking due process.

113. Said threats and resulting closure are all part of Defendants' targeted plan to eliminate the Ocean 9 Liquor store at 865 Collins Avenue specifically and ultimately all package stores on South Beach.

114. The resulting closure was caused by the City's intentional failure to allow Plaintiff to obtain a BTR for over 6 months.

115. Said actions are inconsistent with Section 102.3-377(b)(2) which sets forth the City's rights and remedies relative to the BTR.

116. Moreover, said actions are inconsistent with the City's failure to allow Plaintiff to pay any associated fines and to renew or otherwise update its BTR subsequent to the Special Master's Agreed Order dated September 28, 2017.

117. The City specifically refused to allow Plaintiff or any its representative to pay the fines relative to the BTR violation within the jurisdiction of a Special Master proceeding which ended on September 28, 2017 and wrongfully closed the package store less than one week later based on the very violations dealt with in the Special Master order which had not yet been entered in the City system and which prevented Plaintiff from otherwise doing that which the City now complains about.

118. The City's actions were intentional, targeted, and clearly directed to ambush Plaintiff and allow the City to take the position that because of the conforming use change that had occurred a year early, Plaintiff could no longer obtain a new BTR and operate its package store going forward.

119. Therefore, Plaintiff is entitled to declaratory and injunctive relief.

WHEREFORE Plaintiff, BEACH BLITZ CO., a Florida corporation d/b/a OCEAN 9 LIQUOR and d/b/a as OCEAN 11 MARKET, respectfully requests the following:

1. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring the City's actions relative to the closing of Plaintiff's store at 865 Collins Avenue to be improper, unconstitutional, discriminatory and intentionally designed to ambush Plaintiff;

2. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring that Plaintiff is and was at all times in compliance with appropriate law as it had initiated the appeals with the Special Master, complying with the Agreed Order issued by the Special Master, and was prevented from paying the fines and fees necessary to continuously operate and to otherwise avoid the City's now bad faith argument that it can no longer obtain a BTR;

3. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring for purposes of all relevant periods that Plaintiff's store at 865 Collins Avenue had been operating legally and uninterrupted through its wrongful closer on October 6, 2017;

4. Immediate issuance of mandatory temporary restraining order, preliminary and permanent mandatory injunction pursuant to Fed.R.Civ. P. 65, ordering the City, its officers, agents and employees to issue Plaintiff a BTR license and allow Plaintiff to re-open its business at 865 Collins Avenue without interference from Defendants;

5. An award of attorney's fees and costs; and

6. Ordering such further relief deemed just and proper.

COUNT II
VIOLATION OF 42 U.S.C. §1983

120. Plaintiff realleges and reincorporates by reference paragraphs 1 through 108 as if fully set forth herein.

121. Plaintiff maintains this cause of action pursuant to 42 U.S.C. §1983 and seeks monetary damages and attorneys' fees (pursuant to 42 U.S.C. §1988) for the deprivation of its property and liberty interests, as more particularly set forth herein.

122. As more particularly described herein, Defendants have established a custom, policy, pattern and practice of unlawfully targeting package stores in the MXE district in an unconstitutional and illegal fashion, not reasonably related to any legitimate result, but only designed to remove the "malignant tumors" all of which are lawfully operating small businesses.

123. Defendants have intentionally created a policy that unlawfully targets the package stores, clubs and restaurants in the MXE district.

124. This unlawful targeting is evident in the Ordinances and in the Defendants' unilateral suspension of Plaintiff's BTR without even the most minimal compliance with Code Section 102-383.

125. Defendants subjected Plaintiff to conduct that occurred under color of state law.

126. Defendants' conduct deprived Plaintiff of rights, privileges, or immunities guaranteed under federal law and the U.S. Constitution and is by definition discriminatory.

127. The Ordinances restricting the period in which alcohol may be sold by package stores constitutes irreparable harm.

128. Therefore, Plaintiff is entitled to declaratory and injunctive relief and damages.

WHEREFORE Plaintiff, BEACH BLITZ CO., a Florida corporation d/b/a OCEAN 9 LIQUOR and d/b/a as OCEAN 11 MARKET, respectfully requests the following:

1. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring the City's actions relative to the closing of Plaintiff's store at 865 Collins Avenue to be improper, unconstitutional, and intentionally designed to ambush Plaintiff without justification of law;

2. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring that Plaintiff is and was at all times in compliance with appropriate law as it had initiated the appeal with the Special Master, complying with the Agreed Order issued by the Special Master, and was prevented from paying the fines and fees necessary to continuously operate and to otherwise avoid the City's now bad faith argument that it can no longer obtain a BTR;

3. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring for purposes of all relevant periods that Plaintiff's store at 865 Collins Avenue had been operating legally and uninterrupted through its wrongful closer on October 6, 2017;

4. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring Ordinance Nos. 2016-4047, 2016-4058 and 2017-4101 unconstitutional as applied to Plaintiff because they violate numerous provision of the federal Constitution as set forth herein;

5. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring the proposed September Ordinance unconstitutional as applied to Plaintiff because it violates

numerous provision of the federal Constitution as set forth herein;

6. Immediate issuance of a mandatory temporary restraining order, preliminary and permanent mandatory injunction pursuant to Fed.R.Civ. P. 65, ordering the City, its officers, agents and employees to issue Plaintiff a BTR license and allow Plaintiff to re-open its business at 865 Collins Avenue without interference from Defendants;

7. For damages in its favor and against Defendants, CITY OF MIAMI BEACH, FLORIDA, a municipal corporation of the State of Florida, PHILIP LEVINE, an individual, JIMMY MORALES, an individual, MICKEY STEINBERG, an individual, RICKY ARRIOLA, an individual, MICHAEL GREICO, an individual, JOY MALAKOFF, an individual, KRISTEN ROSEN GONZALEZ, an individual, JOHN ELIZABETH ALEMAN, an individual, RAUL J. AGUILA, an individual, and ALEKSANDR BOKSNER, and individual, jointly and severally;

8. An award of attorney's fees and costs; and

9. Ordering such further relief deemed just and proper.

COUNT III
VIOLATION OF THE 14th AMENDMENT – SUBSTANTIVE
DUE PROCESS AND TAKINGS CLAIM

125. Plaintiff realleges and reincorporates by reference paragraphs 1 through 108 as if fully set forth herein.

126. The Due Process Clause of the Fourteenth Amendment to the United States Constitution prohibits the City from depriving any person of life, liber or process without due process of law.

127. Plaintiff has a liberty and/or property interest in conducting its lawful business of selling alcohol from its package store and receiving income from said sale.

128. The City's unilateral and arbitrary suspension of Plaintiff's BTR license and resulting closure of its business is without due process of law, *to wit*: notice and opportunity to be heard.

129. Further, the City's suspension of Plaintiff's BTR license under the Code and Ordinance No. 2016-4047 deprives Plaintiff of the liberty and/or property interest in retaining

such license, conduct sales of alcohol and/or receive income from said sales without any hearing or proceedings before such suspension and deprivation occurred.

130. In addition, the Ordinances and the City's actions in limiting the sale of alcoholic beverages by package stores in the MXE district is unreasonable and unconstitutional taking as it deprives Plaintiff of his business and the income from sales of alcoholic beverage without a legitimate and established purpose other than to put package liquor stores out of business.

131. The City's actions relative to the closing of Plaintiff's store at 865 Collins Avenue have no reasonable relation to any legitimate local government purpose. The City does not have any compelling state interest or rational basis for its actions, especially since they are limited to a 15 block perimeter between Ocean Drive and Collins Avenue and ignore the reality that alcoholic beverages may be purchased outside that perimeter (a block away) from 8:00 am to midnight. Neither has the City demonstrated the crime problem alleged to be the basis for the actions will be impacted in any fashion once these businesses are destroyed.

132. As a result, the City's actions, on their face and/or as applied are unreasonably discriminatory and violate the Due Process Clause of the Fourteenth Amendment.

133. Defendants' closing of Plaintiff's business and the Ordinances restricting the period during which alcohol may be sold constitute irreparable harm.

134. Therefore, Plaintiff is entitled to declaratory and injunctive relief and damages.

WHEREFORE Plaintiff, BEACH BLITZ CO., a Florida corporation d/b/a OCEAN 9 LIQUOR and d/b/a as OCEAN 11 MARKET, respectfully requests the following:

1. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring the City's actions relative to the closing of Plaintiff's store at 865 Collins Avenue to be improper, unconstitutional, and intentionally designed to ambush Plaintiff;

2. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring that Plaintiff is and was at all times in compliance with appropriate law as it had initiated the appeals with the Special Master, complying with the Agreed Order issued by the Special Master, and was prevented from paying the fines and fees necessary to continuously operate and to otherwise

avoid the City's now bad faith argument that it can no longer obtain a BTR;

3. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring Ordinance Nos. 2016-4047, 2016-4058 and 2017-4101 unconstitutional as applied to Plaintiff because they violate numerous provision of the federal Constitution as set forth herein;

4. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring the proposed September Ordinance unconstitutional as applied to Plaintiff because it violates numerous provision of the federal Constitution as set forth herein;

5. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring for purposes of all relevant periods that Plaintiff's store at 865 Collins Avenue had been operating legally and uninterrupted through its wrongful closer on October 6, 2017;

6. Immediate issuance of a mandatory temporary restraining order, preliminary and permanent mandatory injunction pursuant to Fed.R.Civ. P. 65, ordering the City, its officers, agents and employees to issue Plaintiff a BTR license and allow Plaintiff to re-open its business at 865 Collins Avenue without interference from Defendants;

7. For damages in its favor and against Defendants, CITY OF MIAMI BEACH, FLORIDA, a municipal corporation of the State of Florida, PHILIP LEVINE, an individual, JIMMY MORALES, an individual, MICKEY STEINBERG, an individual, RICKY ARRIOLA, an individual, MICHAEL GREICO, an individual, JOY MALAKOFF, an individual, KRISTEN ROSEN GONZALEZ, an individual, JOHN ELIZABETH ALEMAN, an individual, RAUL J. AGUILA, an individual, and ALEKSANDR BOKSNER, and individual, jointly and severally;

8. An award of attorney's fees and costs; and

9. Ordering such further relief deemed just and proper.

COUNT IV
VIOLATION OF 42 U.S.C. §1983
(Retaliation for First Amendment Expression)

135. Plaintiff realleges and reincorporates by reference paragraphs 1 through 108 as if fully set forth herein.

136. Plaintiff maintains this cause of action pursuant to 42 U.S.C. §1983 and seeks

monetary damages and attorneys' fees (pursuant to 42 U.S.C. §1988) for Defendants actions' against Plaintiff for Plaintiff's protected First Amendment Conduct.

137. Specifically, on or about October 5, 2017, Plaintiff, through his counsel met with Deputy City Attorney Boksner to discuss Plaintiffs' concerns regarding the ongoing changes to the hours in which a package store could sell alcohol.

138. At that time, Plaintiff explained that Defendant's ongoing changes to the hours were severely impacting Plaintiff's business income and that as a result Plaintiff would oppose any further reductions to the hours of operation.

139. Plaintiff's speech to Defendants is constitutionally protected.

140. In response to Plaintiff's speech, on the very next day - October 6, 2017, Code enforcement and two City police officers ordered the immediate closing of Plaintiff's store (865 Collins Avenue) or suffer imprisonment.

141. Deputy City Attorney Boksner essentially suggested that the City's actions were intentional targeted toward Plaintiff.

142. Defendants' closing of Plaintiff's business constitutes irreparable harm.

143. Therefore, Plaintiff is entitled to declaratory and injunctive relief and damages.

WHEREFORE Plaintiff, BEACH BLITZ CO., a Florida corporation d/b/a OCEAN 9 LIQUOR and d/b/a as OCEAN 11 MARKET, respectfully requests the following:

1. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring the City's actions relative to the closing of Plaintiff's store at 865 Collins Avenue to be improper, unconstitutional, and intentionally designed to ambush Plaintiff;

2. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring that Plaintiff is and was at all times in compliance with appropriate law as it had initiated the appeals with the Special Master, complying with the Agreed Order issued by the Special Master, and was prevented from paying the fines and fees necessary to continuously operate and to otherwise avoid the City's now bad faith argument that it can no longer obtain a BTR;

3. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring

Ordinance Nos. 2016-4047, 2016-4058 and 2017-4101 unconstitutional as applied to Plaintiff because they violate numerous provision of the federal Constitution as set forth herein;

4. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring the proposed September Ordinance unconstitutional as applied to Plaintiff because it violates numerous provision of the federal Constitution as set forth herein;

5. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring for purposes of all relevant periods that Plaintiff's store at 865 Collins Avenue had been operating legally and uninterrupted through its wrongful closer on October 6, 2017

6. Immediate issuance of a mandatory temporary restraining order, preliminary and permanent mandatory injunction pursuant to Fed.R.Civ. P. 65, ordering the City, its officers, agents and employees to issue Plaintiff a BTR license and allow Plaintiff to re-open its business at 865 Collins Avenue without interference from Defendants;

7. For damages in its favor and against Defendants, CITY OF MIAMI BEACH, FLORIDA, a municipal corporation of the State of Florida, PHILIP LEVINE, an individual, JIMMY MORALES, an individual, MICKEY STEINBERG, an individual, RICKY ARRIOLA, an individual, MICHAEL GREICO, an individual, JOY MALAKOFF, an individual, KRISTEN ROSEN GONZALEZ, an individual, JOHN ELIZABETH ALEMAN, an individual, RAUL J. AGUILA, an individual, and ALEKSANDR BOKSNER, and individual, jointly and severally;

8. An award of attorney's fees and costs; and

9. Ordering such further relief deemed just and proper.

COUNT V
DECLARATORY JUDGMENT/INJUNCTIVE RELIEF
(Section 102-377(e) of the Code)

144. Plaintiff realleges and reincorporates by reference paragraphs 1 through 108 as if fully set forth herein.

145. Section 102-377(e) of the City Code suggests the city may prevent a business from operating until the required BTR is obtained.

146. Said subsection is directly inconsistent with Section 102-377(b)(2) which states that a person who violates the BTR requirements may be subject to “suit for injunctive relief to enjoin operation of the business.”

147. Said inconsistency renders the Section 102-377 of the City Code vague.

148. Further, the City Code’s authorization to prevent a business from operating until the required BTR is obtained without requiring due process, violates the United States Constitution.

149. Defendants’ closing of Plaintiff’s business constitutes irreparable harm.

150. Therefore, Plaintiff is entitled to declaratory and injunctive relief.

WHEREFORE Plaintiff, BEACH BLITZ CO., a Florida corporation d/b/a OCEAN 9 LIQUOR and d/b/a as OCEAN 11 MARKET, respectfully requests the following:

1. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring Section 102-377 of the City Code unconstitutional as it violates the U.S. Constitution as set forth herein;

2. Immediate issuance of a mandatory temporary restraining order, preliminary and permanent mandatory injunction pursuant to Fed.R.Civ. P. 65, ordering the City, its officers, agents and employees to issue Plaintiff a BTR license and allow Plaintiff to re-open its business at 865 Collins Avenue without interference from Defendants; and

3. Ordering such further relief deemed just and proper.

COUNT VI
DECLARATORY JUDGMENT/INJUNCTIVE RELIEF
(The Ordinances)

151. Plaintiff realleges and reincorporates by reference paragraphs 1 through 108 as if

fully set forth herein.

152. Ordinance Nos. 2016-4047, 2016-4058, 2017-4101, 2017-4131 and the proposed September Ordinance violate Fla. Stat. 562.45 by overly restricting the lawful sale of alcohol.

153. Therefore, Plaintiff is entitled to declaratory and injunctive relief.

WHEREFORE Plaintiff, BEACH BLITZ CO., a Florida corporation d/b/a OCEAN 9 LIQUOR and d/b/a as OCEAN 11 MARKET, respectfully requests the following:

1. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring Ordinance Nos. 2016-4047, 2016-4058 and 2017-4101 unconstitutional as applied to Plaintiff because they violate numerous provision of the federal Constitution as set forth herein;

2. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring the proposed September Ordinance unconstitutional as applied to Plaintiff because it violates numerous provision of the federal Constitution as set forth herein;

3. Immediate issuance of a mandatory temporary restraining order, preliminary and permanent mandatory injunction pursuant to Fed.R.Civ. P. 65, ordering the City, its officers, agents and employees to issue Plaintiff a BTR license and allow Plaintiff to re-open its business at 865 Collins Avenue without interference from Defendants; and

4. Ordering such further relief deemed just and proper.

COUNT VII
BREACH OF FLA. STAT. 562.45
(The Ordinances)

149. Plaintiff realleges and reincorporates by reference paragraphs 1 through 108 as if fully set forth herein.

150. The State of Florida issued Plaintiff a license to sell alcohol.

151. At all times relevant, Plaintiff has held a valid license to sell alcohol.

152. Defendants' actions in passing Ordinance Nos. 2016-4047, 2016-4058, 2017-4101, 2017-4131 and proposing the September Ordinance breach Fla. Stat. 562.45 by overly restricting the lawful sale of alcohol and essentially restricting the rights afforded to Plaintiff by Fla. Stat. 562.45.

153. Defendants' actions exceed the authority delegated to Defendants' by Fla. Stat. 562.45 and is therefore, unconstitutional and void *ab initio*.

154. Defendants' closing of Plaintiff's business constitutes irreparable harm.

155. Defendants' actions have caused and continue to cause Plaintiff damages.

WHEREFORE Plaintiff, BEACH BLITZ CO., a Florida corporation d/b/a OCEAN 9 LIQUOR and d/b/a as OCEAN 11 MARKET, respectfully requests the following:

1. Entry of damages in its favor and against Defendants, CITY OF MIAMI BEACH, FLORIDA, a municipal corporation of the State of Florida, PHILIP LEVINE, an individual, JIMMY MORALES, an individual, MICKEY STEINBERG, an individual, RICKY ARRIOLA, an individual, MICHAEL GREICO, an individual, JOY MALAKOFF, an individual, KRISTEN ROSEN GONZALEZ, an individual, JOHN ELIZABETH ALEMAN, an individual, RAUL J. AGUILA, an individual, and ALEKSANDR BOKSNER, and individual, jointly and severally;

2. Immediate issuance of a mandatory temporary restraining order, preliminary and permanent mandatory injunction pursuant to Fed.R.Civ. P. 65, ordering the City, its officers, agents and employees to issue Plaintiff a BTR license and allow Plaintiff to re-open its business at 865 Collins Avenue without interference from Defendants; and

3. Ordering such further relief deemed just and proper.

Dated: October 30, 2017

SAUL EWING ARNSTEIN & LEHR LLP

Counsel for Plaintiff

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By: /s/ Phillip M. Hudson III

Phillip M. Hudson III
Florida Bar No. 518743
Hilda Piloto
Florida Bar No. 0154120

EXHIBIT A



EDITORIALS

On Miami Beach ballot: No to 2 a.m. stop to liquor sales; Yes to North Beach development plan

MIAMI HERALD EDITORIAL BOARD

OCTOBER 25, 2017 10:36 PM

Two items on the Miami Beach ballot seek to improve residents' quality of life at each end of the city. The first one is a misguided effort to stem rowdiness and crime in South Beach. The second could represent a hard-won victory for the residents of North Beach.

Alcohol sales

A long-standing controversial issue — how late should some bars along Ocean Drive be allowed to serve liquor — is being kicked to the voters.

They are being asked to decide the future of Ocean Drive's late-night party atmosphere by considering whether the city should require certain bars to stop selling alcohol at 2 a.m. instead of the current 5 a.m.

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If the measure is approved, all establishments on Ocean Drive between 5th and 15th streets, except indoor portions of bars that are completely enclosed and located entirely within hotels, are affected. Truth be told, however, the referendum is largely aimed at ending the partying at three bars/nightclub/hotels on the storied street: Mangos, the Clevelander, and Wet Willie's.

At the core is the chagrin of nearby residents who have to endure the hooting, hollering, and crime of rowdy tourists and partygoers. Miami Beach Mayor Philip Levine is on their side. He has gotten an earful of complaints and has had a contentious public exchanges with owners of the establishments.

The Editorial Board agrees with the mayor that the prickly issue should have been handled by the City Commission, but Levine says he's been unable to get a consensus there, largely because of the hefty campaign contributions the bar owners make to commissioners. Scaled-back alcohol hours in the name of public safety "is just the right thing to do," Levine told the Editorial Board.

The business owners who would be affected say the move is heavy-handed and will hurt business and employees.

"This is not punitive. ... The three locations we are focusing on are the malignant tumors, and we want to eradicate the cancer," the mayor said. Strong words.

We agree that something must be done for residents held hostage by partyers. However, this legally shaky, narrowly targeted question isn't the right course. In addition, though drinking, rowdiness and public safety are concerns, the initiative fails to address that carousers can amble over to Collins Avenue — or go to an indoor bar — to keep their party going.

On the question of a 2 a.m. end to alcohol sales on Ocean Drive, the Herald recommends **NO**.

North Beach

After years of contention over the best way to turn South Beach's neglected stepsister of North Beach into a more-vibrant economic force, this referendum has preservationists, developers and, for the most part, residents on the same page. We commend these once-warring factions for coming up with a responsible, more-comprehensive redevelopment plan to create a "town center" where now there are underused, dated buildings, vacant land, and a few commercial enterprises, including a few restaurants and banks. The words "sleepy" and "tired" get used a lot.

The referendum asks if a 10-block district on either side of the main corridor of 71st Street should be "upzoned;" that is, increase floor-area ratio — FAR — which would allow for larger mixed-use buildings to draw more foot traffic, residents, and visitors.

The beauty of this proposal is that it is predicated on creating local historic districts that will protect the area's wealth of Miami Modern apartment buildings. This is key to maintaining the unique character of the low-rise residential areas, and helped bring preservationists on board. "It's really a lesson in working together, preservationist and former commissioner Nancy Liebman told the Editorial Board. "If we just continue to argue about preservation and height and development, we will go nowhere." Voters should get on board, too.

On the question to increase the FAR to create a Town Center in North Beach, the Herald recommends **YES**.

Never miss a local story.

EXHIBIT B

OFFICIAL ZONING MAP
OF THE
CITY OF
MIAMI BEACH
• FLORIDA •

INCORPORATED 1915

ADOPTED 21ST DAY OF SEPTEMBER, 1989
EFFECTIVE 1ST DAY OF OCTOBER, 1989
AS AMENDED
DATE OF LAST REVISION OCTOBER 17, 2011

Biscayne Bay

Atlantic Ocean

MIAMI BEACH
PLANNING DEPARTMENT
1700 CONVENTION CENTER DRIVE
MIAMI BEACH, FLORIDA 33139
P 305.673.7550 F 305.673.7559

0 0.125 0.25 0.5 0.75 1 Miles

THE PLANNING DEPARTMENT HAS STRIVED TO PROVIDE AS ACCURATE A MAP AS POSSIBLE; HOWEVER, THIS MAP IS NOT TO BE CONSTRUED AS A SURVEY INSTRUMENT. THE CITY OF MIAMI BEACH MAKES NO REPRESENTATIONS OR WARRANTIES, NOR ASSUMES ANY LIABILITY, ARISING FROM THE USE OF THIS MAP FOR AN OFFICIAL ZONING DETERMINATION. PLEASE CONTACT THE PLANNING DEPARTMENT.

ZONING DISTRICTS

- | | | | |
|--|--|---|---|
| RS-1 Single family residential | CD-3 Commercial, high intensity | WD-2 Waterway district | CPS-4 Commercial performance standard, intensive phased bayside |
| RS-2 Single family residential | I-1 Urban light industrial | RO Residential office | RMPS-1 Residential mixed use performance standard |
| RS-3 Single family residential | MXE Mixed use entertainment | GC Golf course | SPE Special public facilities educational district |
| RS-4 Single family residential | HD Hospital district | RPS-1 Residential performance standard, medium-low density | TC-1 North Beach Town Center core |
| TH Townhome residential | MR Marine recreational | RPS-2 Residential performance standard, medium density | TC-2 North Beach Town Center mixed use |
| RM-1 Residential multifamily, low intensity | GU Civic and government use | RPS-3 Residential performance standard, medium-high density | TC-3 North Beach Town Center residential/office |
| RM-2 Residential multifamily, medium intensity | CCC Convention center district | RPS-4 Residential performance standard, high density | TC-3(c) North Beach Town Center residential/office with conditional neighborhood commercial |
| RM-3 Residential multifamily, high intensity | RM-PRD Multifamily, planned residential development district | CPS-1 Commercial performance standard, limited mixed use | |
| CD-1 Commercial, low intensity | RM-PRD-2 Multifamily, planned residential development district | CPS-2 Commercial performance standard, general mixed use | |
| CD-2 Commercial, medium intensity | WD-1 Waterway district | CPS-3 Commercial performance standard, intensive mixed use | |

EXHIBIT C

MXE PACKAGE STORE PROHIBITION

ORDINANCE NO. 2016-4047

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 114 OF THE CITY CODE, ENTITLED "GENERAL PROVISIONS," SECTION 114-1, "DEFINITIONS," TO DEFINE PACKAGE STORES; AND AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS," DIVISION 13, "MXE - MIXED USE ENTERTAINMENT DISTRICT," BY AMENDING SECTION 142-544 THEREOF, ENTITLED "PROHIBITED USES," TO PROHIBIT PACKAGE STORES, PACKAGE SALES OF ALCOHOLIC BEVERAGES, AND ENTERTAINMENT USES IN PACKAGE STORES IN THE MXE DISTRICT; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach (the "City") regulates the location, size, hours of operation, and minimum patron age for alcoholic beverage establishments; and

WHEREAS, Chapter 6 of the City Code establishes minimum regulations for the sale and consumption of alcoholic beverages throughout the City, and district-specific alcoholic beverage regulations are set forth in Chapter 142; and

WHEREAS, the Mixed Use Entertainment ("MXE") district, which is the City's entertainment district, is characterized by a variety of uses, ranging in intensity from apartment buildings and retail stores to restaurants and entertainment establishments, which attract a large volume of pedestrians and vehicular traffic; and

WHEREAS, package sales of alcoholic beverages in the MXE district encourage individuals to consume alcoholic beverages in the City's parks, and on the City's streets and sidewalks; and

WHEREAS, the consumption of open containers of alcoholic beverages in public places disturbs the quiet enjoyment of the community, causes undesirable noise, and contributes to litter, noxious odors, and the general degradation of the City; and

WHEREAS, additionally, the consumption of open containers of alcoholic beverages in public places is a violation of Section 70-87 of the City Code; and

WHEREAS, it is therefore in the best interest of the City, and it serves the health, safety, and welfare of the City's residents and visitors, to prohibit package stores and package sales of alcoholic beverages in the MXE district; and

WHEREAS, in *State ex rel. Floyd v. Noel* (Fla. 1936), the Florida Supreme Court recognized that "[i]t is so well settled that no citation of authority is required to support the statement that a municipality exercising the powers inherent in municipal corporations may reasonably regulate the sale of intoxicating liquors and in providing such reasonable regulations

may prohibit the sale of such liquors within certain hours, and also may prohibit the sale of liquors within certain zones"; and

WHEREAS, the Florida Attorney General has opined that a municipality may regulate (1) the hours of sale, (2) zoning of locations in which alcoholic beverages may be sold, and (3) the sanitary conditions under which alcoholic beverages may be dispensed or served to the public. Florida AGO 059-73 (1959); and

WHEREAS, the amendments set forth below are necessary to accomplish all of the above objectives.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

SECTION 1. Section 114-1 of Chapter 114 of the City Code is hereby amended as follows:

**CHAPTER 114
GENERAL PROVISIONS**

Sec. 114-1. – Definitions

The following words, terms and phrases when used in this subpart B, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

* * *

Overlay district means ~~constitutes~~ a set of regulations which are superimposed upon and supplement, but do not replace, the underlying zoning district and regulations otherwise applicable to the designated areas.

Package store means any store primarily engaged in the business of selling alcoholic beverages for off-premises consumption and that has a license for package sales from the State Division of Beverages and Tobacco in the classification of 1-APS, 2-APS, or PS.

* * *

SECTION 2. Section 142-554 of Chapter 142 of the City Code is hereby amended as follows:

**CHAPTER 142
ZONING DISTRICTS AND REGULATIONS**

* * *

ARTICLE II. – DISTRICT REGULATIONS

* * *

DIVISION 13. – MXE MIXED USE ENTERTAINMENT DISTRICT

* * *

Sec. 142-544. – Prohibited uses.

The prohibited uses in the MXE mixed use entertainment district are accessory outdoor bar counters, except as provided in this chapter; package stores; and package sales of alcoholic beverages by any retail store or alcoholic beverage establishment. Additionally, entertainment uses shall be prohibited in package stores.

SECTION 3. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code of the City of Miami Beach, Florida. The sections of this Ordinance may be renumbered or re-lettered to accomplish such intention, and, the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 4. REPEALER.

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 5. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 6. EFFECTIVE DATE.

This Ordinance shall take effect ten days following adoption.

PASSED and ADOPTED this 19 day of October, 2016.

ATTEST:



Rafael E. Granado, City Clerk



Philip Levine, Mayor

Verified By: 

Thomas R. Mooney
Planning Director

(Sponsored by Commissioner Ricky Arriola)

Underline denotes new language

~~Strikethrough~~ denotes removed language

Double underline denotes language added after First Reading

~~~~Double strikethrough~~~~ denotes language removed after First Reading

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

  
\_\_\_\_\_  
City Attorney

10/5/16  
\_\_\_\_\_  
Date

NK

Ordinances - R5 O

# MIAMI BEACH

## COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission  
FROM: Jimmy L. Morales, City Manager  
DATE: October 19, 2016

11:10 a.m. Second Reading Public Hearing

SUBJECT: MXE PACKAGE STORE PROHIBITION:

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 114 OF THE CITY CODE, ENTITLED "GENERAL PROVISIONS," SECTION 114-1, "DEFINITIONS," TO DEFINE PACKAGE STORES; AND AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS," DIVISION 13, "MXE - MIXED USE ENTERTAINMENT DISTRICT," BY AMENDING SECTION 142-544 THEREOF, ENTITLED "PROHIBITED USES," TO PROHIBIT PACKAGE STORES, PACKAGE SALES OF ALCOHOLIC BEVERAGES, AND ENTERTAINMENT USES IN PACKAGE STORES IN THE MXE DISTRICT; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

---

### RECOMMENDATION

The Administration recommends that the City Commission adopt the Ordinance.

### ANALYSIS

#### BACKGROUND

On July 13, 2016, the Mayor and City Commission approved a dual referral pertaining to an LDR Amendment prohibiting package liquor stores in the MXE district to the Planning Board and the Land Use & Development Committee (LUDC). The referral was sponsored by Commissioner Ricky Arriola (item C4I).

On July 20, 2016, the LUDC discussed the item and continued it to September 21, 2016 meeting. On September 21, 2016, the Land Use Committee recommended that the proposed ordinance be adopted at Second Reading.

#### ANALYSIS

Package stores are retail uses that primarily sell alcoholic beverages and package sales are alcoholic beverages for take-out and off premises consumption. In general, the City Code allows for package stores and package sales in any area that allows retail sales. The hours and locations (distance separation) are regulated in Chapter 6 of the City Code.

The Mixed Use Entertainment ("MXE") district is characterized by a variety of uses, including hotel, bars, restaurants, entertainment establishments, apartment buildings, and retail stores which attract a large volume of pedestrians and vehicular traffic. The consumption of alcohol and the high volume of people together are sometimes problematic and were identified as issues by the Mayor's Blue Ribbon Panel on Ocean Drive and the City Commission.

Package sales of alcoholic beverages may encourage patrons to walk around with alcoholic beverages and consume alcoholic beverages in the City's parks, and on the City's streets and sidewalks. The consumption of open containers of alcoholic beverages in public places may cause undesirable noise, as well as contribute to litter and noxious odors. Also, the consumption of open containers of alcoholic beverages in public places is a violation of Section 70-87 of the City Code.

The attached ordinance creates a definition for package store in Section 114.1, the definition section of the Land Use Development Regulations (LDR's). Additionally, both package stores and package sales of alcoholic beverages are listed as a prohibited use in Section 142-544, under the MXE district regulations. Additionally, because entertainment is allowed in retail stores city wide, the following ordinance clarifies that, in the MXE district, package stores are prohibited from having entertainment.

#### **PLANNING BOARD REVIEW**

On August 23, 2016, the Planning Board (by a 6-0 vote) transmitted the proposed ordinance amendment to the City Commission with a favorable recommendation.

#### **UPDATE/SUMMARY**

As indicated previously, the Administration believes that the proposed ordinance amendment is a step in the right direction in terms of addressing tangible quality of life issues for residents and visitors alike. The subject Ordinance was approved at First Reading on September 14, 2016 and subsequently endorsed by the Land Use and Development Committee on September 21, 2016.

At the request of the item sponsor, the ordinance has been updated to include a prohibition on the package sales of alcoholic beverages by any retail store, in addition to the previous prohibition of package sales in alcoholic beverage establishment. This will prohibit the package sale of alcoholic beverages (beer, wine, liquor) in retail establishments in the MXE district.

#### **CONCLUSION**

The Administration recommends that the City Commission adopt the Ordinance.

#### **FINANCIAL INFORMATION**

In accordance with Charter Section 5.02, which requires that the "City of Miami Beach shall consider the long term economic impact (at least 5 years) of proposed legislative actions," this shall confirm that the City Administration City Administration evaluated the long term economic impact (at least 5 years) of this proposed legislative action. The proposed Ordinance is not expected to have a negative fiscal impact upon the City.

**Legislative Tracking**

Planning

**Sponsor**

Commissioner Ricky Arriola and Co-sponsored by Commissioner Joy Malakoff

**ATTACHMENTS:**

**Description**

- ▯ Ordinance

# **EXHIBIT D**

## CHAPTER 6 – ALCOHOLIC BEVERAGES

ORDINANCE NO. 2016-4058

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 6 OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, ENTITLED “ALCOHOLIC BEVERAGES,” ARTICLE I, ENTITLED “IN GENERAL,” SECTION 6-3 THEREOF, ENTITLED “HOURS OF SALE,” TO PROHIBIT PACKAGE LIQUOR SALES AT RETAIL STORES (INCLUDING PACKAGE, GROCERY, CONVENIENCE, AND ANY OTHER RETAIL STORES, AS WELL AS GASOLINE STATIONS/SERVICE STATIONS) AND ALCOHOLIC BEVERAGE ESTABLISHMENTS BEFORE 10:00 A.M. EACH DAY; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

**WHEREAS**, in Chapter 6 of the City Code, entitled “Alcoholic Beverages,” the City of Miami Beach (“City”) regulates the location, size, hours of operation, and minimum patron age for uses that permit the sale and consumption of alcoholic beverages; and

**WHEREAS**, the City’s Committee on the Homeless (“Committee”) has recommended that package liquor sales be restricted by two additional hours each morning; and

**WHEREAS**, pursuant to the Committee’s recommendation, package liquor sales should begin at 10:00 a.m. instead of 8:00 a.m. as currently authorized by the City Code; and

**WHEREAS**, it is in the best interest of the City, and it serves the health, safety, and welfare of the City’s residents and visitors, to prohibit package liquor sales at retail stores (including package, grocery, convenience, and any other retail stores, as well as gasoline service/filling stations) and alcoholic beverage establishments before 10:00 a.m. each day, because the availability of alcoholic beverages for sale and consumption early in the morning discourages the acceptance of services to end homelessness; and

**WHEREAS**, State law expressly grants the City the authority to establish its own regulations for the time for sale of alcoholic or intoxicating beverages; and

**WHEREAS**, pursuant to Section 562.14, Florida Statutes, a municipality may, by ordinance, establish hours of sale for alcoholic beverages; and

**WHEREAS**, Florida courts have rejected equal protection and due process challenges to Section 562.14, Florida Statutes (*See Wednesday Night, Inc. v. City of Fort Lauderdale* (Fla. 1973)); and

**WHEREAS**, Florida Courts have determined that it is within the police power and authority for a municipality to change the hours of regulation of alcoholic beverages, because municipalities have the statutory authority under Section 562.14, Florida Statutes, to restrict the sale of alcohol; additionally, a municipal ordinance regulating the hours of sale of alcoholic beverages may be applied to a property incorporated later into the municipality by annexation. *Village of North Palm Beach v. S & H Foster’s, Inc.*, 80 So. 3d 433 (Fla. 4th DCA 2012); and

**WHEREAS**, in *State ex rel. Floyd v. Noel* (Fla. 1936), the Florida Supreme Court recognized that “[i]t is so well settled that no citation of authority is required to support the statement that a municipality exercising the powers inherent in municipal corporations may reasonably regulate the sale of intoxicating liquors and in providing such reasonable regulations may prohibit the sale of such liquors within certain hours, and also may prohibit the sale of liquors within certain zones”; and

**WHEREAS**, the Florida Attorney General has opined that a municipality may regulate (1) the hours of sale, (2) zoning of locations in which alcoholic beverages may be sold, and (3) the sanitary conditions under which alcoholic beverages may be dispensed or served to the public. Florida AGO 059-73 (1959); and

**WHEREAS**, in fact, the Florida Attorney General has opined that different hours may be provided for in a municipal ordinance, provided there is reasonable relation to the health, safety, and morals of the community. Op. Att’y Gen. Fla., p. 497 (1950); and

**WHEREAS**, Florida courts have consistently held that alcoholic beverage establishments are not entitled to grandfather status as to hours of sale for alcoholic beverages (See *Village of North Palm Beach v. S & H Foster’s, Inc.* (Fla. 4th DCA 2012); *Other Place of Miami, Inc. v. City of Hialeah Gardens* (Fla. 3d DCA 1978)); and

**WHEREAS**, injunctive relief is not available against the enforcement of a municipal ordinance regulating the time at which alcoholic beverages may be sold, because municipalities have the statutory authority to set times for sale of alcoholic beverages. *Id.*; *Playpen S., Inc. v. City of Oakland Park*, 396 So. 2d 830 (Fla. 4th DCA 1981); and

**WHEREAS**, Florida Courts have ruled that hours of operation are not a property right. *S. Daytona Rests., Inc. v. City of S. Daytona*, 186 So. 2d 78 (Fla. 1st DCA 1966); and

**WHEREAS**, the amendments set forth below are necessary to accomplish the objectives identified above.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:**

**SECTION 1.** That Section 6-3, entitled “Hours of Sale,” of Article I, of Chapter 6, of the City Code of the City of Miami Beach is hereby amended as follows:

**CHAPTER 6**  
**ALCOHOLIC BEVERAGES**

**ARTICLE I. In General**

\* \* \*



**Sec. 6-3. Hours of sale/violations.**

- (a) The hours of sale of alcoholic beverages, whether as a permitted main or accessory use, shall require a State License, and shall be according to the following schedule, ~~except as may be otherwise provided pursuant to subsection (6):~~
- (1) *Retail stores for package sales only—Off-premises consumption.* Vendors may make sales of alcohol only for off-premises consumption between the hours of ~~8:00 a.m.~~ 10:00 a.m. and midnight.
  - (2) *Retail stores, including grocery, convenience stores, and gasoline service/filling stations.* Retail stores, including grocery, convenience stores, and gasoline service/filling stations, which primarily offer for sale products other than alcoholic beverages may only make sales of beer and wine only for off-premises consumption between the hours of ~~8:00 a.m.~~ 10:00 a.m. and midnight.
  - (3) *Alcoholic beverage establishments.* All alcoholic beverage establishments with state licensure—On-premises consumption only, may make sales of alcohol between the hours of 8:00 a.m. and 5:00 a.m.
    - (a) *Restaurants not operating as dance halls or entertainment establishments.* Restaurants with full kitchen facilities, serving full meals, licensed as alcoholic beverage establishments, but not operating as dance halls or entertainment establishments, may remain open 24 hours a day; however, alcoholic beverages may not be offered for sale or on-premises consumption between the hours of 5:00 a.m. and 8:00 a.m.
    - (b) *Restaurants also operating as dance halls or entertainment establishments.* Restaurants with full kitchen facilities, serving full meals, licensed as alcoholic beverage establishments, and also operating as dance halls, or entertainment establishments, may remain open 24 hours a day; however, alcoholic beverages may not be offered for sale or on-premises consumption between the hours of 5:00 a.m. and 8:00 a.m., and dancing and entertainment shall not be conducted between the hours of 5:00 a.m. and 10:00 a.m.
    - (c) *Other alcoholic beverage establishments.* Other alcoholic beverage establishments, not containing restaurants with full kitchen facilities, shall close at 5:00 a.m. and remain closed. No patron or other persons, other than those employed by the vendor may remain on the premises between the hours of 5:00 a.m. and 8:00 a.m.
    - (d) *Sidewalk cafes.* Notwithstanding the provisions of subsections (3)(a) through (c), alcoholic beverages shall not be offered for sale or consumption at sidewalk cafes, as defined in section 82-366 of this Code and as otherwise permitted by the City in accordance with chapter 82, article IV, division 5, subdivision II of this Code (as may be amended from time to time), between the hours of 1:30 a.m. and 8:00 a.m., and shall not be consumed at sidewalk cafes between the hours of 2:00 a.m. and 8:00 a.m. No variances may be granted from the provisions of this section 6-3(3)(d) as to the hours of sale or consumption of alcoholic beverages at sidewalk cafes.

Note: For purposes of this section, full kitchen facilities shall mean having commercial grade burners, ovens, and refrigeration units of sufficient size and quantity to accommodate the occupancy content of the establishment. Full kitchen facilities must contain grease trap interceptors, and meet all applicable city, county, and state codes.

- (4) *Off-premises package sales by alcoholic beverage establishments.* Off-premises package sales associated with alcoholic beverage establishments other than retail stores shall be permitted between the hours of 8:00 a.m. 10:00 a.m. and midnight.
- (5) *Private clubs.* Consideration of a request for a private club conditional use permit, including the hours of operation, shall be pursuant to the conditional use Procedures and Review Guidelines as listed in section 118-191, et seq. A private club, either as a permitted main or accessory use, shall only offer alcoholic beverages for sale or on-premises consumption if the private club, in accordance with section 6-2(a), secures a license for the distribution or sale of any alcoholic beverages from the division of alcoholic beverages and tobacco of the department of business and professional regulation of the state. Private clubs licensed as alcoholic beverage establishments, either as permitted main or accessory uses, shall, only offer alcoholic beverages for sale or on-premises consumption between the hours of 8:00 a.m. and 5:00 a.m., on any day of the week, provided that service is made only to members and guests of members pursuant to Florida Statutes. However, any private club permitted to remain open after 2:00 a.m. shall purchase an extra-hours license and must provide for security in its premises by hiring private security guards or off-duty police officers between the hours of 2:00 a.m. and 5:00 a.m. each day.

Private clubs securing a license from the state division of alcoholic beverages and tobacco by complying with the requirements of F.S. § 561.20 for racquetball, tennis, or golf course facilities may admit members at any time for use of such facilities, but may not serve alcoholic beverages after 2:00 a.m. each day unless such private club is the holder of an extra-hours license and complies with the above requirements.

- (6) Alcoholic beverage establishments set forth in subsections (3) and (5) permitted to remain open to serve alcoholic beverages for on-premises consumption until 5:00 a.m. may continue to serve alcoholic beverages for on-premises consumption and, if the alcoholic beverage establishment is located on Ocean Drive between 5th Street and 15th Street, for consumption at the establishment's sidewalk cafe (i) until 7:00 a.m. on January 1 (New Year's Day) or, if January 1 is on a Sunday, until 7:00 a.m. on Monday if the day that is observed as a national holiday for New Year's Day is on Monday, and (ii) until 7:00 a.m. during certain major event days or weekends as may be designated by the city commission or as may be designated by the city manager following approval by the city commission, under the following conditions:
- (a) The police department and the code compliance department of the city must be notified by a letter, received no later than 15 business days prior to either: (a) January 1, or (b) the day on which alcohol sales are to be extended, stating that the alcoholic beverage establishment intends to serve alcoholic beverages for on-premises consumption and, if the alcoholic beverage establishment is located on Ocean Drive between 5th Street and 15th Street, for consumption at the establishment's sidewalk cafe until 7:00 a.m.;
  - (b) If deemed reasonably necessary by the police chief, or the police chief's designee, off-duty police officers must be provided at the alcoholic beverage establishment until 7:00 a.m.;
  - (c) There are no pending City Code violations against the alcoholic beverage establishment;
  - (d) No delinquent or past due monies are owed to the city;
  - (e) Outdoor entertainment or open-air entertainment is not allowed;

- (f) No violation of the city's noise ordinance shall be permitted;
  - (g) No violation of the approved fire code occupancy load shall be permitted;
  - (h) All required city permits and licenses are current;
  - (i) The State License is current; and
  - (j) Any other conditions required by the city manager in order to protect the public health, safety, or welfare.
- (7) Alcoholic beverage establishments set forth in subsections (3) and (5) permitted to remain open to serve alcoholic beverages for on-premises consumption until 5:00 a.m. may continue to serve alcoholic beverages until 6:00 a.m. on the first day of daylight savings time in the spring.
- (8) The city manager may suspend the provisions of subsection (6) at any time to protect the public health, safety, or welfare.
- (9) *Penalties and enforcement.*
- (a) The following penalties shall be imposed for a violation of this section:
    - i. The penalty for the first violation by a person or entity within a 12-month period shall be a civil fine of \$1,000.00;
    - ii. The penalty for the second violation by a person or entity within a 12-month period shall be a civil fine of \$5,000.00;
    - iii. The penalty for the third violation by a person or entity within a 12-month period shall be a civil fine of \$10,000.00;
    - iv. Upon a finding by the special master that four (4) or more violations by a person or entity have occurred within a 12-month period, the city may initiate proceedings to revoke the certificate of use, business tax receipt, or certificate of occupancy of the violator.
    - v. A sidewalk cafe permittee that has been issued four (4) or more violations pursuant to this section or section 82-388 within a permit year shall be prohibited from applying for and obtaining a sidewalk cafe permit for a period of two (2) permit years following the permit year in which the sidewalk cafe permittee incurred the violations.
  - (b) Enhanced penalty. The following enhanced penalty shall be imposed, in addition to any mandatory fines set forth in subsection ~~(8)(a)~~ (9)(a) above, for violations of this section:
    - i. The sale of alcoholic beverages in violation of this section must be immediately terminated, upon confirmation by the code compliance department that a violation has occurred.
  - (c) Enforcement. The code compliance department shall enforce this section. This shall not preclude other law enforcement agencies or regulatory bodies from any action to assure compliance with this section and all applicable laws. If a code compliance officer (which, as defined in section 70-66, includes a police officer) finds a violation of this section, the code compliance officer shall issue a notice of violation in the manner prescribed in chapter 30 of this Code. The notice shall inform the violator of the nature of the violation, amount of fine for which the violator is liable, instructions and due date for paying the fine, that the violation

may be appealed by requesting an administrative hearing before a special master within ten (10) days after service of the notice of violation, and that the failure to appeal the violation within ten (10) days of service shall constitute an admission of the violation and a waiver of the right to a hearing.

- (d) Rights of violators; payment of fine; right to appear; failure to pay civil fine or to appeal; appeals from decisions of the special master.
  - i. A violator who has been served with a notice of violation must elect to either:
    - A. Pay the civil fine in the manner indicated on the notice of violation; or
    - B. Request an administrative hearing before a special master to appeal the notice of violation, which must be requested within ten (10) days of the service of the notice of violation.
  - ii. The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections 30-72 and 30-73 of this Code. Applications for hearings must be accompanied by a fee as approved by a resolution of the city commission, which shall be refunded if the named violator prevails in the appeal.
  - iii. If the named violator, after issuance of the notice of violation, fails to pay the civil fine, or fails to timely request an administrative hearing before a special master, the special master may be informed of such failure by report from the officer. The failure of the named violator to appeal the decision of the officer within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing before the special master, and shall be treated as an admission of the violation. for which fines and penalties shall be assessed accordingly.
  - iv. A certified copy of an order imposing a fine may be recorded in the public records, and thereafter shall constitute a lien upon any real or personal property owned by the violator, which may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the violator's real or personal property, but shall not be deemed to be a court judgment except for enforcement purposes. On or after the sixty-first (61st) day following the recording of any such lien that remains unpaid, the City may foreclose or otherwise execute upon the lien.
  - v. Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.
  - vi. The special master shall be prohibited from hearing the merits of the notice of violation or considering the timeliness of a request for an administrative hearing if the violator has failed to request an administrative hearing within ten (10) days of the service of the notice of violation.
  - vii. The special master shall not have discretion to alter the penalties prescribed in subsection ~~(8)(a) or (8)(b)~~ (9)(a) or (9)(b).

## **SECTION 2. CODIFICATION.**

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code of the City of Miami Beach, Florida. The sections of this Ordinance may be renumbered or

re-lettered to accomplish such intention, and, the word "ordinance" may be changed to "section," "article," or other appropriate word.

**SECTION 3. REPEALER.**

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**SECTION 4. SEVERABILITY.**

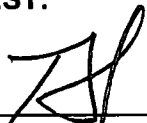
If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

**SECTION 5. EFFECTIVE DATE.**

This Ordinance shall take effect ten days following adoption.

**PASSED** and **ADOPTED** this 9 day of November, 2016.

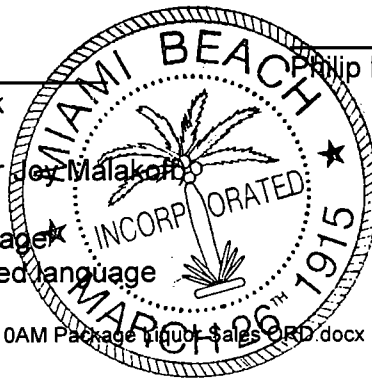
**ATTEST:**

 11/28/16  
Rafael E. Granado, City Clerk

(Sponsored by Commissioner ~~Joe~~ Malakoff)

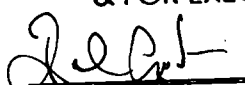
Underline denotes new language  
~~Strikethrough~~ denotes removed language

F:\ATTO\KALN\ORDINANCES\Alcohol\10AM Package Liquor Sales ORD.docx



  
Philip Levine, Mayor

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

 10/11/16  
City Attorney Date

NK

Ordinances - R5 I

# MIAMI BEACH

## COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission  
FROM: Jimmy L. Morales, City Manager  
DATE: November 9, 2016

**10:40 a.m. Second Reading Public Hearing**

SUBJECT: CHAPTER 6 - ALCOHOLIC BEVERAGES:

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 6 OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, ENTITLED "ALCOHOLIC BEVERAGES," ARTICLE I, ENTITLED "IN GENERAL," SECTION 6-3 THEREOF, ENTITLED "HOURS OF SALE," TO PROHIBIT PACKAGE LIQUOR SALES AT RETAIL STORES (INCLUDING PACKAGE, GROCERY, CONVENIENCE, AND ANY OTHER RETAIL STORES, AS WELL AS GASOLINE STATIONS/SERVICE STATIONS) AND ALCOHOLIC BEVERAGE ESTABLISHMENTS BEFORE 10:00 A.M. EACH DAY; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

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### RECOMMENDATION

Approve the ordinance.

### ANALYSIS

At its April 20, 2016 meeting, the Committee on the Homeless passed a resolution urging the Mayor and Commission to push back package liquor sales by two hours, from the current 8:00 a.m. to 10:00 a.m. This recommendation was specifically limited to package sales and not restaurant/bar sales. The Committee reasoned that alcohol abuse was an influencing factor in homelessness in our community and served as an impediment to engaging the homeless to accept services.

On June 8, 2016, the City Commission, at the request of Commissioner Joy Malakoff, referred the proposed ordinance to the Land Use and Development Committee at the recommendation of the Committee on the Homeless. On June 15, 2016, the Land Use Committee initially discussed the item and directed the Administration to prepare an ordinance that would be applicable to all retail stores. Pursuant to direction from the Committee, the attached ordinance was drafted. The specific revisions to Chapter 6 include the following:

- For retail package sales only (off-premises consumption), sales would only be permitted between the hours of 10:00 a.m. and midnight.
- For retail stores, including grocery, convenience stores, and gasoline service/filling stations, which primarily offer for sale products other than alcoholic beverages, the sale of beer and wine (off-premises consumption) would only be permitted between the hours of 10:00 a.m. and midnight.



The Land Use Committee approved the revised ordinance at its September 21, 2016 meeting and subsequently referred it to Commission for consideration. The Commission held the first reading for the ordinance on October 19, 2016.

In unanimously passing the ordinance at first reading, the Commission requested that the Administration return in six months with a report on the ordinance's impact. In addition, the Commission requested that a letter be sent to the Chief Executive Officers of the major retail chains in the City that permit single-serve alcohol sales asking that they follow the lead of Walgreens and voluntarily agree to prohibit these sales.

#### **CONCLUSION**

The Administration recommends that the City Commission approve the ordinance as proposed as a means of discouraging alcohol use among the homeless during morning early hours in hopes that they can be successfully engaged to accept services and end their personal homelessness.

#### **KEY INTENDED OUTCOMES SUPPORTED**

Enhance Beauty And Vibrancy Of Urban And Residential Neighborhoods; Focusing On Cleanliness, Historic Assets, In Select Neighborhoods And Redevelopment Areas

#### **Legislative Tracking**

Housing and Community Services

#### **Sponsor**

Vice-Mayor Joy Malakoff

#### **ATTACHMENTS:**

##### **Description**

- Ordinance

# MIAMI BEACH

**City of Miami Beach**, 1700 Convention Center Drive, Miami Beach, Florida 33139, [www.miamibeachfl.gov](http://www.miamibeachfl.gov)

OFFICE OF THE CITY MANAGER  
Tel: 305.673.7010, Fax: 305.673.7782

November 4, 2016

Publix Super Markets  
Attn: Corporate Sales/Marketing Dept.  
PO Box 407  
Lakeland, FL 33802-0407

Dear Corporate Sales/Marketing Dept.:

As you may be aware, at the October 19, 2016 City Commission meeting the Mayor and City Commission adopted an Ordinance on first reading to prohibit package liquor sales at retail stores (including package, grocery, convenience, and any other retail stores, as well as gasoline stations/service stations) and alcoholic beverage establishments before 10:00 A.M. each day. The second reading/public hearing of this Ordinance is scheduled for November 9, 2016.

While the City is pre-empted by the State in banning single beer container sales, certain retail establishments in the City have already volunteered to no longer sell these items. As such, the Mayor and City Commission respectfully request your cooperation in joining other retail establishments by voluntarily halting the sale of individual beer cans/bottles at your establishments within the borders of the City of Miami Beach.

Sincerely,



Jimmy L. Morales  
City Manager

Attachment:  
Proposed Ordinance

JLM/SMT/HDC/SKS/RFM



## Granado, Rafael

---

**From:** MacBride, Randi  
**Sent:** Tuesday, November 08, 2016 2:26 PM  
**To:** Granado, Rafael  
**Cc:** Hatfield, Liliam; Cardillo, Lilia; Cardeno, Hernan; Torriente, Susanne; De Pinedo, Naima  
**Subject:** RE: • Send a letter to Publix and all other major retailers asking them to stop selling individual beer cans in Miami Beach. Susanne M. Torriente to handle.  
**Attachments:** Letter Request Stop Selling Indiv Beer Containers.pdf

Good afternoon Ralph,

As requested, please see the attached example of the letter. The letters were sent to corporate and to the Store Managers of each location on Miami Beach. They went to Publix, CVS, Walgreens, Total Wine, The Fresh Market, and Whole Foods.

If you need something further please let me know.

Thanks,  
Randi

### MIAMIBEACH

**Randi F. MacBride**, Office Associate V  
CODE COMPLIANCE DEPARTMENT  
555 17th Street, Miami Beach, FL 33139  
Tel: 305-673-7000 Ext. 6169 / Fax: 786-394-4632 / [www.miamibeachfl.gov](http://www.miamibeachfl.gov)  
[randimacbride@miamibeachfl.gov](mailto:randimacbride@miamibeachfl.gov)

*We are committed to providing excellent public service and safety to all who live, work and play in our vibrant, tropical, historic community.*

---

**From:** De Pinedo, Naima  
**Sent:** Tuesday, November 08, 2016 2:19 PM  
**To:** MacBride, Randi  
**Cc:** Hatfield, Liliam; Cardillo, Lilia; Cardeno, Hernan; Torriente, Susanne; Granado, Rafael  
**Subject:** RE: • Send a letter to Publix and all other major retailers asking them to stop selling individual beer cans in Miami Beach. Susanne M. Torriente to handle.

Randi,

Please provide to Ralph.

Thanks.

### MIAMIBEACH

**Naima De Pinedo**, Office Manager  
OFFICE OF THE CITY MANAGER  
1700 Convention Center Drive, Miami Beach, FL 33139  
Tel: 305-673-7010 / Fax: 305-673-7782 / [www.miamibeachfl.gov](http://www.miamibeachfl.gov)

*We are committed to providing excellent public service to all who live, work and play in our vibrant, tropical, historic community.*

---

**From:** Torriente, Susanne  
**Sent:** Tuesday, November 08, 2016 2:10 PM

**To:** Granado, Rafael

**Cc:** De Pinedo, Naima; Hatfield, Liliam; Cardillo, Lilia; Cardeno, Hernan

**Subject:** RE: • Send a letter to Publix and all other major retailers asking them to stop selling individual beer cans in Miami Beach. Susanne M. Torriente to handle.

HI – will do.

Naima or Hernan – can you forward to the Clerk's Office?

Thanks

**MIAMIBEACH**

**Susanne M. Torriente**

**Assistant City Manager/Chief Resiliency Officer**

Office of the City Manager

1700 Convention Center Drive

Miami Beach, FL 33139

305-673-7000 x6486

**susytorriente@miamibeachfl.gov**

**From:** Granado, Rafael

**Sent:** Tuesday, November 8, 2016 1:46 PM

**To:** Torriente, Susanne <[SusanneTorriente@miamibeachfl.gov](mailto:SusanneTorriente@miamibeachfl.gov)>

**Cc:** Granado, Rafael <[RafaelGranado@miamibeachfl.gov](mailto:RafaelGranado@miamibeachfl.gov)>; De Pinedo, Naima <[NaimadePinedo@miamibeachfl.gov](mailto:NaimadePinedo@miamibeachfl.gov)>;

Hatfield, Liliam <[LiliamHatfield@miamibeachfl.gov](mailto:LiliamHatfield@miamibeachfl.gov)>; Cardillo, Lilia <[LiliaCardillo@miamibeachfl.gov](mailto:LiliaCardillo@miamibeachfl.gov)>

**Subject:** • Send a letter to Publix and all other major retailers asking them to stop selling individual beer cans in Miami Beach. Susanne M. Torriente to handle.

Good afternoon Susy,

See below after-action.

Please provide us with a copy of the letter that is sent regarding the sale of individual sale of cans of beer, so we may attach it to the after action.

Regards,

**9:53:00 a.m.**

R5 AB AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 6 OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, ENTITLED "ALCOHOLIC BEVERAGES," ARTICLE I, ENTITLED "IN GENERAL," SECTION 6-3 THEREOF, ENTITLED "HOURS OF SALE," TO PROHIBIT PACKAGE LIQUOR SALES AT RETAIL STORES (INCLUDING PACKAGE, GROCERY, CONVENIENCE, AND ANY OTHER RETAIL STORES, AS WELL AS GASOLINE STATIONS/SERVICE STATIONS) AND ALCOHOLIC BEVERAGE ESTABLISHMENTS BEFORE 10:00 A.M. EACH DAY; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

**First Reading**

Housing and Community Services

Commissioner Joy Malakoff  
and Co-Sponsored by Vice-Mayor Grieco

**ACTION:** Title of the Ordinance read into the record. **Ordinance adopted on first reading.** Motion made by Commissioner Malakoff; seconded by Vice-Mayor Grieco. Ballot vote: 7-0. Second reading, Public Hearing scheduled for **November 9, 2016**. Rafael E. Granado to notice. Lilia Cardillo to place on the Commission Agenda, if received. **Maria Ruiz to handle.**

**TO DO:**

- Revisit the item six months after approved on second reading. **Maria Ruiz to handle.**
- Send a letter to Publix and all other major retailers asking them to stop selling individual beer cans in Miami Beach. **Susanne M. Torriente to handle.**

## MIAMIBEACH

**Rafael E. Granado, Esq., City Clerk**

OFFICE OF THE CITY CLERK

1700 Convention Center Drive, Miami Beach, FL 33139

Tel: 305-673-7411 [rafaelgranado@miamibeachfl.gov](mailto:rafaelgranado@miamibeachfl.gov)

*We are committed to providing excellent public service and safety to all who live, work and play in our vibrant, tropical, historic community.*

# **EXHIBIT E**

## **CHAPTER 6 – ALCOHOLIC BEVERAGES**

**ORDINANCE NO. 2017-4101**

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 6 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED “ALCOHOLIC BEVERAGES,” ARTICLE I, ENTITLED “IN GENERAL,” SECTION 6-3 THEREOF, ENTITLED “HOURS OF SALE,” TO PROHIBIT PACKAGE LIQUOR SALES BEFORE 8:00 A.M. EACH DAY AT RETAIL STORES (INCLUDING PACKAGE, GROCERY, CONVENIENCE, AND ANY OTHER RETAIL STORES, AS WELL AS GASOLINE STATIONS/SERVICE STATIONS) AND ALCOHOLIC BEVERAGE ESTABLISHMENTS AND, AS APPLICABLE TO THE MXE MIXED USE ENTERTAINMENT DISTRICT, TO AUTHORIZE PACKAGE LIQUOR SALES AT SUCH ESTABLISHMENTS BETWEEN THE HOURS OF 10:00 A.M. AND 10:00 P.M. ONLY; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

**WHEREAS**, the City of Miami Beach (“City”) regulates the location, size, hours of operation, and minimum patron age for uses that permit the sale and consumption of alcoholic beverages in Chapter 6 of the City Code, entitled “Alcoholic Beverages”; and

**WHEREAS**, on November 9, 2016, the Mayor and City Commission adopted Ordinance No. 2016-4058, which prohibited package liquor sales at retail stores (including package, grocery, convenience, and any other retail stores, as well as gasoline stations/service stations) and alcoholic beverage establishments before 10:00 a.m. (instead of 8:00 a.m.) each day; and

**WHEREAS**, since the enactment of Ordinance No. 2016-4058, the Mayor and City Commission have determined that it is in the best interest of the City, and it serves the health, safety, and welfare of the City’s residents and visitors, to prohibit package liquor sales at retail stores (including package, grocery, convenience, and any other retail stores, as well as gasoline service/filling stations) and alcoholic beverage establishments before 8:00 a.m. (instead of 10:00 a.m.) each day; and

**WHEREAS**, notwithstanding the above, the Mayor and City Commission desire to restrict package liquor sales in the MXE district from the hours of 10:00 a.m. until 10:00 p.m. only; and

**WHEREAS**, this Ordinance strikes a balance between (i) the public safety concerns associated with the sale of alcoholic beverages, on the one hand, and (ii) the convenience of the City’s residents and visitors who desire to purchase alcoholic beverages, as well as the economic vitality of the City’s retail stores, on the other hand; and

**WHEREAS**, State law expressly grants the City the authority to establish its own regulations for the time for sale of alcoholic or intoxicating beverages; and

**WHEREAS**, pursuant to Section 562.14, Florida Statutes, a municipality may, by ordinance, establish hours of sale for alcoholic beverages; and

**WHEREAS**, Florida courts have rejected equal protection and due process challenges to Section 562.14, Florida Statutes (*See Wednesday Night, Inc. v. City of Fort Lauderdale* (Fla. 1973)); and

**WHEREAS**, Florida Courts have determined that it is within the police power and authority for a municipality to change the hours of regulation of alcoholic beverages, because municipalities have the statutory authority under Section 562.14, Florida Statutes, to restrict the sale of alcohol; additionally, a municipal ordinance regulating the hours of sale of alcoholic beverages may be applied to a property incorporated later into the municipality by annexation. *Village of North Palm Beach v. S & H Foster's, Inc.*, 80 So. 3d 433 (Fla. 4th DCA 2012); and

**WHEREAS**, in *State ex rel. Floyd v. Noel* (Fla. 1936), the Florida Supreme Court recognized that "[i]t is so well settled that no citation of authority is required to support the statement that a municipality exercising the powers inherent in municipal corporations may reasonably regulate the sale of intoxicating liquors and in providing such reasonable regulations may prohibit the sale of such liquors within certain hours, and also may prohibit the sale of liquors within certain zones"; and

**WHEREAS**, the Florida Attorney General has opined that a municipality may regulate (1) the hours of sale, (2) zoning of locations in which alcoholic beverages may be sold, and (3) the sanitary conditions under which alcoholic beverages may be dispensed or served to the public. Florida AGO 059-73 (1959); and

**WHEREAS**, in fact, the Florida Attorney General has opined that different hours may be provided for in a municipal ordinance, provided there is reasonable relation to the health, safety, and morals of the community. Op. Att'y Gen. Fla., p. 497 (1950); and

**WHEREAS**, Florida courts have consistently held that alcoholic beverage establishments are not entitled to grandfather status as to hours of sale for alcoholic beverages (*See Village of North Palm Beach v. S & H Foster's, Inc.* (Fla. 4th DCA 2012); *Other Place of Miami, Inc. v. City of Hialeah Gardens* (Fla. 3d DCA 1978)); and

**WHEREAS**, injunctive relief is not available against the enforcement of a municipal ordinance regulating the time at which alcoholic beverages may be sold, because municipalities have the statutory authority to set times for sale of alcoholic beverages. *Id.*; *Playpen S., Inc. v. City of Oakland Park*, 396 So. 2d 830 (Fla. 4th DCA 1981); and

**WHEREAS**, Florida Courts have ruled that hours of operation are not a property right. *S. Daytona Rests., Inc. v. City of S. Daytona*, 186 So. 2d 78 (Fla. 1st DCA 1966); and

**WHEREAS**, the amendments set forth below are necessary to accomplish the objectives identified above.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:**

**SECTION 1.** That Section 6-3, entitled "Hours of Sale," of Article I, of Chapter 6, of the City Code of the City of Miami Beach is hereby amended as follows:

**CHAPTER 6**  
**ALCOHOLIC BEVERAGES**  
**ARTICLE I. In General**

\* \* \*

**Sec. 6-3. Hours of sale/violations.**

(a) The hours of sale of alcoholic beverages, whether as a permitted main or accessory use, shall require a State License, and shall be according to the following schedule:

- (1) *Retail stores for package sales only—Off-premises consumption.* Vendors may make sales of alcohol only for off-premises consumption between the hours of ~~10:00 a.m.~~ 8:00 a.m. and midnight.

A. Notwithstanding subsection (a)(1), vendors located in the MXE mixed use entertainment district may make sales of alcohol only for off-premises consumption between the hours of 10:00 a.m. and 10:00 p.m.

- (2) *Retail stores, including grocery, convenience stores, and gasoline service/filling stations.* Retail stores, including grocery, convenience stores, and gasoline service/filling stations, which primarily offer for sale products other than alcoholic beverages may only make sales of beer and wine only for off-premises consumption between the hours of ~~10:00 a.m.~~ 8:00 a.m. and midnight.

A. Notwithstanding subsection (a)(2), retail stores, including grocery, convenience stores, and gasoline service/filling stations, that are located in the MXE mixed use entertainment district, and which primarily offer for sale products other than alcoholic beverages may only make sales of beer and wine only between the hours of 10:00 a.m. and 10:00 p.m.

- (3) *Alcoholic beverage establishments.* All alcoholic beverage establishments with state licensure—On-premises consumption only, may make sales of alcohol between the hours of 8:00 a.m. and 5:00 a.m.

(a) *Restaurants not operating as dance halls or entertainment establishments.* Restaurants with full kitchen facilities, serving full meals, licensed as alcoholic beverage establishments, but not operating as dance halls or entertainment establishments, may remain open 24 hours a day; however, alcoholic beverages may not be offered for sale or on-premises consumption between the hours of 5:00 a.m. and 8:00 a.m.

(b) *Restaurants also operating as dance halls or entertainment establishments.* Restaurants with full kitchen facilities, serving full meals, licensed as alcoholic beverage establishments, and also operating as dance halls, or entertainment establishments, may remain open 24 hours a day; however, alcoholic beverages may not be offered for sale or on-premises consumption between the hours of 5:00 a.m. and 8:00 a.m., and dancing and entertainment shall not be conducted between the hours of 5:00 a.m. and 10:00 a.m.

(c) *Other alcoholic beverage establishments.* Other alcoholic beverage establishments, not containing restaurants with full kitchen facilities, shall close at 5:00 a.m. and remain closed. No patron or other persons, other than those employed by the vendor may remain on the premises between the hours of 5:00 a.m. and 8:00 a.m.

- (d) *Sidewalk cafes.* Notwithstanding the provisions of subsections (3)(a) through (c), alcoholic beverages shall not be offered for sale or consumption at sidewalk cafes, as defined in section 82-366 of this Code and as otherwise permitted by the City in accordance with chapter 82, article IV, division 5, subdivision II of this Code (as may be amended from time to time), between the hours of 1:30 a.m. and 8:00 a.m., and shall not be consumed at sidewalk cafes between the hours of 2:00 a.m. and 8:00 a.m. No variances may be granted from the provisions of this section 6-3(3)(d) as to the hours of sale or consumption of alcoholic beverages at sidewalk cafes.

Note: For purposes of this section, full kitchen facilities shall mean having commercial grade burners, ovens, and refrigeration units of sufficient size and quantity to accommodate the occupancy content of the establishment. Full kitchen facilities must contain grease trap interceptors, and meet all applicable city, county, and state codes.

- (4) *Off-premises package sales by alcoholic beverage establishments.* Off-premises package sales associated with alcoholic beverage establishments other than retail stores shall be permitted between the hours of ~~10:00 a.m.~~ 8:00 a.m. and midnight.

A. Notwithstanding subsection (a)(4), off-premises package sales associated with alcoholic beverage establishments, other than retail stores, that are located in the MXE mixed use entertainment district shall be permitted only between the hours of 10:00 a.m. and 10:00 p.m.

- (5) *Private clubs.* Consideration of a request for a private club conditional use permit, including the hours of operation, shall be pursuant to the conditional use Procedures and Review Guidelines as listed in section 118-191, et seq. A private club, either as a permitted main or accessory use, shall only offer alcoholic beverages for sale or on-premises consumption if the private club, in accordance with section 6-2(a), secures a license for the distribution or sale of any alcoholic beverages from the division of alcoholic beverages and tobacco of the department of business and professional regulation of the state. Private clubs licensed as alcoholic beverage establishments, either as permitted main or accessory uses, shall, only offer alcoholic beverages for sale or on-premises consumption between the hours of 8:00 a.m. and 5:00 a.m., on any day of the week, provided that service is made only to members and guests of members pursuant to Florida Statutes. However, any private club permitted to remain open after 2:00 a.m. shall purchase an extra-hours license and must provide for security in its premises by hiring private security guards or off-duty police officers between the hours of 2:00 a.m. and 5:00 a.m. each day.

Private clubs securing a license from the state division of alcoholic beverages and tobacco by complying with the requirements of F.S. § 561.20 for racquetball, tennis, or golf course facilities may admit members at any time for use of such facilities, but may not serve alcoholic beverages after 2:00 a.m. each day unless such private club is the holder of an extra-hours license and complies with the above requirements.

- (6) Alcoholic beverage establishments set forth in subsections (3) and (5) permitted to remain open to serve alcoholic beverages for on-premises consumption until 5:00 a.m. may continue to serve alcoholic beverages for on-premises consumption and, if the alcoholic beverage establishment is located on Ocean Drive between 5th Street and 15th Street, for consumption at the establishment's sidewalk cafe (i) until 7:00 a.m. on January 1 (New Year's Day) or, if January 1 is on a Sunday, until 7:00 a.m. on Monday if the day that is observed as a national holiday for New Year's Day is on Monday, and



- (ii) until 7:00 a.m. during certain major event days or weekends as may be designated by the city commission or as may be designated by the city manager following approval by the city commission, under the following conditions:
  - (a) The police department and the code compliance department of the city must be notified by a letter, received no later than 15 business days prior to either: (a) January 1, or (b) the day on which alcohol sales are to be extended, stating that the alcoholic beverage establishment intends to serve alcoholic beverages for on-premises consumption and, if the alcoholic beverage establishment is located on Ocean Drive between 5th Street and 15th Street, for consumption at the establishment's sidewalk cafe until 7:00 a.m.;
  - (b) If deemed reasonably necessary by the police chief, or the police chief's designee, off-duty police officers must be provided at the alcoholic beverage establishment until 7:00 a.m.;
  - (c) There are no pending City Code violations against the alcoholic beverage establishment;
  - (d) No delinquent or past due monies are owed to the city;
  - (e) Outdoor entertainment or open-air entertainment is not allowed;
  - (f) No violation of the city's noise ordinance shall be permitted;
  - (g) No violation of the approved fire code occupancy load shall be permitted;
  - (h) All required city permits and licenses are current;
  - (i) The State License is current; and
  - (j) Any other conditions required by the city manager in order to protect the public health, safety, or welfare.
- (7) Alcoholic beverage establishments set forth in subsections (3) and (5) permitted to remain open to serve alcoholic beverages for on-premises consumption until 5:00 a.m. may continue to serve alcoholic beverages until 6:00 a.m. on the first day of daylight savings time in the spring.
- (8) The city manager may suspend the provisions of subsection (6) at any time to protect the public health, safety, or welfare.
- (9) *Penalties and enforcement.*
  - (a) The following penalties shall be imposed for a violation of this section:
    - i. The penalty for the first violation by a person or entity within a 12-month period shall be a civil fine of \$1,000.00;
    - ii. The penalty for the second violation by a person or entity within a 12-month period shall be a civil fine of \$5,000.00;
    - iii. The penalty for the third violation by a person or entity within a 12-month period shall be a civil fine of \$10,000.00;
    - iv. Upon a finding by the special master that four (4) or more violations by a person or entity have occurred within a 12-month period, the city may initiate proceedings to revoke the certificate of use, business tax receipt, or certificate of occupancy of the violator.

- v. A sidewalk cafe permittee that has been issued four (4) or more violations pursuant to this section or section 82-388 within a permit year shall be prohibited from applying for and obtaining a sidewalk cafe permit for a period of two (2) permit years following the permit year in which the sidewalk cafe permittee incurred the violations.
- (b) Enhanced penalty. The following enhanced penalty shall be imposed, in addition to any mandatory fines set forth in subsection (9)(a) above, for violations of this section:
  - i. The sale of alcoholic beverages in violation of this section must be immediately terminated, upon confirmation by the code compliance department that a violation has occurred.
- (c) Enforcement. The code compliance department shall enforce this section. This shall not preclude other law enforcement agencies or regulatory bodies from any action to assure compliance with this section and all applicable laws. If a code compliance officer (which, as defined in section 70-66, includes a police officer) finds a violation of this section, the code compliance officer shall issue a notice of violation in the manner prescribed in chapter 30 of this Code. The notice shall inform the violator of the nature of the violation, amount of fine for which the violator is liable, instructions and due date for paying the fine, that the violation may be appealed by requesting an administrative hearing before a special master within ten (10) days after service of the notice of violation, and that the failure to appeal the violation within ten (10) days of service shall constitute an admission of the violation and a waiver of the right to a hearing.
- (d) Rights of violators; payment of fine; right to appear; failure to pay civil fine or to appeal; appeals from decisions of the special master.
  - i. A violator who has been served with a notice of violation must elect to either:
    - A. Pay the civil fine in the manner indicated on the notice of violation; or
    - B. Request an administrative hearing before a special master to appeal the notice of violation, which must be requested within ten (10) days of the service of the notice of violation.
  - ii. The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections 30-72 and 30-73 of this Code. Applications for hearings must be accompanied by a fee as approved by a resolution of the city commission, which shall be refunded if the named violator prevails in the appeal.
  - iii. If the named violator, after issuance of the notice of violation, fails to pay the civil fine, or fails to timely request an administrative hearing before a special master, the special master may be informed of such failure by report from the officer. The failure of the named violator to appeal the decision of the officer within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing before the special master, and shall be treated as an admission of the violation. for which fines and penalties shall be assessed accordingly.
  - iv. A certified copy of an order imposing a fine may be recorded in the public records, and thereafter shall constitute a lien upon any real or personal property owned by the violator, which may be enforced in the same manner as

a court judgment by the sheriffs of this state, including levy against the violator's real or personal property, but shall not be deemed to be a court judgment except for enforcement purposes. On or after the sixty-first (61st) day following the recording of any such lien that remains unpaid, the City may foreclose or otherwise execute upon the lien.

- v. Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.
- vi. The special master shall be prohibited from hearing the merits of the notice of violation or considering the timeliness of a request for an administrative hearing if the violator has failed to request an administrative hearing within ten (10) days of the service of the notice of violation.
- vii. The special master shall not have discretion to alter the penalties prescribed in subsection (9)(a) or (9)(b).

## **SECTION 2. CODIFICATION.**

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code of the City of Miami Beach, Florida. The sections of this Ordinance may be renumbered or re-lettered to accomplish such intention, and, the word "ordinance" may be changed to "section," "article," or other appropriate word.

## **SECTION 3. REPEALER.**

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

## **SECTION 4. SEVERABILITY.**

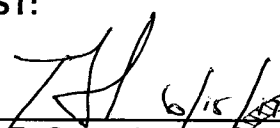
If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

## **SECTION 5. EFFECTIVE DATE.**

This Ordinance shall take effect ten days following adoption.

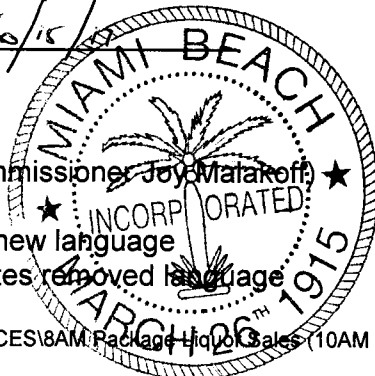
**PASSED and ADOPTED** this 7 day of June, 2017.

**ATTEST:**

  
Rafael E. Granado  
City Clerk

(Sponsored by Commissioner Joy Malakoff)

Underline denotes new language  
Strikethrough denotes removed language



  
Philip Levine  
Mayor

**APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION**

  
City Attorney

5/8/17  
Date

F:\ATTOIKAL\ORDINANCES\8AM Package Liquor Sales (10AM MXE) ORD third first reading.docx

NK

Ordinances - R5 G

# MIAMI BEACH

## COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission  
FROM: Raul J. Aguila, City Attorney  
DATE: June 7, 2017

**10:15 a.m. Second Reading Public Hearing**

**SUBJECT: ALCOHOLIC BEVERAGES:**

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 6 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "ALCOHOLIC BEVERAGES," ARTICLE I, ENTITLED "IN GENERAL," SECTION 6-3 THEREOF, ENTITLED "HOURS OF SALE," TO PROHIBIT PACKAGE LIQUOR SALES BEFORE 8:00 A.M. EACH DAY AT RETAIL STORES (INCLUDING PACKAGE, GROCERY, CONVENIENCE, AND ANY OTHER RETAIL STORES, AS WELL AS GASOLINE STATIONS/SERVICE STATIONS) AND ALCOHOLIC BEVERAGE ESTABLISHMENTS AND, AS APPLICABLE TO THE MXE MIXED USE ENTERTAINMENT DISTRICT, TO AUTHORIZE PACKAGE LIQUOR SALES AT SUCH ESTABLISHMENTS BETWEEN THE HOURS OF 10:00 A.M. AND 10:00 P.M. ONLY; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

---

### **ANALYSIS**

The attached Ordinance, sponsored by Commissioner Joy Malakoff and Commissioner Ricky Arriola, is hereby submitted for consideration by the Mayor and City Commission.

On November 9, 2016, the Mayor and City Commission adopted Ordinance No. 2016-4058, which prohibited package liquor sales at retail stores (including package, grocery, convenience, and any other retail stores, as well as gasoline stations/service stations) and alcoholic beverage establishments before 10:00 a.m. (instead of 8:00 a.m.) each day.

On March 1, 2017, the City Commission reviewed a prior version of this Ordinance, which proposed to prohibit package liquor sales before 9:00 a.m. However, following a discussion on the item, the City Commission directed staff to revise the proposed Ordinance to prohibit package liquor sales before 8:00 a.m. This revision required a new first reading.

On April 26, 2017, the Mayor and City Commission reviewed the revised draft, and directed the City Attorney's Office to prepare a revised draft Ordinance that further restricted the hours of package liquor sales in the MXE district.

The attached Ordinance amends City Code Section 6-3 to prohibit package liquor sales Citywide

before 8:00 a.m. (instead of 10:00 a.m.) each day at retail stores (including package, grocery, convenience, and any other retail stores, as well as gasoline stations/service stations) and alcoholic beverage establishments. Notwithstanding the above, the attached Ordinance restricts package liquor sales in the MXE district between the hours of 10:00 a.m. and 10:00 p.m. only.

**Legislative Tracking**

Office of the City Attorney

**Sponsor**

Commissioners Joy Malakoff and Ricky Arriola

**ATTACHMENTS:**

**Description**

- Ordinance

# **EXHIBIT F**

## CHAPTER 6 – ALCOHOLIC BEVERAGES

ORDINANCE NO. 2017-4131

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 6 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "ALCOHOLIC BEVERAGES," ARTICLE I, ENTITLED "IN GENERAL," SECTION 6-3 THEREOF, ENTITLED "HOURS OF SALE," TO CHANGE THE HOURS OF PACKAGE LIQUOR SALES AT RETAIL STORES (INCLUDING PACKAGE, GROCERY, CONVENIENCE, AND ANY OTHER RETAIL STORES, AS WELL AS GASOLINE STATIONS/SERVICE STATIONS) AND ALCOHOLIC BEVERAGE ESTABLISHMENTS WITHIN THE CD-2, COMMERCIAL DISTRICT ON WASHINGTON AVENUE AND PENNSYLVANIA AVENUE, BETWEEN 5<sup>TH</sup> AND 15<sup>TH</sup> STREET; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

**WHEREAS**, the City of Miami Beach ("City") regulates the location, size, hours of operation, and minimum patron age for uses that permit the sale and consumption of alcoholic beverages in Chapter 6 of the City Code, entitled "Alcoholic Beverages"; and

**WHEREAS**, on November 9, 2016, the Mayor and City Commission adopted Ordinance No. 2016-4058, which prohibited package liquor sales at retail stores (including package, grocery, convenience, and any other retail stores, as well as gasoline stations/service stations) and alcoholic beverage establishments before 10:00 a.m. (instead of 8:00 a.m.) each day; and

**WHEREAS**, since the enactment of Ordinance No. 2016-4058, the Mayor and City Commission have determined that it is in the best interest of the City, and it serves the health, safety, and welfare of the City's residents and visitors, to prohibit package liquor sales at retail stores (including package, grocery, convenience, and any other retail stores, as well as gasoline service/filling stations) and alcoholic beverage establishments before 8:00 a.m. (instead of 10:00 a.m.) each day; and

**WHEREAS**, notwithstanding the above, the Mayor and City Commission approved an Ordinance on June 7, 2017, restricting package liquor sales in the MXE district from the hours of 10:00 a.m. until 10:00 p.m., only; and

**WHEREAS**, there is an elementary school, located in the CD-2 district with retail stores that would be able to sell alcohol at 8:00 a.m., which is the time the minor children are arriving to school; and

**WHEREAS**, one of the biggest issues over hour of sales arose in a retail store adjacent to the public elementary school; and

**WHEREAS**, the minor children should be protected from the effects of persons buying and imbibing alcohol at 8:00 a.m.; and

**WHEREAS**, this Ordinance strikes a balance between (i) the public safety concerns associated with the sale of alcoholic beverages, on the one hand, and (ii) the convenience of



the City's residents and visitors who desire to purchase alcoholic beverages, as well as the economic vitality of the City's retail stores, on the other hand; and

**WHEREAS**, State law expressly grants the City the authority to establish its own regulations for the time for sale of alcoholic or intoxicating beverages; and

**WHEREAS**, pursuant to Section 562.14, Florida Statutes, a municipality may, by ordinance, establish hours of sale for alcoholic beverages; and

**WHEREAS**, Florida courts have rejected equal protection and due process challenges to Section 562.14, Florida Statutes (*See Wednesday Night, Inc. v. City of Fort Lauderdale* (Fla. 1973)); and

**WHEREAS**, Florida Courts have determined that it is within the police power and authority for a municipality to change the hours of regulation of alcoholic beverages, because municipalities have the statutory authority under Section 562.14, Florida Statutes, to restrict the sale of alcohol; additionally, a municipal ordinance regulating the hours of sale of alcoholic beverages may be applied to a property incorporated later into the municipality by annexation. *Village of North Palm Beach v. S & H Foster's, Inc.*, 80 So. 3d 433 (Fla. 4th DCA 2012); and

**WHEREAS**, in *State ex rel. Floyd v. Noel* (Fla. 1936), the Florida Supreme Court recognized that "[i]t is so well settled that no citation of authority is required to support the statement that a municipality exercising the powers inherent in municipal corporations may reasonably regulate the sale of intoxicating liquors and in providing such reasonable regulations may prohibit the sale of such liquors within certain hours, and also may prohibit the sale of liquors within certain zones"; and

**WHEREAS**, the Florida Attorney General has opined that a municipality may regulate (1) the hours of sale, (2) zoning of locations in which alcoholic beverages may be sold, and (3) the sanitary conditions under which alcoholic beverages may be dispensed or served to the public. Florida AGO 059-73 (1959); and

**WHEREAS**, in fact, the Florida Attorney General has opined that different hours may be provided for in a municipal ordinance, provided there is reasonable relation to the health, safety, and morals of the community. Op. Att'y Gen. Fla., p. 497 (1950); and

**WHEREAS**, Florida courts have consistently held that alcoholic beverage establishments are not entitled to grandfather status as to hours of sale for alcoholic beverages (*See Village of North Palm Beach v. S & H Foster's, Inc.* (Fla. 4th DCA 2012); *Other Place of Miami, Inc. v. City of Hialeah Gardens* (Fla. 3d DCA 1978)); and

**WHEREAS**, injunctive relief is not available against the enforcement of a municipal ordinance regulating the time at which alcoholic beverages may be sold, because municipalities have the statutory authority to set times for sale of alcoholic beverages. *Id.*; *Playpen S., Inc. v. City of Oakland Park*, 396 So. 2d 830 (Fla. 4th DCA 1981); and

**WHEREAS**, Florida Courts have ruled that hours of operation are not a property right. *S. Daytona Rests., Inc. v. City of S. Daytona*, 186 So. 2d 78 (Fla. 1st DCA 1966); and

**WHEREAS**, the amendments set forth below are necessary to accomplish the objectives identified above.



**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION  
OF THE CITY OF MIAMI BEACH, FLORIDA:**

**SECTION 1.** That Section 6-3, entitled "Hours of Sale," of Article I, of Chapter 6, of the City Code of the City of Miami Beach is hereby amended as follows:

**CHAPTER 6  
ALCOHOLIC BEVERAGES  
ARTICLE I. In General**

\* \* \*

**Sec. 6-3. Hours of sale/violations.**

- (a) The hours of sale of alcoholic beverages, whether as a permitted main or accessory use, shall require a State License, and shall be according to the following schedule:
- (1) *Retail stores for package sales only—Off-premises consumption.* Vendors may make sales of alcohol only for off-premises consumption between the hours of ~~10:00 a.m.~~ 8:00 a.m. and midnight.
- A. Notwithstanding subsection (a)(1), vendors located in the MXE mixed use entertainment district and the CD-2, commercial medium intensity district, between Washington Avenue and Pennsylvania Avenue, from 5<sup>th</sup> Street to 16<sup>th</sup> Street, may make sales of alcohol only for off-premises consumption between the hours of ~~10:00~~ 9:00 a.m. and 10:00 p.m.
- (2) *Retail stores, including grocery, convenience stores, and gasoline service/filling stations.* Retail stores, including grocery, convenience stores, and gasoline service/filling stations, which primarily offer for sale products other than alcoholic beverages may only make sales of beer and wine only for off-premises consumption between the hours of ~~10:00 a.m.~~ 8:00 a.m. and midnight.
- A. Notwithstanding subsection (a)(2), retail stores, including grocery, convenience stores, and gasoline service/filling stations, that are located in the MXE mixed use entertainment district, and the CD-2, commercial mixed use 2 district, on Washington Avenue and Pennsylvania Avenue, between 5<sup>th</sup> Street and 15<sup>th</sup> Street, and which primarily offer for sale products other than alcoholic beverages may only make sales of beer and wine only between the hours of 10:00 a.m. and 10:00 p.m.
- (3) *Alcoholic beverage establishments.* All alcoholic beverage establishments with state licensure—On-premises consumption only, may make sales of alcohol between the hours of 8:00 a.m. and 5:00 a.m.
- (a) *Restaurants not operating as dance halls or entertainment establishments.* Restaurants with full kitchen facilities, serving full meals, licensed as alcoholic beverage establishments, but not operating as dance halls or entertainment establishments, may remain open 24 hours a day; however, alcoholic beverages may not be offered for sale or on-premises consumption between the hours of 5:00 a.m. and 8:00 a.m.

- (b) *Restaurants also operating as dance halls or entertainment establishments.* Restaurants with full kitchen facilities, serving full meals, licensed as alcoholic beverage establishments, and also operating as dance halls, or entertainment establishments, may remain open 24 hours a day; however, alcoholic beverages may not be offered for sale or on-premises consumption between the hours of 5:00 a.m. and 8:00 a.m., and dancing and entertainment shall not be conducted between the hours of 5:00 a.m. and 10:00 a.m.
- (c) *Other alcoholic beverage establishments.* Other alcoholic beverage establishments, not containing restaurants with full kitchen facilities, shall close at 5:00 a.m. and remain closed. No patron or other persons, other than those employed by the vendor may remain on the premises between the hours of 5:00 a.m. and 8:00 a.m.
- (d) *Sidewalk cafes.* Notwithstanding the provisions of subsections (3)(a) through (c), alcoholic beverages shall not be offered for sale or consumption at sidewalk cafes, as defined in section 82-366 of this Code and as otherwise permitted by the City in accordance with chapter 82, article IV, division 5, subdivision II of this Code (as may be amended from time to time), between the hours of 1:30 a.m. and 8:00 a.m., and shall not be consumed at sidewalk cafes between the hours of 2:00 a.m. and 8:00 a.m. No variances may be granted from the provisions of this section 6-3(3)(d) as to the hours of sale or consumption of alcoholic beverages at sidewalk cafes.

Note: For purposes of this section, full kitchen facilities shall mean having commercial grade burners, ovens, and refrigeration units of sufficient size and quantity to accommodate the occupancy content of the establishment. Full kitchen facilities must contain grease trap interceptors, and meet all applicable city, county, and state codes.

- (4) *Off-premises package sales by alcoholic beverage establishments.* Off-premises package sales associated with alcoholic beverage establishments other than retail stores shall be permitted between the hours of ~~4:00 a.m.~~ 8:00 a.m. and midnight.
  - A. Notwithstanding subsection (a)(4), off-premises package sales associated with alcoholic beverage establishments, other than retail stores, that are located in the MXE mixed use entertainment district and the CD-2, commercial district 2, on Washington Avenue and Pennsylvania Avenue, between 5<sup>th</sup> Street and 15<sup>th</sup> Street, shall be permitted only between the hours of 10:00 a.m. and 10:00 p.m.
- (5) *Private clubs.* Consideration of a request for a private club conditional use permit, including the hours of operation, shall be pursuant to the conditional use Procedures and Review Guidelines as listed in section 118-191, et seq. A private club, either as a permitted main or accessory use, shall only offer alcoholic beverages for sale or on-premises consumption if the private club, in accordance with section 6-2(a), secures a license for the distribution or sale of any alcoholic beverages from the division of alcoholic beverages and tobacco of the department of business and professional regulation of the state. Private clubs licensed as alcoholic beverage establishments, either as permitted main or accessory uses, shall, only offer alcoholic beverages for sale or on-premises consumption between the hours of 8:00 a.m. and 5:00 a.m., on any day of the week, provided that service is made only to members and guests of members pursuant to Florida Statutes. However, any private club permitted to remain open after 2:00 a.m. shall purchase an extra-hours license and must provide for security in its premises by hiring private security guards or off-duty police officers between the hours of 2:00 a.m. and 5:00 a.m. each day.

Private clubs securing a license from the state division of alcoholic beverages and tobacco by complying with the requirements of F.S. § 561.20 for racquetball, tennis, or golf course facilities may admit members at any time for use of such facilities, but may not serve alcoholic beverages after 2:00 a.m. each day unless such private club is the holder of an extra-hours license and complies with the above requirements.

- (6) Alcoholic beverage establishments set forth in subsections (3) and (5) permitted to remain open to serve alcoholic beverages for on-premises consumption until 5:00 a.m. may continue to serve alcoholic beverages for on-premises consumption and, if the alcoholic beverage establishment is located on Ocean Drive between 5th Street and 15th Street, for consumption at the establishment's sidewalk cafe (i) until 7:00 a.m. on January 1 (New Year's Day) or, if January 1 is on a Sunday, until 7:00 a.m. on Monday if the day that is observed as a national holiday for New Year's Day is on Monday, and (ii) until 7:00 a.m. during certain major event days or weekends as may be designated by the city commission or as may be designated by the city manager following approval by the city commission, under the following conditions:
  - (a) The police department and the code compliance department of the city must be notified by a letter, received no later than 15 business days prior to either: (a) January 1, or (b) the day on which alcohol sales are to be extended, stating that the alcoholic beverage establishment intends to serve alcoholic beverages for on-premises consumption and, if the alcoholic beverage establishment is located on Ocean Drive between 5th Street and 15th Street, for consumption at the establishment's sidewalk cafe until 7:00 a.m.;
  - (b) If deemed reasonably necessary by the police chief, or the police chief's designee, off-duty police officers must be provided at the alcoholic beverage establishment until 7:00 a.m.;
  - (c) There are no pending City Code violations against the alcoholic beverage establishment;
  - (d) No delinquent or past due monies are owed to the city;
  - (e) Outdoor entertainment or open-air entertainment is not allowed;
  - (f) No violation of the city's noise ordinance shall be permitted;
  - (g) No violation of the approved fire code occupancy load shall be permitted;
  - (h) All required city permits and licenses are current;
  - (i) The State License is current; and
  - (j) Any other conditions required by the city manager in order to protect the public health, safety, or welfare.
- (7) Alcoholic beverage establishments set forth in subsections (3) and (5) permitted to remain open to serve alcoholic beverages for on-premises consumption until 5:00 a.m. may continue to serve alcoholic beverages until 6:00 a.m. on the first day of daylight savings time in the spring.
- (8) The city manager may suspend the provisions of subsection (6) at any time to protect the public health, safety, or welfare.
- (9) *Penalties and enforcement.*
  - (a) The following penalties shall be imposed for a violation of this section:

- i. The penalty for the first violation by a person or entity within a 12-month period shall be a civil fine of \$1,000.00;
  - ii. The penalty for the second violation by a person or entity within a 12-month period shall be a civil fine of \$5,000.00;
  - iii. The penalty for the third violation by a person or entity within a 12-month period shall be a civil fine of \$10,000.00;
  - iv. Upon a finding by the special master that four (4) or more violations by a person or entity have occurred within a 12-month period, the city may initiate proceedings to revoke the certificate of use, business tax receipt, or certificate of occupancy of the violator.
  - v. A sidewalk cafe permittee that has been issued four (4) or more violations pursuant to this section or section 82-388 within a permit year shall be prohibited from applying for and obtaining a sidewalk cafe permit for a period of two (2) permit years following the permit year in which the sidewalk cafe permittee incurred the violations.
- (b) Enhanced penalty. The following enhanced penalty shall be imposed, in addition to any mandatory fines set forth in subsection (9)(a) above, for violations of this section:
  - i. The sale of alcoholic beverages in violation of this section must be immediately terminated, upon confirmation by the code compliance department that a violation has occurred.
- (c) Enforcement. The code compliance department shall enforce this section. This shall not preclude other law enforcement agencies or regulatory bodies from any action to assure compliance with this section and all applicable laws. If a code compliance officer (which, as defined in section 70-66, includes a police officer) finds a violation of this section, the code compliance officer shall issue a notice of violation in the manner prescribed in chapter 30 of this Code. The notice shall inform the violator of the nature of the violation, amount of fine for which the violator is liable, instructions and due date for paying the fine, that the violation may be appealed by requesting an administrative hearing before a special master within ten (10) days after service of the notice of violation, and that the failure to appeal the violation within ten (10) days of service shall constitute an admission of the violation and a waiver of the right to a hearing.
- (d) Rights of violators; payment of fine; right to appear; failure to pay civil fine or to appeal; appeals from decisions of the special master.
  - i. A violator who has been served with a notice of violation must elect to either:
    - A. Pay the civil fine in the manner indicated on the notice of violation; or
    - B. Request an administrative hearing before a special master to appeal the notice of violation, which must be requested within ten (10) days of the service of the notice of violation.
  - ii. The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections 30-72 and 30-73 of this Code. Applications for hearings must be accompanied by a fee as approved by a resolution of the city commission, which shall be refunded if the named violator prevails in the appeal.

- iii. If the named violator, after issuance of the notice of violation, fails to pay the civil fine, or fails to timely request an administrative hearing before a special master, the special master may be informed of such failure by report from the officer. The failure of the named violator to appeal the decision of the officer within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing before the special master, and shall be treated as an admission of the violation. for which fines and penalties shall be assessed accordingly.
- iv. A certified copy of an order imposing a fine may be recorded in the public records, and thereafter shall constitute a lien upon any real or personal property owned by the violator, which may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the violator's real or personal property, but shall not be deemed to be a court judgment except for enforcement purposes. On or after the sixty-first (61st) day following the recording of any such lien that remains unpaid, the City may foreclose or otherwise execute upon the lien.
- v. Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.
- vi. The special master shall be prohibited from hearing the merits of the notice of violation or considering the timeliness of a request for an administrative hearing if the violator has failed to request an administrative hearing within ten (10) days of the service of the notice of violation.
- vii. The special master shall not have discretion to alter the penalties prescribed in subsection (9)(a) or (9)(b).

## **SECTION 2. CODIFICATION.**

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code of the City of Miami Beach, Florida. The sections of this Ordinance may be renumbered or re-lettered to accomplish such intention, and, the word "ordinance" may be changed to "section," "article," or other appropriate word.

## **SECTION 3. REPEALER.**

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

## **SECTION 4. SEVERABILITY.**

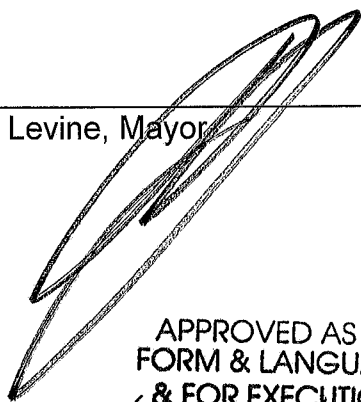
If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.


## **SECTION 5. EFFECTIVE DATE.**

This Ordinance shall take effect ten days following adoption.

**PASSED AND ADOPTED** this 25 day of September, 2017.

ATTEST:

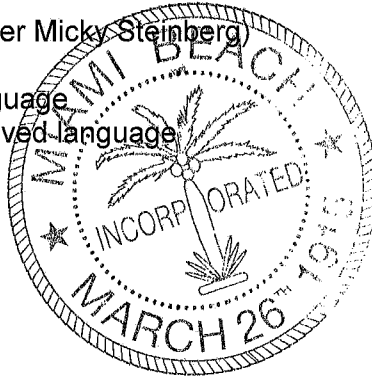
  
Philip Levine, Mayor

  
Rafael E. Granado, City Clerk

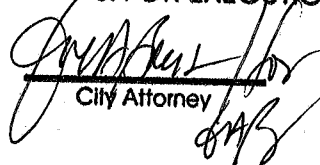
(Sponsored by Commissioner Micky Steinberg)

Underline denotes new language

~~Strikethrough~~ denotes removed language



APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

  
City Attorney

7/18/17  
Date



Ordinances - R5 L

# MIAMI BEACH

## COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission  
FROM: Raul J. Aguila, City Attorney  
DATE: September 13, 2017

**10:55 a.m. Second Reading Public Hearing**

SUBJECT: AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 6 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "ALCOHOLIC BEVERAGES," ARTICLE I, ENTITLED "IN GENERAL," SECTION 6-3 THEREOF, ENTITLED "HOURS OF SALE," TO CHANGE THE HOURS OF PACKAGE LIQUOR SALES AT RETAIL STORES (INCLUDING PACKAGE, GROCERY, CONVENIENCE, AND ANY OTHER RETAIL STORES, AS WELL AS GASOLINE STATIONS/SERVICE STATIONS) AND ALCOHOLIC BEVERAGE ESTABLISHMENTS WITHIN THE CD-2, COMMERCIAL DISTRICT ON WASHINGTON AVENUE AND PENNSYLVANIA AVENUE, BETWEEN 5TH AND 15TH STREET; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

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### RECOMMENDATION

Please see the attached Memorandum and Ordinance.

### ANALYSIS

### Legislative Tracking

Office of the City Attorney

### Sponsor

Commissioner Micky Steinberg

### ATTACHMENTS:

#### Description

- ☐ Memo
- ☐ Ordinance

# MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139,  
www.miamibeachfl.gov

## COMMISSION MEMORANDUM

TO: Mayor Philip Levine and  
Members of the City Commission  
Jimmy L. Morales, City Manager

FROM: Raul Aguila, City Attorney

DATE: September 13, 2017

SUBJECT: **AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 6 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "ALCOHOLIC BEVERAGES," ARTICLE I, ENTITLED "IN GENERAL," SECTION 6-3 THEREOF, ENTITLED "HOURS OF SALE," TO CHANGE THE HOURS OF PACKAGE LIQUOR SALES AT RETAIL STORES (INCLUDING PACKAGE, GROCERY, CONVENIENCE, AND ANY OTHER RETAIL STORES, AS WELL AS GASOLINE STATIONS/SERVICE STATIONS) AND ALCOHOLIC BEVERAGE ESTABLISHMENTS WITHIN THE CD-2, COMMERCIAL DISTRICT ON WASHINGTON AVENUE AND PENNSYLVANIA AVENUE, BETWEEN 5<sup>TH</sup> AND 15<sup>TH</sup> STREET; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

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### **ANALYSIS**

The attached Ordinance, sponsored by Commissioner Micky Steinberg, is hereby submitted for consideration by the Mayor and City Commission.

On November 9, 2016, the Mayor and City Commission adopted Ordinance No.: 2016-4058, which prohibited package liquor sales at retail stores (including package, grocery, convenience, and any other retail stores, as well as gasoline stations/service stations) and alcoholic beverage establishments before 10:00 a.m. (instead of 8:00 a.m.) each day.

On March 1, 2017, the City Commission reviewed a prior version of this Ordinance, which proposed to prohibit package liquor sales before 9:00 a.m. However, following a discussion on this item, the City Commission directed staff to revise the proposed Ordinance to prohibit package liquor sales before 8:00 a.m.



Memorandum on Alcohol Sales 10 a.m.to 10 p.m. in CD-2  
September 13, 2017  
Page 2 of 2

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On April 26, 2017, the Mayor and City Commission reviewed the revised Ordinance, and directed the City Attorney's Office to prepare a revised drafted Ordinance that further restricted the hours of package liquor sales in the MXE district, citywide between 10:00 a.m. and 10:00 p.m. This ordinance was enacted on June 28, 2017.

The attached ordinance would extend the prohibition of 10:00 a.m. to 10:00 p.m. to the CD-2, Commercial District 2, between Washington Avenue and Pennsylvania Avenue between 5<sup>th</sup> and 15<sup>th</sup> Streets. First Reading was held on July 26, 2017 and was moved without modification.

**RECOMMENDATION**

Enact the attached ordinance at Second Reading, Public Hearing.

# **EXHIBIT G**



City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139,  
www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Mayor Philip Levine and  
Members of the City Commission  
Jimmy L. Morales, City Manager

FROM: Raul Aguila, City Attorney

DATE: October 18, 2107 Second Reading

SUBJECT: **AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 6 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "ALCOHOLIC BEVERAGES," ARTICLE I, ENTITLED "IN GENERAL," SECTION 6-3 THEREOF, ENTITLED "HOURS OF SALE," TO PROHIBIT PACKAGE LIQUOR SALES AT RETAIL STORES (INCLUDING PACKAGE, GROCERY, CONVENIENCE, AND ANY OTHER RETAIL STORES, AS WELL AS GASOLINE STATIONS/SERVICE STATIONS) AND ALCOHOLIC BEVERAGE ESTABLISHMENTS WITHIN THE MXE MIXED USE ENTERTAINMENT DISTRICT TO CHANGE THE HOUR AT WHICH TO CEASE SELLING ALCOHOL; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

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**ANALYSIS**

The attached Ordinance, sponsored by Vice Mayor Ricky Arriola, is hereby submitted for consideration by the Mayor and City Commission.

On November 9, 2016, the Mayor and City Commission adopted Ordinance No.: 2016-4058, which prohibited package liquor sales at retail stores (including package, grocery, convenience, and any other retail stores, as well as gasoline stations/service stations) and alcoholic beverage establishments before 10:00 a.m. (instead of 8:00 a.m.) each day.

On March 1, 2017, the City Commission reviewed a prior version of this Ordinance, which proposed to prohibit package liquor sales before 9:00 a.m. However, following a discussion on this item, the City Commission directed staff to revise the proposed Ordinance to prohibit package liquor sales before 8:00 a.m.

Memorandum on Alcohol Sales 8 p.m. in MXE  
October 18, 2017  
Page 2 of 2

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On April 26, 2017, the Mayor and City Commission reviewed the revised Ordinance, and directed the City Attorney's Office to prepare a revised drafted Ordinance that further restricted the hours of package liquor sales in the MXE district, citywide between 10:00 a.m. and 10:00 p.m. This ordinance was enacted on June 28, 2017.

Since the enactment of Ordinance No. 2016-4058, the Mayor and City Commission have determined that it is in the best interest of the City, and it serves the health, safety, and welfare of the City's residents and visitors, to prohibit package liquor sales at retail stores (including package, grocery, convenience, and any other retail stores, as well as gasoline service/filling stations) and alcoholic beverage establishments before 8:00 a.m. (instead of 10:00 a.m.) each day. Notwithstanding the above, the Mayor and City Commission approved an Ordinance on June 7, 2017, restricting package liquor sales in the MXE district from the hours of 10:00 a.m. until 10:00 p.m., only.

As there remain issues in the MXE district, and as it appears the sale of alcohol from retail establishments in the MXE district, at night, often causes problems on Ocean Drive, Collins Avenue and Washington Avenue, the attached ordinance proposes to cease alcohol sales at 8:00 p.m.

On September 13, 2017, the City Commission approved this ordinance at first reading.

**RECOMMENDATION**

Approve at Second Reading, Public Hearing.

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 6 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "ALCOHOLIC BEVERAGES," ARTICLE I, ENTITLED "IN GENERAL," SECTION 6-3 THEREOF, ENTITLED "HOURS OF SALE/VIOLATIONS," TO AMEND THE HOURS OF PACKAGE SALES OF ALCOHOLIC BEVERAGES (WHICH INCLUDE SALES OF ALCOHOL FOR OFF-PREMISES CONSUMPTION) IN THE MXE MIXED USE ENTERTAINMENT DISTRICT, AND IN THE ADJOINING CD-2 COMMERCIAL, MEDIUM INTENSITY DISTRICT; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

**WHEREAS**, the City of Miami Beach ("City") regulates the location, size, hours of operation, and minimum patron age for uses that permit the sale and consumption of alcoholic beverages in Chapter 6 of the City Code, entitled "Alcoholic Beverages"; and

**WHEREAS**, the Mayor and City Commission have determined that it is in the best interest of the City, and it serves the health, safety, and welfare of the City's residents and visitors, to prohibit package sales of alcoholic beverages (which include sales of alcohol for off-premises consumption) after 8 00 p m. each day, in the MXE district; along Washington Avenue in the CD-2 commercial, medium intensity district adjoining the MXE district; and along the east side of Collins Avenue (between 73rd and 75th Streets) in the CD-2 commercial, medium intensity district adjoining the MXE district; and

**WHEREAS**, this Ordinance strikes a balance between (i) the public safety concerns associated with the sale of alcoholic beverages, on the one hand, and (ii) the convenience of the City's residents and visitors who desire to purchase alcoholic beverages, as well as the economic vitality of the City's retail stores, on the other hand; and

**WHEREAS**, State law expressly grants the City the authority to establish its own regulations for the time for sale of alcoholic or intoxicating beverages; and

**WHEREAS**, pursuant to Section 562.14, Florida Statutes, a municipality may, by ordinance, establish hours of sale for alcoholic beverages; and

**WHEREAS**, Florida courts have rejected equal protection and due process challenges to Section 562.14, Florida Statutes (*See Wednesday Night, Inc. v. City of Fort Lauderdale* (Fla. 1973)); and

**WHEREAS**, Florida Courts have determined that it is within the police power and authority for a municipality to change the hours of regulation of alcoholic beverages, because municipalities have the statutory authority under Section 562 14, Florida Statutes, to restrict the sale of alcohol, additionally, a municipal ordinance regulating the hours of sale of alcoholic beverages may be applied to a property incorporated later into the municipality by annexation. *Village of North Palm Beach v S & H Foster's, Inc* , 80 So. 3d 433 (Fla. 4th DCA 2012), and

**WHEREAS**, in *State ex rel Floyd v Noel* (Fla. 1936), the Florida Supreme Court recognized that “[i]t is so well settled that no citation of authority is required to support the statement that a municipality exercising the powers inherent in municipal corporations may reasonably regulate the sale of intoxicating liquors and in providing such reasonable regulations may prohibit the sale of such liquors within certain hours, and also may prohibit the sale of liquors within certain zones”; and

**WHEREAS**, the Florida Attorney General has opined that a municipality may regulate (1) the hours of sale, (2) zoning of locations in which alcoholic beverages may be sold, and (3) the sanitary conditions under which alcoholic beverages may be dispensed or served to the public Florida AGO 059-73 (1959); and

**WHEREAS**, in fact, the Florida Attorney General has opined that different hours may be provided for in a municipal ordinance, provided there is reasonable relation to the health, safety, and morals of the community. Op Att’y Gen. Fla , p. 497 (1950); and

**WHEREAS**, Florida courts have consistently held that alcoholic beverage establishments are not entitled to grandfather status as to hours of sale for alcoholic beverages. (*See Village of North Palm Beach v. S & H Foster’s, Inc.* (Fla 4th DCA 2012); *Other Place of Miami, Inc. v City of Hialeah Gardens* (Fla 3d DCA 1978)); and

**WHEREAS**, injunctive relief is not available against the enforcement of a municipal ordinance regulating the time at which alcoholic beverages may be sold, because municipalities have the statutory authority to set times for sale of alcoholic beverages. *Id* ; *Playpen S., Inc. v. City of Oakland Park*, 396 So 2d 830 (Fla. 4th DCA 1981); and

**WHEREAS**, Florida Courts have ruled that hours of operation are not a property right. *S. Daytona Rests., Inc. v. City of S. Daytona*, 186 So. 2d 78 (Fla. 1st DCA 1966), and

**WHEREAS**, the amendments set forth below are necessary to accomplish the objectives identified above

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:**

**SECTION 1.** Section 6-3, entitled “Hours of sale/violations,” of Article I, of Chapter 6 of the City Code of the City of Miami Beach is hereby amended as follows

**CHAPTER 6**  
**ALCOHOLIC BEVERAGES**  
**ARTICLE I. In General**

\* \* \*

**Sec. 6-3. Hours of sale/violations.**

- (a) The hours of sale of alcoholic beverages, whether as a permitted main or accessory use, shall require a State License, and shall be according to the following schedule:
  - (1) *Retail stores for package sales only—Off-premises consumption* Vendors may make sales of alcohol only for off-premises consumption between the hours of 8.00 a.m and midnight.

- A. Notwithstanding subsection (a)(1), vendors located in the MXE mixed use entertainment district, and the that portion of the CD-2, commercial, medium intensity district adjoining the MXE district between along Washington Avenue and Pennsylvania Avenue, from between 5th Street to and 16th Street, and that portion of the CD-2 district adjoining the MXE district along the east side of Collins Avenue (between 73rd and 75th Streets) may make sales of alcohol only for off-premises consumption between the hours of 9:00 10.00 a.m and ~~10:00~~ 8:00 p.m
- (2) *Retail stores, including grocery, convenience stores, and gasoline service/filling stations.* Retail stores, including grocery, convenience stores, and gasoline service/filling stations, which primarily offer for sale products other than alcoholic beverages may only make sales of beer and wine only for off-premises consumption between the hours of 8:00 a.m. and midnight
- A. Notwithstanding subsection (a)(2), retail stores, including grocery, convenience stores, and gasoline service/filling stations, that are located in the MXE mixed use entertainment district, and the that portion of the CD-2 commercial, mixed use-2 medium intensity district adjoining the MXE district, on along Washington Avenue and Pennsylvania Avenue, between 5th Street and 15th 16th Street, and that portion of the CD-2 district adjoining the MXE district along the east side of Collins Avenue (between 73rd and 75th Streets), and which primarily offer for sale products other than alcoholic beverages may only make sales of beer and wine only between the hours of 10:00 a.m. and ~~10:00~~ 8.00 p.m.
- (3) *Alcoholic beverage establishments.* All alcoholic beverage establishments with state licensure—On-premises consumption only, may make sales of alcohol between the hours of 8:00 a.m. and 5:00 a.m.
- (a) *Restaurants not operating as dance halls or entertainment establishments.* Restaurants with full kitchen facilities, serving full meals, licensed as alcoholic beverage establishments, but not operating as dance halls or entertainment establishments, may remain open 24 hours a day, however, alcoholic beverages may not be offered for sale or on-premises consumption between the hours of 5:00 a.m. and 8:00 a.m.
- (b) *Restaurants also operating as dance halls or entertainment establishments.* Restaurants with full kitchen facilities, serving full meals, licensed as alcoholic beverage establishments, and also operating as dance halls, or entertainment establishments, may remain open 24 hours a day; however, alcoholic beverages may not be offered for sale or on-premises consumption between the hours of 5:00 a.m. and 8:00 a.m., and dancing and entertainment shall not be conducted between the hours of 5:00 a.m. and 10:00 a.m.
- (c) *Other alcoholic beverage establishments.* Other alcoholic beverage establishments, not containing restaurants with full kitchen facilities, shall close at 5:00 a.m. and remain closed. No patron or other persons, other than those employed by the vendor may remain on the premises between the hours of 5:00 a.m. and 8:00 a.m.
- (d) *Sidewalk cafes.* Notwithstanding the provisions of subsections (3)(a) through (c), alcoholic beverages shall not be offered for sale or consumption at sidewalk cafes, as defined in section 82-366 of this Code and as otherwise permitted by the City in accordance with chapter 82, article IV, division 5, subdivision II of this Code (as

may be amended from time to time), between the hours of 1 30 a.m. and 8 00 a m , and shall not be consumed at sidewalk cafes between the hours of 2:00 a.m and 8:00 a.m. No variances may be granted from the provisions of this section 6-3(3)(d) as to the hours of sale or consumption of alcoholic beverages at sidewalk cafes

Note: For purposes of this section, full kitchen facilities shall mean having commercial grade burners, ovens, and refrigeration units of sufficient size and quantity to accommodate the occupancy content of the establishment. Full kitchen facilities must contain grease trap interceptors, and meet all applicable city, county, and state codes

- (4) *Off-premises package sales by alcoholic beverage establishments* Off-premises package sales associated with alcoholic beverage establishments other than retail stores shall be permitted between the hours of 8 00 a m. and midnight

- A. Notwithstanding subsection (a)(4), off-premises package sales associated with alcoholic beverage establishments, other than retail stores, that are located in the MXE mixed use entertainment district, ~~and the that portion of the CD-2, commercial, medium intensity district 2, on adjoining the MXE district along Washington Avenue and Pennsylvania Avenue, between 5th Street and 15th 16th Street, and that portion of the CD-2 district adjoining the MXE district along the east side of Collins Avenue (between 73rd and 75th Streets)~~ shall be permitted only between the hours of 10 00 a m. and ~~40-00~~ 8:00 p.m.

\* \* \*

## **SECTION 2. CODIFICATION.**

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code of the City of Miami Beach, Florida. The sections of this Ordinance may be renumbered or re-lettered to accomplish such intention, and, the word "ordinance" may be changed to "section," "article," or other appropriate word

## **SECTION 3. REPEALER.**

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

## **SECTION 4. SEVERABILITY.**

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.



**SECTION 5. EFFECTIVE DATE.**

This Ordinance shall take effect ten days following adoption.

**PASSED** and **ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2017.

**ATTEST:**

\_\_\_\_\_  
Rafael E. Granado  
City Clerk

\_\_\_\_\_  
Philip Levine  
Mayor

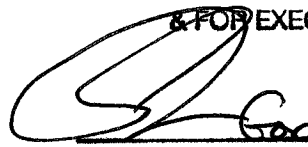
(Sponsored by Vice-Mayor Ricky Arriola and co-sponsored by Mayor Philip Levine)

Underline denotes new language

~~Strikethrough~~ denotes removed language

F:\ATTO\KALN\ORDINANCES\Package liquor sales - 8PM in MXE and CD2.docx

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

  
\_\_\_\_\_  
City Attorney

10/13/17  
\_\_\_\_\_  
Date

NK

# **EXHIBIT H**

SE #CASE #

**CITY OF MIAMI BEACH  
CODE COMPLIANCE DEPARTMENT**

555 17<sup>th</sup> Street  
Miami Beach, FL 33139  
PHONE (305) 673-7555 FAX (305) 678-7012

**NOTICE OF CITY CODE VIOLATION AND FINE**

ITE SITE ADDRESS: 865 Collins ave D  
VIOLATION ISSUE DATE: 12/21/16 TIME: 8:39 AM.  
SSI ISSUED TO: Beach Blitz CO.  
MAIL MAILING ADDRESS: 865 Collins ave, D Miami Beach

DAY OF THE WEEK: SU M T W TH F S

INSPECTION OF THE ABOVE PREMISES ON THIS DATE  
REVEALED YOU ARE IN VIOLATION OF SECTION:

6-3(a)(1)

O OF THE MIAMI BEACH CITY CODE BY:

|                                      | FINE          |
|--------------------------------------|---------------|
| <u>offering alcoholic beverages</u>  | ( ) \$25.00   |
| <u>in a retail establishment for</u> | ( ) \$50.00   |
| <u>package sales between</u>         | ( ) \$75.00   |
| <u>the hours of midnight</u>         | ( ) \$100.00  |
| <u>and 10:00am on any</u>            | ( ) \$150.00  |
| <u>day of the week.</u>              | ( ) \$200.00  |
| <u>You can comply by ceasing</u>     | ( ) \$250.00  |
| <u>immediately illegal alcoholic</u> | ( ) \$350.00  |
| <u>beverage sales upon receipt</u>   | (X) \$1000.00 |
| <u>of this notice and paying</u>     | ( ) \$        |
| <u>a civil fine of:</u>              |               |

TOTAL FINES 1000

COMMENTS: 1st offense

Tax# RL-10005692

CODE COMPLIANCE OFFICER (SIGN)

Ofc. Negrón #1020

CODE COMPLIANCE OFFICER (PRINT)

@miamibeachfl.gov

RECEIVED BY (Signature): [Signature]

RECEIVED BY (Print Name): NATASHA MUCERIWA

DATE: 12/21/16 TIME: 8:39 AM.

**IMPORTANT APPEAL AND ADA INFORMATION ON BACK**

**NOTICE OF CITY CODE VIOLATION AND FINE**

**FINE(S) MUST BE PAID WITHIN 72 HOURS:**

**BY CHECK OR MONEY ORDER  
MAKE CHECKS & MONEY ORDERS PAYABLE TO THE  
CITY OF MIAMI BEACH.**

**MAILED TO:**

**CITY OF MIAMI BEACH  
CODE COMPLIANCE DEPARTMENT  
555 17<sup>TH</sup> STREET  
MIAMI BEACH, FL. 33139**

**CASH PAYMENTS ACCEPTED IN PERSON ONLY:**

**AT MIAMI BEACH CITY HALL  
1700 CONVENTION CENTER DRIVE, 1<sup>ST</sup> FLOOR  
MIAMI BEACH, FL 33139**

**APPEAL PROCESS:**

FINES MAY BE APPEALED WITHIN TWENTY (20) DAYS  
OF RECEIPT OF THIS NOTICE BY A WRITTEN  
REQUEST TO THE CLERK OF THE SPECIAL MASTER  
AT THE ABOVE ADDRESS. A \$100.00 CHECK TO  
COVER THE COST OF THE HEARING MUST BE  
INCLUDED.

FAILURE TO PAY THE FINE OR APPEAL IN THE  
MANNER INDICATED ABOVE SHALL CONSTITUTE A  
WAIVER OF THE VIOLATOR'S RIGHT TO CONTEST  
THE CITATION AND SHALL BE TREATED AS AN  
ADMISSION OF THE VIOLATION.

THE CITY MAY INSTITUTE PROCEEDINGS IN A COURT  
OF COMPETENT JURISDICTION TO COMPEL  
PAYMENT OF CIVIL FINES.

THE CERTIFIED COPY OF THE ORDER IMPOSING CIVIL  
FINES MAY BE RECORDED IN THE PUBLIC RECORDS  
AND THEREAFTER SHALL CONSTITUTE A LIEN UPON  
ANY REAL OR PERSONAL PROPERTY OWNED BY THE  
VIOLATOR.

**ADA INFORMATION**

To request this material in accessible format, sign  
language interpreters, information on access for  
persons with disabilities, and/or any  
accommodation to review any document or  
participate in any city-sponsored proceeding,  
please contact 305 604-2489 or 1-800-955-8770  
(voice), 305 673-7524 (fax), 305 673-7218 or 1-  
800-955-8771 (TTY), 1-877-955-5334 (STS), 1-  
877-955-8773 (Spanish) five days in advance to  
initiate your request. TTY users may also call 711  
(Florida Relay Service).

# **EXHIBIT I**

## Notice of Violation

|                               |                                                                                 |                               |                          |
|-------------------------------|---------------------------------------------------------------------------------|-------------------------------|--------------------------|
| <b>Violation Notice Date:</b> | Date 12/21/2016                                                                 | Time 08:39 AM                 | Case Number CC2016-01704 |
| <b>Address of Violation:</b>  | 865 COLLINS AVE                                                                 |                               | Unit D                   |
| <b>Parcel Number:</b>         | 0242032580040                                                                   |                               |                          |
| <b>Legal Description:</b>     | THE SKYLARK CONDO UNIT D UNDIV 3.167% INT IN COMMON ELEMENTS OFF REC 20580-1711 |                               |                          |
| <b>Violator Name:</b>         | BEACH BLITZ CO.                                                                 |                               |                          |
| <b>Mailing Address:</b>       | 13441 NW 5TH CT                                                                 | City and State PLANTATION, FL | Zip Code 33325           |

The City of Miami Beach Code Compliance Department has determined that the above Property has violated the Miami Beach Code of Laws and Ordinances (the "City Code"). This violation is the 1st offense, and this Notice of Violation carries a fine (and other monetary charges) of \$1,000.00. Specifically, Code Compliance Officer Treisa Smith has found there to be a violation(s) of the City Code, which is/are:

Section 6-3(1): Retail stores for package sales only may make sales of alcohol only for off-premises consumption between the hours of 8:00 a.m. and midnight.

You can comply by ceasing immediately illegal alcoholic beverage sales upon receipt of this notice and paying a civil fine of:

1st Offense \$1,000.00 within a (12) twelve month period.

2nd Offense \$5,000.00 within a (12) twelve month period

3rd Offense \$10,000.00 within a (12) twelve month period

4th Offense upon a finding by the Special Master that four (4) or more violations by a person or entity have occurred within a twelve month period, the City may initiate proceedings to revoke the Certificate of Use, Business Tax Receipt or the Certificate of Occupancy of the violator.

**Fine(s) must be paid within 72 hours** of receipt of the violation. A copy of the violation must accompany the payment. Please make checks or money orders payable to: City of Miami Beach. Payment can be mailed or taken in person to: The Finance Department (Cashier), 1700 Convention Center Drive, 1st floor, Miami Beach, FL 33139.

Fine(s) and/or violations may be appealed within days of receipt of the notice of violation. To appeal a fine and/or violation, submit a written request for an appeal hearing to the Clerk of the Special Master - 1700 Convention Center Dr., Miami Beach, FL 33139. A check for \$100 (administrative charges) must accompany the request along with the case number.

Failure to pay the fine or request an appeal hearing in the manner indicated above shall constitute a waiver of the violator's right to contest the citation and shall be treated as an admission of the violation.

The City may institute proceedings in a court of competent jurisdiction to compile payment of civil fine(s). The certified copy of the order imposing civil fine(s) may be recorded in the public records and thereafter shall constitute a lien upon any real or personal property owned by the violator.

Section 6-3(1): Retail stores for package sales only may make sales of alcohol only for off-premises consumption between the hours of 8:00 a.m. and midnight.

You can comply by ceasing immediately illegal alcoholic beverage sales upon receipt of this notice and paying a civil fine of:

1st Offense \$1,000.00 within a (12) twelve month period.

2nd Offense \$5,000.00 within a (12) twelve month period

3rd Offense \$10,000.00 within a (12) twelve month period

4th Offense upon a finding by the Special Master that four (4) or more violations by a person or entity have occurred within a twelve month period, the City may initiate proceedings to revoke the Certificate of Use, Business Tax Receipt or the Certificate of Occupancy of the violator.

# **EXHIBIT J**

SE #

0-1017-08102

CITY OF MIAMI BEACH  
CODE COMPLIANCE DIVISION  
555 17<sup>th</sup> Street  
Miami Beach, FL 33139  
(305) 673-7555 FAX (305) 673-7012

**NOTICE OF CITY CODE VIOLATION AND FINE**

SITE ADDRESS: 805 Collins

VIOLATION ISSUE DATE: 6/2/17 TIME: 10:50

ISSUED

TO: Beach, FL 112, 11/11/17

Mailing Address: 12441 NW 51st Ave  
Plantation, FL 33324

DAY OF THE WEEK: S U M T W T H F S

INSPECTION OF THE ABOVE PREMISES THIS DATE  
REVEALED YOU ARE IN VIOLATION OF SECTION:

106 (b) (1)(a)

OF THE MIAMI BEACH CITY CODE BY:

|                            | FINE          |
|----------------------------|---------------|
| Not with the city code     | ( ) \$25.00   |
| Violation of the city code | ( ) \$50.00   |
| FIXE                       | ( ) \$75.00   |
| Violation of the city code | ( ) \$100.00  |
| Violation of the city code | ( ) \$150.00  |
| Violation of the city code | ( ) \$200.00  |
| Violation of the city code | ( ) \$250.00  |
| Violation of the city code | ( ) \$350.00  |
| Violation of the city code | ( ) \$500.00  |
| Violation of the city code | (X) \$1000.00 |
|                            | ( )           |

TOTAL FINES

1100

COMMENTS:

Area of violation marked with

CODE COMPLIANCE OFFICER (SIGN)

Frank Valdes

CODE COMPLIANCE OFFICER (PRINT)

RECEIVED BY (Signature):

RECEIVED BY (Print Name):

DATE:

6/2/17

TIME:

IMPORTANT APPEAL AND INFORMATION

# **EXHIBIT K**



## Code Compliance Department

555 - 17th Street

Miami Beach, Florida 33139

Tele: 305.673.7555

Fax: 305.673.7012

## Notice of Violation

|                        |                               |                               |                          |
|------------------------|-------------------------------|-------------------------------|--------------------------|
| Violation Notice Date: | Date 6/25/2017                | Time 11:30PM                  | Case Number CC2017-03103 |
| Address of Violation:  | 865 COLLINS AVE               |                               | Unit D                   |
| Parcel Number:         | 0242032580001                 |                               |                          |
| Legal Description:     |                               |                               |                          |
| Violator Name:         | BEACH BLITZ CO. % DOAR, DORON |                               |                          |
| Mailing Address:       | 13441 NW 5TH CT               | City and State PLANTATION, FL | Zip Code 33325           |

The City of Miami Beach Code Compliance Department has determined that the above Property has violated the Miami Beach Code of Laws and Ordinances (the "City Code"). This violation is the 1st offense, and this Notice of Violation carries a fine (and other monetary charges) of \$1,000.00. Specifically, Code Compliance Officer Enock Valerus has found there to be a violation(s) of the City Code, which is/are:

Article V, Section 102-377. Any person failing to obtain a Business Tax Receipt as required by this article.

Reference: Failure to obtain Business Tax Receipt

Cease immediately until you obtain a Business Tax Receipt from the City of Miami Beach.

A Violation of this Section shall be subject to the following fines:

Any person who shall carry on or conduct any business for which a tax receipt is required by this article without first obtaining such tax receipt shall be issued a violation for the first offense, which shall have a civil fine of \$1000.00. The enhanced enforcement for this violation shall be pursuant to subsection 102-377(d).

In addition to the above a continued violation of subsection 102-377(a) for a period of thirty (30) days or more without first obtaining a tax receipt, shall be punished by imprisonment not to exceed 60 days or by imposition of a fine not to exceed \$500.00 or both.

**Fine(s) must be paid within 72 hours** of receipt of the violation. A copy of the violation must accompany the payment. Please make checks or money orders payable to: City of Miami Beach. Payment can be mailed or taken in person to: The Finance Department (Cashier), 1700 Convention Center Drive, 1st floor, Miami Beach, FL 33139.

Fine(s) and/or violations may be appealed within **Ten (10)** days of receipt of the notice of violation. To appeal a fine and/or violation, submit a written request for an appeal hearing to the Clerk of the Special Master - 1700 Convention Center Dr., Miami Beach, FL 33139. A check for \$100 (administrative charges) must accompany the request along with the case number.

Failure to pay the fine or request an appeal hearing in the manner indicated above shall constitute a waiver of the violator's right to contest the citation and shall be treated as an admission of the violation.

The City may institute proceedings in a court of competent jurisdiction to compile payment of civil fine(s). The certified copy of the order imposing civil fine(s) may be recorded in the public records and thereafter shall constitute a lien upon any real or personal property owned by the violator.

|                                 |                 |                               |               |     |                      |                |
|---------------------------------|-----------------|-------------------------------|---------------|-----|----------------------|----------------|
| Issuing Code Compliance Officer | Name:           | Enock Valerus                 | Badge #       | 740 | Phone and Extension: | (305) 673-7555 |
|                                 | Email:          | EnockValerus@miamibeachfl.gov |               |     |                      |                |
| Received By                     | Compliance Date | Received Date                 | Received Time |     |                      |                |
| Other                           | 06/26/2017      | 06/25/2017                    | 11:30PM       |     |                      |                |

## Code Compliance Department

555 - 17th Street

Miami Beach, Florida 33139

Tele: 305.673.7555

Fax: 305.673.7012

## Notice of Violation

|                        |                               |                               |                          |
|------------------------|-------------------------------|-------------------------------|--------------------------|
| Violation Notice Date: | Date 6/25/2017                | Time 11:30PM                  | Case Number CC2017-03103 |
| Address of Violation:  | 865 COLLINS AVE               |                               | Unit D                   |
| Parcel Number:         | 0242032580001                 |                               |                          |
| Legal Description:     |                               |                               |                          |
| Violator Name:         | BEACH BLITZ CO. % DOAR, DORON |                               |                          |
| Mailing Address:       | 13441 NW 5TH CT               | City and State PLANTATION, FL | Zip Code 33325           |

The City of Miami Beach Code Compliance Department has determined that the above Property has violated the Miami Beach Code of Laws and Ordinances (the "City Code"). This violation is the 1st offense, and this Notice of Violation carries a fine (and other monetary charges) of \$1,000.00. Specifically, Code Compliance Officer Enock Valerus has found there to be a violation(s) of the City Code, which is/are:

Article V, Section 102-377. Any person failing to obtain a Business Tax Receipt as required by this article.

Reference: Failure to obtain Business Tax Receipt

Cease immediately until you obtain a Business Tax Receipt from the City of Miami Beach.

A Violation of this Section shall be subject to the following fines:

Any person who shall carry on or conduct any business for which a tax receipt is required by this article without first obtaining such tax receipt shall be issued a violation for the first offense, which shall have a civil fine of \$1000.00. The enhanced enforcement for this violation shall be pursuant to subsection 102-377(d).

In addition to the above a continued violation of subsection 102-377(a) for a period of thirty (30) days or more without first obtaining a tax receipt, shall be punished by imprisonment not to exceed 60 days or by imposition of a fine not to exceed \$500.00 or both.

**Fine(s) must be paid within 72 hours** of receipt of the violation. A copy of the violation must accompany the payment. Please make checks or money orders payable to: City of Miami Beach. Payment can be mailed or taken in person to: The Finance Department (Cashier), 1700 Convention Center Drive, 1st floor, Miami Beach, FL 33139.

Fine(s) and/or violations may be appealed within **Ten (10)** days of receipt of the notice of violation. To appeal a fine and/or violation, submit a written request for an appeal hearing to the Clerk of the Special Master - 1700 Convention Center Dr., Miami Beach, FL 33139. A check for \$100 (administrative charges) must accompany the request along with the case number.

Failure to pay the fine or request an appeal hearing in the manner indicated above shall constitute a waiver of the violator's right to contest the citation and shall be treated as an admission of the violation.

The City may institute proceedings in a court of competent jurisdiction to compile payment of civil fine(s). The certified copy of the order imposing civil fine(s) may be recorded in the public records and thereafter shall constitute a lien upon any real or personal property owned by the violator.

|                                 |                 |                               |               |     |                      |                |
|---------------------------------|-----------------|-------------------------------|---------------|-----|----------------------|----------------|
| Issuing Code Compliance Officer | Name:           | Enock Valerus                 | Badge #       | 740 | Phone and Extension: | (305) 673-7555 |
|                                 | Email:          | EnockValerus@miamibeachfl.gov |               |     |                      |                |
| Received By                     | Compliance Date | Received Date                 | Received Time |     |                      |                |
| Other                           | 06/26/2017      | 06/25/2017                    | 11:30PM       |     |                      |                |

# **EXHIBIT L**

IN AND BEFORE THE SPECIAL MASTER OF  
THE CITY OF MIAMI BEACH

CODE VIOLATION CASE NOS. CC2016-01704  
CC2017-03102  
CC2017-03103

BEACH BLITZ, CO. c/o  
DOAR, DORON,

Petitioner,

vs.

CITY OF MIAMI BEACH,

Respondent.

---

**AGREED ORDER**

This cause came before the Special Master of the City of Miami Beach, upon stipulation and agreement of Harold Rosen, Esquire, on behalf of Beach Blitz, Co. c/o Doar, Doron, 865 Collins Avenue, #D, Miami Beach (hereinafter referenced as the "Petitioner"), and Deputy City Attorney, Aleksandr Boksner, counsel to Respondent, the City of Miami Beach (hereinafter referenced as the "City"), regarding the above-styled appeal before the Special Master of certain violation(s) against the real property which is located at 865 Collins Avenue, #D, Miami Beach, Florida (the "Property") and the Code Enforcement matter referenced below in this Agreed Order. Respective counsel to City and the Petitioner having agreed to the terms of this Order,

IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. Petitioner, Beach Blitz Co. c/o Doron Doar admit to the legitimacy of the violation charged under Citation/Violation Nos. CC2016-01704, CC2017-03102 and CC2017-03103, and recognize that the violation was properly issued by the City of Miami Beach.


Beach Blitz, Co. and Doron Doar vs. City of Miami Beach  
Citation/Violation Nos. CC2016-01704, CC2017-03102 and CC2017-03103  
Agreed Order  
Page 2 of 2

---

2. Citation/Violation Nos. CC2016-01704, CC2017-03102 and CC2017-03103 are hereby AFFIRMED. The Parties stipulate that a factual basis exists to establish this offense violation by the appropriate legal standard for this proceeding, and the City shall not need to establish the legitimacy.

3. The Petitioner shall be assessed a fine in the amount of One Thousand (\$1,000.00) Dollars, which shall be due within thirty (30) days of the entry of this Agreed Order.

DONE AND ORDERED by the Special Master of the City of Miami Beach, this 28<sup>th</sup> day of September, 2017.

  
\_\_\_\_\_  
SPECIAL MASTER  
As Special Master for the City of Miami Beach

Copies furnished to:

Aleksandr Boksner, First Assistant City Attorney at sandracaba@miamibeachfl.gov  
Harold Rosen, 407 Lincoln Road, Suite 2A, Miami Beach, Florida 33139

8.22.17  
PAID  
CH # 2238  
1000.00

# **EXHIBIT M**



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## Search Results

| Case Number                  | Address         | Type                | Status | District | Opened     | Closed     | Project |
|------------------------------|-----------------|---------------------|--------|----------|------------|------------|---------|
| <a href="#">CC2017-03102</a> | 865 COLLINS AVE | City Code Violation | Closed | MXE      | 06/25/2017 | 10/04/2017 |         |

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Displaying items 1 - 1 of 1

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## Search Results

| Case Number                  | Address         | Type                | Status | District | Opened     | Closed     | Project |
|------------------------------|-----------------|---------------------|--------|----------|------------|------------|---------|
| <a href="#">CC2017-03103</a> | 865 COLLINS AVE | City Code Violation | Closed | MXE      | 06/25/2017 | 10/04/2017 |         |

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Displaying items 1 - 1 of 1

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# **EXHIBIT N**



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## Search Results

| Case Number                  | Address         | Type                | Status    | District | Opened     | Closed     | Project |
|------------------------------|-----------------|---------------------|-----------|----------|------------|------------|---------|
| <a href="#">CC2016-01704</a> | 865 COLLINS AVE | City Code Violation | Fine Paid | MXE      | 12/22/2016 | 10/13/2017 |         |

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Displaying items 1 - 1 of 1

[New Search](#)

# **EXHIBIT O**

Code Compliance Department  
555 - 17th Street  
Miami Beach, Florida 33139  
Tele: 305.673.7555  
Fax: 305.673.7012

## Notice of Violation

|                               |                                                                                 |                                   |                          |
|-------------------------------|---------------------------------------------------------------------------------|-----------------------------------|--------------------------|
| <b>Violation Notice Date:</b> | Date 10/6/2017                                                                  | Time 5:00 PM                      | Case Number CC2017-03686 |
| <b>Address of Violation:</b>  | 865 COLLINS AVE                                                                 |                                   |                          |
| <b>Parcel Number:</b>         | 0242032560040                                                                   |                                   |                          |
| <b>Legal Description:</b>     | THE SKYLARK CONDO UNIT D UNDIV 3 167% INT IN COMMON ELEMENTS OFF REC 20580-1711 |                                   |                          |
| <b>Violator Name:</b>         | Beach Blitz Co. DBA Ocean 9 Liquor O/O Doron Dear                               |                                   |                          |
| <b>Mailing Address:</b>       | 13441 NW 5th Court                                                              | City and State Ft. Lauderdale, FL | Zip Code 33325           |

The City of Miami Beach Code Compliance Department has determined that the above Property has violated the Miami Beach Code of Laws and Ordinances (the "City Code"). This violation is the 2nd offense, and this Notice of Violation carries a fine (and other monetary charges) of \$500.00. Specifically, Code Compliance Officer Manny Bastos has found there to be a violation(s) of the City Code, which is/are:

Article V, Section 102-377. Any person failing to obtain a Business Tax Receipt as required by this article.

**Reference:** Failing to obtain Business Tax Receipt, 2nd Offense

Cease immediately until you obtain a Business Tax Receipt from the City of Miami Beach.

A Violation of this Section shall be subject to the following fines:

Any person who shall carry on or conduct any business for which a tax receipt is required by this article without first obtaining such tax receipt shall be issued a violation for the first offense which shall have a civil fine of \$1000.00. The enhanced enforcement for this violation shall be pursuant to subsection 102-377(d).

In addition to the above a continued violation of subsection 102-377(a) for a period of thirty (30) days or more without first obtaining a tax receipt shall be punished by imprisonment not to exceed 60 days or by imposition of a fine not to exceed \$500.00 or both.

Failure to comply will result in your prosecution before the City of Miami Beach Special Master. The Special Master may impose fines of up to \$1,000.00 per day for noncompliance and up to \$5,000.00 per day for recurring violations. Failure to pay imposed fines will lead to placement of liens upon the real and personal property of violators which will be foreclosed upon or otherwise collected as provided by this code.

If you are aggrieved by the decision of the Code Inspector in issuing this notice of violation, you may appeal. To appeal the violations submit an application for appeal within **Ten (10)** days of receipt of this notice of violation to the appropriate board or the Office of the Special Master 1700 Convention Center Dr., Miami Beach, FL 33139. A check for \$100 (administrative charges) must accompany the request along with the case number.

|                                        |                                           |                |                                                 |
|----------------------------------------|-------------------------------------------|----------------|-------------------------------------------------|
| <b>Issuing Code Compliance Officer</b> | Name<br>Manny Bastos                      | Badge #<br>704 | Phone and Extension<br>(305) 673-7555 ext. 6803 |
|                                        | E-mail<br>EmmanuelBastos@miamibeachfl.gov |                |                                                 |
| Received By:                           | Compliance Date<br>10/06/2017             | Received Date  | Received Time<br>5:00 PM                        |

### ADA Information

To request this material in accessible format, sign language interpreters, information on access for persons with disabilities, and/or any accommodation to review any document or participate in any City-sponsored proceeding, please contact 305.604.2489 (voice), 305.673.7524 (fax) or 305.673.7218 (TTY) five (5) days in advance to initiate your request. TTY users may also call 711 (Florida Relay Services).

Manny Bastos

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

BEACH BLITZ CO., d/b/a OCEAN 9 LIQUOR and d/b/a as OCEAN 11 MARKET

(b) County of Residence of First Listed Plaintiff Miami-Dade  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Phillip M. Hudson III, Saul Ewing Arnstein & Lehr LLP, 200 S. Biscayne Blvd., Suite 3600, Miami, FL 33131 Tel: 305-428-4500

**DEFENDANTS**

CITY OF MIAMI BEACH, et al.

County of Residence of First Listed Defendant Miami-Dade  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |                                         | PTF                        | DEF                        |                                                               | PTF                        | DEF                        |
|-----------------------------------------|----------------------------|----------------------------|---------------------------------------------------------------|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation                                                | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

| CONTRACT                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | TORTS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | FORFEITURE/PENALTY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | BANKRUPTCY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | OTHER STATUTES                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> 110 Insurance<br><input type="checkbox"/> 120 Marine<br><input type="checkbox"/> 130 Miller Act<br><input type="checkbox"/> 140 Negotiable Instrument<br><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment<br><input type="checkbox"/> 151 Medicare Act<br><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)<br><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits<br><input type="checkbox"/> 160 Stockholders' Suits<br><input type="checkbox"/> 190 Other Contract<br><input type="checkbox"/> 195 Contract Product Liability<br><input type="checkbox"/> 196 Franchise | <b>PERSONAL INJURY</b><br><input type="checkbox"/> 310 Airplane<br><input type="checkbox"/> 315 Airplane Product Liability<br><input type="checkbox"/> 320 Assault, Libel & Slander<br><input type="checkbox"/> 330 Federal Employers' Liability<br><input type="checkbox"/> 340 Marine<br><input type="checkbox"/> 345 Marine Product Liability<br><input type="checkbox"/> 350 Motor Vehicle<br><input type="checkbox"/> 355 Motor Vehicle Product Liability<br><input type="checkbox"/> 360 Other Personal Injury<br><input type="checkbox"/> 362 Personal Injury - Medical Malpractice | <input type="checkbox"/> 365 Personal Injury - Product Liability<br><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability<br><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability<br><b>PERSONAL PROPERTY</b><br><input type="checkbox"/> 370 Other Fraud<br><input type="checkbox"/> 371 Truth in Lending<br><input type="checkbox"/> 380 Other Personal Property Damage<br><input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881<br><input type="checkbox"/> 690 Other<br><b>LABOR</b><br><input type="checkbox"/> 710 Fair Labor Standards Act<br><input type="checkbox"/> 720 Labor/Management Relations<br><input type="checkbox"/> 740 Railway Labor Act<br><input type="checkbox"/> 751 Family and Medical Leave Act<br><input type="checkbox"/> 790 Other Labor Litigation<br><input type="checkbox"/> 791 Employee Retirement Income Security Act<br><b>IMMIGRATION</b><br><input type="checkbox"/> 462 Naturalization Application<br><input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 422 Appeal 28 USC 158<br><input type="checkbox"/> 423 Withdrawal 28 USC 157<br><b>PROPERTY RIGHTS</b><br><input type="checkbox"/> 820 Copyrights<br><input type="checkbox"/> 830 Patent<br><input type="checkbox"/> 835 Patent - Abbreviated New Drug Application<br><input type="checkbox"/> 840 Trademark<br><b>SOCIAL SECURITY</b><br><input type="checkbox"/> 861 HIA (1395ff)<br><input type="checkbox"/> 862 Black Lung (923)<br><input type="checkbox"/> 863 DIWC/DIWW (405(g))<br><input type="checkbox"/> 864 SSID Title XVI<br><input type="checkbox"/> 865 RSI (405(g))<br><b>FEDERAL TAX SUITS</b><br><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)<br><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 375 False Claims Act<br><input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))<br><input type="checkbox"/> 400 State Reapportionment<br><input type="checkbox"/> 410 Antitrust<br><input type="checkbox"/> 430 Banks and Banking<br><input type="checkbox"/> 450 Commerce<br><input type="checkbox"/> 460 Deportation<br><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations<br><input type="checkbox"/> 480 Consumer Credit<br><input type="checkbox"/> 490 Cable/Sat TV<br><input type="checkbox"/> 850 Securities/Commodities/Exchange<br><input checked="" type="checkbox"/> 890 Other Statutory Actions<br><input type="checkbox"/> 891 Agricultural Acts<br><input type="checkbox"/> 893 Environmental Matters<br><input type="checkbox"/> 895 Freedom of Information Act<br><input type="checkbox"/> 896 Arbitration<br><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision<br><input checked="" type="checkbox"/> 950 Constitutionality of State Statutes |
| <b>REAL PROPERTY</b><br><input type="checkbox"/> 210 Land Condemnation<br><input type="checkbox"/> 220 Foreclosure<br><input type="checkbox"/> 230 Rent Lease & Ejectment<br><input type="checkbox"/> 240 Torts to Land<br><input type="checkbox"/> 245 Tort Product Liability<br><input type="checkbox"/> 290 All Other Real Property                                                                                                                                                                                                                                                                                                                                                      | <b>CIVIL RIGHTS</b><br><input checked="" type="checkbox"/> 440 Other Civil Rights<br><input type="checkbox"/> 441 Voting<br><input type="checkbox"/> 442 Employment<br><input type="checkbox"/> 443 Housing/Accommodations<br><input type="checkbox"/> 445 Amer. w/Disabilities - Employment<br><input type="checkbox"/> 446 Amer. w/Disabilities - Other<br><input type="checkbox"/> 448 Education                                                                                                                                                                                        | <b>PRISONER PETITIONS</b><br><b>Habeas Corpus:</b><br><input type="checkbox"/> 463 Alien Detainee<br><input type="checkbox"/> 510 Motions to Vacate Sentence<br><input type="checkbox"/> 530 General<br><input type="checkbox"/> 535 Death Penalty<br><b>Other:</b><br><input type="checkbox"/> 540 Mandamus & Other<br><input type="checkbox"/> 550 Civil Rights<br><input type="checkbox"/> 555 Prison Condition<br><input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 USC 1983; 28 USC 2201 and 2202

Brief description of cause:

Action for declaratory and injunctive relief and damages pursuant to the 14th Amendment of the United States

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

10/30/2017

SIGNATURE OF ATTORNEY OF RECORD

/s/ Phillip M. Hudson III

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

CLERK OF COURT



Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:



CLERK OF COURT

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

for the

BEACH BLITZ CO., a Florida Corporation d/b/a  
OCEAN 9 LIQUOR and d/b/a as  
OCEAN 11 MARKET

V.

CITY OF MIAMI BEACH, FLORIDA et al.,

Defendant(s)

Civil Action No.

To: *(Defendant's name and address)* RICKY ARRIOLA  
1700 Convention Center Drive  
4th Floor  
Miami Beach, FL 33139

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff’s attorney, whose name and address are:

PHILLIP M. HUDSON III  
SAUL EWING ARNSTEIN & LEHR LLP  
200 S. BISCAYNE BLVD., SUITE 3600  
MIAMI, FLORIDA 33131

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: \_\_\_\_\_

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

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\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

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\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I returned the summons unexecuted because \_\_\_\_\_ ; or

☐ Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

CLERK OF COURT

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

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*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

for the

BEACH BLITZ CO., a Florida Corporation d/b/a  
OCEAN 9 LIQUOR and d/b/a as  
OCEAN 11 MARKET

V.

CITY OF MIAMI BEACH, FLORIDA et al.,

Defendant(s)

Civil Action No.

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

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Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:



for the

BEACH BLITZ CO., a Florida Corporation d/b/a  
OCEAN 9 LIQUOR and d/b/a as  
OCEAN 11 MARKET

V.

CITY OF MIAMI BEACH, FLORIDA et al.,

Defendant(s)

Civil Action No.

To: *(Defendant's name and address)* KRISTEN ROSEN GONZALEZ  
1700 Convention Center Drive  
4th Floor  
Miami Beach, FL 33139

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff’s attorney, whose name and address are:

PHILLIP M. HUDSON III  
SAUL EWING ARNSTEIN & LEHR LLP  
200 S. BISCAYNE BLVD., SUITE 3600  
MIAMI, FLORIDA 33131

CLERK OF COURT

Date: \_\_\_\_\_

*Signature of Clerk or Deputy Clerk*

Civil Action No. \_\_\_\_\_

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\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

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\_\_\_\_\_  
*Printed name and title*

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*Server's address*

Additional information regarding attempted service, etc:

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

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*Printed name and title*

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Additional information regarding attempted service, etc:

CLERK OF COURT

Civil Action No. \_\_\_\_\_

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\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:



## Southern District of Florida

Civil Action No.

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

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*Printed name and title*

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Additional information regarding attempted service, etc:

CLERK OF COURT

Civil Action No. \_\_\_\_\_

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*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
Case No. 17-23958-CIV-UNGARO/O'SULLIVAN

BEACH BLITZ CO., a Florida  
corporation d/b/a OCEAN 9 LIQUOR, and  
d/b/a as OCEAN 11 MARKET,

Plaintiff,

v.

CITY OF MIAMI BEACH, FLORIDA,  
a municipal corporation of the State of Florida,  
PHILIP LEVINE, an individual, JIMMY  
MORALES, an individual, MICKEY  
STEINBERG, an individual, RICKY ARRIOLA,  
an individual, MICHAEL GREICO, an individual,  
JOY MALAKOFF, an individual, KRISTEN  
ROSEN GONZALEZ, an individual,  
JOHN ELIZABETH ALEMAN, an individual,  
RAUL J. AGUILA, an individual, and  
ALEKSANDR BOKSNER, an individual,

Defendants.

\_\_\_\_\_ /

**REPORT AND RECOMMENDATION**

THIS MATTER is before the Court on the Plaintiff's Emergency Motion for Preliminary Injunction with Incorporated Memorandum of Law (DE# 4, 11/3/17). This matter was referred to the undersigned by the Honorable Ursula Ungaro for a report and recommendation in accordance with 28 U.S.C. § 636(b). See Order of Reference (DE# 23, 11/14/17). Having carefully considered the applicable filings and the law and having held an evidentiary hearing on November 17, 2017, the undersigned respectfully recommends that the Plaintiff's Emergency Motion for Preliminary Injunction with Incorporated Memorandum of Law (DE# 4, 11/3/17) be **DENIED** for the reasons stated herein.

### **BACKGROUND**

On October 30, 2017, Beach Blitz Co. d/b/a Ocean 9 Liquor and d/b/a as Ocean 11 Market (hereinafter “plaintiff” or “Beach Blitz”) filed the instant action alleging the following causes of action against all defendants: Declaratory Judgment/injunctive Relief (Wrongful Closure) (Count I); violation of 42 U.S.C. §1983 (Count II); violation of the 14th Amendment – substantive due process and takings claim (Count III); violation of 42 U.S.C. §1983 (Retaliation for First Amendment Expression) (Count IV); declaratory judgment/injunctive relief (Section 102-377(e) of the Code) (Count V); declaratory judgment/injunctive relief (The Ordinances) (Count VI) and breach of Fla. Stat. § 562.45 (The Ordinances) (Count VII). See Complaint (DE# 1, 10/30/17).

On November 3, 2017, the plaintiff filed the instant motion. See Plaintiff’s Emergency Motion for Preliminary Injunction with Incorporated Memorandum of Law (DE# 4, 11/3/17) (hereinafter “Motion”). The defendants filed their response on November 13, 2017. See Defendants’ Response to Plaintiff’s Emergency Motion for Preliminary Injunction (DE# 22, 11/13/17) (hereinafter “Response”). The plaintiff filed its reply on November 15, 2017. See Reply in Support of Plaintiff’s Emergency Motion for Preliminary Injunction [ECF NO. 4] (DE# 25, 11/15/17).

On November 17, 2017, the undersigned held an evidentiary hearing on the instant motion. The plaintiff presented the testimony of Doron Doar, the principal of Beach Blitz. The defendants presented the testimony of Manuel Marquez, the Assistant Director of Finance for the City of Miami Beach and Hernan Cardino, the Director of Code Compliance for the City of Miami Beach. The undersigned admitted into evidence

the Plaintiff's Exhibits 1 through 17 and the Defendants' Exhibits 1 through 18. The undersigned permitted the parties to file supplemental briefs. See Supplemental Memorandum in Support of Plaintiff's Emergency Motion for Preliminary Injunction (DE# 36, 11/22/17) (hereinafter "Plaintiff's Supplemental Memorandum"); Defendants' Response to Plaintiff's Supplemental Memorandum in Support of Its Emergency Motion for Preliminary Injunction (DE# 38, 11/26/17) (hereinafter "Defendants' Supplemental Memorandum"). This matter is ripe for adjudication.

### **FACTUAL FINDINGS**

Ocean 9 Liquors (hereinafter "Ocean 9") is a liquor store operating in the City of Miami Beach (hereinafter "City"). On October 6, 2017, Ocean 9 was closed for failing to timely obtain a Business Tax Receipt.

#### **I. Business Tax Receipts ("BTRs")**

All for-profit businesses operating in the City are required to have a Business Tax Receipt (hereinafter "BTR"). A BTR is an occupational license. A business seeking to obtain a BTR must submit an application to the City along with other documentation such as a lease or warranty deed evidencing the location of the business, a state license if needed and articles of incorporation.

The Finance Department receives applications for BTRs involving liquor sales. Upon receipt of an application, the Finance Department electronically routes it to the City's other regulatory departments: the Building Department, the Fire Department, the Planning Department and the Code Compliance Department. These departments weigh in on whether to issue the BTR.

A BTR is valid for one fiscal year, from October 1 through September 30th of the following year. Pursuant to state law, all BTRs expire on September 30th of the fiscal year that they were issued. To renew a BTR, a business needs to pay the annual renewal fee. Every July, the City mails out a reminder notice as a courtesy to businesses. The City's records reflect that a renewal reminder notice was created for Ocean 9 on July 1, 2016. A business may pay the BTR renewal fee at City Hall, at the Customer Service Center, at the City's lockbox, at the City's satellite office in North Miami Beach or online. The online system does not prevent businesses from making an online payment for a BTR even if there are outstanding violations.

It is the City's practice to accept payments for BTRs.<sup>1</sup> In instances where a business has outstanding fines or debts owed to the City, the City will withhold the BTR until the business pays the money owed. Once the debt is paid, the City will release the BTR. If a business has an outstanding code violation and that business presents evidence to the City of a proceeding before the Special Master challenging that code violation, the City will release the BTR. If however, a violation has been issued and the time to appeal that violation has passed, the debt becomes due to the City and the City expects the business to pay the debt owed before releasing the BTR. If a Special Master has adjudicated a business guilty and imposed a fine, that business would need to pay the fine before obtaining a BTR. See Transcript (DE# 39 at 132).

If a fiscal year passes and a BTR is not renewed, that BTR will be placed in

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<sup>1</sup> The plaintiff's principal, Dorian Doar, testified that he attempted multiple times to submit payment for Ocean 9's BTR, but each time, the City refused to accept payment.



“closed status.” A closed BTR cannot be renewed. If a business misses the time period for renewing its BTR, that business will need to file a new application to obtain another BTR. If an application for a BTR is denied, the City provides an appeal process through the City Manager or a designee.

## **II. Ocean 9 Liquors (“Ocean 9”)**

Doran Doar is the owner of plaintiff Beach Blitz. Mr. Doar owns two businesses through Beach Blitz: Ocean 9, a liquor store, and Ocean 11 Market (hereinafter “Ocean 11”), a convenience store that sells beer and wine. Ocean 9 has been in business since 2012 and has been very profitable. Tourists make up approximately 85 percent of the customer base of the two stores.

Ocean 9 and Ocean 11 are located in the MXE District in the City of Miami Beach, Florida. Presently, there are only three liquor stores operating in the MXE District. The City has passed several ordinances reducing the hours of operation for liquor stores in the MXE District. The City has also passed an ordinance precluding the opening of any new liquor stores in the MXE District.

On September 30, 2016, the BTR for Ocean 9 expired when it was not renewed. On December 21, 2016, Ocean 9 was cited for selling alcohol outside the permitted hours. See Defendants’ Exhibit 10. The citation imposed a \$1,000 fine. The back of the citation contained a notice stating that fines could be appealed within twenty (20) days of receipt. Id.

On June 25, 2017, the City of Miami Beach Code Compliance Division issued two citations to Ocean 9. See Plaintiff’s Exhibit 5. One of the citations was for selling alcohol outside the permitted business hours. The other citation was for failing to timely

renew a BTR.<sup>2</sup> Each citation imposed a \$1,000 fine. The back of the citation contained a notice which stated that fines could be appealed within ten (10) days of receipt. At no time did the plaintiff appeal the three violations in the manner proscribed on the back of the citations.

Mr. Doar was overseas when the June 25, 2017 citations were issued. A store clerk advised Mr. Doar of the two citations and Mr. Doar returned to the United States on June 27, 2017. Prior to receiving notice of the citations, Mr. Doar did not realize the BTR for Ocean 9 was expired.

Ordinarily, Mr. Doar would receive courtesy renewal notices in July notifying him that the BTRs would expire on September 30th of that year. Mr. Doar testified that he never received the BTR renewal notice for Ocean 9 on or about July 2016 or anytime thereafter. Mr. Doar did receive a renewal notice for Ocean 11 and he renewed that BTR. Mr. Doar did not recall why he did not renew the Ocean 9 BTR at the same time he renewed the Ocean 11 BTR.

On June 27, 2017, Mr. Doar went to the City's Finance Department and tried to pay for the BTR. Mr. Doar did not recall the exact conversation he had with the employee in the Finance Department. However, he testified that the employee told him that he was not allowed to renew his BTR because he had violations. See Transcript (DE# 36 at 76). Mr. Doar understood, in general, that he needed to resolve the

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<sup>2</sup> The Notice of Violation corresponding to this citation contained the following instruction "Cease immediately until you obtain a Business Tax Receipt from the City of Miami Beach." Defendants' Exhibit 12. Ocean 9 did not cease operating at that time.

violations<sup>3</sup> in order to pay for his BTR. Id. at 77. The Finance Department employee provided Mr. Doar with an invoice totaling \$2,246.46, which included the BTR fee and late fee. See Defendants' Exhibit 15. If Mr. Doar had paid this amount plus the \$1,000 fine for the outstanding December 21, 2016 violation, he would have received the BTR.<sup>4</sup>

Mr. Doar did not believe the December 21, 2016 violation was merited. He wanted his "professional people" to deal with that violation and the other two outstanding violations.

Mr. Doar then went to the office of a woman named Rochelle Malik. Ms. Malik helps small business owners resolve problems with the City of Miami Beach and had worked with Mr. Doar in the past. Mr. Doar gave the June 25, 2017 citations (Plaintiff's Exhibit 5) to Ms. Malik and told her to appeal them. Mr. Doar also gave Ms. Malik the citation from December 2016 and told her to resolve that citation as well. Mr. Doar specifically instructed Ms. Malik to go to the City and try to get a BTR.

At the same time, Mr. Doar also hired an attorney, Guy Shir, to appeal the citations. Mr. Shir sent a check for \$100 to the Special Master's Office to appeal the citations, but that check was not accepted. It was Mr. Doar's understanding that without

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<sup>3</sup> At the evidentiary hearing, Mr. Doar referred to "violations" in the plural form. However, he also testified that he did not think the violations he needed to resolve to obtain his BTR included the June 25, 2017 violations because those violations were new.

<sup>4</sup> The City presented testimony that the June 25, 2017 violations would not have been considered due on June 27, 2017 because the time to appeal those violations had not run. Therefore, the only violation that needed to be paid on June 27, 2017 was the December 21, 2016 violation.

resolving his citations, he could not obtain a BTR.<sup>5</sup>

At the end of July 2017, Mr. Doar hired another attorney, Harold Rosen. Mr. Rosen was successful in obtaining an appeal. However, it was not an ordinary appeal process through the Special Master's office. It was initiated through the City Attorney's office and later, an agreed order was placed before the Special Master for a hearing and ratification.

On August 28, 2017, Mr. Rosen reached an agreement with the City to resolve all three citations for \$1,000. On the same day, Mr. Doar gave Mr. Rosen a check for \$1,000 to pay for the citations. Mr. Rosen told Mr. Doar that he gave the check to Aleksandr Boksner, the Deputy City Attorney, on August 28 or August 29, 2017. The check was deposited by the City on October 18, 2017.

The Special Master did not sign the Agreed Order reflecting the parties agreement to resolve all three citations until September 28, 2017. See Plaintiff's Exhibit 7. The City was shut down for a number of days in September due to Hurricane Irma. Under the terms of the Agreed Order, the plaintiff admitted to the violations being properly issued by the City and the plaintiff was assessed a fine of \$1,000. While the Agreed Order's \$1,000 fine resolved all outstanding debt due to the City, Ocean 9 would still need to pay an additional amount to obtain a BTR.

Mr. Rosen provided Mr. Doar with a copy of the Agreed Order on September 28, 2017. On September 28 or September 29, 2017, Mr. Doar went to the City's offices to

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<sup>5</sup> The City of Miami Beach presented testimony that had Mr. Doar paid for his BTR with the citations still outstanding, the clerk would have accepted payment for the BTR and held onto the BTR until the citations were resolved.

pay the violation and to obtain a BTR. A City employee told Mr. Doar that Mr. Doar would not receive a BTR because there were outstanding violations. Mr. Doar told the employee that the violations had been resolved. The employee responded that Mr. Doar had a violation and he could not renew the BTR. Ms. Malik later explained to Mr. Doar that it probably meant that the City's computer system had not yet been updated.

The following week, on Tuesday, October 3, 2017, Mr. Doar again went to the City's offices to obtain a BTR. He renewed the BTR for Ocean 11. See Plaintiff's Exhibits 9 and 10.<sup>6</sup> He also attempted to obtain a BTR for Ocean 9. The City refused to accept Mr. Doar's payment because Ocean 9 had open violations.

On October 6, 2017, two code enforcement officers and two Miami Beach police officers came to Ocean 9 and gave Mr. Doar a violation for operating without a BTR. They told Mr. Doar he had to shut down his store. Mr. Doar explained to them that he had an agreed order for the violations. They told Mr. Doar that if he did not shut down his business within five minutes, he would be arrested. Ocean 9 has been shut down since that time.

The Notice of Violation corresponding to the October 6, 2017 violation advised the plaintiff of its right to appeal within ten (10) days of receipt of the violation. See Defendants' Exhibit 14. The plaintiff never appealed the October 6, 2017 violation.

On or about Monday, October 9, 2017, someone from the City gave Mr. Doar a computer screenshot for the Ocean 9 account. See Plaintiff's Exhibit 17. The top of the

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<sup>6</sup> Mr. Doar could not renew the BTR for Ocean 11 on September 29, 2017 because Ocean 11 had an open violation. The violation was dismissed and on October 3, 2017, Mr. Doar renewed the BTR for Ocean 11.

document stated “Active Holds Exist On This Record,” signifying that the were outstanding monies owed to the City or outstanding violations. Id.; Transcript (DE# 36 at 123). The screenshot also contained the following note “As per City Attorney Office, close BTR for nonpayment. Entity cannot reapply for liquor sales and/or entertainment at 865 Collins Ave,” the location of Ocean 9. See Plaintiff’s Exhibit 17.

The plaintiff did not file an application for a new BTR. Had the plaintiff filed an application for a new BTR, it most likely would not have been granted because a City ordinance prohibits the new sale of liquor in the MXE District. Had the plaintiff applied for a new BTR and the application was denied, the plaintiff would have had the opportunity to appeal the decision, first through the City and then through the state court.

On October 11, 2017, the plaintiff paid for Ocean 9's BTR online. That payment is “in suspense” until the resolution of the instant action. Transcript (DE# 36 at 136). However, it cannot be applied to the fiscal year ending on September 30, 2017 because that “permit” has expired. Id.

Had the plaintiff made an online payment for a BTR, the BTR for Ocean 9 would have been issued once the plaintiff paid its outstanding violations, even if those violations were not paid until October 2017.

The plaintiff did not file a lawsuit in state court. The plaintiff filed the instant action on October 30, 2017.

### **STANDARD OF REVIEW**

A preliminary injunction may be granted only if the moving party establishes four elements: (1) a substantial likelihood of success on the merits; (2) an immediate and

irreparable injury absent injunctive relief; (3) a threatened harm to the plaintiff that outweighs any injury the injunction would cause to the nonmovant and (4) the injunction will not disserve the public interest. Carillon Imps. v. Frank Pesce Int'l Grp. Ltd., 112 F.3d 1125, 1126 (11th Cir. 1997) (citation omitted); see also N. Am. Med. Corp. v. Axiom Worldwide, 522 F.3d 1211, 1217 (11th Cir. 2008) (citing Johnson & Johnson Vision Care, Inc. v. 1-800 Contacts, Inc., 299 F.3d 1242, 1246-47 (11th Cir. 2002)). A preliminary injunction is “an extraordinary and drastic remedy not to be granted unless the movant clearly establishe[s] the ‘burden of persuasion’ as to the four [elements].” McDonald’s Corp. v. Robertson, 147 F.3d 1301, 1306 (11th Cir. 1998) (citing All Care Nursing Serv., Inc. v. Bethesda Mem’l Hosp., Inc., 887 F.2d 1535, 1537 (11th Cir. 1989)).

### **ANALYSIS**

The plaintiff seeks an Order:

(i) enjoining the enforcement of Ordinance No. 2016-4047 as applied to Plaintiff, (ii) enjoining the enforcement of Section 102-377(e) of the City of Miami Beach Code as applied to Plaintiff; (iii) preventing Defendants from enforcing Citation No. CC2017-03686 and (iv) ordering Defendants to issue Plaintiff a Business Tax Receipt for fiscal year 2017-2018 for its location at 865 Collins Avenue and to re-open said location without Defendants’ interference and (iv) granting such further relief deemed just and proper.

Reply (DE# 25 at 5, 11/15/17). As noted above, in order to obtain a preliminary injunction, the movant must demonstrate: “(1) [that there is] a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered if the relief is not granted; (3) that the threatened injury outweighs the harm the relief would inflict on the non-movant; and (4) that the entry of the relief would serve the public interest.” Schiavo

ex. rel Schindler v. Schiavo, 403 F.3d 1223, 1225-26 (11th Cir. 2005). The undersigned will address each of these elements below.

**I. Substantial Likelihood of Success on the Merits**

The first element, the substantial likelihood of success on the merits, requires an analysis of the plaintiff's ability to make a showing of each of the required elements of the claims asserted. See Seiko Kabushiki Kaisha v. Swiss Watch Int'l, Inc., 188 F. Supp. 2d 1350, 1353-55 (S.D. Fla. 2002).

At the November 16, 2017 status hearing, the plaintiff told the undersigned that the plaintiff is seeking a preliminary injunction pursuant to the following counts: declaratory judgment/injunctive relief (Wrongful Closure) (Count I); violation of 42 U.S.C. §1983 (Count II); violation of the 14th Amendment – substantive due process and takings claim (Count III); violation of 42 U.S.C. §1983 (Retaliation for First Amendment Expression) (Count IV) and declaratory judgment/injunctive relief (Section 102-377(e) of the Code) (Count V). For the reasons stated below, the undersigned finds that the plaintiff has not shown a substantial likelihood of success on the merits of the above claims.

**a. Procedural Due Process Claims (Counts I, II and V)**

"[I]n order to maintain a § 1983 action, a plaintiff must allege conduct depriving him of a right, privilege or immunity secured by the Constitution or laws of the United States . . . ." Marrero v. City of Hialeah, 625 F.2d 499, 512 (5th Cir. 1980).<sup>7</sup> The Due

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<sup>7</sup> The Eleventh Circuit in Bonner v. City of Prichard, 661 F. 2d 1206, 1207 (11th Cir. 1981) (en banc), adopted as precedent decisions of the former Fifth Circuit rendered prior to October 1, 1981.



Process Clause of the Fourteenth Amendment provides that no state shall “deprive any person of life, liberty, or property, without due process of law.” U.S. Const. Amend. XIV, § 1. “The Supreme Court’s interpretation of this clause explicates that the amendment provides two different kinds of constitutional protection: procedural due process and substantive due process.” McKinney v. Pate, 20 F.3d 1550, 1555 (11th Cir. 1994). “A violation of either of these kinds of protection may form the basis for a suit under section 1983.” Id.

Procedural due process claims are analyzed in two steps: “the first asks whether there exists a liberty or property interest which has been interfered with by the State. . . . ; the second examines whether the procedures attendant upon that deprivation were constitutionally sufficient.” Kentucky Dep’t of Corr. v. Thompson, 490 U.S. 454, 460 (1989) (citations omitted).

“Protected property interests derive from ‘existing rules or understandings that stem from an independent source such as state law—rules or understandings that . . . support claims of entitlement to those benefits.’” Casas v. Swacina, No. 12-21083-CIV, 2012 WL 12894275, at \*7 (S.D. Fla. Sept. 4, 2012), *aff’d sub nom.* Casas v. USCIS Dist. Dir. Miami, 518 F. App’x 669 (11th Cir. 2013) (quoting Bd. of Regents v. Roth, 408 U.S. 564, 577 (1972)). “[T]he range of interests protected by procedural due process is not infinite.” Roth, 408 U.S. at 570. For instance, the Supreme Court has rejected a “generalized right to be secure in one’s business interests” as a property right protected by the Due Process Clause. Coll. Sav. Bank v. Florida Prepaid Postsecondary Educ. Expense Bd., 527 U.S. 666, 672 (1999). The Supreme Court has explained that:

The assets of a business (including its good will) unquestionably are

property, and any state taking of those assets is unquestionably a “deprivation” under the Fourteenth Amendment. But business in the sense of the activity of doing business, or the activity of making a profit is not property in the ordinary sense . . . .

Id. at 675.

Here, the parties dispute whether the plaintiff has asserted a protected property interest. The defendants argue that “there is no property right to the renewal of an expired business license or permit.” Defendants’ Supplemental Memorandum (DE# 38 at 7). The plaintiff maintains that “[t]he loss of Plaintiff’s business (including, inter alia, all associated goodwill, customers and reputation) is the loss of a protected property interest.” See Plaintiff’s Supplemental Memorandum (DE# 36 at 4).

The plaintiff cites to Marrero v. City of Hialeah, 625 F.2d 499, 514 (5th Cir. 1980) for the proposition that “Florida law recognizes business reputation/good will as an interest protectable under the strictures of 42 U.S.C. §1983.” See Plaintiff’s Supplemental Memorandum (DE# 36 at 4). The court in Marrero noted that:

Although Florida law may not recognize personal reputation as a liberty or property interest, **it does recognize business reputation, at least to the extent it approximates goodwill, as a property interest. Florida has long extended its protection to the intangible interests of a business. Under Florida law, “[o]ne’s business, aside from the investment of money and tangible property therein, is in every sense of the word property, and, as such, if lawful, entitled to protection from all unlawful interference.”** NAACP v. Webb’s City, Inc., 152 So.2d 179, 182 (Fla. Dist. Ct. App.1963), vacated as moot, 376 U.S. 190, 84 S. Ct. 635, 11 L. Ed. 2d 602 (1964). **Hence, since one’s business is property under Florida law, it cannot be injured or destroyed by the state without due process of law.** See Paramount Enterprises, Inc. v. Mitchell, 104 Fla. 407, 140 So. 328 (1932). Thus, for example, in eminent domain proceedings, the loss of goodwill is compensable. See, e. g., Matthews v. Division of Administration, State of Florida, Department of Transportation, 324 So.2d 664 (Fla. Dist. Ct. App. 1975). In addition, the State of Florida provides means of redress for private interference with goodwill. For

instance, the purchaser of the goodwill of a business may recover compensatory damages from a seller who destroys the value of the goodwill. See, e.g., West Shore Restaurant Corp. v. Turk, 101 So.2d 123 (Fla. 1958); Yoo Hoo of Florida v. Catroneo, 175 So.2d 220 (Fla. Dist. Ct. App.), cert. denied, 179 So.2d 212 (Fla. 1965). Also a plaintiff may recover actual damages caused by a defendant's disparaging comments about the plaintiff's business which are of a kind calculated to prevent others from dealing with the plaintiff. See, e.g., Continental Development Corp. of Florida v. Duval Title & Abstract Co., 356 So.2d 925 (Fla. Dist. Ct. App. 1978); Kilgore Ace Hardware, Inc. v. Newsome, 352 So. 2d 918 (Fla. Dist. Ct. App. 1977).

**It thus appears that Florida does extend to appellants a “legal guarantee of present enjoyment” of goodwill, i.e., the value inhering in the favorable consideration of customers arising from a business’ reputation as being well established and well conducted. Since that interest is a protected property interest under Florida law, Florida may not deprive appellants of that interest without due process of law.** Just as a state may not physically destroy a person's tangible property without complying with the requirements of the fourteenth amendment, so it may not destroy through the medium of speech a person's intangible property without the same compliance. **Hence, to the extent the defamatory statements injured appellants’ goodwill without due process of law, appellants have stated a claim upon which relief can be granted.**

Marrero, 625 F.2d at 514-15 (footnotes omitted; emphasis added).

Assuming, without deciding, that the plaintiff's business is a protected property interest under Florida law, the plaintiff has not shown a substantial likelihood of success on the merits of its procedural due process claims because the plaintiff has a post-deprivation remedy. “In order to state a claim under the fourteenth amendment, the complainant must allege facts showing not only that the State has deprived him of a liberty or property interest but also that the State has done so without due process of law.” Marrero, 625 F.2d at 519. “The United States Supreme Court has held that as long as some adequate post-deprivation remedy is available to a plaintiff, no procedural

due process violation has occurred.” Peterson v. Scott, No. 2:14-CV-420-FTM-38CM, 2015 WL 3935376, at \*3 (M.D. Fla. June 26, 2015); see also Cotton v. Jackson, 216 F.3d 1328, 1330-31 (11th Cir. 2000) (stating that “[o]nly when the state refuses to provide a process sufficient to remedy the procedural deprivation does a constitutional violation actionable under section 1983 arise.”). Here, the October 6, 2017 Notice of Violation which resulted in the plaintiff shutting down its store contained instructions on how to appeal the violation. The plaintiff could have pursued those appellate remedies.

As the Eleventh Circuit has noted, “the state may cure a procedural deprivation by providing a later procedural remedy; only when the state refuses to provide a process sufficient to remedy the procedural deprivation does a constitutional violation actionable under section 1983 arise.” McKinney, 20 F.3d at 1557; id. at 1560 (noting that “[w]hen a state procedure is inadequate, no procedural due process right has been violated unless and until the state fails to remedy that inadequacy.”). Assuming, arguendo, that had the plaintiff applied for a new BTR, the City would have denied the application, the plaintiff is not likely to succeed on the merits of a procedural due process claim because the plaintiff would still have an opportunity to appeal the City’s denial to the state court. See McKinney, 20 F.3d at 1563 (noting that “even if [the plaintiff] suffered a procedural deprivation at the hands of a biased Board at his termination hearing, he has not suffered a violation of his procedural due process rights unless and until the State of Florida refuses to make available a means to remedy the deprivation. As any bias on the part of the Board was not sanctioned by the state and was the product of the intentional acts of the commissioners . . . only the state’s refusal to provide a means to correct any error resulting from the bias would engender a

procedural due process violation.”).

The plaintiff has not shown that the process, which includes review by the state court, is inadequate. The plaintiff may appeal any decision by the City to the state court. The state court has the power to review and redress any deficiencies in the City’s decisions with respect to the issuance of a BTR. The plaintiff’s failure to avail itself of the protections afforded through the appeal process and through the state court system does not mean that the procedures available to the plaintiff were constitutionally inadequate. See Cotton, 216 F. 3d at 1331 (stating that “[i]f adequate state remedies were available but the plaintiff failed to take advantage of them, the plaintiff cannot rely on that failure to claim that the state deprived him of procedural due process.”).

The plaintiff’s argument that it is not required to exhaust administrative remedies, see Plaintiff’s Supplemental Memorandum (DE# 36 at 4-5), is inapposite. As the Eleventh Circuit explained in McKinney:

[the plaintiff] cannot state a valid constitutional claim . . . because Florida provides an adequate process to remedy [the plaintiff]’s alleged injury.  
**[The plaintiff]’s case fails, therefore, not for want of exhaustion;**  
indeed, exhaustion is irrelevant to our decision and finds no mention in the opinion. Rather, **[the plaintiff]’s case fails because he fails to state a procedural due process claim . . .** that would give rise to a section 1983 suit.

20 F.3d at 1564 n. 20 (emphasis added). Similarly here, whether the plaintiff must first exhaust administrative remedies or not, does not change the fact that a state procedure was available to the plaintiff to remedy the asserted loss of its business. “All that due process requires . . . is a post-deprivation ‘means of redress for property deprivations satisfy[ing] the requirements of procedural due process.’” McKinney, 20 F.3d at 1563 (quoting Parratt v. Taylor, 451 U.S. 527, 537 (1981) (alteration in original)).

For the foregoing reasons, the plaintiff has not shown a substantial likelihood of success on the merits of its procedural due process claims.

**b. Substantive Due Process Claim (Count III)**

The defendants maintain that the plaintiff cannot show a substantial likelihood of success on the merits of its substantive due process claim because the plaintiff cannot show the violation of a fundamental right. “A ‘fundamental’ right is one that is ‘explicitly or implicitly guaranteed by the Constitution.’” Morrissey v. United States, 871 F.3d 1260, 1268 (11th Cir. 2017) (quoting San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973)). Supreme Court jurisprudence provides that:

The substantive component of the Due Process Clause protects those rights that are “fundamental,” that is, rights that are “implicit in the concept of ordered liberty,” Palko v. Connecticut, 302 U.S. 319, 325, 58 S.Ct. 149, 152, 82 L.Ed. 288 (1937). The Supreme Court has deemed that most—but not all—of the rights enumerated in the Bill of Rights are fundamental; certain unenumerated rights (for instance, the penumbral right of privacy . . . also merit protection. It is in this framework that fundamental rights are incorporated against the states. A finding that a right merits substantive due process protection means that the right is protected “against ‘certain government actions regardless of the fairness of the procedures used to implement them.’” Collins v. City of Harker Heights, 503 U.S. 115, – , 112 S.Ct. 1061, 1068, 117 L.Ed.2d 261 (1992) (quoting Daniels v. Williams, 474 U.S. 327, 331, 106 S.Ct. 662, 665, 88 L.Ed.2d 662 (1986)).

McKinney, 20 F.3d at 1556 (footnotes omitted). “[S]ubstantive due process rights are created only by the Constitution.” Id. (quoting Regents of Univ. of Mich. v. Ewing, 474 U.S. 214, 229 (1985) (Powell, J., concurring)).

“The substantive due process doctrine prevents the government from engaging in conduct that is ‘arbitrary or conscience shocking.’” Koeppel v. Romano, 252 F. Supp. 3d 1310, 1321 (M.D. Fla. 2017) (quoting Doe v. Braddy, 673 F.3d 1313, 1318 (11th Cir.

2012) (per curiam)). The facts presented at the evidentiary hearing and the allegations contained in the Complaint do not rise to this standard. Accordingly, the undersigned finds that the plaintiff has not shown a substantial likelihood of success on the merits of its substantive due process claim.

**c. Retaliation/First Amendment Claim (Count IV)**

Finally, the plaintiff has not shown a substantial likelihood of success on the merits of its retaliation/First Amendment claim. The Complaint alleges that “on or about October 5, 2017, Plaintiff, through his counsel met with Deputy City Attorney Boksner to discuss Plaintiff[s] concerns regarding the ongoing changes to the hours in which a package store could sell alcohol.” Complaint (DE# 1 at ¶ 137). The plaintiff’s counsel communicated to Mr. Boksner that “Defendant[s] ongoing changes to the hours were severely impacting Plaintiff’s business income and that as a result Plaintiff would oppose any further reductions to the hours of operation.” *Id.* at ¶ 138.<sup>8</sup> The following day, Code Enforcement officers and City of Miami Beach police officers effectively shut down the plaintiff’s store. *Id.* at ¶ 140. These conclusory allegations are insufficient to support a section 1983 claim based on the alleged violation of the plaintiff’s First Amendment rights.

In sum, the plaintiff has not met its burden of showing a substantial likelihood of success on the merits. “If the movant is unable to establish a likelihood of success on the merits, a court need not consider the remaining conditions prerequisite to injunctive

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<sup>8</sup> The Complaint also asserts that “Deputy City Attorney Boksner essentially suggested that the City’s actions were intentional[ly] targeted toward Plaintiff.” Complaint (DE# 1 at ¶ 141). However, this conclusory allegation is not supported by any facts.

relief.” Johnson & Johnson Vision Care, Inc. v. 1-800 Contacts, Inc., 299 F.3d 1242, 1247 (11th Cir. 2002) (citing Pittman v. Cole, 267 F.3d 1269, 1292 (11th Cir. 2001)).

Nonetheless, for the sake of completeness, the undersigned will address the remaining elements for obtaining a preliminary injunction.

## **II. Immediate and Irreparable Injury Absent Injunctive Relief**

The plaintiff must also show an immediate and irreparable injury if injunctive relief is not granted. To establish irreparable injury, the plaintiff must show that it will suffer an injury that cannot be adequately compensated if, at some later point in time, it prevails on the merits. United States v. Jefferson Cnty., 720 F.2d 1511, 1520 (11th Cir. 1983). The plaintiff is the owner of a liquor store that has been effectively shut down since October 6, 2017 and has been unable to generate revenue since that date. The injury complained of by the plaintiff is an economic injury. “An injury is ‘irreparable’ only if it cannot be undone through monetary remedies.” Ne. Florida Chapter of Ass’n of Gen. Contractors of Am. v. City of Jacksonville, Fla., 896 F.2d 1283, 1285 (11th Cir. 1990). Because the plaintiff can recover monetary damages, the undersigned concludes that the plaintiff has not shown it will suffer irreparable harm if an injunction is not issued.

## **III. Balancing of Harms**

The plaintiff has shown that it will suffer economic injury should an injunction not issue. On the other hand, the issuance of an injunction would result in, at most, minimal harm to the defendants. The City has an interest in collecting taxes from businesses and ensuring that all businesses operating within the City are licensed businesses.



However, the plaintiff has been operating a licensed business since 2012. The City has also collected payment from the plaintiff for the BTR for Ocean 9 for the October 1, 2016 through September 30, 2017 fiscal year. That payment remains “in suspense” until this litigation is resolved. If an injunction is issued, the City would still be able to regulate the plaintiff’s business. The harm to the plaintiff therefore outweighs any harm to the defendants.

#### **IV. Public Interest**

The Court should also consider whether an injunction, if issued, will disserve the public interest. The plaintiff argues that “[a]n injunction which prevents the enforcement of patently unconstitutional Ordinances does not disserve the public interest. To the contrary, the public’s interest lies in the vindication of rights guaranteed under the Fourteenth Amendment.” Motion (DE# 4 at 15). The defendants maintain that “the public interest is not served by permitting unlicensed business owners to operate in the City.” Response (DE# 22 at 5). However, the issuance of the injunction sought by the plaintiff would only permit the operation of a single store, Ocean 9. The undisputed evidence is that had the plaintiff resolved its violations and paid the appropriate fee, the City would have renewed the BTR for Ocean 9. Therefore, the undersigned finds no basis to support the defendants’ assertion that “[i]t would create chaos in the City if unlicensed businesses could operate with impunity.” Id.

In the instant case, the undersigned finds that this factor is, at best, neutral.

#### **RECOMMENDATION**

Based on the foregoing, the undersigned respectfully **RECOMMENDS** that the Plaintiff’s Emergency Motion for Preliminary Injunction with Incorporated Memorandum

of Law (DE# 4, 11/3/17) be **DENIED**.

The parties shall have until **Friday, December 8, 2017**<sup>9</sup> to file written objections, if any, with the Honorable Ursula Ungaro, United States District Judge. Failure to file objections timely shall bar the parties from a de novo determination by the District Judge of an issue covered in the Report and shall bar the parties from attacking on appeal unobjected-to factual and legal conclusions contained in this Report except upon grounds of plain error if necessary in the interest of justice. See 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140, 149 (1985); Henley v. Johnson, 885 F.2d 790, 794 (1989); 11th Cir. R. 3-1 (2016).

RESPECTFULLY SUBMITTED in Chambers at Miami, Florida this **1<sup>st</sup>** day of December, 2017.

  
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JOHN J. O'SULLIVAN  
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:  
United States District Judge Ungaro  
All Counsel of Record

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<sup>9</sup> The plaintiff has requested that the time period for filing objections be shortened because it has asserted a continuing injury.

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

Case No. 1:17-cv-23958-UU

BEACH BLITZ CO., a Florida corporation  
d/b/a OCEAN 9 LIQUOR, and  
d/b/a as OCEAN 11 MARKET,

Plaintiff,

v.

CITY OF MIAMI BEACH, FLORIDA, *et al.*,

Defendants.

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**ORDER AFFIRMING MAGISTRATE JUDGE’S REPORT**

THIS CAUSE is before the Court upon Plaintiff’s Emergency Motion for Preliminary Injunction (the “Emergency Motion”). D.E. 4. On December 1, 2017, the Honorable John O’Sullivan, United States Magistrate Judge, issued a Report and Recommendation (the “Report”) (D.E. 43) recommending that Plaintiff’s Emergency Motion be DENIED. Both parties filed objections to the Report (the “Objections”). D.E. 51 and 52.

THE COURT has reviewed the Emergency Motion, the Objections, the record herein, and is otherwise fully advised in the premises.

Upon *de novo* review, the Court agrees with Magistrate Judge O’Sullivan’s Report and concurs in all of his findings. Plaintiff’s objections (D.E. 51) to the Report are without merit, are identical to the arguments that were previously raised in the Emergency Motion, and are specifically and properly addressed in Magistrate O’Sullivan’s analysis of the claims. Defendant, however, raises specific objections to a number of the Report’s findings of fact. D.E. 52. The Court addresses each objection in turn.

First, Defendant objects to the Report's finding that Plaintiff's store, Ocean 9 Liquors ("Ocean 9"), was closed on October 6, 2007 for failing to timely obtain a Business Tax Receipt ("BTR"). D.E. 43 at \*3. Defendants assert that the evidence shows that Ocean 9 was closed because it continued to operate without a BTR for more than a year. D.E. 52 at \*2. According to Defendants, "[t]he distinction is important because, given the amount of time Beach Blitz was without a BTR license, under the City's procedures, Beach Blitz would be required to file a new application for a new BTR license". *Id.* at \*2-3. However, the testimony Defendants cite in support of their argument only confirms the Report's finding of fact. When asked to describe the violation Ocean 9 received on October 6, 2017, Defendants' witness Hernan Cardeno testified as follows: "This is a notice of violation, issued on October 6, 2017, for failing to obtain a business tax receipt as required by ordinance." D.E. 51-1, p. 35, L. 22-25. Moreover, the October 6, 2017 "Notice of Violation" issued to Plaintiff states that the violation was issued for "Failing to obtain Business Tax Receipt. 2<sup>nd</sup> Offense". D.E. 39-14. Accordingly, Defendants' first objection is overruled.

Defendants' second objection is to the Report's description and consideration of the testimony of Dorian Doar, Plaintiff Beach Blitz Co.'s principal. According to Defendants, Mr. Doar's testimony was self-serving and contrary to the record. Therefore, Defendants "object[] to them being considered findings of fact." D.E. 52 at \*3. A review of the hearing transcript shows that Mr. Doar's testimony was not controverted by the record. Mr. Doar testified regarding his experience dealing with an employee of the City of Miami Beach's Finance Department. Defendants did not call that employee to testify at the hearing to controvert Mr. Doar's testimony nor did they present sufficient evidence to show that Mr. Doar's account of his interaction with such employee was inaccurate. Defendants' argument that Mr. Doar's account is false is solely

based on what they would expect an employee of the Finance Department to say, not what such employee actually did say to Mr. Doar. As such, Defendants' claim that Mr. Doar's testimony is "contrary to the undisputed record" is a gross overstatement and unsupported by the record. Defendants' second objection is, therefore, overruled.

Defendants also object to the Report's finding that the earlier violation issued to Ocean 9 was for failing to timely renew a BTR. D.E. 43 at \*5-6. Defendants point out that the violation was for "operating a business without the requisite BTR license, not for 'failing to timely renew.'" D.E. 52 at \*4. A review of the actual citation shows that the violation was for "Failure to obtain a Business Tax Receipt." D.E. 39-12. Accordingly, the Court sustains Defendants' third objection in that the violation was for failure to obtain a BTR, rather than for failure to "renew" the BTR.

Defendants' fourth "objection" does not amount to an objection. Defendants again take issue with Mr. Doar's testimony, this time arguing that if Mr. Doar had given the Finance Department employee "correct" information, the employee would have responded to his BTR inquiry differently. Accordingly, there is no objection, just speculation. As such, Defendants' fourth objection is overruled.

Defendants' last objection to the Report's finding of fact is a simple clarification. The Report states that "[h]ad the plaintiff made an online payment for a BTR, the BTR for [Beach Blitz] would have been issued once the plaintiff paid its outstanding violations, even if those violations were not paid until October 2017." D.E. 43 at \*10. Defendants would like the record to reflect that had Plaintiff "paid for its 2016 fiscal year BTR at any point before September 30, 2017, Plaintiff's account would have remained open and the BTR would have been issued once Plaintiff paid its outstanding violations, even if those violations were paid October 1, 2017 or

thereafter”, in accordance with Manuel Marquez’s testimony. D.E. 51-1 at \*129, 99-100, 103-04. The Court sustains this objection for the purposes of clarity.

Finally, Defendants object to the Magistrate’s conclusions that: (i) the harm that plaintiff would suffer if an injunction is not issued outweighs any harm Defendants may suffer; and (ii) that denying the injunction would neither serve nor disserve the public interest. Defendants’ objections to these two conclusions are based on the same arguments that were previously raised in their Response to the Emergency Motion (D.E. 22), and are specifically and properly addressed in the Report. Consequently, Defendants’ objections to the Magistrate’s conclusions of law are overruled. Accordingly, it is hereby

ORDERED AND ADJUDGED that the Report of the Magistrate Judge, D.E. 43, is RATIFIED, ADOPTED, and AFFIRMED. It is further

ORDERED AND ADJUDGED that Plaintiff’s Objections, D.E. 51, are OVERRULED. It is further


ORDERED AND ADJUGDED that Defendant’s Objections, D.E. 52, are GRANTED IN PART and OVERRULED IN PART as follows:

- I. Defendants’ Third and Fifth objections to the Report’s findings of fact are SUSTAINED;
- II. Defendants’ First, Second, and Fourth objections to the Report’s findings of fact are OVERRULED; and
- III. Defendants’ objections to the Report’s conclusions of law are OVERRULED.

It is further

ORDERED AND ADJUGDED that Plaintiff’s Emergency Motion, D.E. 4, is DENIED.

DONE AND ORDERED in Chambers at Miami, Florida, this 22d day December, 2017.

  
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URSULA UNGARO  
UNITED STATES DISTRICT JUDGE

cc:  
counsel of record via cm/ecf

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

Case No. 1:17-cv-23958-UU

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d/b/a OCEAN 9 LIQUOR, and  
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Upon *de novo* review, the Court agrees with Magistrate Judge O’Sullivan’s Report and concurs in all of his findings. Plaintiff’s objections (D.E. 51) to the Report are without merit, are identical to the arguments that were previously raised in the Emergency Motion, and are specifically and properly addressed in Magistrate O’Sullivan’s analysis of the claims. Defendant, however, raises specific objections to a number of the Report’s findings of fact. D.E. 52. The Court addresses each objection in turn.



First, Defendant objects to the Report's finding that Plaintiff's store, Ocean 9 Liquors ("Ocean 9"), was closed on October 6, 2007 for failing to timely obtain a Business Tax Receipt ("BTR"). D.E. 43 at \*3. Defendants assert that the evidence shows that Ocean 9 was closed because it continued to operate without a BTR for more than a year. D.E. 52 at \*2. According to Defendants, "[t]he distinction is important because, given the amount of time Beach Blitz was without a BTR license, under the City's procedures, Beach Blitz would be required to file a new application for a new BTR license". *Id.* at \*2-3. However, the testimony Defendants cite in support of their argument only confirms the Report's finding of fact. When asked to describe the violation Ocean 9 received on October 6, 2017, Defendants' witness Hernan Cardeno testified as follows: "This is a notice of violation, issued on October 6, 2017, for failing to obtain a business tax receipt as required by ordinance." D.E. 51-1, p. 35, L. 22-25. Moreover, the October 6, 2017 "Notice of Violation" issued to Plaintiff states that the violation was issued for "Failing to obtain Business Tax Receipt. 2<sup>nd</sup> Offense". D.E. 39-14. Accordingly, Defendants' first objection is overruled.

Defendants' second objection is to the Report's description and consideration of the testimony of Dorian Doar, Plaintiff Beach Blitz Co.'s principal. According to Defendants, Mr. Doar's testimony was self-serving and contrary to the record. Therefore, Defendants "object[] to them being considered findings of fact." D.E. 52 at \*3. A review of the hearing transcript shows that Mr. Doar's testimony was not controverted by the record. Mr. Doar testified regarding his experience dealing with an employee of the City of Miami Beach's Finance Department. Defendants did not call that employee to testify at the hearing to controvert Mr. Doar's testimony nor did they present sufficient evidence to show that Mr. Doar's account of his interaction with such employee was inaccurate. Defendants' argument that Mr. Doar's account is false is solely

based on what they would expect an employee of the Finance Department to say, not what such employee actually did say to Mr. Doar. As such, Defendants' claim that Mr. Doar's testimony is "contrary to the undisputed record" is a gross overstatement and unsupported by the record. Defendants' second objection is, therefore, overruled.

Defendants also object to the Report's finding that the earlier violation issued to Ocean 9 was for failing to timely renew a BTR. D.E. 43 at \*5-6. Defendants point out that the violation was for "operating a business without the requisite BTR license, not for 'failing to timely renew.'" D.E. 52 at \*4. A review of the actual citation shows that the violation was for "Failure to obtain a Business Tax Receipt." D.E. 39-12. Accordingly, the Court sustains Defendants' third objection in that the violation was for failure to obtain a BTR, rather than for failure to "renew" the BTR.

Defendants' fourth "objection" does not amount to an objection. Defendants again take issue with Mr. Doar's testimony, this time arguing that if Mr. Doar had given the Finance Department employee "correct" information, the employee would have responded to his BTR inquiry differently. Accordingly, there is no objection, just speculation. As such, Defendants' fourth objection is overruled.

Defendants' last objection to the Report's finding of fact is a simple clarification. The Report states that "[h]ad the plaintiff made an online payment for a BTR, the BTR for [Beach Blitz] would have been issued once the plaintiff paid its outstanding violations, even if those violations were not paid until October 2017." D.E. 43 at \*10. Defendants would like the record to reflect that had Plaintiff "paid for its 2016 fiscal year BTR at any point before September 30, 2017, Plaintiff's account would have remained open and the BTR would have been issued once Plaintiff paid its outstanding violations, even if those violations were paid October 1, 2017 or

thereafter”, in accordance with Manuel Marquez’s testimony. D.E. 51-1 at \*129, 99-100, 103-04. The Court sustains this objection for the purposes of clarity.

Finally, Defendants object to the Magistrate’s conclusions that: (i) the harm that plaintiff would suffer if an injunction is not issued outweighs any harm Defendants may suffer; and (ii) that denying the injunction would neither serve nor disserve the public interest. Defendants’ objections to these two conclusions are based on the same arguments that were previously raised in their Response to the Emergency Motion (D.E. 22), and are specifically and properly addressed in the Report. Consequently, Defendants’ objections to the Magistrate’s conclusions of law are overruled. Accordingly, it is hereby

ORDERED AND ADJUDGED that the Report of the Magistrate Judge, D.E. 43, is RATIFIED, ADOPTED, and AFFIRMED. It is further

ORDERED AND ADJUDGED that Plaintiff’s Objections, D.E. 51, are OVERRULED. It is further


ORDERED AND ADJUGDED that Defendant’s Objections, D.E. 52, are GRANTED IN PART and OVERRULED IN PART as follows:

- I. Defendants’ Third and Fifth objections to the Report’s findings of fact are SUSTAINED;
- II. Defendants’ First, Second, and Fourth objections to the Report’s findings of fact are OVERRULED; and
- III. Defendants’ objections to the Report’s conclusions of law are OVERRULED.

It is further

ORDERED AND ADJUGDED that Plaintiff’s Emergency Motion, D.E. 4, is DENIED.

DONE AND ORDERED in Chambers at Miami, Florida, this 22d day December, 2017.

  
\_\_\_\_\_  
URSULA UNGARO  
UNITED STATES DISTRICT JUDGE

cc:  
counsel of record via cm/ecf

# MIAMI BEACH

PLANNING DEPARTMENT, 1700 CONVENTION CENTER DRIVE, 2<sup>ND</sup> FLOOR  
MIAMI BEACH, FLORIDA 33139, WWW.MIAMIBEACHFL.GOV  
305-673-7550

## LAND USE BOARD HEARING APPLICATION

THE FOLLOWING APPLICATION IS SUBMITTED FOR REVIEW AND CONSIDERATION OF THE PROJECT DESCRIBED HEREIN BY THE LAND USE BOARD SELECTED BELOW. A SEPARATE APPLICATION MUST BE COMPLETED FOR EACH BOARD REVIEWING THE PROPOSED PROJECT.

☐ BOARD OF ADJUSTMENT

☐ VARIANCE FROM A PROVISION OF THE LAND DEVELOPMENT REGULATIONS

☒ APPEAL OF AN ADMINISTRATIVE DECISION

☐ DESIGN REVIEW BOARD

☐ DESIGN REVIEW APPROVAL

☐ VARIANCE RELATED TO PROJECT BEING CONSIDERED OR APPROVED BY DRB.

☐ HISTORIC PRESERVATION BOARD

☐ CERTIFICATE OF APPROPRIATENESS FOR DESIGN

☐ CERTIFICATE OF APPROPRIATENESS TO DEMOLISH A STRUCTURE

☐ HISTORIC DISTRICT / SITE DESIGNATION

☐ VARIANCE RELATED TO PROJECT BEING CONSIDERED OR APPROVED BY HPB.

☐ PLANNING BOARD

☐ CONDITIONAL USE PERMIT

☐ LOT SPLIT APPROVAL

☒ AMENDMENT TO THE LAND DEVELOPMENT REGULATIONS OR ZONING MAP

☐ AMENDMENT TO THE COMPREHENSIVE PLAN OR FUTURE LAND USE MAP

☐ FLOOD PLAIN MANAGEMENT BOARD

☐ FLOOD PLAIN WAIVER

☐ OTHER \_\_\_\_\_

SUBJECT PROPERTY ADDRESS: \_\_\_\_\_

865 Collins Avenue, Unit D

LEGAL DESCRIPTION: PLEASE ATTACH LEGAL DESCRIPTION AS "EXHIBIT A" \_\_\_\_\_

FOLIO NUMBER (S) \_\_\_\_\_

Planning Department, 1700 Convention Center Drive 2<sup>nd</sup> Floor  
 Miami Beach, Florida 33139, www.miamibeachfl.gov  
 305.673.7550

## ADMINISTRATIVE APPEAL APPLICATION CHECK LIST

Property address: 865 Collins Avenue, Unit D

Date: 2-1-2018

File #: ZBA18-0062

**Incomplete, or submittals found to be insufficient will not be placed on a Board of Adjustment agenda.**

All fees shall be paid before an item can be scheduled for an agenda. It is the applicant's responsibility to make this payment, if an invoice is not generated by the CAP system, the applicant should contact staff prior to the submittal deadline to be invoiced and make payment.

| ITEM # | ONLINE SUBMITTAL (VIA CAP)<br>To be uploaded online (CAP) by the applicant before 5:00 pm on the submittal deadline.                                       |
|--------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1      | Application with all signed and notarized applicable affidavits and disclosures.                                                                           |
| 2      | Signed and dated Letter of Intent. <b>Letter must indicate the decision that is being appealed</b> and other information as required by Section 118-9 (b). |
| 3      | Full legal description of the property if not included in survey (for lengthy legal descriptions, attach as a separate document - label clearly).          |

| ITEM # | PHYSICAL SUBMITTAL<br>To be hand delivered to the Planning Department before 5:00 pm on the submittal deadline.                                      |
|--------|------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1      | Original application with all signed and notarized applicable affidavits and disclosures.                                                            |
| 2      | Originals of all items provided in the online submittal.                                                                                             |
| 3      | One (1) signed, stapled and collated set of all provided documents.                                                                                  |
| 4      | 14 collated copies of all provided documents                                                                                                         |
| 5      | One (1) CD/DVD with electronic copy of entire package (plans, application, Letter of Intent, etc.) see CD/DVD formatting attached, for instructions. |

It is the responsibility of the applicant to confirm that documents submitted via CAP, Paper Submittal sets (14 copies), and electronic version on CD are consistent with each other and legible.

All documents required for Board applications must be submitted in an electronic format (PDF) via CD in the manner prescribed herein. The CD is considered the "Formal Submission", and must include the electronic version of all hard copy documents associated with the application. A new Updated CD will be required if any modifications are made before or after hearing. Failure to comply with the aforementioned may result in a rehearing before the applicable board at the applicant's expense.



Applicant's or designee's signature

2-15-2018

Date

1. APPLICANT: ☐ OWNER OF THE SUBJECT PROPERTY ☒ TENANT ☐ ARCHITECT ☐ LANDSCAPE ARCHITECT  
☐ ENGINEER ☐ CONTRACTOR ☐ OTHER \_\_\_\_\_

NAME Doron Doar  
 ADDRESS 13441 N.W. 5 CT, Plantation, FL 33325  
 BUSINESS PHONE \_\_\_\_\_ CELL PHONE 954.709.2555  
 E-MAIL ADDRESS ddoar@bellsouth.net

OWNER IF DIFFERENT THAN APPLICANT:

NAME \_\_\_\_\_  
 ADDRESS \_\_\_\_\_  
 BUSINESS PHONE \_\_\_\_\_ CELL PHONE \_\_\_\_\_  
 E-MAIL ADDRESS \_\_\_\_\_

2. AUTHORIZED REPRESENTATIVE(S):

☒ ATTORNEY:

NAME Phillip M. Hudson, Esq.  
 ADDRESS 200 S. Biscayne Blvd #3600, Miami, FL 33131  
 BUSINESS PHONE 305-428-4500 CELL PHONE \_\_\_\_\_  
 E-MAIL ADDRESS phil.hudson@saul.com

☒ AGENT: ATTORNEY

NAME Miguel Diaz de la Portilla, Esq.  
 ADDRESS 200 S. Biscayne Blvd #3600, Miami, FL 33131  
 BUSINESS PHONE 305-428-4500 CELL PHONE \_\_\_\_\_  
 E-MAIL ADDRESS md.portilla@saul.com

☐ CONTACT:

NAME \_\_\_\_\_  
 ADDRESS \_\_\_\_\_  
 BUSINESS PHONE \_\_\_\_\_ CELL PHONE \_\_\_\_\_  
 E-MAIL ADDRESS \_\_\_\_\_

3. PARTY RESPONSIBLE FOR PROJECT DESIGN:

☐ ARCHITECT ☐ LANDSCAPE ARCHITECT ☐ ENGINEER ☐ CONTRACTOR ☐ OTHER: \_\_\_\_\_

NAME \_\_\_\_\_  
 ADDRESS \_\_\_\_\_  
 BUSINESS PHONE \_\_\_\_\_ CELL PHONE \_\_\_\_\_  
 E-MAIL ADDRESS \_\_\_\_\_

FILE NO. ZBA18-0062

4. SUMMARY OF APPLICATION – PROVIDE BRIEF SCOPE OF PROJECT:

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- 4A. IS THERE AN EXISTING BUILDING(S) ON THE SITE ☒ YES ☐ NO
- 4B. DOES THE PROJECT INCLUDE INTERIOR OR EXTERIOR DEMOLITION ☐ YES ☒ NO
- 4C. PROVIDE THE TOTAL FLOOR AREA OF THE NEW BUILDING (IF APPLICABLE) 1760 SQ. FT.
- 4D. PROVIDE THE TOTAL GROSS FLOOR AREA OF THE NEW BUILDING (INCLUDING REQUIRED PARKING AND ALL USEABLE FLOOR SPACE). 19,000 SQ. FT.

5. APPLICATION FEE (TO BE COMPLETED BY PLANNING STAFF) \$ \_\_\_\_\_

- A SEPARATE DISCLOSURE OF INTEREST FORM MUST BE SUBMITTED WITH THIS APPLICATION IF THE APPLICANT OR OWNER IS A CORPORATION, PARTNERSHIP, LIMITED PARTNERSHIP OR TRUSTEE.
- ALL APPLICABLE AFFIDAVITS MUST BE COMPLETED AND THE PROPERTY OWNER MUST COMPLETE AND SIGN THE "POWER OF ATTORNEY" PORTION OF THE AFFIDAVIT IF THEY WILL NOT BE PRESENT AT THE HEARING, OR IF OTHER PERSONS ARE SPEAKING ON THEIR BEHALF.
- TO REQUEST THIS MATERIAL IN ALTERNATE FORMAT, SIGN LANGUAGE INTERPRETER (FIVE-DAY NOTICE IS REQUIRED), INFORMATION ON ACCESS FOR PERSONS WITH DISABILITIES, AND ACCOMMODATION TO REVIEW ANY DOCUMENT OR PARTICIPATE IN ANY CITY-SPONSORED PROCEEDINGS, CALL 305.604.2489 AND SELECT (1) FOR ENGLISH OR (2) FOR SPANISH, THEN OPTION 6; TTY USERS MAY CALL VIA 711 (FLORIDA RELAY SERVICE).

PLEASE READ THE FOLLOWING AND ACKNOWLEDGE BELOW:

- APPLICATIONS FOR ANY BOARD HEARING(S) WILL NOT BE ACCEPTED WITHOUT PAYMENT OF THE REQUIRED FEE. ALL CHECKS ARE TO BE MADE PAYABLE TO THE "CITY OF MIAMI BEACH".
- PUBLIC RECORDS NOTICE – ALL DOCUMENTATION, SUBMITTED FOR THIS APPLICATION IS CONSIDERED A PUBLIC RECORD SUBJECT TO CHAPTER 119 OF THE FLORIDA STATUTES AND SHALL BE DISCLOSED UPON REQUEST.
- IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 2-482 OF THE CODE OF THE CITY OF MIAMI BEACH, ANY INDIVIDUAL OR GROUP THAT WILL BE COMPENSATED TO SPEAK OR REFRAIN FROM SPEAKING IN FAVOR OR AGAINST A PROJECT BEING PRESENTED BEFORE ANY OF THE CITY'S LAND USE BOARDS, SHALL FULLY DISCLOSE, PRIOR TO THE PUBLIC HEARING, THAT THEY HAVE BEEN, OR WILL BE COMPENSATED. SUCH PARTIES INCLUDE: ARCHITECTS, LANDSCAPE ARCHITECTS, ENGINEERS, CONTRACTORS, OR OTHER PERSONS RESPONSIBLE FOR PROJECT DESIGN, AS WELL AS AUTHORIZED REPRESENTATIVES ATTORNEYS OR AGENTS AND CONTACT PERSONS WHO ARE REPRESENTING OR APPEARING ON BEHALF OF A THIRD PARTY; SUCH INDIVIDUALS MUST REGISTER WITH THE CITY CLERK PRIOR TO THE HEARING.

FILE NO. 2BA18-0062



- IN ACCORDANCE WITH SEC.118-31. - DISCLOSURE REQUIREMENT. EACH PERSON OR ENTITY REQUESTING APPROVAL, RELIEF OR OTHER ACTION FROM THE PLANNING BOARD, DESIGN REVIEW BOARD, HISTORIC PRESERVATION BOARD (INCLUDING THE JOINT DESIGN REVIEW BOARD/HISTORIC PRESERVATION BOARD), OR THE BOARD OF ADJUSTMENT SHALL DISCLOSE, AT THE COMMENCEMENT (OR CONTINUANCE) OF THE PUBLIC HEARING(S), ANY CONSIDERATION PROVIDED OR COMMITTED, DIRECTLY OR ON ITS BEHALF, FOR AN AGREEMENT TO SUPPORT OR WITHHOLD OBJECTION TO THE REQUESTED APPROVAL, RELIEF OR ACTION, EXCLUDING FROM THIS REQUIREMENT CONSIDERATION FOR LEGAL OR DESIGN PROFESSIONAL SERVICES RENDERED OR TO BE RENDERED. THE DISCLOSURE SHALL: (I) BE IN WRITING, (II) INDICATE TO WHOM THE CONSIDERATION HAS BEEN PROVIDED OR COMMITTED, (III) GENERALLY DESCRIBE THE NATURE OF THE CONSIDERATION, AND (IV) BE READ INTO THE RECORD BY THE REQUESTING PERSON OR ENTITY PRIOR TO SUBMISSION TO THE SECRETARY/CLERK OF THE RESPECTIVE BOARD. UPON DETERMINATION BY THE APPLICABLE BOARD THAT THE FOREGOING DISCLOSURE REQUIREMENT WAS NOT TIMELY SATISFIED BY THE PERSON OR ENTITY REQUESTING APPROVAL, RELIEF OR OTHER ACTION AS PROVIDED ABOVE, THEN (I) THE APPLICATION OR ORDER, AS APPLICABLE, SHALL IMMEDIATELY BE DEEMED NULL AND VOID WITHOUT FURTHER FORCE OR EFFECT, AND (II) NO APPLICATION FROM SAID PERSON OR ENTITY FOR THE SUBJECT PROPERTY SHALL BE REVIEWED OR CONSIDERED BY THE APPLICABLE BOARD(S) UNTIL EXPIRATION OF A PERIOD OF ONE YEAR AFTER THE NULLIFICATION OF THE APPLICATION OR ORDER. IT SHALL BE UNLAWFUL TO EMPLOY ANY DEVICE, SCHEME OR ARTIFICE TO CIRCUMVENT THE DISCLOSURE REQUIREMENTS OF THIS SECTION AND SUCH CIRCUMVENTION SHALL BE DEEMED A VIOLATION OF THE DISCLOSURE REQUIREMENTS OF THIS SECTION.
- WHEN THE APPLICABLE BOARD REACHES A DECISION A FINAL ORDER WILL BE ISSUED STATING THE BOARD'S DECISION AND ANY CONDITIONS IMPOSED THEREIN. THE FINAL ORDER WILL BE RECORDED WITH THE MIAMI-DADE CLERK OF COURTS. THE ORIGINAL BOARD ORDER SHALL REMAIN ON FILE WITH THE CITY OF MIAMI BEACH PLANNING DEPARTMENT. UNDER NO CIRCUMSTANCES WILL A BUILDING PERMIT BE ISSUED BY THE CITY OF MIAMI BEACH WITHOUT A COPY OF THE RECORDED FINAL ORDER BEING INCLUDED AND MADE A PART OF THE PLANS SUBMITTED FOR A BUILDING PERMIT.

THE AFOREMENTIONED IS ACKNOWLEDGED BY: ☐ OWNER OF THE SUBJECT PROPERTY

☒ AUTHORIZED REPRESENTATIVE

SIGNATURE: \_\_\_\_\_

PRINT NAME: Phillip M. Anderson III

FILE NO. ZBA18-0062

## OWNER AFFIDAVIT FOR INDIVIDUAL OWNER

STATE OF  
COUNTY OF

I, Phil Scada, being first duly sworn, depose and certify as follows: (1) I am the owner of the property that is the subject of this application. (2) This application and all information submitted in support of this application, including sketches, data, and other supplementary materials, are true and correct to the best of my knowledge and belief. (3) I acknowledge and agree that, before this application may be publicly noticed and heard by a land development board, the application must be complete and all information submitted in support thereof must be accurate. (4) I also hereby authorize the City of Miami Beach to enter my property for the sole purpose of posting a Notice of Public Hearing on my property, as required by law. (5) I am responsible for removing this notice after the date of the hearing.

SIGNATURE

Sworn to and subscribed before me this 14 day of Feb, 2018. The foregoing instrument was acknowledged before me by \_\_\_\_\_, who has produced \_\_\_\_\_ as identification and/or is personally known to me and who did/did not take an oath.

NOTARY SEAL OR STAMP



My Commission Expires:

Caren Davila  
Commission # FF945267  
Expires: December 21, 2019  
Bonded thru Aaron Notary

NOTARY PUBLIC

PRINT NAME

ALTERNATE OWNER AFFIDAVIT FOR  
CORPORATION, PARTNERSHIP, OR LIMITED LIABILITY COMPANY  
(Circle one)

STATE OF  
COUNTY OF

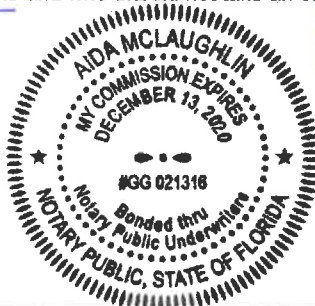
I, Doron Dear, being duly sworn, depose and certify as follows: (1) I am the President (print title) of Beach Blitz Co. (print name of corporate entity). (2) I am authorized to file this application on behalf of such entity. (3) This application and all information submitted in support of this application, including sketches, data, and other supplementary materials, are true and correct to the best of my knowledge and belief. (4) The corporate entity named herein is the owner or tenant of the property that is the subject of this application. (5) I acknowledge and agree that, before this application may be publicly noticed and heard by a land development board, the application must be complete and all information submitted in support thereof must be accurate. (6) I also hereby authorize the City of Miami Beach to enter the subject property for the sole purpose of posting a Notice of Public Hearing on the property, as required by law. (7) I am responsible for removing this notice after the date of the hearing.

SIGNATURE

Sworn to and subscribed before me this 15 day of February 2018. The foregoing instrument was acknowledged before me by Doron Dear, President of Beach Blitz Co., on behalf of such entity, who has produced \_\_\_\_\_ as identification and/or is personally known to me and who did/did not take an oath.

NOTARY SEAL OR STAMP:

My Commission Expires:



NOTARY PUBLIC

PRINT NAME

FILE NO. ZBA18-0062

POWER OF ATTORNEY AFFIDAVITSTATE OF  
COUNTY OF

I, Doron Dear, being duly sworn and deposed, certify as follows: (1) I am the owner or representative of the owner of the real property that is the subject of this application. (2) I hereby authorize Phillip M. Hudson III to be my representative before the Adjustment Board. (3) I also hereby authorize the City of Miami Beach to enter the subject property for the sole purpose of posting a Notice of Public Hearing on the property, as required by law. (4) I am responsible for removing this notice after the date of the hearing.

DORON DEAR

PRINT NAME (and Title, if applicable)

SIGNATURE

Sworn to and subscribed before me this 14 day of February, 2018. The foregoing instrument was acknowledged before me by Doron Dear, President of Beach Blitz Co who has produced as identification and/or is personally known to me and who did/did not take an oath.

NOTARY SEAL OR STAMP

My Commission Expires



Aida McLaughlin  
NOTARY PUBLIC  
Aida McLaughlin  
PRINT NAME

CONTRACT FOR PURCHASE

If the applicant is not the owner of the property, but the applicant is a party to a contract to purchase the property, whether or not such contract is contingent on this application, the applicant shall list the names of the contract purchasers below, including any and all principal officers, stockholders, beneficiaries, or partners. If any of the contract purchasers are corporations, partnerships, limited liability companies, trusts, or other corporate entities, the applicant shall further disclose the identity of the individual(s) (natural persons) having the ultimate ownership interest in the entity. If any contingency clause or contract terms involve additional individuals, corporations, partnerships, limited liability companies, trusts, or other corporate entities, list all individuals and/or corporate entities.\*

NAME

DATE OF CONTRACT

NAME, ADDRESS, AND OFFICE

% OF STOCK

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In the event of any changes of ownership or changes in contracts for purchase, subsequent to the date that this application is filed, but prior to the date of a final public hearing, the applicant shall file a supplemental disclosure of interest.

FILE NO. ZBA18-0062

CITY OF MIAMI BEACH  
DEVELOPMENT REVIEW BOARD APPLICATION

DISCLOSURE OF INTEREST

**1. CORPORATION, PARTNERSHIP, OR LIMITED LIABILITY COMPANY**

If the property that is the subject of the application is owned or leased by a corporation, partnership, or limited liability company, list ALL of the owners, shareholders, partners, managers, and/or members, and the percentage of ownership held by each. If the owners consist of one or more corporations, partnerships, trusts, partnerships, or other corporate entities, the applicant shall further disclose the identity of the individual(s) (natural persons) having the ultimate ownership interest in the entity.\*

Beach Blitz Co. d/b/a Ocean 9 Liquor

NAME OF CORPORATE ENTITY

NAME AND ADDRESS

% OF OWNERSHIP

Doron Doar, 13441 NW 5 CT,  
Plantation, FL 33325

100%

NAME OF CORPORATE ENTITY

NAME AND ADDRESS

% OF OWNERSHIP

IF THERE ARE ADDITIONAL CORPORATE OWNERS, LIST ALL SUCH OWNERS, INCLUDING CORPORATE NAMES AND THE NAME, ADDRESS, AND PERCENTAGE OF OWNERSHIP OF EACH ADDITIONAL OWNER, ON A SEPARATE PAGE.

NOTE: Notarized signature required on page 9

FILE NO. 2BA18-0062

CITY OF MIAMI BEACH  
DEVELOPMENT REVIEW BOARD APPLICATION  
DISCLOSURE OF INTEREST

**2. TRUSTEE**

If the property that is the subject of this application is owned or leased by a trust, list any and all trustees and beneficiaries of the trust, and the percentage of interest held by each. If the owners consist of one or more corporations, partnerships, trusts, partnerships, or other corporate entities, the applicant shall further disclose the identity of the individual(s) (natural persons) having the ultimate ownership interest in the entity.\*

TRUST NAME

NAME AND ADDRESS

% INTEREST

|  |  |
|--|--|
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|  |  |
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|  |  |
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|  |  |
|  |  |

*NOTE: Notarized signature required on page 9*

FILE NO. ZBA18-0062



**3. COMPENSATED LOBBYIST:**

Pursuant to Section 2-482 of the Miami Beach City Code, all lobbyists shall, before engaging in any lobbying activities, register with the City Clerk. Please list below any and all persons or entities retained by the applicant to lobby City staff or any of the City's land development boards in support of this application.

|    | NAME                       | ADDRESS              | PHONE #      |
|----|----------------------------|----------------------|--------------|
| a. | Miguel Diaz de la Portilla | 200 S. Biscayne Blvd | 305-428-4500 |
| b. |                            | #3600                |              |
| c. |                            | MIAMI, FL 33131      |              |

Additional names can be placed on a separate page attached to this form.

\*Disclosure shall not be required of any entity, the equity interests in which are regularly traded on an established securities market in the United States or other country, or of any entity, the ownership interests of which are held in a limited partnership or other entity, consisting of more than 5,000 separate interests, where no one person or entity holds more than a total of 5% of the ownership interests in the entity.

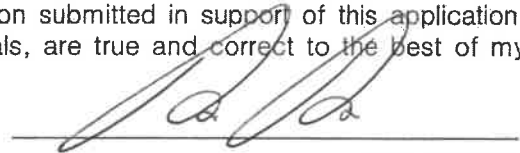
APPLICANT HEREBY ACKNOWLEDGES AND AGREES THAT (1) ANY APPROVAL GRANTED BY A LAND DEVELOPMENT BOARD OF THE CITY SHALL BE SUBJECT TO ANY AND ALL CONDITIONS IMPOSED BY SUCH BOARD AND BY ANY OTHER BOARD HAVING JURISDICTION, AND (2) APPLICANT'S PROJECT SHALL COMPLY WITH THE CODE OF THE CITY OF MIAMI BEACH AND ALL OTHER APPLICABLE CITY, STATE, AND FEDERAL LAWS.

**APPLICANT AFFIDAVIT**

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

I, Doron Dear, being first duly sworn, depose and certify as follows: (1) I am the applicant, or the representative of the applicant. (2) This application and all information submitted in support of this application, including disclosures, sketches, data, and other supplementary materials, are true and correct to the best of my knowledge and belief.

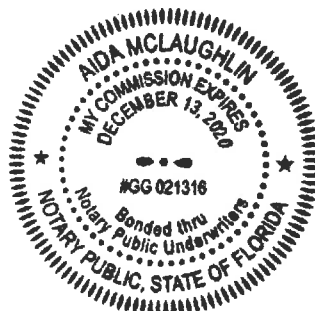


SIGNATURE

Sworn to and subscribed before me this 14 day of February, 20 18. The foregoing instrument was acknowledged before me by, who has produced as identification and/or is personally known to me and who did/did not take an oath.

NOTARY SEAL OR STAMP

My Commission Expires:




NOTARY PUBLIC

Aida McLaughlin

PRINT NAME

FILE NO. ZBA18-0062

## EXHIBIT A

**Folio:** 02-4203-258-0040

**Sub-Division:**

THE SKYLARK CONDO

**Property Address**

865 COLLINS AVE UNIT: D Miami Beach, FL 33139-5820

**Owner**

PMJ HOLDINGS CO LLC

**Mailing Address**

2025 TYLER ST HOLLYWOOD, FL 33020

**PA Primary Zone**

6501 COMMERCIAL - MIXED USE ENTERTAINMENT

**Primary Land Use**

0407 RESIDENTIAL - TOTAL VALUE : CONDOMINIUM - RESIDENTIAL

**UPLOADED ON CAP  
AND HAND DELIVERED TO  
ROGELIO A. MADAN, AICP  
CHIEF OF COMMUNITY PLANNING AND SUSTAINABILITY**

February 16, 2018

Miami Beach  
Planning Department  
1700 Convention Center Drive, 2<sup>nd</sup> Floor  
Miami Beach, Florida 33139

Re: Letter of Intent for Administrative Appeal  
865 Collins Avenue

Dear Sir/Madam:

This letter of intent is submitted in support of Beach Blitz Co., a Florida corporation d/b/a Ocean 9 Liquor ("**Ocean 9**"). Ocean 9 appeals the denial by the Planning Department with respect to allowed zoning in the district in which Ocean 9 operates. Said denial results in Ocean 9's inability to obtain a Business Tax Receipt.

Until October 6, 2017, Ocean 9 serviced South Beach, Florida, with a wide variety of packaged beer, wine, liquor, and related supplies. Ocean 9's location is 865 Collins Avenue. Ocean 9 offered free delivery to the surrounding area of hotels, residences, and the beach. In addition Ocean 9 maintained a live disc jockey on the premises. Ocean 9 had operated at 865 Collins Avenue since 2011. Doron Doar is Ocean 9's principal.

**A. The Events Leading up to the Instant Appeal**

**a. December 2016**

1. On Wednesday, December 21, 2016 at 8:39 a.m. Ocean 9 was cited for alleged violation of Section 6-3(1)(A) of the City Code. The Notice stated that the violation was based upon Ocean 9's sale of alcoholic beverages between the hours of midnight and 10:00 a.m. The violation was identified as Case Number 2016-11719. See Exhibit A.

2. Subsequently, Ocean 9 was provided a different sheet of paper for the December violation bearing Case Number CC2016-01704 and alleging a violation of Section 6-3(1)(A) of the City Code. Id. See Exhibit B.

3. In this notice, the violation stated that Section 6-3(1)(A) of the City Code provides that retail stores in the MXE district for package sales only may make sales of alcohol for off-premises consumption between the hours of 8:00 a.m. and midnight. Id.



4. The December violation was issued at 8:39 a.m. – thus within the then existing lawful time periods for sale.

5. As more fully discussed below, Ocean 9 appealed the December violation to the Special Master as allowed by the Code.

**b. June 2017**

6. On Sunday, June 25, 2017 at 11:30 p.m., a Code Compliance Officer presented the following notices of violation to Ocean 9:

- Violation identified as Code Case Number CC2017-03102, alleging a violation of . See Exhibit C.
- Violation identified as Code Case Number CC2017-03103, alleging a violation of Article V, Section 102-377 of the City Code by failing to obtain a Business Tax Receipt. See Exhibit D.

**c. Ocean 9 appeals the fines and/or violations of the December and June notices**

7. Consistent with the Code and as set forth in the violation notices, Ocean 9 appealed the December and June violations to the Special Master. The Special Master accepted jurisdiction and proceeded in the ordinary course.

8. A hearing was held on the appeal to the Special Master on August 28, 2017. At that time, the parties advised the Special Master that they had reached an agreement which would resolve the violations. The agreement required Ocean 9 to pay a fine in the sum of One Thousand (\$1,000.00) Dollars. The Special Master approved the agreement.

9. As a result, on the very same day, Ocean 9 issued Check No. 2738 in the sum of \$1,000.00. However, because a written order had not been issued by the Special Master, the City would not accept the payment as an order had not been submitted and entered into the “system”. This entry into the “system” is necessary to lift the restriction on tendering payment to, *inter alia*, renew the BTR license. These facts were testified to by Manuel Marquez, Assistant Director of the Finance Department. See Exhibit E.

10. On Thursday, September 28, 2017, a full month after reaching an agreement, the Special Master issued an agreed order affirming Citations CC2016-01704, CC2017-03102 and CC2017-03103. See Exhibit F.

11. In its agreed order the Special Master assessed a fine in the amount of One Thousand (\$1,000.00) Dollars against Ocean 9. Id. The order required Ocean 9 to pay the fine within thirty (30) days of the entry of the agreed order – to wit: October 28, 2017. Id.

12. From Thursday, September 28, 2017 through and including Wednesday, October

4, 2017, Ocean 9 repeatedly presented payment to the City to comply with the Special Master's order and to obtain its BTR. See Exhibit E.

13. From Thursday, September 28, 2017 through and including Wednesday, October 4, 2017, the City provided a series of reasons of why payment could not be accepted. For example, the City claimed that it could not accept payment because the Special Master's order had not yet been put into the system. Id.

14. Finally, on Wednesday, October 4, 2017, the City accepted Ocean 9's payment of the \$1,000 fine.

15. The City also accepted late fees relative to the BTR; however it refused to accept the payment to renew the BTR.

16. This fact is confirmed by the on-line registry which shows that violations CC2017-03102 and CC2017-03103 were closed on October 4, 2017. See Exhibit G.

17. Significantly, although paid the same day as the other violations, the on-line registry shows that violation CC2016-01704 was closed on October 13, 2017 (9 days after the City accepted Ocean 9's check, 16 days after the Special Master's order and 46 days after the parties had agreed to a resolution of the issues raised by the 3 violations). See Exhibit H.

18. Despite accepting the payment which was in compliance with the Special Master's order, the City did not issue the BTR.

**d. October 2017**

19. On Friday, October 6, 2017 at 5:00 p.m., a Code Compliance Officer again presented a notice of violation to Ocean 9 alleging that Ocean 9 had violated Article V, Section 102-377 of the City Code by failing to obtain a BTR. See Exhibit I. The Code Case Number was set forth at CC2017-03686.

20. The October notice was issued during the period allowed for payment of the Special Master's fine relative to, in part, a violation of Article V, Section 102-377 of the City Code (failing to obtain a Business Tax Receipt) and after Ocean 9 had made the payment required by the Special Master to resolve three violations, one of which was failure to obtain a BTR.

**e. Ocean 9 is Closed Down by Code Enforcement for Failing to Have a BTR License**

21. On Friday, October 6, 2017, Code enforcement closed Ocean 9 for failure to obtain a BTR.

**f. Ocean 9 Seeks Relief in Court**

22. Ocean 9 initiated a case in Court to attempt to obtain its BTR. See Exhibit J.

23. Shortly thereafter, the Court held a hearing on Ocean 9's request for injunctive relief. See Exhibit E.

24. Although the Court denied the relief requested, it found Mr. Doar's testimony credible. See Exhibits K and L.

## **B. Grounds for Appeal**

Ocean 9 operated without issue relative to its BTR since 2011. Beginning in June 2017, when Ocean 9 was first cited for failure to obtain its BTR, Ocean 9 has been attempting to obtain the BTR. Despite its efforts and compliance with applicable requirements, the City's failures during the months of August and September 2017 to accept the payment under the Special Master's order and accept payment of the BTR related fees, led to the closing of Ocean 9's store. The City's failure to adhere to its policies and procedures (as admitted to by Mr. Marquez – Exhibit E) resulted in the Ocean 9 entering the new fiscal year 2017/2018 without a BTR. Because of that, Ocean 9 was not operating and is not protected from the ramifications of Ordinance No. 2016-4047 which prohibits package stores and package sales of alcoholic beverages by any retail store or alcoholic beverage establishment within the MXE district.<sup>1</sup> Additionally, the Ordinance prohibits entertainment in package stores.<sup>2</sup> Because Ocean 9's business at 865 Collins Avenue is now deemed non-conforming under said Ordinance, the Planning Department denied Ocean 9's application for a BTR. It is that decision which is being appealed.

Ocean 9 submits that the facts of this matter and the undeniable fact that the City's own procedures and policies were not followed, the appeal should be granted, the decision of the Planning Board reversed and the BTR issued to Ocean 9.

Respectfully submitted

Beach Blitz Co.  
through its President, Doron Doar

---

<sup>1</sup> All package stores in operation at the time the Ordinance was passed were grandfathered in as a matter of law.

<sup>2</sup> Ordinance No. 2016-4047 was passed on October 19, 2016. At that time Ocean 9 was in operation and lawfully provided entertainment.

**UPLOADED ON CAP  
AND HAND DELIVERED TO  
ROGELIO A. MADAN, AICP  
CHIEF OF COMMUNITY PLANNING AND SUSTAINABILITY**

February 20, 2018

Miami Beach  
Planning Department  
1700 Convention Center Drive, 2<sup>nd</sup> Floor  
Miami Beach, Florida 33139

Re: **Amended** Letter of Intent for Administrative Appeal  
865 Collins Avenue, Unit D

Dear Sir/Madam:

This letter of intent is submitted in support of Beach Blitz Co., a Florida corporation d/b/a Ocean 9 Liquor (“**Ocean 9**”). Ocean 9 appeals the denial by the Planning Department with respect to allowed zoning in the district in which Ocean 9 operates. Said denial results in Ocean 9’s inability to obtain a Business Tax Receipt.

Until October 6, 2017, Ocean 9 serviced South Beach, Florida, with a wide variety of packaged beer, wine, liquor, and related supplies. Ocean 9’s location is 865 Collins Avenue. Ocean 9 offered free delivery to the surrounding area of hotels, residences, and the beach. In addition Ocean 9 maintained a live disc jockey on the premises. Ocean 9 had operated at 865 Collins Avenue, Unit D since 2011. Doron Doar is Ocean 9’s principal.

**A. The Events Leading up to the Instant Appeal**

**a. December 2016**

1. On Wednesday, December 21, 2016 at 8:39 a.m. Ocean 9 was cited for alleged violation of Section 6-3(1)(A) of the City Code. The Notice stated that the violation was based upon Ocean 9’s sale of alcoholic beverages between the hours of midnight and 10:00 a.m. The violation was identified as Case Number 2016-11719. See Exhibit A.

2. Subsequently, Ocean 9 was provided a different sheet of paper for the December violation bearing Case Number CC2016-01704 and alleging a violation of Section 6-3(1)(A) of the City Code. Id. See Exhibit B.

3. In this notice, the violation stated that Section 6-3(1)(A) of the City Code provides that retail stores in the MXE district for package sales only may make sales of alcohol for off-premises consumption between the hours of 8:00 a.m. and midnight. Id.

4. The December violation was issued at 8:39 a.m. – thus within the then existing lawful time periods for sale.

5. As more fully discussed below, Ocean 9 appealed the December violation to the Special Master as allowed by the Code.

**b. June 2017**

6. On Sunday, June 25, 2017 at 11:30 p.m., a Code Compliance Officer presented the following notices of violation to Ocean 9:

- Violation identified as Code Case Number CC2017-03102.
- Violation identified as Code Case Number CC2017-03103, alleging a violation of Article V, Section 102-377 of the City Code by failing to obtain a Business Tax Receipt. See Exhibit D.

**c. Ocean 9 appealed the fines and/or violations of the December and June notices**

7. Consistent with the Code and as set forth in the violation notices, Ocean 9 appealed the December and June violations to the Special Master. The Special Master accepted jurisdiction and proceeded in the ordinary course.

8. A hearing was held on the appeal to the Special Master on August 28, 2017. At that time, the parties advised the Special Master that they had reached an agreement which would resolve the violations. The agreement required Ocean 9 to pay a fine in the sum of One Thousand (\$1,000.00) Dollars. The Special Master approved the agreement.

9. As a result, on the very same day, Ocean 9 issued Check No. 2738 in the sum of \$1,000.00. However, because a written order had not been issued by the Special Master, the City would not accept the payment as an order had not been submitted and entered into the “system”. This entry into the “system” is necessary to lift the restriction on tendering payment to, *inter alia*, renew the BTR license. These facts were testified to by Manuel Marquez, Assistant Director of the Finance Department. See Exhibit E.

10. On Thursday, September 28, 2017, a full month after reaching an agreement, the Special Master issued an agreed order affirming Citations CC2016-01704, CC2017-03102 and CC2017-03103. See Exhibit F.

11. In its agreed order the Special Master assessed a fine in the amount of One Thousand (\$1,000.00) Dollars against Ocean 9. Id. The order required Ocean 9 to pay the fine within thirty (30) days of the entry of the agreed order – to wit: October 28, 2017. Id.

12. From Thursday, September 28, 2017 through and including Wednesday, October 4, 2017, Ocean 9 repeatedly presented payment to the City to comply with the Special Master’s

order and to obtain its BTR. See Exhibit E.

13. From Thursday, September 28, 2017 through and including Wednesday, October 4, 2017, the City provided a series of reasons of why payment could not be accepted. For example, the City claimed that it could not accept payment because the Special Master's order had not yet been put into the system. Id.

14. Finally, on Wednesday, October 4, 2017, the City accepted Ocean 9's payment of the \$1,000 fine.

15. The City also accepted late fees relative to the BTR; however it refused to accept the payment to renew the BTR.

16. This fact is confirmed by the on-line registry which shows that violations CC2017-03102 and CC2017-03103 were closed on October 4, 2017. See Exhibit G.

17. Significantly, although paid the same day as the other violations, the on-line registry shows that violation CC2016-01704 was closed on October 13, 2017 (9 days after the City accepted Ocean 9's check, 16 days after the Special Master's order and 46 days after the parties had agreed to a resolution of the issues raised by the 3 violations). See Exhibit H.

18. Despite accepting the payment which was in compliance with the Special Master's order, the City did not issue the BTR.

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19. On Friday, October 6, 2017 at 5:00 p.m., a Code Compliance Officer again presented a notice of violation to Ocean 9 alleging that Ocean 9 had violated Article V, Section 102-377 of the City Code by failing to obtain a BTR. See Exhibit I. The Code Case Number was set forth at CC2017-03686.

20. The October notice was issued during the period allowed for payment of the Special Master's fine relative to, in part, a violation of Article V, Section 102-377 of the City Code (failing to obtain a Business Tax Receipt) and after Ocean 9 had made the payment required by the Special Master to resolve three violations, one of which was failure to obtain a BTR.

**e. Ocean 9 is Closed Down by Code Enforcement for Failing to Have a BTR License**

21. On Friday, October 6, 2017, Code enforcement closed Ocean 9 for failure to obtain a BTR.

**f. Ocean 9 Seeks Relief in Court**

22. Ocean 9 initiated a case in Court to attempt to obtain its BTR. See Exhibit J.

23. Shortly thereafter, the Court held a hearing on Ocean 9's request for injunctive relief. See Exhibit E.

24. Although the Court denied the relief requested, it found Mr. Doar's testimony credible. See Exhibits K and L.

## **B. Grounds for Appeal**

Ocean 9 operated without issue relative to its BTR since 2011. Beginning in June 2017, when Ocean 9 was first cited for failure to obtain its BTR, Ocean 9 has been attempting to obtain the BTR. Despite its efforts and compliance with applicable requirements, the City's failures during the months of August and September 2017 to accept the payment under the Special Master's order and accept payment of the BTR related fees was later used by the City as a pretext for forcibly closing Ocean 9's store. The City's failure to adhere to its policies and procedures (as admitted to by Mr. Marquez – Exhibit E) resulted in the Ocean 9 entering the new fiscal year 2017/2018 without a BTR. Packaged liquor stores were legally permitted uses in the MXE District under the City's Zoning Code until the City changed its code on October 19, 2016.<sup>1</sup> Upon the City changing its zoning code to prohibit packaged liquor stores in the MXE District, all existing package liquor stores operating in the MXE District, including Ocean 9, became legal non-conforming uses.<sup>2</sup> Ocean 9 never voluntarily abandoned the use of its store as a package liquor store. The city failed to follow its own procedures to prevent Ocean 9 from obtaining a BTR for 2016/1017 and wrongfully denied Ocean 9 a BTR for 2017/2018. Ocean 9 is appealing the City's decision to deny a BTR for its store at 865 Collins Avenue.

Ocean 9 submits that the facts of this matter and the undeniable fact that the City's own procedures and policies were not followed, the appeal should be granted, the decision of the Planning Board reversed and the BTR issued to Ocean 9 for its store at 865 Collins Avenue, Miami Beach, Florida.

Respectfully submitted

*/s/ Doron Doar*

Beach Blitz Co.  
through its President, Doron Doar

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<sup>1</sup> Ordinance No. 2016-4047 was passed on October 19, 2016. At that time Ocean 9 was in operation and lawfully provided entertainment.

<sup>2</sup> All package stores in operation at the time the Ordinance was passed were grandfathered in as a matter of law.

24347814.1



# **EXHIBIT H**

SE #CASE #. 2016-117119

CITY OF MIAMI BEACH  
CODE COMPLIANCE DEPARTMENT  
555 17<sup>th</sup> Street  
Miami Beach, FL 33139  
PHONE (305) 673-7555 FAX (305) 678-7012

NOTICE OF CITY CODE VIOLATION AND FINE

ITE SITE ADDRESS: 865 Collins ave D  
VIOLATION ISSUE DATE: 12/21/16 TIME: 8:39 AM.  
SSI ISSUED TO: Beach Blitz CO.  
MAIL MAILING ADDRESS: 865 Collins ave, D Miami Beach

DAY OF THE WEEK: SU M T W TH F S

INSPECTION OF THE ABOVE PREMISES ON THIS DATE  
REVEALED YOU ARE IN VIOLATION OF SECTION:

6-3(a)(1)

O OF THE MIAMI BEACH CITY CODE BY:

|                               | FINE          |
|-------------------------------|---------------|
| offering alcoholic beverages  | ( ) \$25.00   |
| in a retail establishment for | ( ) \$50.00   |
| package sales between         | ( ) \$75.00   |
| the hours of midnight         | ( ) \$100.00  |
| and 10:00am on any            | ( ) \$150.00  |
| day of the week.              | ( ) \$200.00  |
|                               | ( ) \$250.00  |
| You can comply by ceasing     | ( ) \$350.00  |
| immediately illegal alcoholic | ( ) \$500.00  |
| beverage sales upon receipt   | (X) \$1000.00 |
| of this notice and paying     | ( ) \$        |
| a civil fine of:              |               |

TOTAL FINES 1,000

COMMENTS: 1st offense

Tax# RL-10005692

CODE COMPLIANCE OFFICER (SIGN)

Ofc. Negrón #1020

CODE COMPLIANCE OFFICER (PRINT)

@miamibeachfl.gov

RECEIVED BY (Signature):

RECEIVED BY (Print Name): NATASHA MUCERIWA

DATE: 12/21/16 11/4/16 TIME: 8:39 AM.

IMPORTANT APPEAL AND ADA INFORMATION ON BACK

NOTICE OF CITY CODE VIOLATION AND FINE

FINE(S) MUST BE PAID WITHIN 72 HOURS:

BY CHECK OR MONEY ORDER  
MAKE CHECKS & MONEY ORDERS PAYABLE TO THE  
CITY OF MIAMI BEACH.

MAILED TO:

CITY OF MIAMI BEACH  
CODE COMPLIANCE DEPARTMENT  
555 17<sup>TH</sup> STREET  
MIAMI BEACH, FL. 33139

CASH PAYMENTS ACCEPTED IN PERSON ONLY:

AT MIAMI BEACH CITY HALL  
1700 CONVENTION CENTER DRIVE, 1<sup>ST</sup> FLOOR  
MIAMI BEACH, FL 33139

APPEAL PROCESS:

FINES MAY BE APPEALED WITHIN TWENTY (20) DAYS  
OF RECEIPT OF THIS NOTICE BY A WRITTEN  
REQUEST TO THE CLERK OF THE SPECIAL MASTER  
AT THE ABOVE ADDRESS. A \$100.00 CHECK TO  
COVER THE COST OF THE HEARING MUST BE  
INCLUDED.

FAILURE TO PAY THE FINE OR APPEAL IN THE  
MANNER INDICATED ABOVE SHALL CONSTITUTE A  
WAIVER OF THE VIOLATOR'S RIGHT TO CONTEST  
THE CITATION AND SHALL BE TREATED AS AN  
ADMISSION OF THE VIOLATION.

THE CITY MAY INSTITUTE PROCEEDINGS IN A COURT  
OF COMPETENT JURISDICTION TO COMPEL  
PAYMENT OF CIVIL FINES.

THE CERTIFIED COPY OF THE ORDER IMPOSING CIVIL  
FINES MAY BE RECORDED IN THE PUBLIC RECORDS  
AND THEREAFTER SHALL CONSTITUTE A LIEN UPON  
ANY REAL OR PERSONAL PROPERTY OWNED BY THE  
VIOLATOR.

ADA INFORMATION

To request this material in accessible format, sign  
language interpreters, information on access for  
persons with disabilities, and/or any  
accommodation to review any document or  
participate in any city-sponsored proceeding,  
please contact 305 604-2489 or 1-800-955-8770  
(voice), 305 673-7524 (fax), 305 673-7218 or 1-  
800-955-8771 (TTY), 1-877-955-5334 (STS), 1-  
877-955-8773 (Spanish) five days in advance to  
initiate your request. TTY users may also call 711  
(Florida Relay Service).

EXHIBIT

A

# **EXHIBIT I**

## Notice of Violation

|                               |                                                                                 |                               |                          |
|-------------------------------|---------------------------------------------------------------------------------|-------------------------------|--------------------------|
| <b>Violation Notice Date:</b> | Date 12/21/2016                                                                 | Time 08:39 AM                 | Case Number CC2016-01704 |
| <b>Address of Violation:</b>  | 865 COLLINS AVE                                                                 |                               | Unit D                   |
| <b>Parcel Number:</b>         | 0242032580040                                                                   |                               |                          |
| <b>Legal Description:</b>     | THE SKYLARK CONDO UNIT D UNDIV 3.167% INT IN COMMON ELEMENTS OFF REC 20580-1711 |                               |                          |
| <b>Violator Name:</b>         | BEACH BLITZ CO.                                                                 |                               |                          |
| <b>Mailing Address:</b>       | 13441 NW 5TH CT                                                                 | City and State PLANTATION, FL | Zip Code 33325           |

The City of Miami Beach Code Compliance Department has determined that the above Property has violated the Miami Beach Code of Laws and Ordinances (the "City Code"). This violation is the 1st offense, and this Notice of Violation carries a fine (and other monetary charges) of \$1,000.00. Specifically, Code Compliance Officer Treisa Smith has found there to be a violation(s) of the City Code, which is/are:

Section 6-3(1): Retail stores for package sales only may make sales of alcohol only for off-premises consumption between the hours of 8:00 a.m. and midnight.

You can comply by ceasing immediately illegal alcoholic beverage sales upon receipt of this notice and paying a civil fine of:

1st Offense \$1,000.00 within a (12) twelve month period.

2nd Offense \$5,000.00 within a (12) twelve month period

3rd Offense \$10,000.00 within a (12) twelve month period

4th Offense upon a finding by the Special Master that four (4) or more violations by a person or entity have occurred within a twelve month period, the City may initiate proceedings to revoke the Certificate of Use, Business Tax Receipt or the Certificate of Occupancy of the violator.

**Fine(s) must be paid within 72 hours** of receipt of the violation. A copy of the violation must accompany the payment. Please make checks or money orders payable to: City of Miami Beach. Payment can be mailed or taken in person to: The Finance Department (Cashier), 1700 Convention Center Drive, 1st floor, Miami Beach, FL 33139.

Fine(s) and/or violations may be appealed within days of receipt of the notice of violation. To appeal a fine and/or violation, submit a written request for an appeal hearing to the Clerk of the Special Master - 1700 Convention Center Dr., Miami Beach, FL 33139. A check for \$100 (administrative charges) must accompany the request along with the case number.

Failure to pay the fine or request an appeal hearing in the manner indicated above shall constitute a waiver of the violator's right to contest the citation and shall be treated as an admission of the violation.

The City may institute proceedings in a court of competent jurisdiction to compile payment of civil fine(s). The certified copy of the order imposing civil fine(s) may be recorded in the public records and thereafter shall constitute a lien upon any real or personal property owned by the violator.

Section 6-3(1): Retail stores for package sales only may make sales of alcohol only for off-premises consumption between the hours of 8:00 a.m. and midnight.

You can comply by ceasing immediately illegal alcoholic beverage sales upon receipt of this notice and paying a civil fine of:

1st Offense \$1,000.00 within a (12) twelve month period.

2nd Offense \$5,000.00 within a (12) twelve month period

3rd Offense \$10,000.00 within a (12) twelve month period

4th Offense upon a finding by the Special Master that four (4) or more violations by a person or entity have occurred within a twelve month period, the City may initiate proceedings to revoke the Certificate of Use, Business Tax Receipt or the Certificate of Occupancy of the violator.

EXHIBIT

B

# **EXHIBIT J**

USE #

C-1017-08102

**CITY OF MIAMI BEACH  
CODE COMPLIANCE DIVISION**

555 47<sup>th</sup> Street  
Miami Beach, FL 33139  
(305) 673-7555 FAX (305) 673-7012

**NOTICE OF CITY CODE VIOLATION AND FINE**

SITE ADDRESS: 805 Collins

VIOLATION ISSUE DATE: 6/2/17 TIME: 10:50

ISSUED TO: Beach, FL 112, 11/11/17

Mailing Address: 12441 NW 5th Ave, Suite 100, Plantation, FL 33324

DAY OF THE WEEK: S U M T W T H F S

INSPECTION OF THE ABOVE PREMISES THIS DATE  
REVEALED YOU ARE IN VIOLATION OF SECTION:

106.06.01

OF THE MIAMI BEACH CITY CODE BY:

|                              | FINE          |
|------------------------------|---------------|
| Not a valid building code    | ( ) \$25.00   |
| Violate building code in the | ( ) \$50.00   |
| FIXE building code           | ( ) \$75.00   |
| Violate building code in the | ( ) \$100.00  |
| Violate building code in the | ( ) \$150.00  |
| Violate building code in the | ( ) \$200.00  |
| Violate building code in the | ( ) \$250.00  |
| Violate building code in the | ( ) \$350.00  |
| Violate building code in the | ( ) \$500.00  |
| Violate building code in the | (X) \$1000.00 |
|                              | ( )           |

TOTAL FINES \$1000.00

COMMENTS: Violate building code by City of Miami Beach

CODE COMPLIANCE OFFICER (SIGN)

Frank Valdes

CODE COMPLIANCE OFFICER (PRINT)

RECEIVED BY (Signature):

RECEIVED BY (Print Name):

DATE: 6/2/17 TIME: 11:00

EXHIBIT

C

# **EXHIBIT K**

**Code Compliance Department**

555 - 17th Street

Miami Beach, Florida 33139

Tele: 305.673.7555

Fax: 305.673.7012

**Notice of Violation**

|                        |                               |                               |                          |
|------------------------|-------------------------------|-------------------------------|--------------------------|
| Violation Notice Date: | Date 6/25/2017                | Time 11:30PM                  | Case Number CC2017-03103 |
| Address of Violation:  | 865 COLLINS AVE               |                               | Unit D                   |
| Parcel Number:         | 0242032580001                 |                               |                          |
| Legal Description:     |                               |                               |                          |
| Violator Name:         | BEACH BLITZ CO. % DOAR, DORON |                               |                          |
| Mailing Address:       | 13441 NW 5TH CT               | City and State PLANTATION, FL | Zip Code 33325           |

The City of Miami Beach Code Compliance Department has determined that the above Property has violated the Miami Beach Code of Laws and Ordinances (the "City Code"). This violation is the 1st offense, and this Notice of Violation carries a fine (and other monetary charges) of \$1,000.00. Specifically, Code Compliance Officer Enock Valerus has found there to be a violation(s) of the City Code, which is/are:

Article V, Section 102-377. Any person failing to obtain a Business Tax Receipt as required by this article.

**Reference:** Failure to obtain Business Tax Receipt

Cease immediately until you obtain a Business Tax Receipt from the City of Miami Beach.

A Violation of this Section shall be subject to the following fines:

Any person who shall carry on or conduct any business for which a tax receipt is required by this article without first obtaining such tax receipt shall be issued a violation for the first offense, which shall have a civil fine of \$1000.00. The enhanced enforcement for this violation shall be pursuant to subsection 102-377(d).

In addition to the above a continued violation of subsection 102-377(a) for a period of thirty (30) days or more without first obtaining a tax receipt, shall be punished by imprisonment not to exceed 60 days or by imposition of a fine not to exceed \$500.00 or both.

**Fine(s) must be paid within 72 hours** of receipt of the violation. A copy of the violation must accompany the payment. Please make checks or money orders payable to: City of Miami Beach. Payment can be mailed or taken in person to: The Finance Department (Cashier), 1700 Convention Center Drive, 1st floor, Miami Beach, FL 33139.

Fine(s) and/or violations may be appealed within **Ten (10)** days of receipt of the notice of violation. To appeal a fine and/or violation, submit a written request for an appeal hearing to the Clerk of the Special Master - 1700 Convention Center Dr., Miami Beach, FL 33139. A check for \$100 (administrative charges) must accompany the request along with the case number.

Failure to pay the fine or request an appeal hearing in the manner indicated above shall constitute a waiver of the violator's right to contest the citation and shall be treated as an admission of the violation.

The City may institute proceedings in a court of competent jurisdiction to compile payment of civil fine(s). The certified copy of the order imposing civil fine(s) may be recorded in the public records and thereafter shall constitute a lien upon any real or personal property owned by the violator.

|                                 |                 |                               |               |     |                      |                |
|---------------------------------|-----------------|-------------------------------|---------------|-----|----------------------|----------------|
| Issuing Code Compliance Officer | Name:           | Enock Valerus                 | Badge #       | 740 | Phone and Extension: | (305) 673-7555 |
|                                 | Email:          | EnockValerus@miamibeachfl.gov |               |     |                      |                |
| Received By                     | Compliance Date | Received Date                 | Received Time |     |                      |                |
| Other                           | 06/26/2017      | 06/25/2017                    | 11:30PM       |     |                      |                |



**Code Compliance Department**

555 - 17th Street

Miami Beach, Florida 33139

Tele: 305.673.7555

Fax: 305.673.7012

**Notice of Violation**

|                        |                               |                               |                          |
|------------------------|-------------------------------|-------------------------------|--------------------------|
| Violation Notice Date: | Date 6/25/2017                | Time 11:30PM                  | Case Number CC2017-03103 |
| Address of Violation:  | 865 COLLINS AVE               |                               | Unit D                   |
| Parcel Number:         | 0242032580001                 |                               |                          |
| Legal Description:     |                               |                               |                          |
| Violator Name:         | BEACH BLITZ CO. % DOAR, DORON |                               |                          |
| Mailing Address:       | 13441 NW 5TH CT               | City and State PLANTATION, FL | Zip Code 33325           |

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Reference: Failure to obtain Business Tax Receipt

Cease immediately until you obtain a Business Tax Receipt from the City of Miami Beach.

A Violation of this Section shall be subject to the following fines:

Any person who shall carry on or conduct any business for which a tax receipt is required by this article without first obtaining such tax receipt shall be issued a violation for the first offense, which shall have a civil fine of \$1000.00. The enhanced enforcement for this violation shall be pursuant to subsection 102-377(d).

In addition to the above a continued violation of subsection 102-377(a) for a period of thirty (30) days or more without first obtaining a tax receipt, shall be punished by imprisonment not to exceed 60 days or by imposition of a fine not to exceed \$500.00 or both.

**Fine(s) must be paid within 72 hours** of receipt of the violation. A copy of the violation must accompany the payment. Please make checks or money orders payable to: City of Miami Beach. Payment can be mailed or taken in person to: The Finance Department (Cashier), 1700 Convention Center Drive, 1st floor, Miami Beach, FL 33139.

Fine(s) and/or violations may be appealed within **Ten (10)** days of receipt of the notice of violation. To appeal a fine and/or violation, submit a written request for an appeal hearing to the Clerk of the Special Master - 1700 Convention Center Dr., Miami Beach, FL 33139. A check for \$100 (administrative charges) must accompany the request along with the case number.

Failure to pay the fine or request an appeal hearing in the manner indicated above shall constitute a waiver of the violator's right to contest the citation and shall be treated as an admission of the violation.

The City may institute proceedings in a court of competent jurisdiction to compile payment of civil fine(s). The certified copy of the order imposing civil fine(s) may be recorded in the public records and thereafter shall constitute a lien upon any real or personal property owned by the violator.

|                                 |                                         |                             |                                        |
|---------------------------------|-----------------------------------------|-----------------------------|----------------------------------------|
| Issuing Code Compliance Officer | Name:<br>Enock Valerus                  | Badge #<br>740              | Phone and Extension:<br>(305) 673-7555 |
|                                 | Email:<br>EnockValerus@miamibeachfl.gov |                             |                                        |
| Received By<br>Other            | Compliance Date<br>06/26/2017           | Received Date<br>06/25/2017 | Received Time<br>11:30PM               |

**EXHIBIT****D**

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF FLORIDA  
3 CASE NO. 17-CV-23958

4 BEACH BLITZ CO.,

Miami, Florida

5 Plaintiff(s),

November 17, 2017

6 vs.

7 CITY OF MIAMI BEACH, FLORIDA,

Volume 01

8 Defendant(s).

Pages 1- 173

9 -----  
10 PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION  
11 BEFORE THE HONORABLE JOHN J. O'SULLIVAN  
12 UNITED STATES MAGISTRATE JUDGE

13 APPEARANCES:

14 FOR THE PLAINTIFF(S): PHILLIP M. HUDSON, III, ESQ.  
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18 (305) 374-3330  
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22 Miami Tower  
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- and -

SCOTT EVERETT BYERS, ESQ.  
GARY PAPPAS, ESQ.

26 REPORTED BY: Jill M. Felicetti, RPR, CRR, CSR  
27 Official Court Reporter  
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30 jill\_felicetti@flsd.uscourts.gov

EXHIBIT

E

## I N D E X

ExaminationPage

DORAN DOAR

Direct

By Mr. Hudson

15

Cross

By Mr. Pappas

47

MANUEL MARQUEZ

Direct

By Mr. Arana

88

Cross

By Mr. Hudson

102

Redirect

By Mr. Arana

128

HERNAN CARDENO

Direct

By Mr. Byers

130

Cross

By Mr. Hudson

136

Redirect

By Mr. Byers

149

1       Thereupon,  
2       the following proceedings began at 11:02 a.m.:

3               (In open court)

4               THE COURT:   Hearing on preliminary injunction.

5               Appearances for the plaintiff first.

6               MR. HUDSON:   Phillip Hudson on behalf of plaintiff  
7       Beach Blitz.   I have my paralegal, Jennin Gil, and Mr. Doran  
8       Doar, the principal of Beach Blitz, your Honor.

9               THE COURT:   Who is here for the defendants?

10              MR. ARANA:   Enrique Arana, Scott Byers, and Gary  
11       Pappas, from Carlton Fields, on behalf of the defendants.

12              THE COURT:   Anything we need to discuss before we get  
13       started?

14              MR. HUDSON:   Did you want a brief opening?

15              THE COURT:   Well, I think we had it yesterday.   If you  
16       want to spend five minutes, you are welcome to, but I don't  
17       want to spend too much time.

18              MR. HUDSON:   I will invoke the rule.

19              THE COURT:   If anybody has a witness other than the  
20       parties, you need to leave.   You can't discuss your testimony  
21       with anybody until your testimony is completed.

22              Schedule, we will take a break around 1 for lunch.   We  
23       will come back and finish after that.

24              MR. HUDSON:   Thank you.   I will try to be as brief as  
25       possible given yesterday, your Honor.

1           We are here on a preliminary injunction to get back to  
2 the status quo. Although I indicated yesterday, and I still  
3 believe this is a simple matter, it's a very, very, very  
4 important matter because it involves the destruction of a  
5 business, in our view, in the absolute complete absence of due  
6 process, whether that be procedural or substantive due process.

7           You know the outline of the case so I am not going to  
8 go through what we will put on for evidence today.

9           We believe essentially we need to demonstrate to the  
10 court the four elements necessary for a preliminary injunction  
11 in this case, your Honor. What we are asking the court to do  
12 is to immediately command that the City of Miami Beach issue  
13 whatever license necessary, whether it be on a year-to-year  
14 basis or on a temporary basis pending during this litigation  
15 because there is no status quo, because they put my client out  
16 of business. If he's not restored to that position in the  
17 relatively near future, he will never be to survive. Whether  
18 that's a few weeks or a month at the outside, your Honor, his  
19 business will be destroyed.

20           THE COURT: They say you don't have a protective  
21 property interest.

22           MR. HUDSON: Well, as I indicated to you yesterday,  
23 they are trying to change the narrative. They are trying to  
24 say it's about a business license. It's not, your Honor. It's  
25 about a unique liquor store in a unique area with unique

1     licensing that is now irreplaceable.

2             THE COURT:  It's the license that's the issue.  In  
3     other words, they are not going to stop you if you want to sell  
4     Cheerios from that spot, you can do that.  What you can't sell  
5     is liquor.  For liquor you need a license.  They say there are  
6     a bunch of cases -- I haven't read those cases -- but they say  
7     there is a bunch of cases that you don't have --

8             MR. HUDSON:  First of all, we disagree with those  
9     cases, your Honor, and we are happy to brief that particular  
10    issue again if you want.

11            We don't agree.  There are certain types of licenses  
12    that are protectable interests, number one.

13            THE COURT:  Which ones are those?

14            MR. HUDSON:  Your Honor, those are licenses that are  
15    critical to a business, that in the absence of that you lose  
16    the good will of the business, the customer base of the  
17    business.  Those types of licenses.

18            THE COURT:  A liquor license, for instance.

19            MR. HUDSON:  Exactly.

20            THE COURT:  Liquor is 90 percent of his sales, I am  
21    sure.  Do you have cases that say we treat liquor licenses  
22    different than we treat -- I don't know what kind of licenses  
23    there are.  You are a licensed to be a veterinarian.  If you  
24    lose your license to be a vet, you can keep your store but all  
25    you can sell is dog food.  Are you saying there's any cases

1 that say there are licenses that you have a property interest  
2 in?

3 MR. HUDSON: There are those cases, your Honor. I  
4 don't know as I stand here whether there's a liquor license  
5 case on point. But there's two ways I want to address that  
6 argument with you.

7 First of all, liquor licenses. We are not talking  
8 about a liquor license here. My client has a liquor license  
9 from the State of Florida that's current and valid. The State  
10 of Florida has preempted all other governments in Florida --  
11 municipalities, counties, et cetera -- has specifically  
12 preempted the regulation of liquor but for three things, and  
13 the only one relevant in this case are hours of sales. We are  
14 not here on the hour of sale issue.

15 So what we are alleging they have done is prevented us  
16 from renewing our license, which is a renewal process and would  
17 have been automatically renewed had they not prevented us from  
18 paying it, therefore requiring us to get a new license, at all  
19 times knowing that they would never give us a new license  
20 because of the change of the ordinance.

21 One of the exhibits that I believe you are going to  
22 see today is an internal City of Miami Beach record that says  
23 he may not reapply for a liquor license because of the new  
24 ordinance.

25 THE COURT: The BTR. You are making the statement I

1 made.

2 MR. HUDSON: Correct. I'm sorry, Judge. Thank you  
3 for correcting me.

4 He may not now apply for that BTR because of the  
5 change in the statute. We believe that was intentional. That  
6 is a taking, Judge. Certainly it's a taking of the license.  
7 But it's not the license that's in our view the relevant issue.

8 They targeted these four liquor stores. They  
9 targeted -- malignant tumor, as the Mayor called it. They  
10 targeted the cafes that are serving until 5:00 p.m.

11 We have evidence that we will show, that we don't need  
12 to get into today, of the targeting, your Honor. They  
13 specifically intended to put him out of business by this.

14 THE COURT: I understand your argument of the fact  
15 that what they are saying is that legally you have got no right  
16 to be here, you should be in Miami Beach appealing this to some  
17 special master or administrative law judge. When that gets  
18 denied, you should go on your way to state court.

19 MR. HUDSON: Let's talk about that. There is no  
20 appellate right at this point because their argument is that  
21 the license expired and as a result you can't get it. So their  
22 argument in their very papers says, all right, Mr. Hudson, send  
23 your client down to do an application for a new license. I am  
24 going to show you today that they have already made the  
25 decision they are not going to grant him a new license. That's



1 part of the conspiracy.

2 They tried to get to the end of the year. They got to  
3 the end of the year. They are now saying you have to go apply  
4 for a new license, but you can't get a new license because of  
5 the change in the code. So they won. They got what they  
6 wanted. They put one of the four liquor stores out of  
7 business, your Honor.

8 THE COURT: I don't want to hear too much more. I am  
9 going to be more interested after we get the testimony because  
10 then we could talk about, instead of what you are going to  
11 hear, what I heard. I know the facts. I don't know the way  
12 you guys do it, but I read the papers and I am familiar with  
13 it. I really don't want to hear too much more argument.

14 MR. HUDSON: Understood, your Honor.

15 The due process, that's what you are going to hear  
16 today. You are going to hear from my client two things. One,  
17 irreparable harm. Why this is unique. It is unique by the  
18 very fact that it's irreplaceable. It's made irreplaceable by  
19 their ordinance. So the fact that he was able to stay and  
20 renew his license. They took it away from him without any due  
21 process. There is no remedy. They are trying to get you to  
22 believe there is a remedy. There isn't. It wasn't revoked.  
23 It wasn't suspended. It wasn't denied.

24 They got him to October 1 where he couldn't renew it.  
25 There is no legal way for him to reopen absent the relief from

1 this court, Judge. That's why an injunction is appropriate.

2 So what you are going to hear from him today, your  
3 Honor, is essentially the unique nature of this business, why  
4 it's unique, and, as I said, it is now self-evident that it's  
5 unique because he was grandfathered in and nobody could do it.  
6 Number one.

7 Number two, you are going to hear that he tried and  
8 hired professional after professional and he personally went  
9 down multiple times --

10 THE COURT: I heard all this yesterday. I told you I  
11 don't want to hear this again.

12 Let's go to the defendant. I understand what you  
13 want. I want five minutes or less. Same for you. And don't  
14 tell me what you told me yesterday. If that's what you are  
15 going to tell me, sit down.

16 MR. ARANA: Your Honor, I will take two minutes here  
17 at the outset.

18 A critical fact that they are misconstruing, the BTR  
19 license expired naturally on September 30, 2016. It expired.

20 THE COURT: Because you wouldn't let what he says --  
21 don't say no because you don't know what I am going to say.  
22 Because he said that you refused to take payment for the  
23 license while the violations were unpaid.

24 MR. ARANA: I apologize for interrupting you. The  
25 factual history is as follows. On September 30, 2016, the

1 license expired.

2 THE COURT: We all know that.

3 MR. ARANA: Nine months later they were cited for  
4 operating without a license. That was on June 26, 2017, nine  
5 months later.

6 Since that time they contend they had been trying to  
7 get a new BTR, that they have been trying to renew it or get a  
8 new one, and that the city has deprived them of that  
9 opportunity. We disagree with that. But here is the point,  
10 your Honor. The case law is unequivocally clear that when a  
11 license is expired -- this is not about revoking an existing  
12 license or taking it away from them. They don't have one. It  
13 expired naturally. So there is no --

14 THE COURT: You are saying once September 30, the last  
15 year rolled around, no matter what happened, if the city didn't  
16 want to give them the license again, you didn't need to.

17 MR. ARANA: No, not at all. What I am saying is  
18 there's no property interest at that point. There is no  
19 federally protected property interest in an expired license.  
20 There's no dispute about that. There's a legion of cases to  
21 that effect.

22 They say, well, it was our business. It was our  
23 business activity. That's protected. Well, your Honor, there  
24 are Supreme Court and Eleventh Circuit authorities. College  
25 Savings Bank v. Florida Prepaid PostSecondary Education, 527

1 U.S. 666, that says: While the assets of a business are  
2 property, business in the sense of the activity of doing  
3 business or the activity of making a profit is not property in  
4 the ordinary sense.

5 The Eleventh Circuit says the same thing.

6 In other words, the activity of doing business is also  
7 not a protected property interest. So you don't have it either  
8 way in terms of a property interest you can protect in federal  
9 court.

10 Now, the license expired naturally. The plaintiffs  
11 can apply for a new BTR, and it may well be denied by the city  
12 on the grounds that there is an ordinance in effect that  
13 prohibits package liquor stores in the district. But if that  
14 is what the city decides, the plaintiff can appeal that  
15 decision through the state process.

16 THE COURT: Who do they appeal to?

17 MR. ARANA: They can appeal it through the city's  
18 administrative process to the city manager or his designee, who  
19 will then take evidence, and they can make this argument to the  
20 city manager. They can say, no, we really should be allowed to  
21 get the license because we didn't understand or we were  
22 confused or misled or whatever they want to say.

23 THE COURT: What's their due process to remedy the  
24 wrong they allege that you refused to take their money and  
25 allow them to renew the license within the one-year period?

1           MR. ARANA: If the city did anything wrong by not --  
2 if the city did not take their money, and the evidence will  
3 show that that is not correct.

4           THE COURT: We will see.

5           MR. ARANA: They can make those arguments in state  
6 court, that they are entitled to a license under state law.

7           Their argument to the court is that they are entitled  
8 to a new license under state law. Well, they need to make that  
9 argument in state court. First in the state administrative  
10 procedure and then in the state -- and then if they want in the  
11 state courts.

12          THE COURT: But is there a way for them to get to an  
13 administrative procedure without applying for a new license?  
14 Because they don't want to apply for a new license. What they  
15 want you to do is -- what they wanted you to do is issue them  
16 their BTR before September 30, or to renew the BTR, whatever it  
17 is.

18          MR. ARANA: I don't think there will be any dispute  
19 about this. The license expired on September 30, 2016 because  
20 they did not renew it, and they will not dispute that they made  
21 no effort to renew it before that date or for nine months  
22 thereafter.

23          THE COURT: Well, I think once June rolled around they  
24 started to.

25          MR. ARANA: I am saying -- June is nine months later.

1 They realized that they were operating without a license. So  
2 they have an expired license. So they have no federal property  
3 right.

4 Now if they want a new license --

5 THE COURT: Getting back to the facts, what if they  
6 didn't get a citation, but on June 1st he woke up and said, my  
7 Lord, I forgot to get a new BTR and he went down to City Hall  
8 and gave you guys \$1,000?

9 MR. ARANA: If he had done that, he may have gotten a  
10 license at that time.

11 THE COURT: Is the city obligated to give him a  
12 license at that time?

13 MR. ARANA: I am not sure whether they are obligated  
14 or not, but the city would make a decision and if he didn't  
15 like that decision, he could appeal it.

16 If he had tendered the money and they said you get a  
17 license, they give it to him. If they said no, you are not  
18 entitled to a license, then he could appeal that decision.

19 THE COURT: What can he do now other than apply for a  
20 new license? Assuming he doesn't apply for a new license, does  
21 he have any administrative rights in the city?

22 MR. ARANA: Vis-a-vis the license, no.

23 THE COURT: No. Vis-a-vis -- well, when you say the  
24 license, the BTR.

25 MR. ARANA: Vis-a-vis the BTR.

1           THE COURT: What he says is he has no administrative  
2 process to go to because the BTR was wrongfully withheld from  
3 him.

4           MR. ARANA: If he thinks that was the case, he  
5 could -- yes, if he thinks it's been withheld from him already,  
6 he can appeal that, whatever decision he -- you know, he's got  
7 to identify at a point in time where the city said you can't  
8 have one. But if at any point the city says we will not give  
9 you a BTR, he can appeal that decision.

10           Section 102.372 of the city code says: Any person  
11 whose application for business tax receipt has been denied may  
12 seek a hearing under Sections 102.384 and 102.385.

13           If he in fact tried during the course of the year to  
14 get a BTR license and the city said I am sorry, we are not  
15 going to give it to you, he could appeal that.

16           THE COURT: All right. Very good.

17           Call your first witness, please.

18           MR. HUDSON: Doran Doar.

19           THE COURT: Come on up, Mr. Doar.

20                           DORAN DOAR,  
21 having been first duly sworn on oath, was examined and  
22 testified as follows:

23           THE WITNESS: Doran Doar. Last name D-O-A-R.  
24  
25

## DIRECT EXAMINATION

BY MR. HUDSON:

Q. Good morning.

Are you familiar with an entity by the name of Beach Blitz, which is the plaintiff in this case?

A. Yes.

Q. And what is your involvement with Beach Blitz?

A. I am the owner of the Beach Blitz, Florida corporation.

Q. Are you familiar with an entity or something called Ocean 9 Liquor?

A. Yes. It is the liquor store, the d/b/a Beach Blitz. Beach Blitz d/b/a Ocean 9 Liquor.

Q. So you own Ocean 9 Liquor store through Beach Blitz?

A. Yes.

Q. Please wait for me to finish my question, sir.

A. Yes.

Q. Thank you.

Are you familiar with something called Ocean 11 Liquor or Ocean 11 Market?

A. Yes.

Q. What is Ocean 11 Market?

A. It's a regular convenience store that I own.

Q. You own that as well?

A. Yes.

Q. Now, Ocean 9 Liquors is a full liquor store, correct?



1 A. Yes.

2 Q. Does Ocean 11 Market sell liquor?

3 A. Yes. Beer and wine.

4 Q. Only beer and wine?

5 A. Yes.

6 Q. Does Ocean 9 hold a Florida state license to sell all types  
7 of liquor?

8 A. Yes.

9 Q. How long has Ocean 9 been in business?

10 A. From 2012.

11 Q. Is it a profitable company?

12 A. Very profitable.

13 Q. Briefly tell the court the location of Ocean 9 Liquor and  
14 what type of business it is.

15 A. Ocean 9 Liquor, it's located in a very unique place in the  
16 center of South Beach, half a block from Ocean Drive, next door  
17 to Mangos Tropical Bar, and many turn to the beach. It's a  
18 very unique, special location.

19 Q. Do you know what the MXE district is?

20 A. Yes.

21 Q. Tell the court what you understand the MXE district to be.

22 A. What I understand from right now that MXE, it's from Fifth  
23 Street to 15th or 16th Street southwest and from Collins Avenue  
24 to Ocean Drive east and west.

25 Q. And the City of Miami Beach recognizes the MXE district as

1 a separate zoning district; is that correct?

2 A. Yes.

3 Q. How many liquor stores that sell full liquor are presently  
4 in the MXE district?

5 A. Three or four. Four liquor store.

6 Q. And does that include Ocean 9, which is closed?

7 A. Yes.

8 Q. So there are presently three liquor stores that are  
9 operating?

10 A. Yes.

11 Q. Are you generally familiar with a series of ordinances over  
12 the past 12 months or so where the City of Miami Beach has  
13 substantially reduced the hours of operation of the liquor  
14 stores in the MXE district?

15 A. Yes, I am familiar.

16 Q. Have you objected to those ordinances?

17 A. Yes.

18 Q. Have you hired professionals to help you deal with the City  
19 of Miami Beach to try to change those ordinances?

20 A. Yes.

21 Q. What are the current hours of sale in the MXE district, do  
22 you know?

23 A. Yes.

24 Q. What are they?

25 A. Until a few changes, but I think right now the hours is

1 between 10:00 a.m. to 8:00 p.m. in the evening. It used to be  
2 8:00 a.m. in the morning to 12:00 a.m. in the night.

3 Q. So in the last 12 months there had been a series of  
4 ordinances that have reduced the number of hours by six hours;  
5 is that fair?

6 A. Yes. From 6 to 10.

7 Q. Do you believe Ocean 9 Liquors would be able to survive  
8 with the substantially reduced hours? It's possible, but do  
9 you believe --

10 A. Hard to believe, but it's possible.

11 Q. Do you believe the other stores -- strike that.

12 Is Ocean 11 Market also in the MXE district?

13 A. Yes.

14 Q. Could someone come into the MXE district today and open a  
15 new full service liquor store?

16 A. I don't think it's even possible because of the new  
17 ordinance that they did a few month ago, last year.

18 Q. So tell us what your understanding is of the ordinance that  
19 would prevent any new liquor stores from opening in that  
20 district.

21 A. What I understand from the ordinance, that notify that  
22 nobody can open liquor store, any liquor store, any kind of  
23 liquor store, not beer and wine, not any kind of liquor store  
24 in the MXE district.

25 Q. Do you believe that fact makes your liquor store special or

1 unique?

2 A. For the moment it's going to be much more unique, much more  
3 profitable because less competition possible.

4 Q. Do you know what a BTR is?

5 A. I learn about the BTR only in the last three or four month.

6 Q. What is your understanding of a BTR?

7 A. Business tax receipt.

8 Q. And is that like an occupational license?

9 A. Yes. It change the name from occupation license to  
10 business tax receipt in -- I don't recall when.

11 Q. And that's a license -- do you understand that you need a  
12 BTR to operate a business in Miami Beach?

13 A. Yes.

14 Q. Do you have BTRs for Ocean 11 Market?

15 A. Yes.

16 Q. You always had BTRs for Ocean 11 Market?

17 A. Always.

18 Q. Have you always had, except for fiscal years 2016 and '17,  
19 have you always had BTRs for Ocean 9 Liquor?

20 A. Always.

21 Q. Did there come a time in 2017 when you realized that you  
22 did not have or that your BTR was not current because you  
23 didn't renew it at some point?

24 A. I didn't understand the question. I am sorry.

25 Q. At some point did you realize in 2017 that there was a

1 problem with your BTR?

2 A. I realize in June after I receive a BTR violation, which I  
3 don't have the BTR. It's never happened to me before in the  
4 surviving of my business. I realize for some reason that's  
5 what happened.

6 THE COURT: Who usually went and got your BTR? You or  
7 somebody else at your work?

8 THE WITNESS: Usually it's either me or another woman.  
9 The name is Rochelle Malik. She is professional dealing with  
10 the city with violation and with the license and all this. She  
11 know the people and she lead me usually what to do.

12 MR. HUDSON: Your Honor, I'd like to point the witness  
13 to what's been marked as Plaintiff Exhibit 5. I don't know if  
14 he has a binder or not yet.

15 THE COURT: Did you give him one? Where is the  
16 binder?

17 For the record, all these exhibits are in evidence.  
18 You don't need to set the predicate or anything.

19 MR. HUDSON: Correct, your Honor. I am going to  
20 proceed.

21 BY MR. HUDSON:

22 Q. Sir, turn to tab 5 in that white binder that I just sent to  
23 you. Take a look at that document the first page. When you  
24 have had an opportunity to look at it, tell the court, please,  
25 what is there.

1 A. I see two violations. Usually the last three number 102  
2 and 103.

3 102, it's selling alcohol after hour of ordinance  
4 separation.

5 103 is not having business tax receipt license.

6 Q. When did you first see these two citations?

7 A. I saw this -- when I got it, I was overseas. I was in a  
8 different country, in Israel, and I saw this when I came back  
9 on June 27.

10 Q. So someone in the U.S. sent these to you while were you in  
11 Israel?

12 A. Yes.

13 Q. You saw them. You returned to the United States a couple  
14 of days later, correct?

15 A. Yes.

16 Q. And at that point did you do anything, sir, to try to  
17 resolve these violations?

18 A. Of course. I handed them to Rochelle Malik and also I  
19 handed them to Guy Shir, which is also a lawyer, and we tried  
20 to appeal the violations.

21 Q. Let's start one at a time, and I know sometimes dates are  
22 hard to remember, but do your best, please, for the Court.

23 When you came back in late June, did you personally do  
24 anything at that time other than to contact Ms. Malik?

25 A. I went to the city on June 27 and I tried to pay the BTR.

1 Q. You physically went where?

2 A. To finance.

3 Q. Describe for the Court where that is physically.

4 A. I think it's on Meridian and 18, first floor.

5 Q. So there is a counter or something you go to?

6 A. It's a counter. You take a number, you stand in line, and  
7 you do a few things over there, I mean, and --

8 Q. So you personally went in late June --

9 A. Yes.

10 Q. -- to the city. And describe for us what happened when you  
11 were at the counter.

12 A. They did not renew. They didn't let me renew the license.  
13 So I went to Rochelle office.

14 THE COURT: What did you tell the person at the  
15 counter and what did the person tell you?

16 THE WITNESS: I don't remember exactly the  
17 conversation, but I went over there, tried to renew, to pay my  
18 BTR because I got the violation of the BTR. So I went to the  
19 finance, tried to pay. For some reason they probably show me a  
20 violation or some -- I don't remember exactly. I went to  
21 Rochelle.

22 THE COURT: You went to what?

23 THE WITNESS: To Rochelle Malik, to the woman that  
24 usually take care of --

25 THE COURT: No. I am talking about when you were at

1 the finance department in Miami Beach. Tell me exactly what  
2 did you do; how much money did you give them; did you give them  
3 cash, check; who do you give it to?

4 THE WITNESS: No. You ask them for how much to pay,  
5 how much to pay. Then say they are not allow you to renew the  
6 license.

7 THE COURT: Okay.

8 BY MR. HUDSON:

9 Q. So they told you specifically that day, someone behind the  
10 counter at Miami Beach, that they would not allow to you renew  
11 the license; is that your testimony?

12 A. Yes.

13 Q. Then what did you do next?

14 A. I went to Rochelle office and I hand her the violations and  
15 I ask her to do, to appeal it.

16 Q. Explain to the court who Rochelle Malik is, to the best of  
17 your knowledge.

18 A. Rochelle Malik, she is the wife of the former mayor of  
19 Miami Beach. She is dealing with the Miami Beach city on  
20 stuff, like on violations and BTR and helping people like me,  
21 small business owners, to try to resolve problems. So she know  
22 the system, how it's working. And I work with her for a few  
23 years already and she usually help me to renew the license, or  
24 maybe she go, maybe she pay some kind of checks. Sometimes  
25 it's me.



1 Q. Earlier you told the court that you had hired folks from  
2 time to time that helped you with the BTR process prior to when  
3 you found out you had the problem, right? Ms. Malik had  
4 already been working for you for some time to help you with  
5 licensing and to help you with issues on Miami Beach, correct?

6 A. Yes.

7 Q. So when you couldn't accomplish what you wanted to  
8 accomplish trying to get your BTR, you then asked her to get  
9 involved, correct?

10 A. Yes.

11 Q. And you hired her to go down and try to pay the BTR as  
12 well?

13 A. Yes.

14 Q. Was she successful?

15 A. No. From few month.

16 Q. How many times, let's --

17 THE COURT: I am a little confused. His testimony  
18 before you started leading him was, I went to Malik, I handed  
19 her the tickets and asked her to appeal it. He didn't say I  
20 went to Malik and said, hey, they are not taking my money for  
21 the license. He said I went to Malik, handed her the tickets  
22 and said appeal it, is what I remember him saying.

23 So now all of a sudden you jump to Malik -- what he  
24 testified to is he told Malik to appeal the tickets. Appealing  
25 the tickets is not get me my BTR.

1 MR. HUDSON: I am not sure --

2 THE COURT: They are two different things. I think  
3 it's extremely important. So you need to get answers from him  
4 and he needs to provide answers.

5 MR. HUDSON: I agree with you, Judge. There is a big  
6 distinction. I am trying to --

7 THE COURT: You seem to be doing it now by telling him  
8 what he is going to say. I want to hear what he has to say  
9 rather than what you have to say.

10 MR. HUDSON: I understand.

11 BY MR. HUDSON:

12 Q. Mr. Doar, focus on my questions and the Court's questions.

13 Okay. Let's go back. You personally went down at the  
14 end of June, correct, to try to get a BTR license? Correct?

15 A. Yes.

16 Q. You had previously hired Ms. Malik to do other things for  
17 you before the BTR problem, including renewing BTRs, paying  
18 violations; is that correct?

19 A. Yes.

20 Q. After June 27 or 28 when you were unsuccessful at renewing  
21 your BTR, did you hire Ms. Malik to assist you with the BTR?

22 A. Yes.

23 Q. And what was it that you asked her to try to accomplish?

24 A. I told her -- I give her the violations and I ask her to  
25 deal with the violation. Part of the dealing with the

1 violation, as I understand, we have a few days to appeal it.

2 Q. So the violations that you are talking about is the Exhibit  
3 5 in front of you, correct?

4 A. Yes.

5 Q. The violation ending in 102 and 103.

6 A. Yes.

7 If I am not mistaken, it was one more violation.

8 Q. There was a third violation from December of '16 as well,  
9 correct?

10 A. Yes.

11 Q. That she was dealing with?

12 A. Yes.

13 Q. It was not a BTR violation, correct?

14 A. No.

15 Q. Okay. Did Ms. Malik report back to you whether she was  
16 able to resolve the BTR problem?

17 A. She always told me that it's okay, it's under control, that  
18 she's dealing with that. But she could not resolve the  
19 problem.

20 Q. She could not. Please get closer to the microphone. I  
21 can't hear you.

22 A. Rochelle Malik didn't resolve the -- she resolved the  
23 problem with the violation but not with the BTR. They never  
24 let her pay or me to pay the BTR.

25 Q. Did you specifically charge Ms. Malik with going down and

1     trying to get a BTR for you in June or July of 2017?

2     A.   Yes.

3     Q.   Did you either give her money to do so or did you have an  
4     understanding that if she paid, you would repay her?

5     A.   We have understanding.  I didn't give her money but we have  
6     understanding that, you know, she pay with her checks and she  
7     get the money from me all the time.

8     Q.   That understanding goes back years, correct?

9     A.   Yes.

10    Q.   It's a course and custom in business, correct?

11                 MR. PAPPAS:  I have got to object to the leading at  
12    this point.

13                 THE COURT:  Stop the leading.  On this part it doesn't  
14    make much difference to me, but go ahead.

15    BY MR. HUDSON:

16    Q.   When Ms. Malik reported that she was unsuccessful at  
17    getting a BTR, what did you do next?

18    A.   Also at the same time I went to a Guy, Shir which is a  
19    lawyer from --

20                 THE COURT:  Can you spell that name?

21                 MR. HUDSON:  S-H-I-R.

22                 THE COURT:  The first name Guy?

23                 MR. HUDSON:  Yes.

24    BY MR. HUDSON:

25    Q.   So you retained an attorney by the name of Guy Shir?

1 A. Guy Shir, and I also emailing the violations. And because  
2 Rochelle had a hard time to deal with the city or with the  
3 violation, he send the letter with the checks of \$100 to the  
4 city to appeal with the letter to appeal the violation.

5 Q. The violations?

6 A. And for some reason after he send the letter, the city  
7 didn't accept it.

8 Q. Mr. --

9 A. Because -- some reason.

10 Q. I am sorry. I didn't mean to cut you off.

11 A. Okay.

12 Q. So Mr. Shir was unsuccessful in getting you a BTR, correct?

13 MR. ARANA: Leading.

14 THE COURT: Sustained.

15 What he is talking about is that he sent a check with  
16 \$100 to appeal, which they didn't accept, is what he said. I  
17 mean, that's the way I understand what he said.

18 THE WITNESS: Yes. That's what I said. And I know  
19 that Mr. Shir was speaking with a woman named Cindy in the  
20 special master and she give him instruction, different  
21 instruction than what he had, you know, to appeal it.

22 BY MR. HUDSON:

23 Q. Was Mr. Shir successful at getting you a BTR in 2017?

24 A. No.

25 Q. What did you do next?

1           THE COURT: Excuse me. What did Mr. Shir do to get  
2 you a BTR in or last year before October of 2017, this past  
3 year?

4           THE WITNESS: We understand from the city that without  
5 resolve the violation we cannot get a BTR several time.

6           MR. HUDSON: May I continue, Judge?

7           THE COURT: Yes.

8 BY MR. HUDSON:

9 Q. So after Mr. Shir was unsuccessful, what did you do next?

10 A. I went to Harold Rosen.

11 Q. Who is Harold Rosen?

12 A. He is a lawyer that used to be a -- he is a former, of  
13 Miami Beach that also dealing with violations and special  
14 masters and tries to resolve problem for people like business  
15 owners.

16 Q. So you retained Mr. Rosen, correct?

17 A. Yes. I hire him and -- I hire him in July, the end of  
18 July. They lead me that without resolve the violation cannot  
19 renew the BTR. So he had a special master on August 28th. On  
20 August 28th he had an order with the special master.

21 Q. So let's break it down a little bit so everybody can  
22 understand.

23           You hired Mr. Rosen, you said, sometime in late July?

24 A. Yes.

25 Q. And was Mr. Rosen successful at making some progress on the

1 violations and the BTR?

2 A. Not on the BTR, on the violation. He had some agreement  
3 with the special master.

4 Q. Okay. How many violations were outstanding at the time  
5 that you hired Harold Rosen?

6 A. Three.

7 Q. And what were those violations for?

8 A. One violation from December 22, if I don't mistake. That  
9 say that I selling liquor before 10:00 a.m. This was maybe one  
10 week, two weeks after the new ordinance, that they change the  
11 time.

12 Q. That was one. What was the next one?

13 A. The second one, it was selling alcohol after 10:00 p.m.,  
14 and the third violation was not having a BTR.

15 Q. So when Mr. Rosen was successful at getting a special  
16 master involved, was he dealing with two of those or three of  
17 those?

18 A. With the three of them.

19 Q. All three of them, correct?

20 A. All three of them.

21 Q. Including the BTR issue, correct?

22 A. All of them.

23 Q. Was he also retained by you to assist or try to get you a  
24 BTR in 2017?

25 A. Excuse me. I didn't understand.

1 Q. Did you also hire him to help you get a BTR in 2017?

2 A. So I hired him to resolve my problem. So probably to get  
3 the BTR was part of it, yeah.

4 Q. Was he successful at getting you a BTR in 2017?

5 A. No.

6 Q. At some point did Mr. Rosen indicate that he had an  
7 agreement with the City of Miami Beach regarding the resolution  
8 of all of the violations?

9 A. I am sorry. Can you repeat?

10 Q. Did Mr. Rosen tell you at any time that he had reached an  
11 agreement with the city to solve all of the violations, all  
12 three?

13 A. Yes.

14 Q. When did he tell you that?

15 A. On August 28th.

16 Q. Of what year?

17 A. 2017.

18 Q. Did he ask you to do anything on that date?

19 A. Yes. He asked me to give, to give a check to the City of  
20 Miami Beach for \$1,000.

21 Q. Did you do so?

22 A. Yes.

23 Q. Turn to tab 1 in your book in front of you, please. Please  
24 look at that.

25 Is that the check that you are talking about?



1 A. Yes.

2 Q. So did you write that check on or about August 28 of '17?

3 A. Yes.

4 Q. Is that your signature?

5 A. Yes.

6 Q. Is that your handwriting on the rest of the check?

7 A. Yes.

8 Q. And I note that it says in the line "paid in full," and it  
9 seems to list the three violations. Is that a fair reading of  
10 that document?

11 A. Yes.

12 Q. When did you give that to Mr. Rosen or -- I am sorry. Whom  
13 did you deliver that check to?

14 A. To Mr. Rosen, in the meeting between Mr. Rosen and Rochelle  
15 Malik.

16 Q. Did Mr. Rosen tell you that after that date that he had  
17 delivered that to the City of Miami Beach?

18 A. He admit a few times in front of us.

19 Q. Did he tell you who at the City of Miami Beach he gave it  
20 to?

21 A. He gave it to Alex Baxter, I think. He is deputy of city  
22 attorney.

23 Q. Alex Boxner?

24 A. Alex Boxner.

25 Q. Did he say when he gave it to Mr. Boxner?

1 A. He said on August 28 or August 29.

2 Q. About the time, within a day or two of when you delivered  
3 the check?

4 A. Yes. That's what he said, within a day or two.

5 Q. Look at the second page there, the back of the check.

6 Do you see that?

7 A. Yes.

8 Q. It seems to have been deposited by the City of Miami Beach  
9 on 10/18/2017.

10 Do you have any idea why it would have taken the city  
11 a month and a half, if not more, to deposit that check?

12 A. You are asking me?

13 MR. PAPPAS: Foundation, your Honor.

14 THE COURT: Overruled.

15 If you know, you know. If you don't, you don't.

16 MR. HUDSON: Exactly.

17 THE COURT: I assume he doesn't know, but maybe he  
18 does.

19 Did he answer?

20 Do you know?

21 A. No, I don't know why.

22 BY MR. HUDSON:

23 Q. After you gave Mr. Rosen the check, did you personally go  
24 down and try to obtain a BTR now that the violations were  
25 cleared?

1 A. I don't remember if after I give him the check I went to  
2 try to pay the BTR.

3 Q. Let's go to --

4 A. I tried on the month of September.

5 Q. I know. We are jumping ahead.

6 Turn to page 7 of your binder, please.

7 Have you seen that document before?

8 A. This is the agreed order. Yes.

9 Q. What do you understand this order to do?

10 A. I understand that this order, it's agreement between the  
11 Beach Blitz to the City of Miami Beach regarding the three  
12 violation that say they agree that \$3,000 resolve the problem.

13 Q. Do you have any idea why it took a month from August 28  
14 when you delivered the check to Mr. Rosen told you he had a  
15 deal for this order to be prepared and signed?

16 A. I don't have any idea.

17 Q. When did you first see this order?

18 A. Excuse me?

19 Q. When did you first see this order?

20 A. This order, on August -- when I see the order, I think on  
21 September 28.

22 Q. Did Mr. Rosen give it to you?

23 A. Yes.

24 Q. At that time when you received it, did you personally go  
25 down and try to get your BTR again?

1 A. Yes.

2 Q. September 28 was 2017 was a Thursday, was it not?

3 A. Yeah, Thursday.

4 Q. Do you recall?

5 A. It's either was Thursday or Friday.

6 THE COURT: It was a Thursday. I will take judicial  
7 notice of that.

8 MR. HUDSON: Thank you, Judge.

9 BY MR. HUDSON:

10 Q. Do you recall, did you go down on the 28th or 29th, or  
11 both?

12 A. Either the 28th or the 29th. Either was Thursday or  
13 Friday.

14 Q. And so you personally once again went down to the city  
15 first floor counter, correct?

16 A. Yes.

17 Q. And you personally asked to please allow to you get a BTR,  
18 correct?

19 A. Yes.

20 Q. What did they tell you?

21 A. They tell me that they are not going to issue me a BTR  
22 because I have the violations.

23 MR. HUDSON: One moment, your Honor.

24 THE COURT: Yes.

25 MR. ARANA: Your Honor, we were presented with a

1 document this morning that plaintiffs want to add to an exhibit  
2 list. It appears to be a city record, but we haven't had an  
3 opportunity to confirm.

4 We object on timeliness grounds.

5 THE COURT: What is it?

6 MR. HUDSON: It was potentially a rebuttal or  
7 impeachment exhibit. It's a record that basically shows  
8 internally why they closed his license and that it couldn't be  
9 renewed or replied for. I believe the witness will testify  
10 that it was given to him that day.

11 THE COURT: Well, I will allow it subject to the city,  
12 if you determine that it's not a record, then let me know  
13 afterwards and I will take the opportunity to strike it.

14 MR. HUDSON: This will be admitted?

15 MR. BYERS: Your Honor, we have an objection. It's  
16 dated after September 28 and 29th. There's actually markings  
17 on there showing October 6th of 2017. So therefore it is  
18 impossible --

19 THE COURT: You should have saved that for  
20 cross-examination.

21 MR. HUDSON: We don't know what it is. That's the  
22 problem, Judge. But he is going to testify that he was given  
23 this by the city.

24 THE DEPUTY CLERK: Speak into the microphone.

25 MR. HUDSON: May I approach the witness, your Honor?

1 THE COURT: We will mark that as 17. Is that your  
2 next exhibit?

3 THE DEPUTY CLERK: Yes.

4 Can I have a brief description of it. Brief.

5 MR. HUDSON: It is a screenshot from the City of Miami  
6 Beach that has, for lack of a better word, a rectangle in the  
7 middle of it, that we can't see what it is, and I can't tell  
8 you when it's dated, to be honest with you. Maybe the city  
9 can, if they know how to read it. But we can't tell when it's  
10 dated.

11 THE COURT: Okay. Give it to the witness to look at  
12 it.

13 MR. HUDSON: Do you need a copy?

14 THE DEPUTY CLERK: I don't.

15 THE COURT: I do.

16 BY MR. HUDSON:

17 Q. Sir, you went down to the city on either the Thursday or  
18 the Friday and, once again, they told you they could not give  
19 you the BTR, correct?

20 A. Yes.

21 Q. Did you indicate to them at that time that your violations  
22 had been resolved?

23 A. Yeah.

24 Q. And what did they say? What was their response?

25 A. I have a violation, that they cannot renew the BTR.

1 Q. Do you understand that to mean that their system had not  
2 been updated or did you understand that to mean something else?

3 A. That's what Rochelle told me, that probably the system is  
4 not updated.

5 Q. So when you were told you couldn't do it, did you call  
6 Ms. Malik or did you ask her to go do it as well?

7 A. Yes. Yes. I told her that I can't renew it.

8 Q. Do you know whether Ms. Malik went down there that Thursday  
9 or Friday to try to renew it?

10 A. I am not sure.

11 Q. But you were unable to, correct?

12 A. I wasn't.

13 Q. You went down there for the specific purpose of renewing  
14 it?

15 A. Correct.

16 Q. You had the financial capability of renewing it at that  
17 time?

18 A. Of course. The financial was no problem at any time.

19 Q. Okay. So next Monday was October 1st, correct?

20 MR. HUDSON: The court will take judicial notice of  
21 that?

22 THE COURT: Next Monday was what?

23 MR. HUDSON: October 1.

24 THE COURT: No, that's not true. October 2.

25 MR. HUDSON: Okay. Thank you, Judge.

1           THE COURT: October 1st was Sunday. At least that's  
2 what my government calendar says.

3 BY MR. HUDSON:

4 Q. So the following week, starting on October 2nd, any time  
5 during that week did you go down and try to get the BTR?

6 A. Which week are you talking about?

7 Q. The Thursday or Friday was the 28th --

8 A. Yes.

9 Q. -- and 29th.

10           The next Monday or any day that following week  
11 starting on October 2nd, as the court has just indicated, did  
12 you personally go down to the city to try to get a BTR?

13 A. Yes, on October 3. On October 3.

14 Q. Did you go on October 3 for other reasons as well?

15 A. Yeah. I renew my Ocean 11 BTR, because they didn't want to  
16 renew it on September 28. They told me that I had a violation.

17 Q. So turn to page 9.

18           THE COURT: You say page 9. You mean Exhibit 9?

19           MR. HUDSON: Exhibit 9, please.

20 BY MR. HUDSON:

21 Q. Please, in the book. You are at tab 9.

22           Is that an invoice for Miami Beach for \$966?

23 A. Yes.

24 Q. What is that, sir?

25 A. It's a payment of --



1 THE COURT: You need to talk into the microphone.

2 A. It's a license for Ocean 11 Market.

3 Q. So is this something that was given to you the day that you  
4 were -- on October 3 when you were at the city? Did they give  
5 this to you that day so you could tell how much to pay?

6 A. No, they didn't give me this paper. They give me the  
7 receipt.

8 Q. So you had this paper in advance?

9 A. No, I didn't have. They give me this on October, on  
10 October 9.

11 Q. So turning to Exhibit 10, tell us what Exhibit 10 is.

12 A. This is the bill for -- this is the bill for Ocean 11  
13 Market.

14 Q. Is this the receipt that was physically given to you on  
15 October 3 when you paid the bill for Ocean 11 Market?

16 A. I don't remember. But it's another receipt that I remember  
17 they give it to me. I don't remember this one was together.

18 Q. Look at the date, sir.

19 A. Yes, yes. Actually, yes. They give me this. They give me  
20 this and they give me also another receipt.

21 Q. Okay. So this Exhibit 10 was physically given to you by  
22 someone at the City of Miami Beach on October 3, correct?

23 A. Yes.

24 Q. At that same time you attempted to pay the BTR for your  
25 other business, Ocean 9, correct?

1 A. Of course.

2 Q. They refused?

3 A. They refused to take the money.

4 Q. Did they tell you why they refused?

5 A. Because I have violations.

6 Q. Because you had open violations?

7 A. Open violations.

8 Q. Consistent with everything they have told you in the past,  
9 correct?

10 A. Yes.

11 Q. Do you know if Ms. Malik or Mr. Rosen or Mr. Shir or  
12 anybody else continued to try to ask the city to --

13 A. All the time. All the time. Every day. Every day phone  
14 calls.

15 Q. Ms. Malik's job, in fact, was to stay on top of this,  
16 correct?

17 A. Yes.

18 Q. And she was unsuccessful, correct?

19 A. Yes. Also, Harold Rosen was calling.

20 Q. Turn to Exhibit 11, please. Tell the court what Exhibit 11  
21 is, if you know.

22 A. This is the receipt and my check from the city after I paid  
23 the BTR of Ocean 11.

24 Q. I am looking at --

25 A. Eleven you said?

1 Q. -- Exhibit 11. I think that's 10, sir.

2 A. Sorry.

3 Q. Eleven should be a document, a Miami Beach document  
4 regarding the closing of violation 102.

5 A. Okay. The exhibit it's after the number, right? After the  
6 number?

7 Q. It should be after the tab, correct.

8 Is that what you are looking at, sir?

9 A. Yeah, I think so, if it's regarding violation ending 102.

10 Q. Yes.

11 A. Yes, that's what I have.

12 Q. Do you know why only that violation was closed out on 10/4,  
13 yet you had paid all three violations at one time?

14 MR. PAPPAS: Objection, your Honor. No foundation  
15 whatsoever.

16 THE COURT: On the next day it shows all three were  
17 closed out on the same day. So it's a bad question to start  
18 with.

19 MR. HUDSON: Your Honor, part of our problem is we  
20 don't have access to the records. We are using what we have.  
21 But there were three violations.

22 THE COURT: You just asked the question why was 02  
23 closed out. You look on the next page, 03 was closed out on  
24 the next day.

25 MR. HUDSON: But the third wasn't. That's where we

1 are going.

2 THE COURT: Ask him if he knows why the third wasn't  
3 closed out.

4 MR. PAPPAS: There's no foundation -- he hasn't  
5 established that it was or it wasn't, and he can't with this  
6 witness.

7 THE COURT: Overruled. He can if he knows. Hearsay  
8 is admissible here. Maybe someone from Miami Beach told him  
9 it's not closed out because we don't like you or something. I  
10 don't know what they told him.

11 MR. PAPPAS: Let's hear.

12 BY MR. HUDSON:

13 Q. Turn to Exhibit 12.

14 A. Violation 704.

15 Q. Yes.

16 Do you have any idea why that violation was closed out  
17 on 10/13 as opposed to 10/4?

18 A. What is this violation?

19 Q. Sir, if you know, you do. If you don't, you don't.

20 THE COURT: I think that's the earlier one. The  
21 December 2016, if I recall.

22 MR. HUDSON: Correct.

23 A. Yes, I recall. This violation, it's for before 10:00 a.m.

24 BY MR. HUDSON:

25 Q. So you paid all three violations at one time with one

1 check, correct?

2 A. Yes.

3 Q. You have no idea why one lasted for two weeks into October,  
4 correct?

5 A. No, I don't.

6 MR. PAPPAS: Leading.

7 THE COURT: Sustained.

8 MR. PAPPAS: No foundation.

9 A. This is part of the reloader.

10 BY MR. HUDSON:

11 Q. So to the best of your ability, sir, how many times between  
12 you, Ms. Malik, Mr. Shir, and Mr. Rosen do you believe Beach  
13 Blitz and Ocean 9 tried to get the 2016/2017 BTR before  
14 October 1st of 2017?

15 A. Many, many times. Many times. I don't remember all the  
16 dates, but many times.

17 Q. How much would the BTR have been?

18 A. Excuse me?

19 Q. How much would the BTR have been?

20 A. What do you mean?

21 Q. Money. How much would it cost?

22 A. About, I think, \$2,000 and change.

23 Q. Beach Blitz and Ocean 9 had the financial ability to pay  
24 that, correct?

25 A. Of course.

1 Q. Today if you were to apply for a new license, do you  
2 believe the City of Miami Beach would give you a new license?

3 A. I don't believe because of the new ordinance.

4 Q. That does what? Which ordinance?

5 A. That I'm not allowed to have -- if I went to renew, you ask  
6 me?

7 Q. No. To apply for a new license.

8 A. To apply for a new license. They are not going to give me  
9 a liquor license.

10 Q. Please look at the document that we gave you to the right  
11 that's marked as 17.

12 A. This one?

13 Q. Yes.

14 A. Yes.

15 Q. Was that document given to you by someone at the City of  
16 Miami Beach?

17 A. Yes.

18 Q. Do you recall which of the visits that you went that it was  
19 given to you?

20 A. I think this give it to me, I think, I think on October --  
21 I think on October -- Monday. It was a Monday, I think.

22 Q. Monday?

23 THE COURT: Monday was October 2nd.

24 THE WITNESS: No, the next, following Monday. After  
25 October 6th.

1 BY MR. HUDSON:

2 Q. So let's talk about October 6th.

3 October 6th was a Friday.

4 A. Yes.

5 Q. What happened on October 6th?

6 A. October 6th, about 5:00 o'clock, two law code enforcement  
7 came --

8 Q. Speak up, please.

9 A. On October 6th, about 5:00 o'clock afternoon, two code  
10 enforcement came to my store with two policeman, Miami Beach  
11 policemen, and give me violation for not having a BTR. They  
12 told me that I have to shut down my store, and I told them that  
13 it's impossible. I have agreed order for the violation. I  
14 didn't understand exactly what they want from me. And they  
15 told me within five minutes I am not shutting the door of the  
16 business, I am going to be arrested.

17 I tried to talk to them, to show them paper, and they  
18 told me, listen, we give you five minutes to close the door or  
19 we taking you right now. There was very, very tough with me.  
20 They didn't want to see any paper of mine, just want me to sign  
21 and shut down the doors.

22 Q. That was a Friday, correct?

23 A. Yes.

24 Q. Are you aware of any contact on behalf of Beach Blitz the  
25 day before that event?

1 A. What -- I don't understand.

2 Q. Do you recall -- strike that.

3 MR. HUDSON: Judge, I have no further questions.

4 THE COURT: Any cross-examination?

5 MR. PAPPAS: Yes, your Honor.

6 May I approach to give Mr. Doar a copy of the exhibits  
7 as well?

8 CROSS-EXAMINATION

9 BY MR. PAPPAS:

10 Q. Mr. Doar, my name is Gary Pappas.

11 You and I have never met before, right?

12 A. Right. How are you doing?

13 Q. Nice to meet you.

14 A. Nice to meet you.

15 Q. Your spoken English is a little broken. My question for  
16 you, and I don't mean this personally at all, do you read  
17 English?

18 A. I read. I read, not perfect.

19 Q. Not perfect?

20 A. Yes.

21 Q. But you can read English?

22 A. I can read, but not perfect.

23 Q. Okay. Now, does Beach Blitz own any other businesses  
24 besides the package store on 865 Collins, Ocean 9, and the  
25 market on 1100 Collins, Ocean 11?



1 A. No.

2 Q. Those are the only two businesses that Beach Blitz owns and  
3 operates?

4 A. Yes.

5 Q. Okay. And you are the sole shareholder, sole owner?

6 A. Yes.

7 Q. And just in general, given the location of those markets,  
8 is it fair to say that customer base is tourists?

9 A. Yes.

10 Q. Almost exclusively, right?

11 A. Yes. I would say 85 percent.

12 Q. Before December 16, 2016, did either of your businesses --  
13 strike that for a second.

14 Do you go by the Ocean 9, Ocean 11, or do you go by  
15 the address? What's the best way you want to talk about them?

16 A. Any way you want.

17 Q. I have in my mind the address.

18 Ocean 9 is 865 Collins, correct?

19 A. Yes.

20 Q. And Ocean 11 is the 1100?

21 A. Yes.

22 Q. So back to my question. Before December 16, 2016, had  
23 either Ocean 9 or Ocean 11 ever received any type of citation  
24 from the City of Miami Beach for any reason?

25 A. Before? What you mean before?

1 Q. December 16, 2016 is when Ocean 9 received a citation by  
2 the City of Miami Beach for selling alcohol too early, right?

3 A. I don't remember.

4 Q. Well, I mean, it's in all of our exhibits.

5 If you will just turn to -- I didn't want to get hung  
6 up on that, but we could just turn to your exhibits.

7 MR. HUDSON: Yours and ours or yours?

8 MR. PAPPAS: He can do them off mine, too. I think  
9 it's in mine. I will go to mine.

10 BY MR. PAPPAS:

11 Q. If you will turn in the black binder to tab 10E,  
12 Plaintiff's 10.

13 Tell me when you are there. Are you there?

14 A. Yes.

15 Q. Okay. That is the citation that the City of Miami Beach  
16 issued to 865 Collins Avenue, which is Ocean 9, on December 21,  
17 2016 at 8:39 in the morning for selling alcohol too early in  
18 the morning?

19 A. I recognize this. I thought you ask me about December 16,  
20 2016. I'm sorry.

21 Q. That's the date of Defendants' 10, correct?

22 THE COURT: No, it's December 21.

23 BY MR. PAPPAS:

24 Q. My apologies. I was thinking 2016. December 21. Okay.

25 A. I recognize it.

1 Q. Right. No doubt that that citation was issued to your  
2 store on December 21st at 8:39 in the morning, right?

3 A. Yes.

4 Q. Before December 21, 2016 -- let's start with Ocean 9. Had  
5 Ocean 9 ever received a citation from the City of Miami Beach?

6 A. I think so. I don't remember, but I think so, after that  
7 code enforcement on my store.

8 Q. And how about Ocean 11, had it received citations?

9 A. I believe so.

10 Q. All right. So let's just talk about 865 for the time  
11 being. If you will turn to tab 4 in the black binder,  
12 Defendants' 4.

13 That is the original BTR issued by the City of Miami  
14 Beach for 865 Collins Avenue, correct?

15 A. The first BTR.

16 Q. The very first BTR?

17 A. I am getting confused.

18 Q. That's all right.

19 You are on Defendants' 4, correct? You are in number  
20 4?

21 A. I think so.

22 Q. So let's start up in the upper left -- yes, you are in 4 --  
23 upper left-hand corner. The trade name is Beach Blitz.

24 Do you see that?

25 A. Yes.

1 Q. And it says in care of you, Doran Doar, correct?

2 A. Yes.

3 Q. And then it has an address, 1344 Northwest 5th Court in  
4 Plantation?

5 A. Correct.

6 Q. Who lives there?

7 A. Me.

8 Q. Is that where you live today?

9 A. Yes.

10 THE COURT: You have got about a half an hour more to  
11 cross-examine this fellow. If you want to go through each of  
12 these, you are welcome to. Nobody is saying -- I don't know  
13 what this has to do with his cross-examination or how it's  
14 moving the ball for you.

15 MR. PAPPAS: Judge, I will move on.

16 BY MR. PAPPAS:

17 Q. That's where you live, right?

18 A. Yes.

19 Q. Do you receive mail --

20 A. Yes.

21 Q. -- at that address?

22 A. Yes.

23 Q. Related to Beach Blitz?

24 A. Yes.

25 Q. And if you go to the right-hand side of Defendants' 4, it

1 shows that the beginning date for this BTR is October 1, 2011,  
2 correct?

3 A. Yes.

4 Q. That was the first year Ocean 9 had a BTR?

5 A. I don't think so.

6 Q. All right. If you turn to --

7 A. You confuse me, because Beach Blitz -- Beach Blitz, if you  
8 call it BTR or occupational license before this.

9 Q. But not for the 865 location?

10 A. Of course for the 865 location.

11 Q. Okay. And so if you turn to, if you turn to the second  
12 page of Defendants' 4, you see that there is an application;  
13 correct? Do you see the application on the second page of  
14 Defendants' 4, with handwriting on it?

15 A. Yes.

16 Q. Is that your handwriting?

17 A. No.

18 Q. That's not your handwriting?

19 A. No.

20 Q. How about the signature on the third page, is that your  
21 signature?

22 A. No.

23 Q. That's not your signature either?

24 A. No.

25 Q. It says your name. Your name is printed there. Is that

1 correct?

2 A. Yes.

3 Q. So someone forged your signature. On June 15, 2012 someone  
4 forged your signature on an application for a BTR with the City  
5 of Miami Beach?

6 A. You are talking on the right side?

7 THE COURT: Talk into the microphone. We can't hear  
8 you, sir. What did you say?

9 Sir, look at me when I ask you a question. You have  
10 got to answer. I said, what did you say? Look at me again.

11 THE WITNESS: Yes.

12 THE COURT: You said something when you were facing  
13 the other way. I didn't hear it. You need to repeat what you  
14 said.

15 THE WITNESS: This is not my signature.

16 THE COURT: You said something after that.

17 THE WITNESS: I don't remember. Sorry.

18 BY MR. PAPPAS:

19 Q. Do you recognize the signature? Do you recognize the  
20 handwriting or the signature?

21 A. No.

22 Q. Is this Ms. Malik's signature and handwriting?

23 A. No. I don't know.

24 Q. In the years from 2011, 2012, 2013, 2014, did you receive  
25 renewal notices from the City of Miami Beach in or about July

1 of each year notifying you that your BTR would expire on  
2 September 30th?

3 A. Usually, yes.

4 Q. Yes.

5 To your address at home, correct?

6 A. Yes.

7 Q. And then what would you do with those renewal notices?

8 A. I renew.

9 Q. Before September 30, before the BTR expired, correct?

10 A. Sometime I was late.

11 Q. Sometimes you were late. But would you go down personally  
12 and pay the check and renew?

13 A. I don't remember all the situation, but we renew the BTR.

14 Q. Well, I want to be clear. When you say we renew. Is there  
15 anyone else that's associated with Beach Blitz that would go  
16 down and renew BTR applications?

17 A. Yes.

18 Q. Who?

19 A. If it's not me, it was Rochelle Malik.

20 Q. Okay. Now did you receive -- turn to Defendants' 7. Are  
21 you on Defendants' 7? Tab 7.

22 A. I think so.

23 Q. What is the address 865 Collins Avenue D?

24 A. Yes.

25 Q. Is that the address of --

1 A. Yes. This is the address of the Ocean 9 Liquor.

2 Q. This is an invoice from the City of Miami dated July 1,  
3 2016, correct?

4 A. Yes.

5 Q. For the renewal of your BTR for that location?

6 A. This is what it look like. I never receive it.

7 Q. You never received it?

8 A. I never receive it.

9 Q. Okay. You received one, though, for 1100 Collins Avenue  
10 because you renewed that license?

11 A. I receive for -- yeah, I receive it to 13441 Northwest 5th  
12 Court.

13 Q. For 1100?

14 A. Yes.

15 Q. And you renewed 1100?

16 A. Yes.

17 Q. Why didn't you renew 865 Ocean 9 when you renewed 1100?  
18 You knew they expired on the exact same date. Why didn't you  
19 do that?

20 A. Because I didn't have the renewal, and I don't recall why,  
21 what's happened. I don't remember what's happened, why.

22 Q. You knew --

23 A. I don't remember the situation.

24 Q. You knew that the BTRs expired on the exact same day year  
25 after year after year, correct?



1 A. I do. I do remember the dates.

2 Q. Right. So when you renewed 1100, Ocean 11, for the  
3 2016/2017 year beginning on October 1, 2016, you could have  
4 renewed Ocean 9, but you didn't, right?

5 A. If I had a choice to renew it from the city, I would renew  
6 it for sure. If something happened with the city -- I don't  
7 remember what it was before -- they not allow me to renew the  
8 license.

9 Q. You are testifying under oath here today that when you  
10 renewed Ocean 11 for the 2016/2017 year, you tried to renew  
11 Ocean 9 and the city told you you could not; that's your  
12 testimony?

13 A. Yes.

14 Q. Did you bring a check?

15 A. I asked them, you know, to give me the bill. They didn't  
16 give me the bill.

17 Q. When you went down --

18 A. How can I make a check if I don't have the bill. I don't  
19 know how much.

20 Q. Did you bring your checkbook with you?

21 A. Of course. Always I have my credit card. I have anything  
22 to pay. It's not a problem, the payment.

23 Q. When did you go back -- so this was what, before  
24 September 30, 2016, you renewed Ocean 11 and you tried to renew  
25 Ocean 9 and the city wouldn't give you an invoice; is that what

1 you are saying?

2 A. I said that I tried to pay before, before.

3 Q. I am talking -- I want to be very clear about the time we  
4 are talking about. We are talking about before your BTR  
5 expired on September 30, 2016.

6 Both of your BTRs for your two businesses expired on  
7 the exact same date, correct?

8 A. Should, because this is from the Miami Beach. Yes.

9 Q. You got a renewal notice for Ocean 11 and you usually got a  
10 renewal notice for Ocean 9, but you didn't this year, correct?  
11 That's your testimony?

12 A. That I didn't renew? I don't remember the situation when I  
13 renew exactly on Ocean 11. It was before 2016, 30th of  
14 September or not, I don't remember. Maybe it was after.

15 Q. Well, sir, you know that the city charges you a late fee if  
16 you renew after October 1, correct?

17 A. Yes, I know.

18 Q. You would always try to renew before to save the late fee,  
19 correct?

20 A. You always try to save the money, but it's --

21 Q. So I am asking a very specific question. You went down and  
22 renewed your license, your BTR license, for Ocean 11 before  
23 September 30, 2016?

24 A. I don't think I renew it before September 30, 2016. I  
25 don't think I -- I renew Ocean 11 before.

1 Q. After?

2 A. September.

3 Q. After.

4 A. Maybe after sometime, yeah. I don't remember the date.

5 Q. You only own two businesses. They have two BTRs. You went  
6 down to renew Ocean 11 just like you had year after year after  
7 year. You always have two to renew.

8 Are you saying you tried to renew Ocean 9 when you  
9 renewed Ocean 11?

10 A. I don't remember what was the situation.

11 Q. Okay. So you don't remember?

12 A. I don't remember.

13 Q. You are not testifying --

14 THE COURT: Wait. He is talking.

15 MR. HUDSON: Your Honor, asked and answered as well.

16 THE COURT: Well, he's given a couple of different  
17 answers is the problem.

18 BY MR. PAPPAS:

19 Q. Finish your answer.

20 A. I don't remember exactly the situation when I paid the  
21 2016, '17 for Ocean 11 Market. I don't remember the situation,  
22 if it was Ocean 9 or not, if I try, and I don't remember the  
23 situation.

24 Q. So you are not saying that the city prohibited you from  
25 renewing Ocean 9 when you renewed Ocean 11, correct?

1 A. I don't remember the situation. I don't remember the  
2 situation. I don't remember.

3 Q. There is no doubt whatsoever as we sit here today that your  
4 Ocean 9 BTR expired on September 30, 2016, correct?

5 MR. HUDSON: Objection to the extent it calls for a  
6 legal conclusion.

7 THE COURT: Overruled.

8 BY MR. PAPPAS:

9 Q. Correct?

10 A. Yeah. According to the papers, yes.

11 Q. Did you display your BTR license prominently and  
12 conspicuously at the location just as the BTR says you are  
13 supposed to?

14 A. Usually, yes.

15 Q. Posted like right above the cash register or something,  
16 right?

17 A. Usually, yes, something like that. I have a folder with --  
18 I should have a folder with the license.

19 Q. But you know the license says it has to be posted somewhere  
20 conspicuously, right?

21 A. Yes.

22 Q. You had the license posted at your store, right?

23 A. Usually, yes.

24 Q. And you work at the store, don't you?

25 A. I work. Of course I work.

1 Q. And so it was sitting there for nine months expired and you  
2 didn't notice and you didn't remember that it was expired for  
3 nine months, correct?

4 A. It's possible I didn't put, I didn't put it.

5 Q. You didn't notice. You testified on direct examination  
6 that the first time you found out that you did not have a BTR  
7 for Ocean 9 --

8 A. Was June 27th.

9 Q. June 27th?

10 A. June 25, yeah.

11 Q. Well --

12 A. Twenty-five, 27.

13 Q. So what happened was you were in Israel on June 25,  
14 correct?

15 A. Yes.

16 Q. And one of your clerks sent you the notices of violation in  
17 Israel?

18 A. I think so.

19 Q. And you came right back, correct?

20 A. Yes.

21 Q. And by the way, do you do the bookkeeping for your stores?

22 A. Most of it.

23 Q. Right. So don't you have a journal somewhere that says BTR  
24 license every year? And you knew you wrote a check for Ocean  
25 11 but you didn't write one for Ocean 9?

1 A. Usually I don't do mistakes. Usually I don't do mistakes.

2 Q. So you come back and -- let me back up for a second.

3 I want you to go back to Defendants' 10. Okay. Black  
4 binder number ten. Right. That's the December 16 violation.  
5 Okay.

6 THE COURT: December 21.

7 BY MR. PAPPAS:

8 Q. December 21, 2016. I will get my year. December 21.

9 Are you there, sir?

10 A. I think so, yeah.

11 Q. Did you receive this violation personally? Did you look at  
12 it in person?

13 A. Yes. I didn't receive it personal, but I look at it.

14 Q. Did you obtain a copy of it at or about the time of  
15 December 21, 2016?

16 A. If I had a copy of this violation, that's what you are  
17 asking me?

18 Q. Yes. Within 24 hours of getting the violation you had a  
19 copy of it, right?

20 A. I am not sure about 24 hours.

21 Q. Had you ever seen -- you said you thought you had received  
22 violations before. You are familiar with the City of Miami  
23 Beach's violation, aren't you?

24 A. Yes.

25 Q. Right at the bottom it says: Important. Appeal and ADA

1 information on the back.

2 Do you see that right at the bottom of the ticket?

3 A. What it says?

4 Q. Important?

5 A. Important appeal.

6 Q. Important appeal, right?

7 A. Yeah.

8 Q. And then turn over to the next page. You have read these  
9 before, haven't you?

10 A. Usually I give it to -- when it's come to violation, I give  
11 it to professional people to deal with it.

12 Q. You know that the city's policy is that you can appeal a  
13 ticket within 20 days, correct?

14 MR. HUDSON: Objection on legal conclusion, your  
15 Honor.

16 THE COURT: Overruled.

17 BY MR. PAPPAS:

18 Q. Correct.

19 A. I know that it's a different time for appeal for different  
20 kind of violations. It's not all the same.

21 Q. And this ticket says right on the back of it that it must  
22 be appealed within 20 days by a written request to the clerk.  
23 Do you see that?

24 A. No. Where is it?

25 MR. PAPPAS: May I, your Honor?

1 THE COURT: Yes.

2 MR. HUDSON: I will object to this line of questioning  
3 because the special master accepted jurisdiction and resolved  
4 these three violations.

5 THE COURT: Overruled.

6 BY MR. PAPPAS:

7 Q. Sir, you never appealed this ticket, did you? Within 20  
8 days you never filed a written appeal of this ticket, correct?

9 A. No, I didn't.

10 Q. Okay. So now let's go to December 25th. You find out  
11 about the new hour violation, different than December 21, and  
12 you find out that for the first time that you did not have a  
13 BTR.

14 Are you with me?

15 THE COURT: I think you meant June 25. You said  
16 December 25, I think. But go ahead.

17 MR. PAPPAS: My apologies. It's dyslexia kicking in.

18 THE COURT: Maybe you are thinking about Christmas. I  
19 don't know.

20 BY MR. PAPPAS:

21 Q. And you personally went right down to the finance  
22 department in person with the violations, correct?

23 A. Yes.

24 Q. That's what you testified. You went down in person with  
25 the violations. You went to the finance department and you



1 have got your number. You waited to be called. You met face  
2 to face with a human being at the City of Miami Beach finance  
3 department, correct?

4 A. Yes.

5 Q. At that point in time you testified on direct examination  
6 that you were told -- in fact, I wrote that they showed you  
7 that you had an outstanding violation, correct?

8 A. Yes.

9 Q. That was the December 21, 2016 ticket that you did not  
10 appeal, correct?

11 A. I don't remember which one it was.

12 Yes. Yes.

13 Q. And they told you, the people at the finance department  
14 told you that in order to renew your BTR license you had to pay  
15 the ticket?

16 MR. HUDSON: Objection. Speculation. He is  
17 testifying to what someone at the counter told him. He can  
18 testify differently.

19 THE COURT: That's what happens when you get to lead.  
20 He says yes or no.

21 MR. HUDSON: It's leading, but it's an inappropriate.

22 THE COURT: Stand up if you are objecting, and the  
23 objection is overruled.

24 You can answer the question, sir.

25

1 BY MR. PAPPAS:

2 Q. You can answer, sir.

3 A. Ask it again, the question, please.

4 Q. When you went down with the June 25th tickets on June 27th  
5 in person and met with another human being from the City of  
6 Miami Beach, they showed you you had an outstanding violation  
7 back from December that you had to pay first in order to renew  
8 your BTR license, correct?

9 A. I am not sure what they show me. I am not sure what they  
10 show me.

11 Q. They showed you you had a violation?

12 A. They told me that I cannot renew the license.

13 Q. Because you had an outstanding violation, correct?

14 A. I don't remember for what. I think because of having  
15 violations.

16 Q. Right, and they told you all you have to do, sir, is pay  
17 the violation and you can renew your BTR license?

18 MR. HUDSON: Objection, your Honor. He's asked three  
19 times and he's answered the same way three times.

20 THE COURT: He hasn't answered the question yet.

21 You need to stand up if you want to be recognized in  
22 this courtroom. Okay?

23 MR. HUDSON: He said he doesn't remember three times,  
24 your Honor. He's trying to get him to answer it. He says I  
25 don't remember.

1           THE COURT: The question is, sir, they told you all  
2 you have to do, sir, is pay the violation and you can renew  
3 your BTR license. Answer that question, please.

4 A. I don't remember this exactly what they told me.

5 BY MR. PAPPAS:

6 Q. Was it something sort of like that if not exactly?

7 A. What I understand is that I cannot renew my license because  
8 I have violations.

9 Q. Right. Did you ask how do I pay for the violations so I  
10 can renew? Did you ask that?

11 A. I went to Rochelle Malik.

12 Q. No. I am talking about -- we are not at Rochelle Malik.

13 A. I don't remember exactly the conversation that I had with  
14 cashier over there, the officer in the finance.

15 Q. We are sitting there on December 27th. You are sitting  
16 there talking to a finance department --

17           THE COURT: I am sorry. You keep using the wrong  
18 date. It's June 27.

19           MR. PAPPAS: June 27th.

20 BY MR. PAPPAS:

21 Q. You are sitting face to face at the finance department on  
22 June 27th. They told you you could not renew because you had  
23 an outstanding violation. Correct?

24 A. Something make a noise like that over here like boom, boom  
25 something. Like a noise.

1 Q. They told you that you could not renew.

2 THE COURT: Now asked and answered. Let's go.

3 BY MR. PAPPAS:

4 Q. Did you simply ask while you were sitting there --

5 A. They told me -- I understand in general that I need to  
6 resolve the violations in order to come and pay my license.

7 Q. Okay.

8 A. That's what I understand.

9 Q. And --

10 A. I didn't understand --

11 Q. And did you say, great, how do I resolve my violation from  
12 December? Where do I pay it?

13 A. That's what I say great, to who?

14 Q. You wanted your BTR, didn't you?

15 A. What you mean I say great?

16 Q. They told you you had to resolve the violation in order to  
17 get your BTR, right?

18 A. Yes. They told me that I need to resolve my violations in  
19 order to pay my BTR.

20 Q. And resolve the violation from back --

21 THE COURT: Hold on a second. He is saying violations  
22 and you are saying violation. So you can't change his  
23 testimony. He is saying violations, which would include the  
24 December 1 and the one that he got two days before, is what his  
25 testimony is that he was told he had to resolve.

1 BY MR. PAPPAS:

2 Q. Right. And so you distinctly recall them telling you on  
3 December 27th that you had to resolve all three of your  
4 violations to get your BTR?

5 A. June 27. I don't understand.

6 THE COURT: You have to get the dates.

7 MR. HUDSON: Creating confusion.

8 A. December 27. I am sorry.

9 BY MR. PAPPAS:

10 Q. When you were there in person on June 27th --

11 A. When I was there on June 27.

12 Q. -- did the clerk from the finance department tell you you  
13 had to resolve all three outstanding violations or only the  
14 December 21, 2016 violation in order to renew your BTR?

15 A. I understand that I cannot renew my BTR until I resolve my  
16 violation. I don't know what it mean, but I assume it's not --  
17 they don't mean that the other two because it was new. But I  
18 assumed that it was maybe the other.

19 Q. You understood and assumed it was the December violation,  
20 which you didn't appeal, right?

21 A. That I had a violation and I need to -- I didn't know  
22 exactly which violation. They show you a paper all the time  
23 with more than ten violations. And some violation close, some  
24 violation open, some violation this. It's very hard for me to  
25 read this paper when it's with a lot of violation. It's taking

1 time to understand what's going on. So I am going to a  
2 professional people and I am trying to get explanation how it's  
3 work. I don't know exactly how it's work because --

4 Q. Before you went to professionals, while you were still  
5 sitting there, did you say to the clerk, I have my checkbook, I  
6 am ready to pay for the December violation, I have the money,  
7 where do I pay so can I renew my BTR? Did you do that?

8 A. I came to pay. I came to get my BTR.

9 Q. Did you do that? Did you ask?

10 A. Probably. I probably say it. I don't remember exactly  
11 what it was I said, but probably I came to pay my BTR. What I  
12 came for what? I came to finance to what? To find out about  
13 my violation? To find out about my violation you go to the  
14 code enforcement.

15 Q. Did you ask how much you owed for your BTR?

16 A. I think so.

17 Q. Okay. Turn to Defendants' Exhibit 15 in the black book.  
18 The black book. That's the white one. The black one. Sir,  
19 the other one. The Defendants' 15.

20 Are you there?

21 A. Yes.

22 Q. If you look in the upper right-hand corner, it's an Ocean 9  
23 invoice. Correct?

24 A. Yes.

25 Q. It's dated June 27th, 2017, correct?

1 A. Yes.

2 Q. They handed this to you on June 27 when you were there  
3 trying to renew your BTR license, didn't they?

4 A. Yes.

5 Q. And it has the \$570 late charge on it because your license  
6 had been expired for nine months, correct?

7 First line. The very first line. Late fee, \$570.  
8 Right?

9 A. Yes.

10 Q. And you had your checkbook with you, didn't you?

11 A. Always I have my checkbook with me.

12 Q. And you had plenty of money to pay the \$2,246 for this BTR  
13 license, right?

14 A. Yes.

15 Q. And you had an extra thousand dollars to pay the December  
16 invoice to resolve it, didn't you?

17 A. Yes.

18 Q. And you never paid the December 16 invoice?

19 A. They didn't accept my money.

20 Q. Did you try to pay?

21 A. I tried to pay. They told me that I need to resolve my  
22 violation.

23 Q. I am talking about the violation, sir. Did you go and try  
24 to pay the \$1,000 violation from December to resolve it?

25 A. I give it to my professional people. I give it to my

1 professional people to deal with that because I wasn't agree  
2 about this violation.

3 This violation, this violation that they give me on  
4 December, it was selling before 10:00 a.m., 8:33 or something  
5 in the morning, which we didn't even know that this ordinance,  
6 it's already in order.

7 Q. So on June 27th you voluntarily refused to pay the  
8 outstanding December 2016 violation which you never appealed?

9 MR. HUDSON: Objection, your Honor. Mischaracterizes  
10 his testimony.

11 THE COURT: Overruled.

12 BY MR. PAPPAS:

13 Q. You chose not to pay it at that time even though the clerk  
14 said to you if you just paid the thousand dollars and resolved  
15 the violation, we will give you your BTR for \$2,246.46, just  
16 like it says on Defendants' Exhibit 15, right?

17 A. I don't remember exactly what was the situation with the  
18 violation, but they told me that I need to resolve the  
19 violation and either way in order to pay the BTR.

20 Q. And you knew when you --

21 A. I went to my professional people to see what we doing, and  
22 we agreed that we need to appeal a violation of thousand  
23 dollar, that it's not correct to give, it's not right to give  
24 it to me if they create a new ordinance and it doesn't let us  
25 know that we have a new ordinance and they just come and give



1 you a violation and you come and you just pay thousand dollar  
2 like, like we make the thousand dollars in one second and just,  
3 you know, for to pay the BTR.

4 I think the mind on the same moment was the violation  
5 wasn't right and the other violation wasn't right and they  
6 attacking me and they trap us and they tried to get us out of  
7 business by giving us violation on violation on violation  
8 without us to know anything, what's going on. They create a  
9 new ordinance and changing the ordinance and nobody recognize  
10 what is real and what is not and what to do right and what to  
11 do wrong, and every move I had to go to professional people to  
12 see if I am doing the right thing or not. This exactly what's  
13 happening.

14 Q. And so on June 27, 2017 it was already six months after the  
15 December 2016 citation had been issued to you, correct? Right?

16 A. Probably.

17 Q. You knew you couldn't file a written appeal like it says  
18 right on the citation. You knew you waived your right to  
19 appeal it, correct?

20 A. We appeal. I didn't waive the right to appeal. Maybe I  
21 didn't appeal in the first 20 days because I didn't exactly  
22 know the situation, but we didn't waive the right to appeal  
23 because we appeal it after.

24 Q. Did you ever file a written notice of appeal for the  
25 June 25, 2017 violations?

1 A. Excuse me again?

2 Q. I will rephrase it.

3 The June 25th violations were on the exact same ticket  
4 form that the December violation was on, correct?

5 A. I am sorry. I am not --

6 Q. The tickets from June.

7 A. June 25.

8 Q. They were exactly the same form as the December tickets,  
9 right?

10 A. Yes.

11 Q. You knew you had time to appeal them in writing just like  
12 it says on the ticket, correct?

13 A. Yes. I brought it to the professional people.

14 Q. You never appealed in writing with the special master's  
15 office just like it says on the ticket, correct?

16 A. Yes, correct.

17 You are talking about the December?

18 Q. And the June.

19 You never filed a written appeal?

20 A. We had filed an appeal and they didn't accept our appeal.

21 Q. Because it was too late?

22 A. Not because it was too late. Because they said -- not  
23 because it was too late. Because they said that we send the  
24 appeal to a wrong office in the Miami Beach. We send it to,  
25 maybe to Miami Beach instead of to Miami City of Miami Beach,

1 maybe to the cashier instead of to -- I don't know exactly the  
2 situation, but not the reason because of the 20 days.

3 Q. When you say "we," you are referring to some professional  
4 that you hired? Not you personally, correct?

5 A. Yes.

6 Q. So the professional that you hired sent the notice of  
7 appeal to the wrong office; is that what you are saying?

8 A. They sent the appeal and I don't know what is the reason it  
9 didn't exactly accept it, but what I understand it was a wrong  
10 address.

11 Q. Did you ever sign a written notice of appeal of the  
12 June 25, 2017 violations within 20 days? Did you ever do that?

13 A. If I sign -- tell me again the question.

14 Q. You never --

15 A. I don't want to a make mistakes.

16 Q. You never filed a written appeal according to the City of  
17 Miami Beach's procedures for the June 25th, 2017 violations,  
18 correct?

19 A. We send appeal. We send appeal. I mean, Guy Shir send  
20 appeal with a \$100 check. We send appeal. But they didn't --  
21 for some reason it didn't work.

22 Q. When you say "we," you are talking about Ms. Malik?

23 A. Ms. Malik and Guy Shir, yeah.

24 Q. So your professionals that you hired, you claim took care  
25 of it for you, and they sent the appeal to the wrong location,

1 correct?

2 A. The professional, all the professional that I hire, any  
3 time that you come and try to do movement, they get some  
4 problem, you know, to deal with my cases.

5 Q. Did you ever --

6 A. I don't understand what is that. The professional try and  
7 try and try and all the time they have a problem and problem.  
8 You are not talking about one professional, another one,  
9 another one, another one. I did anything I can. Anything I  
10 can to try to resolve the problem with the city.

11 The City set me up. The city trap me. The city set  
12 me up not to get the license. That's what the city did. They  
13 set me up not to get the license in order to take for me my  
14 liquor store and destroy my business. That's exactly what's  
15 happened.

16 Q. You said it just now. You did everything in your power,  
17 right?

18 A. Everything in my power.

19 Q. When you were sitting with across from the clerk on  
20 June 27th at the finance department did you say, look, I have  
21 got my checkbook, how much do I owe you to get my BTR? Did you  
22 ask that?

23 A. But you are talking about the violation from December and  
24 then violation from June 25 and then another violation that  
25 come and come and come. So when does it stop? When are you

1 going to stop with it? When are you going to let me work and  
2 not attack me with all the violations? When you going to do  
3 it?

4 Q. Sir, answer my question.

5 A. Why should I answer you?

6 Q. Answer my question, sir. When you were sitting in front of  
7 that clerk on June 27th, did you say I have my checkbook right  
8 here, how much do I owe you to get the BTR? You didn't do  
9 that, did you, sir?

10 A. I answer you many time already.

11 Q. You didn't do it?

12 A. I don't have problem to pay any money. If any money, I  
13 don't have problem to pay.

14 Q. You refused to pay the December 16, 2016 invoice, the  
15 citation, you refused to pay it on June 27?

16 A. I appeal it because it was the wrong violation and I wasn't  
17 agreeing with all these violations, that we getting attacked  
18 from the city for no reasons. And changing ordinance from time  
19 to time. You know, how many time you change the ordinance in  
20 the city in the last year? Maybe four or five times. If you  
21 ask any liquor store or any convenience store what time is the  
22 hours right now, right now today, even the code enforcement  
23 doesn't know when to open and when to close. Then you come  
24 with the code enforcement and give violation, then you attack  
25 me and what? Just pay the thousand dollars, just pay another

1 thousand dollars, and then it's \$5,000 and then \$10,000.

2 Q. The answer to my question is --

3 THE COURT: Let's move on to another area.

4 BY MR. PAPPAS:

5 Q. Sir, you were not present with Mr. Rosen --

6 A. Shame on you.

7 Q. You were in the presence -- excuse me? Excuse me, sir?

8 A. Sorry.

9 Q. What did you say?

10 THE COURT: He said shame on you. Let's go. Move  
11 along.

12 BY MR. PAPPAS:

13 Q. You were not present with Mr. Rosen on August 28 when you  
14 allegedly met with the special master, correct? You were not  
15 there?

16 A. No.

17 Q. You have no idea what he did with the check, do you?

18 A. Who? Mr. Rosen?

19 Q. Yes.

20 A. He told us that he gave the check.

21 Q. You weren't there though, right?

22 A. I wasn't there.

23 Q. Were you in Miami in September?

24 A. Yes.

25 Q. Right. Do you remember what happened on the weekend of

1 September 9th and 10th?

2 A. No.

3 Q. Do you remember Hurricane Irma?

4 A. I remember Hurricane Irma.

5 Q. You remember the city shut down on a Thursday? The city  
6 shut down I think even on Wednesday.

7 A. So what's happened before. Every Thursday you have the  
8 special master. What happened before, the week before? You  
9 move the computer from office to another office and then shut  
10 down again.

11 Q. Right, sir. You know that the city was shut down on  
12 September 7th, correct? Correct? That was the --

13 A. I didn't know exactly when the city shut down, when the  
14 city opened.

15 Q. And you knew that the city remained shut down on  
16 September 14th after Hurricane Irma, correct? Correct?

17 A. I am sorry. I need to drink some water. Can I?

18 Q. Yes, of course. Tell me when you are ready.

19 Are you all set?

20 A. Yes.

21 Q. You did not go down to the City of Miami Beach on  
22 September 28th, Thursday, September 28th, 2017, correct?

23 A. What you mean?

24 Q. You didn't go in person on Thursday, September 28?

25 A. I went on 28, 29.

1 Q. You did?

2 A. I went. I don't remember the date exactly, you know, but I  
3 went after they told me to sign the order and go pay your BTR.

4 Q. Right. And --

5 A. Harold told me go pay your BTR.

6 Q. Did you renew your Ocean 11 BTR on September 28?

7 A. They didn't allow me.

8 Q. Why not?

9 A. Because they told me that I have a violation.

10 Q. Did you have a violation on Ocean 11?

11 A. Some signed violation.

12 Q. Did you pay for the violation?

13 A. No. They dismiss the violation.

14 Q. When?

15 A. They dismiss it for some -- they dismiss the violation and  
16 then I went Monday and I paid.

17 Q. Tuesday?

18 A. Actually, actually, I don't remember how it was working.

19 Q. So you had an open violation on September 28th on Ocean 11  
20 and they wouldn't let you renew, correct?

21 A. Yeah, I think so.

22 Q. Right. Then when you had to pay -- then you renewed Ocean  
23 11 on October 3?

24 A. On October 3.

25 Q. You went down in person with your checkbook. Now the



1 violation was resolved and you could pay your bill, right, just  
2 like they told you for Ocean 9 back on June 27? Right?

3 A. The code enforcement dismiss the violation.

4 Q. It was resolved?

5 A. They dismiss the violation and then I went and pay, yeah.

6 And exactly like I tried to do on September 28th when the  
7 violation, the three violation was resolved with the special  
8 master, I went to pay and they didn't accept it.

9 Q. Right.

10 A. They didn't accept both of them.

11 Q. You went to the cashier, right?

12 A. On October 3, yeah.

13 Q. No. On September 28 you went to the cashier at the finance  
14 department?

15 A. No. No.

16 Q. Did you go personally?

17 A. I went to finance, not to the cashier. It's two different  
18 windows.

19 Q. Right, and they opened up your screen and still saw open  
20 violations?

21 A. Yes.

22 Q. Did you have the agreed order with you? Did you have it  
23 with you?

24 A. No, I didn't have it.

25 Q. Right. Was --

1 A. I didn't have that, the agreed order. I had it -- I had  
2 agreed order. Rochelle -- I didn't have the agreed order with  
3 me.

4 Q. You didn't?

5 A. I didn't have the agreed order with me. I didn't.

6 Q. You didn't have a copy of it?

7 A. I had a copy.

8 Q. You didn't have it with you?

9 A. I didn't have it with me.

10 Q. The clerk at the city finance department said I have no  
11 evidence that you have an agreed order, correct?

12 A. So what did -- I don't understand. So I don't think that  
13 you going to trick me another two days or something happen. I  
14 just thought that I resolved the problem. I come to pay. They  
15 tell me you can't pay because you still have the violations.  
16 It doesn't -- to something like this, you think it's a matter  
17 of one day, you know. So I went Friday -- I think Friday -- it  
18 was Thursday or Friday, and then I went again on Tuesday.

19 Q. Sir --

20 A. I went every day. Almost every day I tried to pay.

21 Q. Your license was now over a year old at that point in time,  
22 expired, correct?

23 A. After.

24 Q. Right. You had admitted the violations of the hours  
25 problems at your stores, correct? You admitted that those

1 violations were valid, correct?

2 A. Yeah.

3 Q. And you never ever wrote a check for --

4 A. They never accept a check for me.

5 Q. My question is --

6 A. They never accept without result of violation. They never  
7 accept the check. After September 28, when I was in the  
8 finance, they never accept a check from Ocean 9 Liquor.

9 Q. On June 27 --

10 A. Back to June 27?

11 Q. From June 27 --

12 A. Okay.

13 Q. -- until October 6th, you never wrote a check for the  
14 \$2,240 that they showed was owing for your BTR just like on the  
15 invoice that they gave you on June 27 in person with the late  
16 charge? You never, ever wrote that check and handed it to  
17 them, did you?

18 A. They never let me hand it.

19 Q. My question is different. You never wrote the check like  
20 you wrote the thousand dollar check, you never wrote the  
21 2,200 --

22 A. Everybody leave me. The city, the city, the officer in the  
23 city, everybody there, Rochelle Malik, Rosen, everybody leave  
24 me that I need to resolve the violation in order to pay my BTR.  
25 I never, technically I never did it. I never did it. I never

1 did it.

2 Q. Thank you.

3 A. I never did it because -- I never did it because nobody  
4 allowed me to pay. Nobody allowed me to pay.

5 Q. I think you have answered my question.

6 A. This is the way, you know, the city set you up. So it's --

7 Q. You never appealed the October 6th, 2017 violation, did  
8 you?

9 A. They told me -- no, I never appealed this September 6.

10 Q. October 6.

11 A. October 6 violation.

12 Q. The violation when they closed you down for not having a  
13 BTR, you never appealed that according to the city's procedures  
14 of filing a written notice of appeal; you never did that, did  
15 you?

16 A. I never appealed it.

17 Q. Correct?

18 A. I never appeal it.

19 Q. Right.

20 A. I never appeal. I went to a lawsuit.

21 Q. You have never --

22 A. I went to a lawsuit.

23 Q. You have never --

24 A. I saw that I can't do anything, you know, without lawsuit,  
25 without sitting with the city authority and talk to them and

1 try to resolve the problem.

2 Q. You have never filled out an application for a new BTR,  
3 correct?

4 THE WITNESS: What shall I --

5 THE COURT: Just answer the question yes or no.

6 A. No.

7 BY MR. PAPPAS:

8 Q. You have never appealed from your claim that the city will  
9 not issue you a new BTR, correct?

10 A. I never appeal if you mean on the October 6 violation, I  
11 never appeal. I went to a lawsuit.

12 Q. And you have never gone to the city and said you have  
13 wrongfully refused my BTR, I want to appeal, correct?

14 A. I had people, professional people, trying to deal with the  
15 city every day, every day. Every day talking with the city  
16 manager, talking with the city attorney, talking with anybody  
17 possible.

18 Q. You have never had a hearing with the city manager  
19 regarding your BTR license, correct?

20 A. What? Excuse me?

21 Q. I will rephrase it.

22 A. Okay.

23 Q. You have never had a meeting with the city manager,  
24 regarding your BTR license for Ocean 9, 865 Collins Avenue,  
25 correct?

1 A. I had a meeting with the city manager.

2 Q. You had a meeting with the city manager. Have you ever had  
3 a hearing with the city manager?

4 A. I had a meeting with the city manager. We did  
5 professional. We did Rochelle Malik. We tried to resolve the  
6 problem to pay the BTR and they didn't accept it.

7 Q. And did you appeal the city manager's refusal to accept  
8 your BTR? Did you appeal?

9 A. I didn't appeal. On the violation you are talking about or  
10 not accept my payment for the BTR?

11 Q. Yes.

12 A. I don't understand what you are asking me.

13 Q. We are talking about your claim that the city refused --

14 A. What answer I can do? I had three lawyers working on it.

15 Q. Sir --

16 A. With a city manager, with a city attorney, with all the  
17 people. You asked me if I didn't appeal.

18 Q. Yes.

19 A. It was obvious that I can't get anything. I can't get  
20 anything. It over here that the city attorney order not to  
21 issue me any license. It's over here. How can I -- what  
22 appeal what? I went to lawsuit. What appeal? You ask me for  
23 appeal.

24 Q. Did you ever file a lawsuit in the state court system  
25 claiming --

1 THE COURT: You don't need to ask these questions.  
2 It's uncontroverted that he never filed any lawsuit.

3 MR. PAPPAS: We don't know that.

4 THE COURT: Stipulate that -- excuse me, sir? Quiet.

5 THE WITNESS: I am sorry, your Honor.

6 THE COURT: Let me tell you something. You are in a  
7 court of law. You answer a question when you are asked. This  
8 isn't for you to stand on a podium and make announcements.

9 Do you understand?

10 THE WITNESS: Yes. I am sorry.

11 THE COURT: Do you stipulate there has not been a  
12 state lawsuit filed in this matter?

13 MR. PAPPAS: Yes.

14 THE COURT: How much more do you have?

15 MR. PAPPAS: None.

16 THE COURT: Redirect.

17 MR. HUDSON: Nothing, your Honor.

18 THE COURT: You can step down, sir.

19 (Witness excused)

20 THE COURT: We are going to take a lunch break.

21 Is the plaintiff calling anybody else?

22 MR. HUDSON: No. We are done.

23 THE COURT: Defendants, who are you calling?

24 MR. ARANA: Manuel Marquez.

25 THE COURT: What about the second person?

1 MR. ARANA: Assistant director of finance, and then  
2 probably Hernan Cardeno.

3 THE COURT: How long are they going to take?

4 MR. ARANA: I don't think they are going to take long.  
5 A half hour each.

6 THE COURT: For your direct?

7 MR. ARANA: For direct maximum.

8 THE COURT: How long are you going to take?

9 MR. HUDSON: Cross about the same, probably.

10 THE COURT: We will start up again at 2.

11 So far the estimate was this witness was going to be  
12 an hour. He took two hours. Let's get a little more focused  
13 on the next two witnesses. In fact, let's come back at a  
14 quarter to 2. That should give you enough time to grab a  
15 sandwich if you want to.

16 (Recess taken in proceedings.)

17 THE COURT: Does the plaintiff have any further  
18 evidence or witnesses?

19 MR. HUDSON: No, your Honor.

20 THE COURT: Defendant call their first witness,  
21 please.

22 MANUEL MARQUEZ,  
23 having been first duly sworn on oath, was examined and  
24 testified as follows:

25 THE WITNESS: Manuel Marquez. Last name



1 M-A-R-Q-U-E-Z.

2 DIRECT EXAMINATION

3 BY MR. ARANA:

4 Q. Good afternoon, Mr. Marquez.

5 A. Good afternoon.

6 Q. Do you work for the City of Miami Beach?

7 A. I do.

8 Q. What is your position with the city?

9 A. I am assistant director of the finance department.

10 Q. How long have you served in that capacity?

11 A. Since 2006.

12 Q. I think you submitted an affidavit in this case, which  
13 suggests it was from 2011. Is that a typo?

14 A. That is a scrivener error.

15 Q. What is your general duties and responsibilities as  
16 assistant director of finance?

17 A. I manage the day-to-day functions of our city's customer  
18 service center, which handles business tax receipts, utility  
19 billing, lien statements, and other revenue-generating  
20 functions of the city.

21 Q. Thank you.

22 And what is a business tax receipt?

23 A. A business tax receipt is what lay people would call an  
24 occupational license. It's a tax. For any business engaged in  
25 a for profit business, the City of Miami Beach is required to

1 obtain a business tax receipt.

2 Q. Any business in the City of Miami Beach has to have a  
3 business tax receipt to operate; is that correct?

4 A. That is correct.

5 Q. Can you briefly describe the process that a business  
6 applicant must follow to apply for a new BTR?

7 A. Business tax receipts are governed by Florida statutes 205  
8 and our city code section 102. A business that wants to obtain  
9 a business tax receipt in the City of Miami Beach has to apply.  
10 They can apply online or in person. They are required to fill  
11 out an application. That application, you also have to submit  
12 a lease or a warranty deed that tells us where you are going to  
13 be operating. If the business that you are operating requires  
14 a state license, you would also need to submit a state license  
15 and you would also need to submit articles of incorporation.

16 Q. Are you familiar with Beach Blitz's BTR license history?

17 A. Yes.

18 Q. I am going to direct you to a few exhibits which are in the  
19 black binder in front of you. If you could please look at  
20 Exhibit 4, which is in evidence.

21 A. I have Exhibit 4.

22 Q. What is Exhibit 4?

23 A. Exhibit 4 is a business tax receipt for Beach Blitz company  
24 located at 865 Collins Avenue for the fiscal year beginning  
25 October 1, 2011 through September 30, 2012. It's a BTR,

1 business tax receipt, for liquor sales.

2 Q. And what was the city's procedure for processing this BTR  
3 application?

4 A. This BTR application would have been received and it would  
5 have been routed to all of our regulatory departments. For  
6 this type of business the finance department does the  
7 application intake and then we route it electronically to the  
8 building department, the fire department, planning department,  
9 and the code compliance department.

10 Q. And those departments weigh in on whether to approve the  
11 BTR?

12 A. They do.

13 Q. Did Beach Blitz renew its BTR license for fiscal years  
14 2012/13, 2013/14, 2014/2015 and 2015/2016?

15 A. They did.

16 Q. Okay. What was Beach Blitz required to do in order to  
17 renew its BTR for those years?

18 A. To simply pay the BTR renewal, which is mailed out in July  
19 of every year. We mail out the renewal for the upcoming fiscal  
20 year.

21 Q. If the company wanted to add a new use, what would happen  
22 then?

23 A. A company wanting to add a new use would fill out an  
24 application similar to the first application that was filled  
25 out for this entity, Beach Blitz. They would fill out an

1 application describing the type of business activity you wanted  
2 to partake in and then we would take that application and route  
3 it to all of the regulatory departments.

4 Q. So could you take a look at Exhibit 6. What is Exhibit 6?

5 A. Exhibit 6 is a BTR, business tax receipt, for Beach Blitz  
6 at 865 Collins Avenue. It is for the time period October 1,  
7 2015 through September 30, 2016. It's for all the categories  
8 that are listed there in exhibit. They have an ATM machine  
9 located at the facility, they are engaged in food sales, liquor  
10 sales, merchant sales, and they also have a category for  
11 entertainment establishment without dancing.

12 Q. So if we look at pages 2 and 3 of Exhibit 6, is this an  
13 application for BTR?

14 A. Yes, it is.

15 Q. And this is Beach Blitz's application for a BTR for the  
16 2015 and '16 fiscal year, correct?

17 A. Correct. This is an application where they added these  
18 additional categories to their existing BTR.

19 Q. So that was my question. Why did Beach Blitz have to  
20 submit a new application for this year?

21 A. Any time you add a category to your BTR, you are required  
22 to fill out an application.

23 Q. So Beach Blitz submitted a new application adding the  
24 categories and then this application, who routed this  
25 application to the various departments. Is that right?

1 A. Correct. We would route it to building, planning, fire and  
2 code compliance.

3 Q. And the BTR for 2015, fiscal year 2015 to '16 was issued,  
4 correct?

5 A. It was, yes.

6 Q. And when did this BTR expire?

7 A. All BTRs expires September 30th of the year that they were  
8 issued. This is by state statute chapter 205.

9 The period for BTR is from October 1th through  
10 September 30th of the fiscal year.

11 Q. So did this BTR expire on September 30, 2016?

12 A. It did.

13 Q. And did Beach Blitz submit payment to renew its BTR prior  
14 to that date?

15 A. It did. That's why it had this BTR.

16 Q. I am talking about prior to the expiration of this BTR.

17 A. Yes.

18 Q. Did Beach Blitz pay for a license, a BTR license for  
19 2016/17?

20 A. They did not.

21 Q. And that's because the license -- because they did not pay  
22 for that renewal, correct?

23 A. Correct.

24 Q. So just to clarify, Exhibit 6, which is the 2015/16 BTR,  
25 expired on September 30, 2016, correct?

1 A. Correct.

2 Q. Without Beach Blitz having made a payment for the following  
3 year, correct?

4 A. Correct.

5 Q. Now if you could take a look at Exhibit 7, please. What is  
6 Exhibit 7?

7 A. Exhibit 7 is a printout from our system depicting the date  
8 that the renewal for the fiscal year 2016/17, when it was  
9 created. This renewal notice was created on July 1, 2016.

10 Q. And this was the renewal notice for Beach Blitz, correct?

11 A. Correct, for Beach Blitz.

12 Q. For the 865 Collins Avenue location, correct?

13 A. Yes, sir.

14 Q. And does the city send its BTR license holder an invoice to  
15 renew their BTRs every year?

16 A. We do.

17 Q. And in July of the year in which the license expires, is  
18 that the time when --

19 A. That's the time.

20 Q. -- when they are sent?

21 A. Yes. We send it out every July via U.S. Postal Service, we  
22 send out renewal notices.

23 Q. But Beach Blitz did not pay its renewal invoice prior to  
24 the expiration of the BTR on September 30, 2016, correct?

25 A. They did not. They did not pay for this location.

1 Q. Let's talk about, then, the 2016-17 fiscal year. Would  
2 that be from October 1 until September -- I am sorry.  
3 October 1 of 2016 to September 30 of 2017?

4 A. That is correct.

5 Q. Is there any process or procedure in your department which  
6 would have prevented Beach Blitz from paying this invoice  
7 during that fiscal year?

8 A. None whatsoever. They could have paid the invoice at City  
9 Hall, 1700 Vintage Center Drive, at our customer service  
10 center, 1755 Meridian Avenue, our lockbox. Our lockbox is on  
11 our renewal notice. Our renewal notice has a link to our  
12 website and you can click on the link and pay online.

13 Additionally, we have a satellite office in North  
14 Beach Miami Beach where customers can pay it at our satellite  
15 office.

16 Q. Can you explain to the court -- so just to be clear, the  
17 city will always accept payment for a BTR, correct?

18 A. Correct. That's why we send out the renewal notices, so we  
19 can get paid.

20 Q. Can you explain to the court the city's procedure for  
21 actually issuing the BTR in the event that there are  
22 outstanding fines or debts owing to the city?

23 A. Sure. In our city code on chapter 102, the city permits us  
24 from withholding someone's BTR if it has been paid if a  
25 business entity owes the city outstanding monies. So we mail

1 out a renewal notices in July. If a customer does not pay --  
2 their period to pay ends September 30th of that fiscal year.  
3 That BTR is good for one year, from October 1 through  
4 September 30th.

5 THE COURT: If someone pays but they have a violation  
6 that's outstanding, what happens then?

7 THE WITNESS: If someone comes to our office and pays  
8 for a BTR and they have an outstanding violation, we would  
9 notify them, thank you for your payment for the BTR but you  
10 have these outstanding violations or you have these outstanding  
11 moneys that are owed to the city. You need to remedy these  
12 first before we can issue your BTR.

13 Now, if the outstanding violation is a code violation  
14 and the customer wishes to challenge the violation, they say  
15 this isn't right, I am going to challenge it at the special  
16 master level, once they schedule something before a special  
17 master and they show us evidence that it's going before the  
18 special master, we will release the BTR. That's our standard  
19 practice, because they haven't had their day in court, they  
20 haven't been adjudicated guilty.

21 BY MR. ARANA:

22 Q. So if a notice of violation is issued and the time for  
23 appeal runs, then that violation, that debt becomes due to the  
24 city, correct?

25 A. Correct. Yes, sir.



1 Q. You would expect a business owner to pay that before the  
2 city, before the city will issue the BTR, correct?

3 A. That is correct. Yes.

4 Q. But the city will accept payment for the BTR, correct?

5 A. Yes, we do. That's part of our practice every single day.

6 Q. And then when the violations are paid, it will go ahead and  
7 issue the BTR; is that right?

8 A. Yes.

9 Q. As far as you know, did Beach Blitz during the 2016/17  
10 fiscal year ever submit payment to the city for its BTR?

11 A. They did not.

12 Q. And if Beach Blitz had ever submitted payment to the city  
13 for its BTR for the 2016/17 fiscal year, would the city have  
14 accepted that check?

15 A. We would have accepted the payment.

16 Q. Let me ask you to take a look at Exhibit 15. What is  
17 Exhibit 15?

18 A. Exhibit 15 is a reprint of an invoice for fiscal year  
19 2016/17. The customer or customer's representative came to our  
20 office on June 27 -- that's the invoice date that's on this  
21 document -- and asked for a printout of what was owed for the  
22 BTR for Beach Blitz at 865 Collins Avenue. One of my staff  
23 members printed this and hand delivered it to the person  
24 representing Beach Blitz.

25 Q. And if on June 27th Beach Blitz or its representatives had

1 handed the clerk a check for \$2,246.46, would the clerk have  
2 accepted that payment?

3 A. The clerk would have accepted that payment. And if there  
4 was no outstanding monies owed, we would have issued a BTR  
5 there and then.

6 Q. Now, are you aware that Beach Blitz at this time on  
7 June 27th had an outstanding violation from December 21 of  
8 2016?

9 A. I am now aware that they had an outstanding violation.

10 Q. And you are aware that they were cited on December 21, 2016  
11 and never appealed that violation? Correct?

12 A. Correct.

13 Q. So on June 27 when they came in, in addition to owing the  
14 money for the BTR, Beach Blitz also owed \$1,000 for the  
15 citation, correct?

16 A. Correct. If they would have paid the BTR, the \$2,246.46  
17 and the thousand dollars for the violation, we would have  
18 issued their BTR on the spot at that moment.

19 Q. Now, are you aware that on June 25th, two days before this  
20 invoice was issued, Beach Blitz received two notices of  
21 violation?

22 A. I am aware.

23 Q. Would those notices of violation have been due on  
24 June 27th?

25 A. They would not have been due on June 27th.

1 Q. Okay. Is that because they are not due until the time for  
2 appealing them runs?

3 A. Correct.

4 Q. So those invoices would not have impacted Beach Blitz's  
5 ability to pay for and obtain its BTR at that moment, right?

6 A. No.

7 Q. All it had to do was pay \$2,246 plus a six-month-old \$1,000  
8 fine?

9 A. Correct.

10 Q. If Beach Blitz had timely appealed those two June 25th  
11 violations to a special master, would Beach Blitz have been  
12 able to simply pay the BTR and obtain its license --

13 A. Yes.

14 Q. -- at that point?

15 A. Yes. If Beach Blitz timely appealed the two violations and  
16 paid for the BTR, we would not withhold the BTR. We would have  
17 issued a BTR as soon as we had confirmation of the payment for  
18 the BTR.

19 Q. Because if Beach Blitz had timely appealed that, those two  
20 citations, they wouldn't be due, correct?

21 A. They are not due until the special master makes a ruling on  
22 that case.

23 Q. Okay. Now, we just talked about the June 25th, 2017  
24 violation for operating without a BTR.

25 You are aware of that one, right?

1 A. Yes.

2 Q. Does the resolution of the appeal to the special master  
3 regarding the fine resolve the issue of payment for the BTR?

4 A. No. They are two independent items. The BTR is a tax for  
5 conducting business in Miami Beach that needs to be paid.

6 Q. So does the city expect business owners who are cited for  
7 operating without a BTR to come in and pay for the BTR?

8 A. Yes.

9 Q. Independent of whether they choose to appeal that citation?

10 A. Correct. The BTR amount due are still due to the city.

11 Q. Let me ask you to take a look at Exhibit 8. If you could  
12 explain to the court what is Exhibit 8.

13 A. Exhibit 8 is a screenshot from our database where we manage  
14 our BTRs. This shows the Beach Blitz businesses. They have a  
15 business at 1100 Collins Avenue and an additional business at  
16 865 Collins Avenue. It shows that they have an active BTR for  
17 Beach Blitz at 1100 Collins and a closed BTR at 865 Collins  
18 Avenue.

19 Q. What does it mean that the 865, the location of the license  
20 status is closed?

21 A. This means that in our database this business has been  
22 closed. Their time frame to renew and pay for the renewal has  
23 expired. In order for them to get a BTR for that location they  
24 would have to reapply. They missed the renewal period.

25 They had approximately nearly 400 days to pay for

1 their BTR renewal since the mailings were sent out in July, and  
2 they were due in July of 2016, and they had until  
3 September 30th of 2017 to pay for the renewal. So this  
4 business in our records has been closed. They didn't renew  
5 their license.

6 Q. In any one of those 400 days Beach Blitz could have come in  
7 and submitted their payment?

8 A. At any time in any of the payment methods I mentioned  
9 before.

10 Q. And the city would have accepted that payment, correct?

11 A. Yes.

12 Q. If there was an outstanding violation that they were not  
13 paying, then you would have held that BTR until they paid the  
14 fine?

15 A. Correct. We would have advised them of the outstanding  
16 violation and instructed them that this needs to be resolved  
17 before we can issue your paid BTR.

18 Q. Once an account is closed over a year after the license  
19 expires, correct, what does an applicant need to do, a business  
20 owner need to do to obtain a BTR?

21 A. It's simple. It's one of our earlier exhibits. You submit  
22 an application and the application is routed to all of our  
23 regulatory department, building, planning, fire and code, and  
24 they would review the application. The application intake  
25 would happen in my department, the finance department, and we

1 would route it electronically to all of our regulatory  
2 departments.

3 Q. And if you were to submit an application today for a new  
4 BTR, is that the process you would follow?

5 A. Yes.

6 Q. And if the result of that application were a denial, does  
7 the applicant have an opportunity to appeal that through the  
8 city's processes?

9 A. Yes. Chapter 102 of our city code has an appeal process  
10 for businesses that are denied BTR. The city manager or  
11 designee would process the appeal.

12 Q. And if an application for a new BTR were submitted by Beach  
13 Blitz, would you or your department make the decision about  
14 whether to grant it in the first place?

15 A. No. My department, just the paper we receive, the  
16 application. We are the intake department. We route it to the  
17 regulatory departments. Once the regulatory departments have  
18 reviewed, they give us the okay. Then we are the ones that  
19 collect the money and issue the BTR.

20 THE COURT: They give you the okay or the denial?

21 THE WITNESS: Correct, they give us the okay or the  
22 denial electronically in our system.

23 MR. ARANA: Mr. Marquez, I have no further questions.  
24 Thank you.

25 THE COURT: Any cross?

1 MR. HUDSON: Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. HUDSON:

4 Q. Let me understand the process first and then we will get  
5 into some specifics. I kept hearing counsel say to you that  
6 they would have accepted the money had money been tendered; is  
7 that correct?

8 A. That is correct.

9 Q. But you wouldn't have -- you will help me with the words --  
10 but you wouldn't have issued or released the license if there  
11 were a special master proceeding pending or something pending,  
12 correct?

13 A. If there were outstanding monies owed to the city, we would  
14 withhold the BTR until the outstanding monies are either paid  
15 or, if it's a special master case, it's been appealed at the  
16 special master level. If it has been appealed at the special  
17 master level, we would release the BTR.

18 Q. So payment alone doesn't solve the BTR problem; it's a step  
19 in the right direction, correct?

20 A. Normally, typically payment alone solves the BTR problem.  
21 Most businesses don't have outstanding violations or monies  
22 owed to the city. So the typical practice is you receive a  
23 renewal notice, you pay for your renewal notice, and then we  
24 issue the BTR.

25 Q. In this case, on June 27th there was an outstanding

1 violation that had dated back to the prior year, 12/16. Are  
2 you familiar with that?

3 A. The \$1,000 violation?

4 Q. Correct.

5 A. Okay.

6 Q. There's been testimony by my client that he walked in and  
7 tried to get his BTR and he was told he couldn't because there  
8 were outstanding violations. Is that inconsistent with how the  
9 process works?

10 A. That would be an accurate statement. My staff would have  
11 told them you can pay for your BTR or we will not release your  
12 BTR until you pay this other outstanding monies owed to the  
13 city. But we will accept payment for the BTR.

14 Q. Let's assume nothing changed and the fiscal year clicked  
15 over. In other words, they had paid the BTR money on that  
16 June 27th day. For whatever reason that violation had not been  
17 resolved. The BTR would have expired or closed, as you call  
18 it, correct?

19 A. It would have expired September 30. They are good for one  
20 fiscal year.

21 Q. And he would have had to apply for a new BTR, correct?

22 A. If he had paid for his BTR and is handling something that's  
23 going before the special master, we wouldn't close the BTR at  
24 that point because it's an ongoing thing with the special  
25 master.



1 Q. So it's your testimony it would have been simply a renewal?

2 A. Our system doesn't renew BTRs unless a payment has been  
3 made. If no payment has been made for the BTR, our system  
4 won't automatically renew a BTR.

5 Q. I think you testified that a renewal is simply just paying  
6 the amount on the renewal notice or any late fee, correct?

7 A. A renewal is a courtesy notice the city sends to customers  
8 so they can pay their BTR.

9 Q. Once the payment is made if there are no violations,  
10 there's an automatic renewal, correct?

11 A. Correct.

12 Q. That didn't happen here, right?

13 A. That didn't happen here because the customer didn't pay  
14 their BTR during the fiscal year.

15 Q. Let's talk about that. I have seen your affidavit. I  
16 don't think we need to talk about your affidavit because you  
17 testified to this today. You testified as to a process. I  
18 understand process. Everybody tries to have process. But  
19 process doesn't always work.

20 In this case we have alleged there is an additional  
21 motive of the commission, the mayor, the city manager and  
22 others to put liquor stores out of business. So we have  
23 alleged that the city essentially violated its process by not  
24 doing what it would normally do.

25 So in this case when you say in your affidavit and you

1 say under oath today, and I don't mean to put words in your  
2 mouth so you tell me if I stated this incorrectly.

3 "I'm sure that they never tried to pay the BTR because  
4 we would have accepted the money."

5 Did you interview every one of your -- I don't know  
6 what they are called, the people at the desk. Did you  
7 interview every one of them and ask them if they had any  
8 recollection about this?

9 A. I did not interview every one of my staff members.

10 Q. So when you say I know he didn't pay, what you are really  
11 saying is I can tell you what the process is and I could tell  
12 you what they should have said, but I wasn't there and I can't  
13 tell you what really happened?

14 A. Well, I was there during June 27. If there was a problem,  
15 if a customer or any business for that matter came to our  
16 office and attempted to pay and couldn't pay, they could have  
17 easily called for one of my many supervisors or called for me  
18 and I would have immediately gone out and solved whatever the  
19 issue is or given some guidance. That did not happen in this  
20 case.

21 Q. So since that didn't happen, I don't know, you don't know,  
22 the judge doesn't know actually happened on June 27 at that  
23 counter?

24 A. What I know is that the customer came in and a reprint of  
25 his BTR was provided. It is our practice to tell customers,

1 this is your BTR, it's due, it's late. The penalty charges  
2 were already calculated on that June 27th invoice. And we  
3 would have instructed the customer as part of our standard  
4 operations that here is your invoice, you could pay for it at  
5 our window.

6 Q. Now in the context of what actually happened in this case,  
7 let's play it out. There was a \$1,000 fine outstanding on a  
8 matter from December the prior year, right? So if he had paid  
9 that day, you would have accepted the money, but his license  
10 would have been -- I am not even sure what the right word is --  
11 in suspense?

12 A. If he would have paid the BTR that day and he would have  
13 paid the \$1,000 violation and there's nothing else in our  
14 system that he owes us any late monies for any other invoices,  
15 he would have walked out with a BTR in his hands.

16 Q. But just paying the BTR money that day wouldn't have solved  
17 the problem?

18 A. No, not just paying the BTR money. There was a thousand  
19 dollar outstanding matter.

20 THE COURT: I thought you had to check with other  
21 departments before you issued the BTR.

22 THE WITNESS: No. I check with our departments in a  
23 brand new application.

24 THE COURT: Only on new applications.

25 THE WITNESS: This is a renewal notice. So for a

1 renewal notice, it's simply make a payment. If you don't owe  
2 the city any money, we release the BTR.

3 BY MR. HUDSON:

4 Q. Turn to Exhibit 7 in the white binder.

5 THE COURT: Tell me the number again.

6 MR. HUDSON: Seven, your Honor. It's the agreed  
7 special master order.

8 BY MR. HUDSON:

9 Q. Have you seen this document before?

10 A. I don't recall.

11 Q. On June 27 you testified that there was one outstanding  
12 violation that was old. Were you aware that there were two  
13 brand new violations that were issued on June 25th?

14 A. I am aware now. I wasn't aware in June 27th because the  
15 customer did not speak with me. But I am aware now and since  
16 sometime in October.

17 Q. Take a quick look at Exhibit 5, which are those two  
18 June 25th violations. I want you to pay attention to the  
19 violation numbers because then I want you to go to the special  
20 master agreed order, which is Exhibit 7, again.

21 A. I see these violations were issued on June 25th. So I  
22 imagine this is what triggered the customer, the business to  
23 come to our office on June 27th.

24 Q. And that's what you want to happen, right?

25 A. Yes.

1 Q. You didn't pay your bill, come pay it, correct?

2 A. Yes.

3 Q. Now, by the way, you said notices. Sometimes you would  
4 send courtesy notices out. In addition to the original invoice  
5 you would send courtesy notices out. Did any courtesy notices  
6 go to my client?

7 A. Yes. The renewal notice is a courtesy notice. We call the  
8 renewal notice a courtesy notice because there's no requirement  
9 by state statute or city code that a renewal notice be sent  
10 out.

11 Q. Did my client Beach Blitz Ocean 9, the 865 address, did it  
12 receive any other notices relative to the BTR violation?

13 A. It received its notice in July. I am not aware of Beach  
14 Blitz receiving any other notices.

15 Q. The July 16 notice, that would have been for '16, '17?

16 A. Correct. This is very similar to like your driver's  
17 license. Your driver's license expires on a certain date.  
18 Whether you get a renewal notice or not, the expiration date is  
19 the expiration date. Similar to tax day, April 15. April 15  
20 is the day your IRS taxes are due. Whether you receive a  
21 notice or not, that's the due date.

22 It's very similar in our business tax. The business  
23 tax BTR is good for one fiscal year, October 1 through  
24 September 30th, and most businesses are aware of this because  
25 they renew every year. So it's a common thing.

1 Q. Look at the agreed order, which is Exhibit 7.

2 Wouldn't you agree that all three of the violations  
3 that were outstanding were dealt with by the special master by  
4 the order dated September 28?

5 A. I have to read the order.

6 Q. Sure. I am sorry. Take your time.

7 MR. ARANA: I'm going to object for lack of personal  
8 knowledge. The witness is not familiar with this exhibit.

9 THE COURT: Objection is overruled.

10 You can answer.

11 A. This is something that would be done either at a special  
12 master or a city attorney's office. It's not a form that I am  
13 familiar with. I am not an attorney.

14 Q. I don't mean to cut you off, but I want you to tell me if  
15 you can tell if the three outstanding violations for 865, which  
16 is the Beach Blitz Ocean 9 business, are the three that were  
17 outstanding on June 27th?

18 A. I am reading the citation number, cc 21601704 and cc  
19 2170312 and cc 2170313 are hereby affirmed. I have no idea  
20 what that means, but that's what I am reading.

21 Q. But by the citation numbers can you tell, as you looked at  
22 something earlier either on your direct or speaking to me, that  
23 there were three citations? In fact, we showed you Exhibit 5.

24 A. Correct. There was a citation for \$1,000.

25 Q. Look at the citation numbers in Exhibit 5. Those two are

1 the same as in the agreed order.

2 MR. ARANA: I will object. Again, lack of personal  
3 knowledge.

4 THE COURT: Overruled. He is testifying to what his  
5 company does or his office does. I can just take judicial  
6 notice of 02.

7 Is there any objection that these are the three  
8 citations we have been talking about?

9 MR. ARANA: No, your Honor.

10 THE COURT: The other two are from June 2017.

11 BY MR. HUDSON:

12 Q. When your office gets an order resolving all outstanding  
13 violations, based on what I believe you have said today, now a  
14 person can tender the money for the BTR, get the BTR  
15 immediately, correct?

16 A. If I receive something from our city manager's office or  
17 our city attorney's office saying these violations have been  
18 settled, whatever terminology is used, if I receive something  
19 from the city attorney's office or city manager's office and  
20 the BTR payment has been made, the BTR would have been  
21 released.

22 Is that your question?

23 Q. So this order wouldn't have been enough for you. You  
24 needed direction either from the city attorney or from the city  
25 manager, correct?

1 A. If I didn't understand this order presented to me and I  
2 don't understand what I was reading, I would reach out to  
3 whoever wrote the order to find out what this deals with.

4 Q. Can you tell from that order who wrote it?

5 A. What was the number of the exhibit again? I am sorry.

6 Q. Seven.

7 A. I see a special master. I can't make out the signature on  
8 this special master.

9 Q. How often do you deal with special master orders and in the  
10 context of BTRs and violations?

11 A. It's not a regular daily matter. It's not part of my daily  
12 job. My job, I am the tax man. I send out bills and collect  
13 money for the city.

14 Q. I don't know if I'd admit that in open court.

15 THE COURT: They made a song about that.

16 BY MR. HUDSON:

17 Q. Is it fair to say the people that work in your department  
18 that are subordinate to you that are at the counter are  
19 probably even less familiar with the special master process and  
20 special master agreed orders?

21 A. I wouldn't say that. I have some people that are detached  
22 and worked with the special master in prosecuting certain  
23 cases.

24 Q. So the simple existence of this September 8th order may not  
25 have been sufficient to allow the city to release the BTR?



1 A. If the customer came on this date that you just mentioned  
2 with this order and paid for their BTR, we would have processed  
3 the payment for the BTR and we would have investigated what is  
4 this order all about, does this settle the three outstanding  
5 violations. We would have done that if this came to our desk.

6 Q. That's what you would have done, you as the supervisor?

7 A. Correct. That's what our staff would do. They are trained  
8 to solve issues, help customers.

9 We want the customer to get the BTR. We don't want  
10 the customer not to get the BTR, and we want the customer to  
11 pay the BTR.

12 Q. Our allegations in this case are that the city didn't want  
13 the customer to get the BTR.

14 MR. ARANA: Objection.

15 BY MR. HUDSON:

16 Q. Let me ask to you look under -- I don't know where it is  
17 there. It's a separate piece of paper. It may be in that  
18 white binder.

19 THE COURT: Go up there and find it for him. He won't  
20 know where it is.

21 Counsel is giving me an extra one.

22 BY MR. HUDSON:

23 Q. Take a look at that.

24 Do you recognize that? Can you tell us what it is?

25 A. It appears --

1 THE COURT: For the record, it's Plaintiff's 17 you  
2 are showing him, right?

3 MR. HUDSON: Yes, your Honor.

4 THE COURT: Go ahead.

5 A. This appears to be a screenshot from our system. I can't  
6 verify for sure because I didn't produce this document, but it  
7 appears to be a screenshot from our system.

8 Q. Let's start with this. What system is this?

9 A. This is our database where we run BTR renewals.

10 Q. So this is under your division finance?

11 A. Correct. We would be the users of this system.

12 Q. Can you tell the date of this document?

13 A. I cannot tell the date of this document.

14 Q. Look at the top. There is a red line. Can you read what's  
15 in the red line?

16 A. I read on the red line "active holds exist on this record."

17 Q. What does that mean?

18 A. That means that this record has outstanding -- this means  
19 that this partial serial number, the address, has outstanding  
20 monies or violations with the city, outstanding monies owed to  
21 the city or outstanding violations with the city.

22 Q. Let's go into the white box in the middle. Read that for  
23 the record.

24 A. Want me to read out loud?

25 Q. Yes.

1 A. The white box in the middle says, "As per city attorney  
2 office, close BTR for nonpayment. Entity cannot reply for  
3 liquor sales and/or entertainment at 865 Collins Avenue."

4 Q. Let's start with the first sentence. That's really  
5 unnecessary, isn't it, because if the fiscal year had come and  
6 gone, that 16/17 BTR is finished, correct?

7 A. That is correct. If the fiscal year came and went and the  
8 BTR was not paid, the BTR would be moved to a closed status by  
9 my staff.

10 Q. There was no reason for that first sentence, correct? The  
11 city attorney didn't need to do that. It would happen as a  
12 matter of law, as you testified?

13 A. No. It could have happened. I don't know who typed this  
14 or if it even came from our system, but the city attorney could  
15 reach out to us and say, hey, by the way, this BTR is in an  
16 expired state, remember to close it. That's not within the  
17 realm of possibility.

18 Q. Is that the ordinary course?

19 A. No. This case is not the ordinary course, though.

20 Q. I would agree with you.

21 Let's look at the next sentence. "Entity cannot  
22 reapply for liquor sales and/or entertainment at 865 Collins  
23 Avenue."

24 Any idea why that's there?

25 A. The entity can reapply and my department would accept an

1 application for this entity. Now, this might mean that this  
2 type of use is no longer permitted in this area. So it may be  
3 it's just giving a heads-up.

4 Now, this note here, if it's from our system, I have  
5 no way of knowing who typed this note in. Many departments use  
6 this system -- finance, building, planning, fire, code. So I  
7 don't know who typed this note in the system. But the entity  
8 can reapply. My department would accept the application and we  
9 would route it to the regulatory departments. They are the  
10 ones that would ultimately say entity cannot reapply for liquor  
11 or sales or entertainment at 865 Collins Avenue.

12 Q. So --

13 A. It might be there is a heads-up, this use is no longer  
14 permitted at this area because this BTR has expired.

15 Q. If my client was provided this document by somebody at your  
16 counter, are you saying it was a mistake to give him this?

17 MR. ARANA: Objection.

18 A. No, I am not. If they came, if the customer came to our  
19 office and there is something in our system that pertains to  
20 his account, my staff would give them that information. The  
21 same way he came on June 27 and we gave him the invoice that  
22 was due, we would give him the information pertaining to his  
23 account, if indeed this came from my office.

24 BY MR. HUDSON:

25 Q. Okay. One of our frustrations is we can't see the rest of

1 this document, but let's go to the left of the white box about  
2 three quarters down. There is a word "violations" in all caps.

3 Do you see that?

4 A. I see that.

5 Q. Is there any way, based on your knowledge of the system and  
6 this case, you can help figure out what might be behind that?

7 A. I need to go into our system and see what's there. And  
8 this could be a simple box. It could have been moved from  
9 somewhere else, it could have been moved and placed on top of  
10 that. The system works in Windows so you can minimize and  
11 maximize the windows.

12 Q. It looks like it's a regular window someone pulled up?

13 THE COURT: If you look at the next line, it starts  
14 out the same, right?

15 THE WITNESS: It could be. If that's a note, you  
16 click on that line underneath the violations. When you click  
17 on that, this other box pops up. But I can't know for sure  
18 unless I'm in the system.

19 BY MR. HUDSON:

20 Q. Sure. But the Judge accurately points out the next line is  
21 interesting as well. If you look at it, it also says, "As per  
22 the city attorney office, close BTR for nonpayment," and all we  
23 can see on the rest of that line is a date on the other side,  
24 which was the day they shut our business down, but it was five  
25 and a half hours earlier in the day.

1           Is that a fair reading of that document?

2           THE COURT: Which side had that? Were they closed in  
3 the morning?

4           MR. HUDSON: Closed at 5:00 p.m. on 10/6, your Honor.  
5 It appears, we believe this says 10/6, 11:33 a.m.

6 BY MR. HUDSON:

7 Q. Is that a fair reading of that document of what little we  
8 could see?

9 A. Could you repeat that?

10 Q. The second line under the "violations" also indicates the  
11 city attorney's office gave a direction in this case to close  
12 the BTR.

13 A. You could make that assumption from reading this, but the  
14 BTR would have been closed anyway by my staff because it has  
15 expired.

16 Q. Exactly. There was no need for that direction. Why would  
17 the city attorney then give you the direction?

18 A. I don't know. You should ask the attorney.

19           MR. ARANA: Objection.

20           THE COURT: That's fair. Don't need to know.

21           MR. HUDSON: I'll take it step by step, Judge.

22 BY MR. HUDSON:

23 Q. Have you spoken -- who would the city attorney in this case  
24 have been? Would there have been a particular city attorney?

25 A. The city attorney I dealt with --

1 MR. ARANA: I am going to instruct the witness not to  
2 disclose attorney-client confidences or object on the grounds  
3 that --

4 THE COURT: He can tell us the name of the city  
5 attorney. That's not a confidence.

6 MR. HUDSON: I am taking it step by step to be  
7 careful.

8 THE COURT: Tell us who the city attorney is.

9 THE WITNESS: Mr. Alex Boxner.

10 BY MR. HUDSON:

11 Q. Is he generally the deputy city attorney responsible for  
12 these things?

13 A. I don't know his official title.

14 Q. Okay. Prior to the institution of this lawsuit have you  
15 ever had a conversation with attorney Boxner about this case?

16 A. No.

17 MR. ARANA: Objection. Attorney-client privilege.

18 THE COURT: Sustained.

19 MR. HUDSON: I'm sorry, your Honor?

20 THE COURT: Sustained.

21 BY MR. HUDSON:

22 Q. Have you had a conversation with anyone in the city not  
23 involving the city attorney about this case prior to the  
24 lawsuit?

25 A. With my staff while we were preparing for this lawsuit and

1 preparing exhibits. I have spoken with my staff in providing  
2 exhibits and locating exhibits in our database.

3 Q. I'm sorry. Maybe I misspoke.

4 Prior to filing the lawsuit, was this on your radar  
5 for any reason?

6 A. No. Usually when something gets to my level it is because  
7 there's some sort of issue. So that's how my involvement -- I  
8 got involved with this sometime in October.

9 Q. Turn to Exhibit 3 in the white binder. Any idea what these  
10 few pages are?

11 A. I can read what it says here, but it's not a document that  
12 I am familiar with.

13 Q. I pulled these off the City of Miami Beach website. Does  
14 that help refresh your recollection at all?

15 A. No, because I work for the finance department. I don't  
16 work for the special master's office, so I wouldn't go into  
17 this website.

18 Q. Let's take a look at something anyway and see if you have a  
19 comment on it.

20 MR. ARANA: Object on foundation and relevance  
21 grounds.

22 THE COURT: Let's see what it is first.

23 BY MR. HUDSON:

24 Q. Turn to the second page. The fourth bold item, "I just  
25 received," do you see that?



1 A. Yes.

2 THE COURT: What page? I'm sorry.

3 MR. HUDSON: It is the second page of the exhibit,  
4 your Honor. You are looking at Exhibit 3 in the white book.

5 THE COURT: Okay. Go ahead.

6 MR. HUDSON: Exhibit 3, fourth item down. "I just  
7 received."

8 THE COURT: Got it.

9 BY MR. HUDSON:

10 Q. I will read it into the record.

11 "I just received a letter from the finance department  
12 that my occupational license, certificate of use cannot be  
13 renewed because of a special master case. What do I do?"

14 Seems to be an answer. "Call the special master  
15 office. We will advise you accordingly."

16 So you are in the finance department, right?

17 A. I am.

18 Q. That's your specialty.

19 It seems that this document suggests that if you have  
20 a special master case there may be a hold on your BTR. Is that  
21 unfair?

22 A. Yes. This would be a hold on a BTR, how I am reading it.

23 Again, I am not -- this is not a document that was  
24 prepared by my office. I received a letter from the finance  
25 department that my occupational license, certificate of use

1 cannot be renewed because of a special master case. What do I  
2 do. This can very well be there is a violation, the judge has  
3 adjudicated guilty, the violation has been set \$1,000 or  
4 there's a daily running fine, you need to -- if someone were to  
5 come to my office and they have this, we would refer them to  
6 the special master office.

7 So this is an accurate statement.

8 Q. Is it accurate or inaccurate?

9 A. It would be an accurate statement. If someone comes to our  
10 office and there is a special master -- a special master has  
11 adjudicated someone guilty, they owe the city monies. We would  
12 refer them to the special master office so the special master  
13 can provide them an invoice for the monies that are owed.

14 Q. I'm sorry. Maybe it's the echo in here. I will ask you to  
15 spell it. Inaccurate with an I-N or accurate with an A-C-C --

16 A. I believe this --

17 Q. -- statement?

18 A. I believe this statement is accurate.

19 Q. You believe it's accurate?

20 A. Yes.

21 Q. In other words, during a special master proceeding your  
22 occupational license cannot be renewed?

23 MR. ARANA: Objection. Mischaracterizing the  
24 testimony.

25 THE COURT: Overruled.

1 Answer if you can.

2 A. If a special master has indicated a business guilty, they  
3 have gone before the special master, they have been adjudicated  
4 guilty, there is a fine. Sometimes there's a daily running  
5 fine. You need to get that number. So my finance staff would  
6 send someone to the special master office. You need to get an  
7 invoice. Let's say they went to pay that special master  
8 violation. My finance staff would direct the business to the  
9 special master office so the special master office could print  
10 an invoice for them so they could go pay at the cashier.

11 Q. Let's talk about this. The agreed order, which is Exhibit  
12 7, was entered on Thursday, September 28. The Judge corrected  
13 me this morning. The following Monday was October 2nd. So all  
14 BTRs in the state, I think you told us earlier, right, expire  
15 on September --

16 A. They are good for fiscal year October 1 through  
17 September 30.

18 Q. So they expire September 30, 11:59 p.m., which would have  
19 been on this date, would have been a Saturday, I believe.

20 A. September 30 was a Saturday, yes.

21 Q. So if the special master order wasn't entered until  
22 September 28th, is there any procedure by which that person  
23 could have cleared those violations soon enough to preserve a  
24 16-17 BTR?

25 A. They could have paid their BTR. They could have paid the

1 fiscal year 2016/17 BTR before the 30th of September.

2 Q. If their testimony was they tried and they were rejected?

3 A. I wouldn't believe that they tried and they were rejected  
4 because there's so many mechanisms to pay. They pay it in  
5 person with cash, cashier's check or credit card, money order,  
6 they could pay online, they could pay at our satellite office,  
7 they could mail a payment, mail a payment to the lockbox. So I  
8 would say that's a false statement.

9 We would not refuse. If someone came in to pay a BTR  
10 we would not refuse payment. It doesn't make sense. It is not  
11 our business process.

12 Q. The distinction that I think needs to be made was you would  
13 have accepted payment, but that doesn't release the BTR?

14 A. We would not release the BTR. If there's outstanding  
15 monies owed to the city, you need to take care of that first.

16 Q. As of September 28, if this agreed order had not been put  
17 in the system, would that gentleman have been able to pay the  
18 BTR? Would you have accepted the money?

19 A. Correct, we would have accepted the money.

20 Q. But if he hadn't by Friday 5:00 p.m. close of business,  
21 either done -- he had to do something else.

22 A. If he had come to my office and said I want my BTR, I need  
23 to get my BTR today, here is the money, let me first pay you  
24 the BTR, I want to get my BTR, we would look at this document.  
25 We would have reached out to special master, the city

1 attorney's office to see what needed to be done to get the BTR.

2 If that did not happen, if he did not come to my  
3 office -- I don't recall him ever asking for me or asking for a  
4 supervisor. None of my supervisors in preparing for this case  
5 ever recall him requesting to speak to a supervisor. Because  
6 if there is a problem, I'm here. I want to pay for something,  
7 I need to get it and you don't get what you want, I think  
8 common sense would dictate to call for a supervisor, and the  
9 next person would come in. That did not happen.

10 Q. Common sense would dictate that someone that had a very  
11 valuable business wouldn't lose it for \$1,000 either.

12 A. It's not common sense.

13 Q. I think I heard what you said, but let's be clear. You  
14 couldn't do it on your own. You had to either go to the  
15 special master, try to find him on Thursday afternoon or  
16 Friday. They only work on Thursdays, right?

17 A. The special master staff, the clerks of the special masters  
18 work at City Hall Monday through Friday during regular business  
19 hours.

20 Q. You would have had to go to the special master, and I don't  
21 know if it's this one or not but let's use the special master  
22 in general for the moment, or the city attorney to get them to  
23 clear it?

24 A. Or the city manager.

25 Q. Correct. If they were predisposed not to do so because

1 they wanted to close this liquor store down, you may not have  
2 been able to find them within a day. Strike that.

3 THE COURT: Let me ask a question. As I understand  
4 it, at least the testimony until now, none of these violation  
5 notices were appealed within the 20-day time period that's  
6 called for under, I don't know if it's under your code or on  
7 the back of the ticket. So taken that for a granted, if -- but  
8 the matter was before a special master. Somehow they were able  
9 to get it in front of a special master on August --

10 MR. HUDSON: Twenty-eight it appears when the deal was  
11 made.

12 THE COURT: If that's in front of a special master but  
13 not pursuant to an appeal, but just in front of a special  
14 master under some other circumstances, would the BTR be issued  
15 if you were aware it was in front of a special master?

16 THE WITNESS: If we are aware it was in front of a  
17 special master being appealed or being negotiated, we would  
18 release the BTR if the BTR had been paid.

19 THE COURT: And assuming that the special master had  
20 ruled and imposed a fine, once the special master rules and  
21 imposes a fine, then the fine needs to be paid before you  
22 release the BTR.

23 THE WITNESS: Yes, sir.

24 MR. HUDSON: Judge, just give me a moment. I am  
25 almost there.

1 BY MR. HUDSON:

2 Q. Beach Blitz ultimately did pay online for the BTR, correct?

3 A. They paid online sometime in mid-October or first week of  
4 October, approximately.

5 Q. October 11.

6 Would it surprise you if they testified that they  
7 tried to pay online before and that was the first time at which  
8 the system would accept the payment?

9 A. Yes, that would surprise me.

10 Q. If they had paid on October 11 of '17, was that a payment  
11 for the old BTR that's now gone?

12 A. That's a payment that's in suspense right now. We are  
13 waiting for the outcome of this either to refund the money or  
14 see what the judge determines. But that payment is in  
15 suspense. It can't be applied to 2017 because that permit has  
16 expired.

17 Q. Cannot, correct?

18 A. Cannot, correct.

19 Q. So --

20 A. We were wondering, perhaps, if he intends to reapply, it  
21 could be applied, reapplied to his new application.

22 Q. Well, if the city's internal system already said don't  
23 reapply per the city attorney, what's point in reapplying?

24 A. That's not -- the case, if he comes in and reapplies, we  
25 accept his application, then we route it to the regulatory

1 department. The regulatory department, we are the ones that  
2 make that determination -- planning and zoning, building, fire,  
3 or code compliance.

4 That's not my finance department to say whether or not  
5 that business gets approved or rejected.

6 Q. One last question. I know I have asked it, but I want to  
7 ask it one more time because it's important.

8 THE COURT: It's like asking for an objection.

9 MR. ARANA: Asked and answered.

10 MR. HUDSON: I am explaining in advance. I am trying  
11 to get covered.

12 THE COURT: Go ahead.

13 BY MR. HUDSON:

14 Q. You testified as to the policies and procedures, and I get  
15 that. This case, as you said, is not the normal case. We  
16 agree with you. You do not have personal knowledge that  
17 anybody at a counter told Mr. Doar, the owner of Beach Blitz,  
18 that he was not able to get a BTR on the several times that he  
19 and his hired professionals went down there to try to get one,  
20 correct?

21 A. Please repeat the question.

22 Q. You have no personal knowledge of what the people at the  
23 counter told Mr. Doar; is that correct?

24 A. I don't have any personal knowledge. I know what our staff  
25 are trained to do and what they are trained to say to all of



1 our customers.

2 Q. Thank you.

3 MR. HUDSON: No further questions.

4 MR. ARANA: Could I have two questions?

5 THE COURT: Yes.

6 REDIRECT EXAMINATION

7 BY MR. ARANA:

8 Q. Counsel asked you whether you know whether staff may have  
9 disregarded your procedures and refused payment of the BTR,  
10 correct?

11 A. Yes.

12 Q. Can you testify for certain that the online system does not  
13 shut anyone out from making a payment because there is an  
14 outstanding violation?

15 A. The online system does not shut anybody out from making a  
16 payment because there is a violation. On the contrary, we  
17 accept payments. If there's an invoice, the online system will  
18 accept payments for that invoice number at any time.

19 Q. And the online system can't disregard your instructions,  
20 correct?

21 A. Correct. It's an automated system.

22 Many businesses when they are issued violations, they  
23 go online and they immediately pay. Just because there's a  
24 violation doesn't prevent them from making an online payment  
25 for a BTR.

1 Q. At any time from July of 2016 until September 30 of 2017,  
2 Beach Blitz could have made an online payment for its BTR,  
3 correct?

4 A. Correct. Yes, sir.

5 Q. If it had done that, then, when it's outstanding, its  
6 outstanding violations were paid, the BTR would have issued?

7 A. We would have issued it, yes.

8 Q. That's the case even if the outstanding violations were  
9 paid in October of 2017, correct?

10 A. Come again.

11 Q. The BTR would issue even if the outstanding violations were  
12 not paid until early October?

13 A. Correct, yes.

14 Q. Because the payment was made during the fiscal year?

15 A. During the fiscal year, correct.

16 MR. ARANA: Thank you.

17 THE COURT: Sir, thank you. You may step down. You  
18 are excused.

19 (Witness excused)

20 THE COURT: The defendants can call their next  
21 witness, please.

22 HERNAN CARDENO,  
23 having been first duly sworn on oath, was examined and  
24 testified as follows:

25 THE WITNESS: Cardeno, C-A-R-D-E-N-O, Hernan,

1 H-E-R-N-A-N.

2 DIRECT EXAMINATION

3 BY MR. BYERS:

4 Q. Good afternoon. Could you please tell us what your  
5 occupation is.

6 A. Director of the code compliance department for the City of  
7 Miami Beach.

8 Q. And how long have you been at that position?

9 A. Since 2014.

10 Q. Does code enforcement issue BTRs?

11 A. No, they do not.

12 Q. Does code enforcement decide whether to issue a BTR?

13 A. No, they do not.

14 Q. And if you could go to the black book there. Those are  
15 defendants' exhibits which already have been admitted by the  
16 court.

17 Look to tab 2, which is Defendants' Exhibit 2.

18 Are you there?

19 A. Yes.

20 Q. Did you prepare an affidavit in this case?

21 A. Yes, I did.

22 Q. And is Exhibit 2 that affidavit?

23 A. Yes, it is.

24 Q. Is there anything you need to clarify or correct in that  
25 affidavit?

1 A. Yes, there is. On page 2, paragraph 6.

2 Q. Can you explain what that clarification or correction is?

3 A. It says here: "Beach Blitz did not cease operations or  
4 apply for or pay for a BTR license. Instead, Beach Blitz  
5 appealed all three citations to the special master. On  
6 September 28, 2017, the special master entered an agreed order  
7 in which Beach Blitz admitted to the violations and agreed to  
8 pay \$1,000 to resolve all three citations."

9 It's really just a matter of clarification. It still  
10 is in appeal, but it wasn't a normal appeal through the regular  
11 protocol or procedures. Meaning it didn't go through the  
12 special master, clerk of the court. Rather, it was directly  
13 with the city attorney's office, and then agreed order was  
14 placed on the docket calendar for the special master to hear  
15 and ratify.

16 Q. Is there anything else you need to correct or clarify in  
17 that affidavit?

18 A. I don't believe so.

19 Q. If you could turn to Exhibit 10, which is also tab 10.

20 A. Yes.

21 Q. Do you recognize this document?

22 A. Yes, I do. This is a civil infraction code violation form.

23 Q. What is the violation for?

24 A. So this violation is dated December 21, 2016. The  
25 violation is for selling alcoholic beverages outside of the

1 approved hours by ordinance.

2 Q. And was that a violation in the city code on December 21,  
3 2016 to sell liquor before 10:00 a.m.?

4 A. Yes, it was.

5 Q. If we go to page 2 of that document. Is there a procedure  
6 there for an appeal?

7 A. Yes. It says, "fines may be appealed within 20 days of  
8 receipt of this notice."

9 Q. To your knowledge, did Beach Blitz appeal within 20 days of  
10 that notice?

11 A. No.

12 Q. I want to move next to Exhibit 11.

13 A. Yes.

14 Q. Do you recognize this document?

15 A. Yes, I do.

16 Q. What is it?

17 A. This is another civil citation form issued by the code  
18 compliance department for sales of alcohol outside of the  
19 prescribed hours.

20 Q. Was that a violation of the city code on June 25, 2017?

21 A. Yes.

22 Q. And there's an appeal process listed on that citation as  
23 well?

24 A. Yes, there is. Within ten days of receipt of the notice.

25 Q. Did Beach Blitz appeal, to your knowledge, within ten days

1 of the notice?

2 A. No.

3 Q. We now move to Exhibit 12.

4 Do you recognize this document?

5 A. Yes.

6 Q. What is it?

7 A. This is a notice of violation for failing to obtain a  
8 business tax receipt.

9 Q. And to your knowledge, did Beach Blitz possess a business  
10 tax receipt on June 25, 2017?

11 A. No, they did not.

12 Q. And the violation states that fines may be appealed within  
13 ten days; is that correct?

14 A. Yes.

15 Q. And did Beach Blitz appeal within the ten days?

16 A. No, they did not.

17 Q. Now, I want to look at the notice of violation. Does this  
18 notice of violation state "cease immediately until you obtain a  
19 business tax receipt from the City of Miami Beach?"

20 A. Yes.

21 THE COURT: Where is that?

22 MR. BYERS: First line right underneath "reference,"  
23 your Honor. Center of the page.

24 THE COURT: I see it. Okay.

25

1 BY MR. BYERS:

2 Q. When issuing these violations, does code enforcement expect  
3 that the business will cease operations immediately and attempt  
4 to obtain a BTR?

5 THE COURT: For the record, it says "cease." I  
6 thought you said seize, as in take.

7 BY MR. BYERS:

8 Q. Cease operations immediately.

9 A. Yes, sir.

10 Q. I will ask that again.

11 When code enforcement issues these citations, does it  
12 expect that the business will cease operations until it obtains  
13 a BTR?

14 A. Yes.

15 Q. To your knowledge, did Beach Blitz cease operations?

16 A. No.

17 Q. To your knowledge, did Beach Blitz obtain a BTR for the  
18 fiscal year of 2016/2017 at any time thereafter?

19 A. They did not.

20 Q. We now move to Exhibit 14, sir.

21 A. Yes.

22 Q. Do you recognize this document?

23 A. Yes. This is a notice of violation, issued on October 6,  
24 2017, for failing to obtain a business tax receipt as required  
25 by ordinance.

1 Q. And to your knowledge, on October 6, 2017 did Beach Blitz  
2 have a BTR license?

3 A. No, they did not.

4 Q. Does this state they have an ability to appeal within ten  
5 days of violation?

6 A. Yes.

7 Q. To your knowledge, did any appeal take place?

8 A. No, they did not.

9 Q. The notice again says, "cease immediately until you obtain  
10 a business tax receipt from the City of Miami."

11 A. Yes.

12 Q. Did code enforcement close Beach Blitz's operations down on  
13 October 6, 2017?

14 A. Yes.

15 Q. Why was it closed?

16 A. Well, because they still did not have a business tax  
17 receipt to operate the business, and so they were closed until  
18 they could obtain the business tax receipt.

19 Q. Did the City of Miami Beach code require that a business  
20 have a BTR in order to operate in the City of Miami Beach?

21 A. Yes, they do.

22 MR. BYERS: No further questions.

23 THE COURT: Any cross?

24 Actually, I have a question for you. Maybe counsel  
25 can help me out. Number 12. It says, "amendment, notice of



1 violation." Was there an initial violation that was  
2 handwritten?

3 THE WITNESS: Usually, your Honor, there is a  
4 handwritten violation that's written out in the field, and then  
5 this is the computer-generated letter that is sent out.

6 THE COURT: This is mailed to the offender?

7 THE WITNESS: Sometimes it's mailed, sometimes it's  
8 hand delivered.

9 THE COURT: Do you know what was the case with this  
10 one?

11 THE WITNESS: I believe this one was hand delivered.

12 THE COURT: Why do you believe that?

13 THE WITNESS: Because it's signed by a manager at the  
14 bottom.

15 THE COURT: That's a manager of the business; is that  
16 what it is?

17 THE WITNESS: Yes.

18 THE COURT: I see. Okay. Good enough. Thanks.

19 CROSS-EXAMINATION

20 BY MR. HUDSON:

21 Q. Was it hand delivered by the two police officers, by the  
22 code enforcement gentleman around 5:00 p.m. on October 6?

23 THE COURT: The one I was referring to was the one  
24 issued on June 25. I think you are referring to Exhibit  
25 14.

1 BY MR. HUDSON:

2 Q. Let me turn to Exhibit 14, please.

3 A. Yes, this one was also hand delivered.

4 Q. Okay. Was it hand delivered in this format or was there a  
5 typical citation, handwritten citation?

6 A. It was this form itself, which is also signed in this  
7 particular case by the business owner.

8 Q. This was prepared in advance by someone at the city?

9 A. Yes.

10 Q. Why did it happen this way as opposed to the standard  
11 handwritten version?

12 A. They are both notices of violation. So if we don't have  
13 anyone at the business that we contact, we send out the letter  
14 certified return receipt requested. In this particular case  
15 they went ahead and printed the notice of violation and hand  
16 delivered it.

17 Q. Can you tell me from this document or any other knowledge  
18 you have when this document was prepared?

19 A. I would say it was probably prepared on the same day,  
20 October 6, 2017.

21 Q. But you don't know that for sure. Sir, do you know that  
22 for sure?

23 A. I do not.

24 THE COURT: Do you mind if I ask some questions.

25 On this notice of violation and the other one it says

1 ten days, but on the handwritten one it says 20 days to appeal.  
2 Is there a reason why there is a difference, or is there a  
3 statute that allows for ten if it's a --

4 THE WITNESS: You know what, your Honor, it may be  
5 because of the amendment to the ordinance for the appeal time.  
6 So that may be why there is a difference.

7 THE COURT: What do you mean? An amendment to what  
8 ordinance?

9 THE WITNESS: When the ordinance was amended where  
10 business tax receipts could be appealed, the ten days' language  
11 was included there.

12 THE COURT: Well, if we look at 12, the June 25 one,  
13 that one says ten days. This is the amendment notice of  
14 violation dated June 25th.

15 MR. BYERS: Your Honor, I can state that there was an  
16 amendment in that time period between December and the next  
17 citation in July -- I'm sorry, June 25, where it was moved from  
18 20 days to ten days.

19 THE COURT: Where is the June 25 citation in here?

20 MR. BYERS: Exhibit 11.

21 THE COURT: Of which one?

22 MR. BYERS: Defendants' black book. And you will see  
23 both citations on --

24 THE COURT: I see.

25 MR. BYERS: -- June 25. Both are ten days.

1 THE COURT: I got it. I was thinking 20 days. I  
2 guess we had only discussed the old one. Okay. I got it. No  
3 problem.

4 Go ahead, counsel. I'm sorry.

5 BY MR. HUDSON:

6 Q. Let's look at 14 again in the black book.

7 A. Yes.

8 Q. The business was open and operating at the time, correct?

9 A. Yes.

10 Q. So is there anywhere on this document where the person  
11 receiving the violation was warned that their business could be  
12 closed down immediately without further notice?

13 A. Well, it does say under the reference section "cease  
14 immediately until you obtain a business tax receipt."

15 Q. But there's nothing that says if you don't cease  
16 immediately we will come shut you down without further notice,  
17 correct?

18 A. No.

19 Q. What was the authority of code enforcement and two Miami  
20 Beach police officers that code enforcement relied on to shut  
21 that gentleman's business down that afternoon at 5:00 p.m.?

22 A. That authority would be the City of Miami Beach Code of  
23 Laws and Ordinances. I believe it's Section 102-377(e).

24 Q. I am going to read to you --

25 MR. HUDSON: May I read that statute, as I understand

1 it, into the record at the moment so that the witness can hear  
2 it.

3 THE COURT: Yes. I know somebody filed a copy of the  
4 code, I think.

5 MR. BYERS: It's Exhibit 16 of defendants' exhibits in  
6 the black book. Go to page 35.

7 THE COURT: Page 35 of the document?

8 MR. BYERS: Of the document itself.

9 THE COURT: Page 35 of 69 you are talking about?

10 MR. BYERS: I am 36 of 69, your Honor.

11 BY MR. HUDSON:

12 Q. Sir, while we are all trying to find this, would your  
13 department or you -- you are the head of the department, right?

14 A. Yes.

15 Q. Would you rely on your own interpretation of how to read  
16 these statutes or would you have to go to the city attorney's  
17 office on how to read these statutes if there was an issue?

18 A. The answer is it depends.

19 Q. Depends on what?

20 A. Well, there is several codes of laws and ordinances. Some  
21 that we handle more frequently than others. So in those, in  
22 those particular cases, we would confer with the city  
23 attorney's office. On the more complex investigations, then of  
24 course, yes, we would seek guidance from the city attorney's  
25 office.

1 Q. So let me read this for the record. It's Section 102-377  
2 of the Miami Beach Code of Ordinances, subsection (e), as in  
3 Edward: "As an additional means of enforcement and  
4 supplemental to the above, if any person carries on or conducts  
5 any business for which a tax receipt is required by this  
6 article without first obtaining such tax receipt, then the city  
7 may prevent the business from operating until the required tax  
8 receipt is obtained."

9 Do you see that?

10 A. Yes.

11 Q. So if you go back up to (b), as in boy, in the same  
12 section, there are enforcement mechanisms for failure to pay a  
13 BTR. But those mechanisms require notices and potential  
14 hearings and so forth, correct?

15 A. Yes.

16 Q. In your view, can you just jump to (e) and rely on (e) or  
17 do you have to go through the notices in (b) first?

18 MR. BYERS: Objection. First, this is a legal  
19 argument.

20 THE COURT: Overruled.

21 A. So the way I am reading subsection (b), that applies to  
22 violations of any other provision of this article, and so  
23 because it's subsection (b), the only other section before it  
24 of course is (a), which is a business who carries on operations  
25 without first obtaining a business tax receipt.

1 Q. So let's go to (a). What are the procedural protections in  
2 (a)?

3 MR. BYERS: Same objection. Legal conclusion.

4 THE COURT: Overruled.

5 A. Did you say procedural protections?

6 Q. Yes.

7 You have dealt with (a) before. I am sure you  
8 probably deal with it on a daily basis, right?

9 A. Yes.

10 Q. So under (a), is it your understanding, or any of the  
11 ordinances that are referenced in (a), aren't there notice  
12 requirements before folks can be fined or bad things can happen  
13 to them under the code?

14 A. Usually there is a notice of violation that will trigger  
15 some type of process, whether that is a fine or some action  
16 that the violator has to take to cure.

17 Q. Right. Typically the first step would be a notice. The  
18 second step would be, sometimes alternative, that you can  
19 either pay or you can elect a hearing or you can do that,  
20 right? That's the way it normally works, correct?

21 A. Generally, yes.

22 Q. In this case what actions under either (a) or (b) did the  
23 city take before it went to (e)?

24 A. In this particular case I believe the business had already  
25 received at least one notice of violation for operating without

1 a business tax receipt.

2 Q. Turn to Exhibit 7 in the white binder. Do you see that?  
3 Obviously you have seen that because the first thing your  
4 counsel asked to you do was to clarify a statement in your  
5 affidavit filed in this case under oath, right? So you have  
6 seen this order?

7 A. Yes.

8 Q. And what was that clarification again?

9 A. The clarification was that under paragraph 6 of my  
10 affidavit, that the way the word appeal is used is that it  
11 wasn't the normal protocols, that it was appealed to the  
12 special master, clerk of the court but, rather, they went to  
13 the state, city attorney's office and then arrived at this  
14 agreed order which was placed before the special master.

15 Q. So the City of Miami Beach, based on your testimony, agreed  
16 to some sort of different process from the standard process,  
17 right? Fair statement?

18 A. I wouldn't say it's standard because there is a lot of  
19 stipulated agreements and agreed orders that are entered into  
20 on violations. So --

21 Q. But it didn't go the normal way it would go, correct?

22 A. It didn't go the way through the special master, clerk's  
23 office.

24 Q. But it did end up in a special master proceeding, didn't  
25 it?



1 A. Yes.

2 Q. And the City of Miami Beach participated in that, didn't  
3 it?

4 A. Yes.

5 Q. So the City of Miami Beach waived all of its other  
6 procedural protections by doing the special process and  
7 procedure, didn't it?

8 MR. BYERS: Objection, your Honor. Legal conclusion.

9 THE COURT: Sustained.

10 BY MR. HUDSON:

11 Q. Do know why the city attorney has a different path than the  
12 normal path in this case?

13 MR. BYERS: I would suggest not to discuss any  
14 attorney-client communications you may or may not have had with  
15 the city attorney.

16 MR. HUDSON: I will amend the question to exclude any  
17 conversations he's had with the city attorney or his defense  
18 attorneys, your Honor.

19 THE COURT: All right.

20 A. So, your Honor, in my experience when we have stipulated  
21 agreements or agreed orders, it's through a variety of  
22 different forms that it comes to us. Sometimes, for example,  
23 the special master will ask the violator to meet with the city  
24 attorney's office and see if they can come to an agreement and  
25 then later schedule it for another date with a stipulated or

1     agreed order.  So there is different formats of how it could  
2     have arrived at this agreed order.

3     BY MR. HUDSON:

4     Q.  Have you had any conversations with Deputy City Attorney  
5     Boxner prior to filing this lawsuit?

6             MR. BYERS:  Objection.

7             THE COURT:  I will allow you to answer whether or not  
8     or require you to answer if you had conversations without  
9     revealing the content of the conversation.

10    A.  Regarding this lawsuit?

11    BY MR. HUDSON:

12    Q.  No, about Beach Blitz 865(d) prior to the filing of this  
13    lawsuit?

14             MR. BYERS:  Same objection.

15             THE COURT:  Overruled.

16    A.  Yes.

17    BY MR. HUDSON:

18    Q.  What were those conversations about?

19             MR. BYERS:  Objection.

20             THE COURT:  Sustained.

21    BY MR. HUDSON:

22    Q.  When were those conversations?

23             MR. BYERS:  Objection.

24    A.  Probably --

25             THE COURT:  That objection is overruled.

1 A. Probably around October 6th.

2 Q. That's the day that Beach Blitz was shut down, right?

3 A. Yes.

4 Q. Did the city attorney's office direct code enforcement to  
5 shut Beach Blitz down?

6 MR. BYERS: Objection.

7 THE COURT: Sustained.

8 Your objection, by the way, is attorney-client  
9 privilege, am I correct?

10 MR. BYERS: Yes, your Honor.

11 THE COURT: Okay. Sustained.

12 BY MR. HUDSON:

13 Q. See the blue piece of paper in front of you, blue and  
14 white?

15 A. Yes.

16 Q. That's been marked as Plaintiff's 17. Take a look at that  
17 and tell me, tell the court, if you can tell us what this is.

18 A. It looks to be some type of notes entered on our city  
19 enterprise system.

20 Q. Read the first sentence that's contained in the white  
21 rectangle in the center of the page.

22 MR. BYERS: Objection for lack of personal knowledge  
23 of this document.

24 THE COURT: Overruled.

25 A. "As per city attorney's office, close BTR for nonpayment.

1 Entity cannot reapply for liquor sales and/or entertainment at  
2 865 Collins Avenue."

3 Q. What system are we looking at, do you know? What's the  
4 program that we are looking at here?

5 A. I believe this is the city's enterprise system, which is  
6 known as EnerGov.

7 Q. Do you have access to this system?

8 A. I do have access to this system.

9 Q. Any idea what that note means?

10 A. No.

11 Q. Have you ever seen that note before?

12 A. No.

13 Q. Any idea why the city attorney would suggest that the BTR  
14 be closed for nonpayment when it happened automatically?

15 MR. BYERS: Objection. Speculation.

16 THE COURT: Overruled.

17 BY MR. HUDSON:

18 Q. You can answer it, sir.

19 A. No.

20 Q. Had Beach Blitz applied for a new BTR for fiscal 17/18,  
21 given this note in the system would it have been denied?

22 MR. BYERS: Objection. He testified that they don't  
23 issue BTRs or deny them. We put on our other witness who was  
24 from finance.

25 THE COURT: Overruled.

1 Answer, if you can.

2 A. Your Honor, just as a separation of checks and balances,  
3 code compliance is really just the enforcement arm for several  
4 departments. We don't do any permitting. That's different  
5 entities.

6 Q. I understand. I asked if you know. If you don't, that's  
7 fine.

8 Do you know?

9 A. No.

10 Q. How many other times do you recall the City of Miami Beach  
11 sending police officers and code enforcement to a business for  
12 shutting down for not having a BTR?

13 A. Several.

14 Q. How many a year?

15 A. It varies. I am not certain. More than four, more than  
16 five.

17 Q. In a year. How many businesses are in Miami Beach?

18 A. Well --

19 Q. If you know.

20 A. I don't.

21 Q. That's fair.

22 THE COURT: And how many don't pay their BTR.

23 THE WITNESS: Well, licensed or unlicensed businesses,  
24 I don't know. With the advent of the short-term rental  
25 enforcements, you know, those are businesses that have no BTR

1 and those are shut down and vacated with police officers also.  
2 So I couldn't be certain.

3 MR. HUDSON: Nothing further, your Honor.

4 THE COURT: Any redirect?

5 MR. BYERS: A couple.

6 REDIRECT EXAMINATION

7 BY MR. BYERS:

8 Q. To your knowledge, Beach Blitz was operating without a  
9 license for more than 370 days; is that correct?

10 A. Yes.

11 Q. Opposing counsel talked to you about Section 102.377(e).  
12 If you could turn to that again. That's Exhibit 16 and, again,  
13 it's page 35 at the bottom and page 36 of 69 at the top.

14 A. Yes.

15 Q. It says that "As additional means of enforcement and  
16 supplemental to the above, if a person carries on or conducts  
17 any business for which a tax receipt is required by this  
18 article without first obtaining such tax receipt, then the city  
19 may prevent the business from operating until the required tax  
20 receipt is obtained."

21 Did I read that correctly?

22 A. Yes.

23 Q. If a business is shut down for failure to have a BTR, does  
24 code compliance tell them they need to go get a BTR?

25 A. Yes. That's the procedure. They usually tell the operator

1 or the violator how they can cure.

2 Q. And is that also stated in the notice of violations for  
3 failure to have a BTR?

4 A. Yes.

5 Q. And if the said business were to obtain a BTR, they then  
6 can open up and operate, correct?

7 A. Yes.

8 MR. BYERS: No further questions.

9 THE COURT: Thank you, sir. You can step down.

10 THE WITNESS: Thank you, your Honor.

11 THE COURT: This witness is excused, I take it. You  
12 can go back to Miami Beach.

13 (Witness excused)

14 THE COURT: Defendants have any other witnesses?

15 MR. ARANA: No further witnesses.

16 THE COURT: Any further evidence?

17 MR. ARANA: No, your Honor.

18 MR. HUDSON: No.

19 THE COURT: Okay.

20 MR. ARANA: I'm sorry, your Honor. We have one  
21 exhibit that we wanted to just introduce for the record.

22 THE COURT: What is that?

23 MR. ARANA: It is an ordinance.

24 THE COURT: Have you shown it to opposing counsel?

25 MR. ARANA: Yes.

1 MR. HUDSON: No objection.

2 MR. ARANA: Defendants' Exhibit 18.

3 THE COURT: That ordinance is what. So the clerk can  
4 describe it.

5 MR. BYERS: 2016-4062.

6 THE COURT: Okay.

7 MR. BYERS: First may we approach and add these to the  
8 books?

9 THE COURT: Yes. Give me one and give the clerk.  
10 Mr. Hudson, what do you say?

11 MR. HUDSON: Your Honor, my story hasn't changed.

12 THE COURT: It is my story and I am going to stick to  
13 it?

14 MR. HUDSON: That's probably the good news. My  
15 closing has changed, though.

16 THE COURT: I wonder why that is.

17 MR. HUDSON: Although we are going to get to the same  
18 place.

19 What we have learned today from the City of Miami  
20 folks was there was nothing normal about this deal. Claims  
21 that should have been appealed timely that may not have been  
22 appealed timely ultimately ended up in some sort of appellate  
23 process by special something. We don't know. City attorneys  
24 making notes on files that don't need to be made. City  
25 attorneys staying on top of cases and we wonder why they are



1 staying on top of particular cases. Nothing is right about  
2 this.

3 The city relies on statute 137 or 377-102377(e) which  
4 is supplemental to other statutes, meaning something else must  
5 come first. And (e) on its face doesn't have any due process  
6 involved at all. Again, something different.

7 One of our arguments, your Honor, is the application  
8 of (e) to shut him down as it applied in this case a minimum  
9 lacks procedural due process. My client stood before you and  
10 emotionally testified that he tried everything he could try  
11 from June 25 when he was in Israel, coming back two days later,  
12 to pay. He went there. We have evidence that he was there.  
13 We have pieces of paper that he was there. He tried to pay  
14 multiple times.

15 They say he didn't pay, but they say he didn't pay  
16 because the process. They would never have allowed him to do  
17 that. But they weren't there. That may be the process.

18 THE COURT: They said the process wouldn't allow him  
19 to pay. I think everyone is in agreement that he didn't pay.

20 MR. HUDSON: The evidence in this record, the witness  
21 is the only person in the courtroom who was there on multiple  
22 occasions and had the most to lose. The city has nothing to do  
23 to lose here.

24 THE COURT: Why didn't he pay the extra thousand  
25 dollars then if he had nothing to loss? What did he owe, 2600

1 for the BTR? He could have paid the thousand on the December  
2 thing and been done with it.

3 MR. HUDSON: Your Honor --

4 THE COURT: It would have been cheaper than him hiring  
5 Ms. Aiken and hiring Mr. Rosen or hiring Mr. Shir.

6 MR. HUDSON: That may be clear as we all sit here, and  
7 this group has spent a month figuring it out and we have given  
8 a presentation to you after a month of that, and they have had  
9 their internal folks tell them this and that, but that wasn't  
10 clear to him at the time. Because how many times did he say to  
11 you I would not have put my business at risk for a thousand  
12 dollars.

13 THE COURT: I think he made clear he didn't want -- he  
14 knew that if he paid -- I have to look back. I am sure if he  
15 knew it was one violation. But he certainly knew if he paid  
16 those three violations, he could pay his BTR. That's what I  
17 recall.

18 MR. HUDSON: Right, but he exercised his  
19 constitutional right and his ordinance right to appeal. Then  
20 the city agreed to waive all of those other things by let's do  
21 this other appeal.

22 Now, they are going to say we did him a favor. We are  
23 going to say you set us up. So the essence of my argument,  
24 Judge, and then can you ask me more specifics about various  
25 things if you want, but the essence of my argument is very

1       simple.

2               Nobody followed any procedures correctly here. The  
3       result was this gentleman has lost his business, that is one of  
4       the most valuable liquor store businesses in the country  
5       because of where it is, because it is half a block from Ocean  
6       Drive. The mayor wanted him out of business. They wanted  
7       Mangos out of business. They are malignant tumors. All the  
8       motivations were there. We know why they did it. We know why  
9       they had the special process. They set him up.

10              So what's the result of that? All I am asking to do  
11       today, Judge, is to open him up, let him generate revenue while  
12       we litigate this case. As we know, the balance that the old  
13       scales of justice have -- I am sure they are around here  
14       somewhere. Get them out. That's what you do in preliminary  
15       injunction hearings. What's harm to the city in letting him  
16       open, generating revenue, so he can defend himself and pay for  
17       his family and his kids until we make this decision? Because  
18       right now what we all know from today is that nothing happened  
19       the way it was supposed to happen in this case and we wonder  
20       why. I have my views, but you know what. Hopefully I have the  
21       next two years to convince you that I am right.

22              They set him up, your Honor. What is the downside at  
23       this point? We know you can't open a new liquor store in Miami  
24       Beach. There is your irreparable harm right there, in addition  
25       to all the others we cited. Losing a business is an

1 irreparable harm. It is a property right. The U.S. and  
2 Florida constitutions protect property rights. Ownership  
3 interests in business is a property right. They used the  
4 weapon of the BTR to take it away from him.

5 So in our view they are trying to change the narrative  
6 and say, oh, you don't have a property right in this license.  
7 The State of Florida gave us a license and told us we could  
8 operate. The City of Miami Beach can't shut us down. We  
9 allege and we believe we can prove and we believe the record  
10 today suggests we have a reasonable chance of proving because  
11 everything was done wrong in this case and everything was done  
12 different, and nobody relied on anything. Now they are relying  
13 on statutes and ordinances and technical stuff to try to say  
14 you are done. That alone demonstrates our entitlement to this,  
15 your Honor.

16 Give us a chance to defend ourselves and prove to you  
17 and to this court that we were wronged and we did not get any  
18 process. They did not tell you, not one of those witnesses  
19 told you today that he got process. They showed up on his door  
20 at 5:00 o'clock and you are closed. They used 377(e) to do  
21 that. 377 (e) has to come with two things before it, and they  
22 didn't do that in our view.

23 So there is no record evidence that they followed  
24 their procedure. They used a supplemental thing that says they  
25 may close him down. Every other thing in the ordinance, every

1 other situation in the Miami Beach code, where they are trying  
2 to go after business requires a lawsuit, an administrative  
3 hearing, something. We know why. Because that's due process.  
4 They didn't give him due process.

5 Fundamental rights, the right in this country to start  
6 your own business and operate it consistent with the law, there  
7 are very few fundamental rights more important than that.

8 We have filed a First Amendment retaliation claim  
9 under 1983. First Amendment is the First Amendment. It's the  
10 most fundamental right in some people's views.

11 Mr. Doar's lawyer showed up on Thursday to have a  
12 meeting with the city's attorney office.

13 THE COURT: Your first claim is very, very thin. That  
14 someone had a conversation where they said let's talk about  
15 this and then he gets shut down, that's -- it wasn't like he  
16 was standing in front of the City of Miami Beach screaming that  
17 they were unfair. He was actually in the process of  
18 negotiation.

19 MR. HUDSON: But now that we have learned going  
20 backwards, we knew the system was rigged.

21 THE COURT: Well, I mean that might be true, but  
22 that's not because of the statement he made or his agents made  
23 to the city attorney.

24 MR. HUDSON: We don't know.

25 THE COURT: Well --

1 MR. HUDSON: I would agree with you.

2 THE COURT: If there was a motion to dismiss on, I  
3 would say that's out because there's no plausibility to that.

4 MR. HUDSON: I would agree with you that that's not my  
5 best count, but I am telling you, we are dealing with  
6 fundamental rights, the right to go start a business.

7 This gentleman obviously isn't from the United States  
8 originally. He wanted to start a business. He has a family.  
9 He has a young family. He is trying to do everything he can.

10 We all know you can take judicial notice of all the  
11 articles and the recent referendum and everything else. We  
12 know that this commission or the last commission as of a week  
13 ago wanted these folks gone.

14 So what do we have, Judge, in summation?

15 We have they wanted him gone. They are using the old  
16 what I call anaconda technique. They are making the hour  
17 shorter, making them shorter, making them shorter. Somebody  
18 discovered Ocean 9 didn't have a BTR. That's interesting. So  
19 our view of the story is they did everything they could to get  
20 one of four. Now they got one of four.

21 THE COURT: If they really wanted to do everything  
22 they could, they wouldn't have issued that citation. They  
23 would have just let the clock run out.

24 Why would they put him on notice in June if they are  
25 trying to set the guy up. By the way, you haven't gotten your

1 BTR. They would have never said it. September 30 they would  
2 have said sorry, or October 1.

3 MR. HUDSON: Until I am entitled to get some discovery  
4 and get behind this white rectangular box -- you can never  
5 prove a conspiracy at this stage, ever. That's what happened  
6 here. So all I am asking to you do, Judge, is open him up  
7 temporarily, let him generate business so he can defend himself  
8 and operate his business. There's no harm, no harm to the city  
9 as a result of that. We will see where we are in a year or  
10 two. Otherwise, Judge, this is one of the most unjust cases I  
11 have ever seen in my life.

12 Thank you.

13 THE COURT: What do the defendants say?

14 MR. ARANA: I have rarely been in an argument where  
15 the other side doesn't cite a single case.

16 THE COURT: They cited cases.

17 MR. ARANA: There is not a single case cited for the  
18 proposition that operating a business is a property right  
19 protectable by the Fourteenth Amendment. The reason he can't  
20 cite that is because it's all to the contrary.

21 Again, in our initial brief we cited all of the cases  
22 which say that an expired -- there is no property right in an  
23 expired license. There is a series of cases that we cite.  
24 Vaster v. Citroen. Business owner had no property interest in  
25 an expired liquor license.

1           Lockhart v. Matthew, Third Circuit. Natural  
2 expiration of the license negates any claim that it is a  
3 property interest protected by the due process clause.

4           Lappen v. Costello. When an ordinance provides for  
5 the issuance of a license, a party has no due process right for  
6 a renewal or issuance of the license.

7           THE COURT: Due process right because of the way his  
8 business was closed?

9           MR. ARANA: No, because the issue is, is there a  
10 property interest that is at issue that's being affected. The  
11 interest that they are claiming was first the license, but they  
12 didn't have a license. So they don't have a property interest  
13 to protect. Now they are saying their property interest is the  
14 business. Okay. The operation of the business. It was  
15 improper to shut them down.

16           The 11th Circuit, Baltimore Air Transport v. Jackson,  
17 419 Fed.Appx. 932. No constitutional -- sorry. No  
18 constitutional right is implicated by a complaint that asserts  
19 a property interest in maintaining a business or earning a  
20 profit. Because the complaint fails to state a claim for  
21 procedural due process, the district court properly dismissed  
22 it.

23           So there isn't a property interest at issue that would  
24 give rise to a procedural due process claim to begin with. The  
25 law is crystal clear on that.



1           What about substantive due process? Substantive due  
2 process is clear there is no fundamental right at issue here  
3 that gives rise to a substantive due process claim.

4           I would cite Friedman v. Town of Eatonville. That's a  
5 case where a nightclub was closed down for noise and  
6 disturbances, and the plaintiff brought a procedural due  
7 process and a substantive due process claim. The Eleventh  
8 Circuit in that case affirmed the dismissal of that complaint  
9 on the grounds there was no procedural due process claim  
10 because there was a state law claim for damages.

11           You don't even have to present the procedure that the  
12 city has in place. It's enough if there's a state law remedy  
13 for damages.

14           Here, the city has a procedure for appealing a denial,  
15 which we have talked about, that the plaintiffs have not  
16 pursued. But in any event, they certainly would have a claim  
17 in state court.

18           Now the court goes on to say: "To the extent  
19 plaintiffs assert a violation of substantive due process, we  
20 decline to extend the concept of fundamental constitutional  
21 rights to encompass plaintiff's claims."

22           In other words, running a business is not a property  
23 interest or a fundamental right protected by the federal  
24 constitution.

25           If they have a state law claim, they can pursue a

1 state law claim. This is a state permitting a licensing issue.  
2 That's what we are talking about here. We spent an entire  
3 afternoon in federal court talking about the city's processes  
4 and the plaintiff's efforts to get a new BTR license. We think  
5 the record is clear. The only reason we are here is because  
6 the plaintiff, one, let his license expire without paying for  
7 it; then he was cited for it nine months later, and he still  
8 didn't pay for the license. He could have gone into the city  
9 and paid it that very day. The only thing he had to do was pay  
10 an outstanding fine that was six months old. It was six months  
11 old and he had never appealed it.

12 Then the plaintiff didn't appeal the new violations on  
13 June 25th either. He had a process for doing that. He didn't  
14 do that either. And if at any point he had paid for his BTR  
15 and paid the outstanding fines, they would have given him the  
16 BTR on the spot.

17 THE COURT: But he did eventually appeal the three  
18 violations. He says it was on appeal to the special master.

19 MR. ARANA: What he did, he hired an attorney long  
20 after the time for appeal had run and he contacted the city  
21 attorney's office. The city attorney worked with him, and the  
22 plaintiff, one, admitted the violations and, two, agreed to pay  
23 the thousand dollar fine, which he never paid the BTR during  
24 that entire year. He never tendered a check. He could have  
25 paid it online.

1           Once those violations were resolved -- I think the  
2 reason, if the plaintiff had filed a timely appeal of those  
3 violations, then they probably wouldn't have even shown up as  
4 due on the system.

5           THE COURT: That's what your witness says.

6           MR. ARANA: Since he didn't appeal them through the  
7 process, they were still technically due. He wasn't going to  
8 get his BTR issued until he resolved the outstanding fine.

9           THE COURT: He does that on August 28. His attorney  
10 and the city attorney come to an agreement, you are going to  
11 pay \$1,000 and everything is going to go away. What happens  
12 between August 28 and September 28? Why does it take a month  
13 to have a simple order that says you are going to pay 1,000  
14 bucks and everything is over?

15          MR. ARANA: As I understand it, the special master has  
16 a hearing every week or so in the City of Miami Beach and  
17 addresses these things. This was right in the middle of the  
18 hurricane, is my understanding. There was no hearing on  
19 September 7th or September 14. So it was brought before the  
20 special master on the 28th.

21          THE COURT: What happened on the 21st?

22          MR. ARANA: I don't know if there was a hearing or  
23 not. Maybe they didn't hear these issues on that date. That's  
24 not in the record at this point.

25          But the point is that the plaintiff pursued this

1 process to try and avoid paying those fines. He admitted the  
2 violations, but he had a reduced fine. In any event --

3 THE COURT: Doesn't this seem kind of inequitable?  
4 This fellow didn't pay \$2,000 and he's losing -- I have no idea  
5 what his business is worth, but he's losing a million dollar  
6 business all because he didn't pay \$2,000. It was clear six  
7 days later or two weeks later he was willing to pay after  
8 everything got cleared.

9 The way I see it, he didn't realize, I think, because  
10 it just doesn't make sense if he did realize it. He could have  
11 paid that money to the city and it would have been held in --  
12 the BTR just simply would not have been issued, as I understand  
13 it. It would have existed, but they would not have given him  
14 the piece of paper to hang up in his business. If he had done  
15 that, then he would have been fine.

16 Even if he took care of those fines the next fiscal  
17 year, he would have been fine, according to the testimony of  
18 the fellow from the finance department. Right?

19 MR. ARANA: Yes, your Honor.

20 THE COURT: So the punishment is for that is --  
21 shouldn't the city have some kind of equity and say of course  
22 we know you want to continue to do your business and we are not  
23 going to close you down because of \$2,500. That would be  
24 ridiculous.

25 MR. ARANA: I think the point, your Honor, is that the

1 plaintiff can make these arguments to the city through the  
2 administrative process. He can make this exact case if he  
3 wants to.

4 It's inequitable that he was trying to pay, that he  
5 didn't understand he could have submitted the payment, if  
6 that's what his testimony is. He didn't understand that he  
7 could have tendered the check. He could make all those  
8 arguments through the city process. He hasn't done that.

9 So now we are in federal court, and the question is  
10 does he have a likelihood of success on a federal claim. He  
11 doesn't because he has no federally protected property interest  
12 at stake. There is no substantive due process claim. There is  
13 no procedural due process claim. There is no claim that the  
14 ordinance that says you can be prevented from operating if you  
15 don't have a BTR license is vague.

16 You are not supposed to operate without a license.  
17 Everybody knows that. It's clear. The ordinance says that.

18 So our view of it is that, frankly, the plaintiff  
19 didn't pay for his license for more than a year. But if he has  
20 some argument, if he has an argument that, look, I should be  
21 allowed to be grandfathered in or I should be allowed to get it  
22 at this point because of everything that happened, that's an  
23 argument he needs to take up through the adequate state court  
24 system. Otherwise, can you imagine the number of cases that  
25 you would be inundated with if every time somebody got was

1 involved in a state court permitting system and didn't like the  
2 outcome --

3 THE COURT: What makes this a little different is that  
4 his business is closed. If you said, okay, take this up on the  
5 city and keep running your business, but know when you lose  
6 this thing we are going to close you down if the city doesn't  
7 give you some relief through the special master or whoever you  
8 appeal to.

9 MR. ARANA: And I can understand that point, but the  
10 question is whether he is in the right forum. We don't --

11 THE COURT: Your main argument then is the forum  
12 argument, not the facts.

13 MR. ARANA: No, I think --

14 THE COURT: Other than the facts, the facts relate to  
15 the forum.

16 MR. ARANA: Well, we have heard the facts today. I  
17 think the city's process is clear and it was fair. All he had  
18 to do was either renew his license timely or pay it any time  
19 during the year and he would have had it.

20 If he thinks that he should be entitled to a new BTR,  
21 he should apply for one. I think the facts show that the city  
22 didn't do anything wrong and that the process is fair and that  
23 he just needs to follow through with it.

24 But in addition to that, we are in federal court on  
25 federal claims that he doesn't have. So what the court can say

1 is, look, you don't have a likelihood of success on the merits  
2 because you don't have federal claims. In fact, they are going  
3 to be dismissed. Go through the state court procedure, file an  
4 application for a BTR, and if the city says you are not  
5 entitled to one, take that before the city manager and make the  
6 case they are making.

7 That's what they could have done. They could have  
8 done that a month ago. But you can't open the door to federal  
9 court just because it's unfortunate that they're out of  
10 business, and it is.

11 I will note that the case law makes it clear that,  
12 first of all, lost profits is generally not considered  
13 irreparable harm. They have more than one location. If they  
14 were to successfully make a claim down the road, they could  
15 calculate lost profits. So I don't think they even  
16 establish --

17 THE COURT: Does the second location sell liquor too?

18 MR. HUDSON: Beer and wine. Only beer and wine.

19 THE COURT: But the one we are talking about is a true  
20 liquor store.

21 MR. HUDSON: Right, full liquor.

22 MR. ARANA: So I don't think they established  
23 irreparable harm. I think money damages is money damages. If  
24 they are right on this -- I don't think they are -- but if they  
25 are right, they can pursue a claim for money damages.

1           Also the case law is clear that irreparable harm is  
2 not enough to get an injunction alone.

3           We know we are not supposed to be in federal court.  
4 We don't have a claim. We don't even have a case to cite to  
5 suggest we have one. It's really unfortunate for us that we  
6 are closed down. That's not enough.

7           For all those reasons we would ask that the court deny  
8 the motion. Thank you.

9           THE COURT: Briefly, Mr. Hudson.

10          MR. HUDSON: We absolutely believe we have federal  
11 claims. We only had two days to brief this thing. If you need  
12 some more, we are happy to give you more. I am sure these  
13 young folks will be spending some time on it. We absolutely  
14 have federal claims here.

15          There is no state court remedy for us. That's exactly  
16 why we have federal claims. There is no state court remedy.  
17 Because you have seen the internal notes in the system say  
18 don't give this guy the license when he opens up. You call it  
19 futility. Call it whatever you want. If we hadn't filed that  
20 application, it would have taken six months, a year, whatever,  
21 whatever. We are not obligated to do that much.

22          Specifically there is an exception in 1983 cases for  
23 exhausting administrative remedies. We don't have one, as I  
24 think you learned today. We don't have one because they forced  
25 us into a new application. This is not an appeal. This is a



1 new application, which we know from what we have seen today,  
2 the evidence, the uncontroverted evidence, that it's going to  
3 be denied.

4 So that's exactly what a 1983 claim is and that's  
5 exactly why --

6 THE COURT: But there is a process if it's denied for  
7 to you appeal within the city. Even if I take for granted that  
8 it's going to be denied, then you have a process within the  
9 city to appeal that.

10 MR. HUDSON: 1983 says I don't have to do that if I  
11 choose not to. We have chosen not to because we believe that  
12 we will not be around by the time that process is accomplished  
13 because of everything that you heard today. Everything was  
14 different, nothing that you could normally rely upon. They are  
15 asking him to rely on stuff, yet they did everything  
16 differently in this case, your Honor.

17 THE COURT: But I don't see why you say they did  
18 everything differently. I think they did everything by the  
19 book, at least from the testimony I heard.

20 MR. HUDSON: The special master proceeding, there was  
21 nothing by the book. The good news is there was a special  
22 master proceeding because they have waived all those other  
23 arguments and appellate dates and deadlines.

24 THE COURT: I agree the special master was somewhat  
25 unusual. He said it happens occasionally, but that he didn't

1 file the appeal on the back of the ticket or the front of the  
2 ticket but, rather, his lawyer convinced the city attorney to  
3 allow the --

4 MR. HUDSON: Correct, and his lawyers are telling him  
5 we are now in the process, don't worry, we will take care of  
6 it. So he's good to go. Then when they tell him we are good  
7 to go, give me the check, we gave him the check. All of the  
8 sudden we have a month delay. The hurricane, I can't argue  
9 with that, but there is still another day. There's too many  
10 coincidences.

11 THE COURT: Shouldn't he be suing his advisers and his  
12 lawyers? Shouldn't his advisers and lawyers have been saying,  
13 hey, you have got to go down there or we have to go down there  
14 and write a check to \$2,265 and give it to that clerk because  
15 no matter what happens with these things, you are going to be  
16 protected. Your license, you are not going to lose your BTR.

17 MR. HUDSON: I can't comment on that. Harold Rosen  
18 has been on the beach forever. He is a well-known lawyer. I  
19 know Guy Shir as well. I can't speculate. That's speculation,  
20 Judge.

21 I want to address these claims. There is no question  
22 in our view we have procedural due process. There was no due  
23 process here. You were right. I believe you are absolutely  
24 right. What due process did he have before they shut him down  
25 on the 6th. None. Zero.

1 I believe -- Judge, tell me if you want a couple more  
2 cases.

3 THE COURT: I do want cases, yes. I could be wrong,  
4 and I asked the defendant. He said he is relying on both. But  
5 to me it seems like his strongest argument is that you  
6 shouldn't be in federal court. There is no property interest  
7 in the license or in the running of a business.

8 MR. HUDSON: There is no question under the Fourteenth  
9 Amendment, your Honor, we are entitled to be here. There is  
10 concurrent jurisdiction in 1938 cases. We will give you more  
11 case law.

12 THE COURT: When are you going to do that?

13 MR. HUDSON: I will ask you.

14 THE COURT: It's up to you. I know you want to move  
15 quickly.

16 MR. HUDSON: Absolutely.

17 THE COURT: Your problem is that if I don't rule on  
18 this thing, you then have a report and recommendation that goes  
19 to Judge Ungaro. Then you have two weeks to object. So every  
20 day you have to add at least two weeks on to that and then two  
21 weeks to respond. So you are talking about a long period of  
22 time.

23 MR. HUDSON: We were a little heartbroken. I am happy  
24 to meet you, but we were heartbroken when we saw it come in  
25 because we knew it would take us Monday. I will try to get it

1 before Monday.

2 THE COURT: Don't get before Monday because I am not  
3 looking at it before Monday.

4 MR. HUDSON: I thought we were Wednesday. We are  
5 Friday.

6 THE COURT: We are Friday.

7 MR. HUDSON: If I can get it to you sooner, I will.  
8 But Wednesday I will get you more.

9 You want it on federal jurisdiction essentially.

10 THE COURT: Yes.

11 By Wednesday, file something.

12 You folks don't need to, but if you want to respond,  
13 respond by Friday. If it's just a response -- that's right,  
14 Thursday and Friday is Thanksgiving. Next week the court is  
15 closed on Friday. So if you get it to me by Wednesday, there  
16 is no point. If you file it by Sunday night or Monday morning  
17 because the court is closed.

18 MR. HUDSON: Your Honor, do you have the ability to  
19 shorten the briefing time or only Judge Ungaro on the R&R?

20 THE COURT: I can recommend that that be done.

21 MR. HUDSON: Could you recommend that, please.

22 THE COURT: I will consider that, yes.

23 MR. HUDSON: Thank you.

24 THE COURT: Anything else anybody thinks should be  
25 briefed?

1 MR. ARANA: No, your Honor.

2 THE COURT: I don't want 80 pages on this thing.

3 MR. HUDSON: No, I won't have time to do 80. We will  
4 do ten good pages.

5 THE COURT: Thanks, everybody, for your hard work  
6 today. I will try to get something out quickly.

7 Court is in recess.

8 Thank you, all. Have a good Thanksgiving.

9 MR. HUDSON: Thank you for giving us a quick hearing.  
10 We appreciate it.

11 C E R T I F I C A T E  
12

13 I hereby certify that the foregoing is an accurate  
14 transcription of the proceedings in the above-entitled matter.  
15  
16

17 November 22, 2017 /s/ Jill M. Felicetti  
18 Jill M. Felicetti, RPR, CRR, CSR  
19 Official Court Reporter  
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21 Miami, Florida 33128  
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23  
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| <p><b>BY MR. ARANA:</b><br/>[3] 88/2 95/20 128/6</p> <p><b>BY MR. BYERS:</b><br/>[4] 130/2 133/24<br/>134/6 149/6</p> <p><b>BY MR. HUDSON:</b><br/>[45] 15/1 20/20 23/7<br/>25/10 27/14 27/23<br/>28/21 29/7 33/21<br/>35/8 37/15 39/2<br/>39/19 43/11 43/23<br/>44/9 45/25 102/2<br/>107/2 107/7 110/10<br/>111/15 112/14<br/>112/21 115/23<br/>116/18 117/5 117/21<br/>118/9 118/20 119/22<br/>120/8 125/25 127/12<br/>136/19 136/25 139/4<br/>140/10 144/9 145/2<br/>145/10 145/16<br/>145/20 146/11<br/>147/16</p> <p><b>BY MR. PAPPAS:</b><br/>[21] 47/8 49/9 49/22<br/>51/15 53/17 58/17<br/>59/7 61/6 62/16 63/5<br/>63/19 64/24 66/4<br/>66/19 67/2 67/25<br/>68/8 71/11 77/3<br/>77/11 84/6</p> | <p><b>MR. ARANA: [55]</b><br/>3/9 9/15 9/23 10/2<br/>10/16 11/16 11/25<br/>12/4 12/17 12/24<br/>13/8 13/12 13/21<br/>13/24 14/3 28/12<br/>35/24 86/23 86/25<br/>87/3 87/6 101/22<br/>109/6 110/1 110/8<br/>112/13 115/16<br/>117/18 117/25<br/>118/16 119/19<br/>121/22 127/8 128/3<br/>129/15 150/14<br/>150/16 150/19<br/>150/22 150/24 151/1<br/>158/13 158/16 159/8<br/>161/18 162/5 162/14<br/>162/21 163/18<br/>163/24 165/8 165/12<br/>165/15 166/21<br/>171/25</p> <p><b>MR. BYERS: [27]</b><br/>36/14 133/21 135/21<br/>138/14 138/19<br/>138/21 138/24 140/4<br/>140/7 140/9 141/17<br/>142/2 144/7 144/12<br/>145/5 145/13 145/18<br/>145/22 146/5 146/9<br/>146/21 147/14<br/>147/21 149/4 150/7</p> | <p>151/4 151/6</p> <p><b>MR. HUDSON:</b><br/>[101] 3/5 3/13 3/17<br/>3/23 4/21 5/7 5/13<br/>5/18 6/2 7/1 7/18<br/>8/13 14/17 20/11<br/>20/18 24/25 25/4<br/>25/9 27/20 27/22<br/>29/5 33/15 35/7<br/>35/22 36/5 36/13<br/>36/20 36/24 37/4<br/>37/12 38/19 38/22<br/>38/24 39/18 42/18<br/>42/24 43/21 47/2<br/>49/6 58/14 59/4<br/>62/13 63/1 64/15<br/>64/20 65/17 65/22<br/>68/6 71/8 86/16<br/>86/21 87/8 87/18<br/>101/25 107/5 113/2<br/>117/3 117/20 118/5<br/>118/18 120/2 120/5<br/>125/9 125/23 127/9<br/>128/2 139/24 144/15<br/>149/2 150/17 150/25<br/>151/10 151/13<br/>151/16 152/19 153/2<br/>153/5 153/17 156/18<br/>156/23 156/25 157/3<br/>158/2 166/17 166/20<br/>167/9 168/9 168/19<br/>169/3 169/16 170/7</p> |
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| THE COURT:           | \$2,246 [2] 70/12    | 131/19 131/19         |
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| THE WITNESS:         | \$2,500 [1] 163/23   | 100 [1] 1/17          |
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| <b>1</b><br>10:00 a.m... [4] 30/9<br>43/23 71/4 132/3<br>10:00 p.m [1] 30/13<br>10E [1] 49/11<br>10th [1] 78/1<br>11 [40] 15/18 15/19<br>15/21 16/2 18/12<br>19/14 19/16 39/15<br>40/2 40/12 40/15<br>41/20 41/20 41/23<br>42/1 47/25 48/14<br>48/20 48/23 50/8<br>56/2 56/10 56/24<br>57/9 57/13 57/22<br>57/25 58/6 58/9<br>58/21 58/25 60/25<br>79/6 79/10 79/19<br>79/23 126/5 126/10<br>132/12 138/20<br>1100 [9] 47/25 48/20<br>55/9 55/13 55/15<br>55/17 56/2 99/15<br>99/17<br>11:02 [1] 3/2<br>11:33 a.m [1] 117/5<br>11:59 p.m [1]<br>122/18<br>11th [1] 159/16<br>12 [6] 17/12 18/3<br>43/13 133/3 135/25<br>138/12 | 12/16 [1] 103/1<br>128 [1] 2/10<br>12:00 a.m [1] 18/2<br>13 [2] 43/17 90/14<br>130 [1] 2/12<br>1344 [1] 51/3<br>13441 [1] 55/11<br>136 [1] 2/13<br>137 [1] 152/3<br>14 [6] 90/14 134/20<br>136/25 137/2 139/6<br>162/19<br>149 [1] 2/14<br>14th [1] 78/16<br>15 [10] 2/5 53/3<br>69/17 69/19 71/16<br>96/16 96/17 96/18<br>108/19 108/19<br>15th [1] 16/23<br>16 [12] 48/12 48/22<br>49/1 49/19 61/4<br>70/18 76/14 92/24<br>103/1 108/15 140/5<br>149/12<br>16-17 [1] 122/24<br>16/17 [1] 114/6<br>16th [1] 16/23<br>17 [14] 1/4 37/1<br>45/11 92/19 93/8<br>94/1 96/9 96/13<br>96/19 113/1 114/6<br>122/24 123/1 146/16 | 17-CV-23958 [1]<br>1/2<br>17/18 [1] 147/20<br>1700 [1] 94/9<br>173 [1] 1/7<br>1755 [1] 94/10<br>18 [3] 22/4 147/20<br>151/2<br>1938 [1] 170/10<br>1983 [4] 156/9<br>167/22 168/4 168/10<br>1st [4] 13/6 38/19<br>39/1 44/14<br>1th [1] 92/9<br><b>2</b><br>2,200 [1] 82/21<br>20 [11] 62/13 62/22<br>63/7 72/21 74/2<br>74/12 132/7 132/9<br>138/1 138/18 139/1<br>20-day [1] 125/5<br>200 [1] 1/13<br>2006 [1] 88/11<br>2011 [4] 52/1 53/24<br>88/13 89/25<br>2012 [4] 16/10 53/3<br>53/24 89/25<br>2012/13 [1] 90/14<br>2013 [1] 53/24<br>2013/14 [1] 90/14<br>2014 [2] 53/24 130/9<br>2014/2015 [1] 90/14 |
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| <b>91/16 92/3 92/3</b>      | <b>83/7 94/3 98/23</b>      | <b>26 [1] 10/4</b>          |
| <b>2015/16 [1] 92/24</b>    | <b>100/3 110/10 126/15</b>  | <b>2600 [1] 152/25</b>      |
| <b>2015/2016 [1] 90/14</b>  | <b>129/1 129/9 131/6</b>    | <b>27 [22] 21/9 21/25</b>   |
| <b>2016 [41] 9/19 9/25</b>  | <b>132/20 133/10</b>        | <b>25/20 60/12 66/18</b>    |
| <b>12/19 19/18 43/21</b>    | <b>134/18 134/24 135/1</b>  | <b>68/5 68/8 68/11 70/2</b> |
| <b>48/12 48/22 49/1</b>     | <b>135/13 137/20</b>        | <b>72/14 76/15 80/2</b>     |
| <b>49/17 49/20 49/24</b>    | <b>172/17</b>               | <b>82/9 82/10 82/11</b>     |
| <b>50/4 55/3 56/3 56/24</b> | <b>205 [2] 89/7 92/8</b>    | <b>82/15 96/20 97/13</b>    |
| <b>57/5 57/13 57/23</b>     | <b>21 [15] 49/16 49/22</b>  | <b>105/14 105/22</b>        |
| <b>57/24 58/21 59/4</b>     | <b>49/24 50/4 61/6 61/8</b> | <b>107/11 115/21</b>        |
| <b>61/8 61/15 64/9</b>      | <b>61/8 61/15 63/11</b>     | <b>27th [22] 60/8 60/9</b>  |
| <b>68/14 71/8 72/15</b>     | <b>64/9 68/14 97/7</b>      | <b>65/4 66/15 66/19</b>     |
| <b>76/14 90/14 91/7</b>     | <b>97/10 131/24 132/2</b>   | <b>66/22 68/3 68/10</b>     |
| <b>92/11 92/25 93/9</b>     | <b>21601704 [1] 109/18</b>  | <b>69/25 71/7 75/20</b>     |
| <b>93/24 94/3 97/8</b>      | <b>2170312 [1] 109/19</b>   | <b>76/7 96/25 97/7</b>      |
| <b>97/10 100/2 129/1</b>    | <b>2170313 [1] 109/19</b>   | <b>97/24 97/25 102/25</b>   |
| <b>131/24 132/3</b>         | <b>21st [2] 50/2 162/21</b> | <b>103/16 106/2 107/14</b>  |
| <b>2016-17 [1] 94/1</b>     | <b>22 [2] 30/8 172/17</b>   | <b>107/23 109/17</b>        |
| <b>2016-4062 [1] 151/5</b>  | <b>23958 [1] 1/2</b>        | <b>28 [21] 25/20 32/2</b>   |
| <b>2016/17 [6] 92/19</b>    | <b>24 [2] 61/18 61/20</b>   | <b>33/1 34/13 34/21</b>     |
| <b>93/8 96/9 96/13</b>      | <b>25 [16] 60/10 60/13</b>  | <b>35/2 36/16 39/16</b>     |
| <b>96/19 123/1</b>          | <b>63/15 63/16 72/25</b>    | <b>77/13 78/24 78/25</b>    |
| <b>2016/2017 [4] 44/13</b>  | <b>73/7 74/12 75/24</b>     | <b>79/6 80/13 82/7</b>      |
| <b>56/3 56/10 134/18</b>    | <b>132/20 133/10</b>        | <b>109/4 122/12 123/16</b>  |
| <b>2017 [41] 1/4 10/4</b>   | <b>136/24 138/12</b>        | <b>131/6 162/9 162/12</b>   |
| <b>19/21 19/25 27/1</b>     | <b>138/17 138/19</b>        | <b>162/12</b>               |
| <b>28/23 29/2 30/24</b>     | <b>138/25 152/11</b>        | <b>28th [12] 29/19</b>      |
| <b>31/1 31/4 31/17 33/9</b> | <b>25th [12] 63/10 65/4</b> | <b>29/20 31/15 35/10</b>    |
| <b>35/2 36/17 44/13</b>     | <b>73/3 74/17 97/19</b>     | <b>35/12 39/7 78/22</b>     |
| <b>44/14 56/3 56/10</b>     | <b>98/10 98/23 107/13</b>   | <b>78/22 79/19 80/6</b>     |

|                             |                              |                             |
|-----------------------------|------------------------------|-----------------------------|
| <b>2</b>                    | <b>374-3330 [1] 1/14</b>     | <b>7</b>                    |
| <b>28th... [2] 122/22</b>   | <b>377 [4] 139/23 141/1</b>  | <b>704 [1] 43/14</b>        |
| <b>162/20</b>               | <b>155/20 155/21</b>         | <b>7th [2] 78/12 162/19</b> |
| <b>29 [2] 33/1 78/25</b>    | <b>377-102377 [1]</b>        | <b>8</b>                    |
| <b>29th [4] 35/10 35/12</b> | <b>152/3</b>                 | <b>80 [2] 172/2 172/3</b>   |
| <b>36/16 39/9</b>           | <b>4</b>                     | <b>85 percent [1] 48/11</b> |
| <b>2nd [4] 39/4 39/11</b>   | <b>400 [4] 1/24 99/25</b>    | <b>865 [24] 47/24 48/18</b> |
| <b>45/23 122/13</b>         | <b>100/6 172/18</b>          | <b>49/16 50/10 50/14</b>    |
| <b>3</b>                    | <b>4062 [1] 151/5</b>        | <b>52/9 52/10 54/23</b>     |
| <b>30 [23] 9/19 9/25</b>    | <b>419 [1] 159/17</b>        | <b>55/17 84/24 89/24</b>    |
| <b>10/14 12/16 12/19</b>    | <b>4200 [1] 1/18</b>         | <b>91/6 93/12 96/22</b>     |
| <b>54/9 56/24 57/5</b>      | <b>47 [1] 2/6</b>            | <b>99/16 99/17 99/19</b>    |
| <b>57/23 57/24 59/4</b>     | <b>5</b>                     | <b>108/11 109/15 114/3</b>  |
| <b>89/25 91/7 92/11</b>     | <b>527 [1] 10/25</b>         | <b>114/22 115/11</b>        |
| <b>92/25 93/24 94/3</b>     | <b>530-0050 [1] 1/19</b>     | <b>145/12 147/2</b>         |
| <b>103/19 122/17</b>        | <b>5:00 o'clock [3] 46/6</b> | <b>88 [1] 2/8</b>           |
| <b>122/18 122/20 129/1</b>  | <b>46/9 155/20</b>           | <b>8:00 a.m [1] 18/2</b>    |
| <b>158/1</b>                | <b>5:00 p.m [5] 7/10</b>     | <b>8:00 p.m [1] 18/1</b>    |
| <b>305 [2] 1/14 1/19</b>    | <b>117/4 123/20 136/22</b>   | <b>8:33 [1] 71/4</b>        |
| <b>30th [9] 54/2 57/13</b>  | <b>139/21</b>                | <b>8:39 [2] 49/17 50/2</b>  |
| <b>92/7 92/10 95/2 95/4</b> | <b>5th [2] 51/3 55/11</b>    | <b>8th [1] 111/24</b>       |
| <b>100/3 108/24 123/1</b>   | <b>6</b>                     | <b>9</b>                    |
| <b>33128 [2] 1/25</b>       | <b>666 [1] 11/1</b>          | <b>90 percent [1] 5/20</b>  |
| <b>172/19</b>               | <b>69 [3] 140/9 140/10</b>   | <b>932 [1] 159/17</b>       |
| <b>33131 [2] 1/13 1/18</b>  | <b>149/13</b>                | <b>9th [1] 78/1</b>         |
| <b>3330 [1] 1/14</b>        | <b>6th [11] 36/17 45/25</b>  | <b>A</b>                    |
| <b>35 [4] 140/6 140/7</b>   | <b>46/2 46/3 46/5 46/6</b>   | <b>A-C-C [1] 121/15</b>     |
| <b>140/9 149/13</b>         | <b>46/9 82/13 83/7</b>       | <b>a.m [9] 3/2 18/1</b>     |
| <b>36 [2] 140/10 149/13</b> | <b>146/1 169/25</b>          | <b>18/2 18/2 30/9 43/23</b> |
| <b>3600 [1] 1/13</b>        |                              | <b>71/4 117/5 132/3</b>     |
| <b>370 [1] 149/9</b>        |                              |                             |

|          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|----------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>A</b> | <b>above [4] 59/15<br/>141/4 149/16 172/14<br/>above-entitled [1]<br/>172/14<br/>absence [2] 4/5 5/15<br/>absent [1] 8/25<br/>absolute [1] 4/5<br/>absolutely [4]<br/>167/10 167/13<br/>169/23 170/16<br/>accept [23] 28/7<br/>28/16 70/19 73/20<br/>74/9 80/8 80/10 82/4<br/>82/6 82/7 82/8 85/6<br/>85/7 85/10 94/17<br/>96/4 103/13 114/25<br/>115/8 126/8 126/25<br/>128/17 128/18<br/>accepted [12] 63/3<br/>96/14 96/15 97/2<br/>97/3 100/10 102/6<br/>105/4 106/9 123/13<br/>123/18 123/19<br/>access [3] 42/20<br/>147/7 147/8<br/>accomplish [3] 24/7<br/>24/8 25/23<br/>accomplished [1]<br/>168/12<br/>according [4] 59/10<br/>74/16 83/13 163/17<br/>accordingly [1]</b> | <b>120/15<br/>account [3] 100/18<br/>115/20 115/23<br/>accurate [8] 103/10<br/>121/7 121/8 121/9<br/>121/15 121/18<br/>121/19 172/13<br/>accurately [1]<br/>116/20<br/>across [1] 75/19<br/>action [1] 142/15<br/>actions [1] 142/22<br/>active [2] 99/16<br/>113/16<br/>activity [5] 10/23<br/>11/2 11/3 11/6 91/1<br/>actually [9] 36/16<br/>40/19 79/18 79/18<br/>94/21 105/22 106/6<br/>135/24 156/17<br/>ADA [1] 61/25<br/>add [6] 36/1 90/21<br/>90/23 91/21 151/7<br/>170/20<br/>added [1] 91/17<br/>adding [1] 91/23<br/>addition [4] 97/13<br/>108/4 154/24 165/24<br/>additional [5] 91/18<br/>99/15 104/20 141/3<br/>149/15<br/>Additionally [1]</b> |
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|                            |                             |                             |
|----------------------------|-----------------------------|-----------------------------|
| <b>A</b>                   | <b>affected [1] 159/10</b>  | <b>120/23 129/10</b>        |
| <b>Additionally... [1]</b> | <b>affidavit [10] 88/12</b> | <b>134/10 135/9 139/6</b>   |
| <b>94/13</b>               | <b>104/15 104/16</b>        | <b>143/8 149/12 149/12</b>  |
| <b>address [13] 6/5</b>    | <b>104/25 130/20</b>        | <b>152/6 158/21</b>         |
| <b>48/15 48/17 51/3</b>    | <b>130/22 130/25</b>        | <b>agents [1] 156/22</b>    |
| <b>51/21 54/5 54/23</b>    | <b>131/17 143/5 143/10</b>  | <b>ago [3] 18/17 157/13</b> |
| <b>54/25 55/1 74/10</b>    | <b>affirmed [2] 109/19</b>  | <b>166/8</b>                |
| <b>108/11 113/19</b>       | <b>160/8</b>                | <b>agree [10] 5/11 25/5</b> |
| <b>169/21</b>              | <b>after [41] 3/23 8/9</b>  | <b>34/12 71/1 109/2</b>     |
| <b>addresses [1]</b>       | <b>9/8 20/2 21/3 25/20</b>  | <b>114/20 127/16 157/1</b>  |
| <b>162/17</b>              | <b>28/6 29/9 30/10</b>      | <b>157/4 168/24</b>         |
| <b>adequate [1] 164/23</b> | <b>30/13 32/16 33/23</b>    | <b>agreed [27] 34/8</b>     |
| <b>adjudicated [4]</b>     | <b>34/1 36/16 41/22</b>     | <b>46/13 71/22 80/22</b>    |
| <b>95/20 121/3 121/11</b>  | <b>42/5 42/5 42/7 45/24</b> | <b>81/1 81/2 81/2 81/5</b>  |
| <b>122/3</b>               | <b>50/6 53/16 55/25</b>     | <b>81/11 107/6 107/20</b>   |
| <b>administrative [9]</b>  | <b>55/25 57/14 57/16</b>    | <b>109/1 110/1 111/20</b>   |
| <b>7/17 11/18 12/9</b>     | <b>58/1 58/3 58/4 58/6</b>  | <b>122/11 123/16 131/6</b>  |
| <b>12/13 13/21 14/1</b>    | <b>58/6 72/14 72/23</b>     | <b>131/7 131/13 143/14</b>  |
| <b>156/2 164/2 167/23</b>  | <b>78/16 79/3 81/23</b>     | <b>143/15 143/19</b>        |
| <b>admissible [1] 43/8</b> | <b>82/7 100/18 153/8</b>    | <b>144/21 145/1 145/2</b>   |
| <b>admit [2] 32/18</b>     | <b>156/2 161/20 163/7</b>   | <b>153/20 161/22</b>        |
| <b>111/14</b>              | <b>afternoon [7] 46/9</b>   | <b>agreeing [1] 76/17</b>   |
| <b>admitted [7] 36/14</b>  | <b>88/4 88/5 124/15</b>     | <b>agreement [7] 30/2</b>   |
| <b>81/24 81/25 130/15</b>  | <b>130/4 139/21 161/3</b>   | <b>31/7 31/11 34/10</b>     |
| <b>131/7 161/22 163/1</b>  | <b>afterwards [1]</b>       | <b>144/24 152/19</b>        |
| <b>advance [3] 40/8</b>    | <b>36/13</b>                | <b>162/10</b>               |
| <b>127/10 137/8</b>        | <b>again [27] 5/10 9/11</b> | <b>agreements [2]</b>       |
| <b>advent [1] 148/24</b>   | <b>10/16 34/25 35/14</b>    | <b>143/19 144/21</b>        |
| <b>advise [1] 120/15</b>   | <b>37/18 53/10 65/3</b>     | <b>ahead [9] 27/14 34/5</b> |
| <b>advised [1] 100/15</b>  | <b>73/1 74/13 78/10</b>     | <b>63/16 96/6 113/4</b>     |
| <b>advisers [2] 169/11</b> | <b>81/18 87/10 107/5</b>    | <b>120/5 127/12 137/15</b>  |
| <b>169/12</b>              | <b>107/20 110/2 111/5</b>   | <b>139/4</b>                |

|                              |                             |                             |
|------------------------------|-----------------------------|-----------------------------|
| <b>A</b>                     | <b>154/18 154/25</b>        | <b>126/22 130/15</b>        |
| <b>Aiken [1] 153/5</b>       | <b>157/10 157/10 158/6</b>  | <b>142/24</b>               |
| <b>Air [1] 159/16</b>        | <b>158/20 158/21 163/6</b>  | <b>also [24] 11/6 18/12</b> |
| <b>alcohol [5] 21/3</b>      | <b>164/7 165/17 166/12</b>  | <b>21/18 21/19 27/18</b>    |
| <b>30/13 49/2 49/17</b>      | <b>167/7 168/22 169/7</b>   | <b>28/1 29/13 30/23</b>     |
| <b>132/18</b>                | <b>172/8</b>                | <b>31/1 40/20 41/19</b>     |
| <b>alcoholic [1] 131/25</b>  | <b>allegations [1]</b>      | <b>89/11 89/14 89/15</b>    |
| <b>Alex [4] 32/21 32/23</b>  | <b>112/12</b>               | <b>91/10 97/14 116/21</b>   |
| <b>32/24 118/9</b>           | <b>allege [2] 11/24</b>     | <b>117/10 131/19 137/3</b>  |
| <b>all [85] 5/8 5/24 6/7</b> | <b>155/9</b>                | <b>137/6 149/1 150/2</b>    |
| <b>6/10 6/18 7/22 9/10</b>   | <b>alleged [2] 104/20</b>   | <b>167/1</b>                |
| <b>10/2 10/17 14/16</b>      | <b>104/23</b>               | <b>alternative [1]</b>      |
| <b>16/6 20/10 20/17</b>      | <b>allegedly [1] 77/14</b>  | <b>142/18</b>               |
| <b>24/23 27/7 30/19</b>      | <b>alleging [1] 6/15</b>    | <b>Although [2] 4/2</b>     |
| <b>30/20 30/22 31/8</b>      | <b>allow [11] 11/25</b>     | <b>151/17</b>               |
| <b>31/11 31/11 41/13</b>     | <b>23/5 23/10 35/17</b>     | <b>always [13] 19/16</b>    |
| <b>41/13 42/13 42/16</b>     | <b>36/11 56/7 79/7</b>      | <b>19/17 19/18 19/19</b>    |
| <b>43/25 44/15 47/16</b>     | <b>111/25 145/7 152/18</b>  | <b>19/20 26/17 56/21</b>    |
| <b>49/4 50/10 50/18</b>      | <b>169/3</b>                | <b>57/18 57/20 58/7</b>     |
| <b>52/6 54/13 62/20</b>      | <b>allowed [7] 11/20</b>    | <b>70/11 94/17 104/19</b>   |
| <b>65/16 66/1 68/3</b>       | <b>45/5 83/4 83/4</b>       | <b>am [90] 4/7 5/20</b>     |
| <b>68/13 68/22 75/2</b>      | <b>152/16 164/21</b>        | <b>7/23 8/8 8/12 9/21</b>   |
| <b>75/7 76/2 76/17</b>       | <b>164/21</b>               | <b>10/17 12/25 13/13</b>    |
| <b>78/19 85/16 90/5</b>      | <b>allows [1] 138/3</b>     | <b>14/14 15/8 17/15</b>     |
| <b>91/3 91/7 92/7 98/7</b>   | <b>almost [3] 48/10</b>     | <b>19/24 20/19 22/25</b>    |
| <b>100/22 101/1 109/2</b>    | <b>81/20 125/25</b>         | <b>24/17 25/1 25/6 26/7</b> |
| <b>110/12 112/4 116/2</b>    | <b>alone [4] 102/18</b>     | <b>28/10 31/9 32/12</b>     |
| <b>116/22 119/14</b>         | <b>102/20 155/14 167/2</b>  | <b>38/10 41/24 46/15</b>    |
| <b>122/13 127/25 131/5</b>   | <b>along [1] 77/11</b>      | <b>46/16 50/17 57/3</b>     |
| <b>131/8 140/12 144/5</b>    | <b>already [11] 7/24</b>    | <b>57/21 61/20 65/9</b>     |
| <b>144/19 152/6 153/6</b>    | <b>14/5 23/23 24/4 71/6</b> | <b>65/9 66/12 66/17</b>     |
| <b>153/20 154/7 154/10</b>   | <b>72/14 76/10 106/2</b>    | <b>68/8 69/1 69/2 69/6</b>  |

|                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
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| <b>A</b>                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| am... [52] 70/23<br>72/12 73/5 73/5<br>78/17 86/5 86/10<br>88/9 89/18 92/16<br>94/2 95/15 97/9<br>97/22 106/10 107/14<br>107/15 108/13 109/6<br>109/12 109/13<br>109/18 109/20 111/5<br>111/12 115/18 118/1<br>118/6 119/12 120/17<br>120/22 120/23<br>125/24 127/10<br>127/10 139/24<br>140/10 141/21 142/7<br>146/9 148/15 151/12<br>153/14 154/10<br>154/13 154/21 157/5<br>158/3 158/6 167/12<br>170/23 171/2 | and/or [3] 114/3<br>114/22 147/1<br>announcements [1]<br>86/8<br>another [15] 20/8<br>40/16 40/20 65/5<br>75/8 75/9 75/9 75/24<br>76/25 77/3 78/9<br>81/13 132/17 144/25<br>169/9<br>answer [23] 33/19<br>53/10 58/19 64/24<br>65/2 65/24 66/3 76/4<br>76/5 76/6 76/10 77/2<br>84/5 85/14 86/7<br>109/10 120/14 122/1<br>140/18 145/7 145/8<br>147/18 148/1<br>answered [6] 58/15<br>65/19 65/20 67/2<br>83/5 127/9<br>answers [3] 25/3<br>25/4 58/17<br>any [85] 5/25 8/20<br>12/18 13/21 14/8<br>14/10 18/19 18/22<br>18/22 18/23 31/10<br>33/10 34/13 34/16<br>38/18 39/4 39/10<br>43/16 46/20 46/24<br>47/4 47/23 48/16<br>48/23 48/24 75/2 | 76/12 76/12 76/21<br>76/21 85/21 86/2<br>87/17 88/24 89/2<br>91/21 94/5 100/6<br>100/8 100/8 101/25<br>104/6 105/7 105/15<br>106/14 106/14 107/2<br>108/5 108/12 108/14<br>110/7 114/24 116/5<br>119/5 119/9 122/22<br>127/24 128/18 129/1<br>134/18 135/7 135/23<br>137/17 141/4 141/5<br>141/22 142/10<br>144/13 144/16 145/4<br>147/9 147/13 148/4<br>149/4 149/17 150/14<br>150/16 152/5 154/2<br>155/17 159/2 160/16<br>161/14 163/2 165/18<br>anybody [8] 3/19<br>3/21 41/12 84/16<br>86/21 127/17 128/15<br>171/24<br>anyone [4] 54/15<br>118/22 128/13<br>137/13<br>anything [18] 3/12<br>12/1 20/18 21/16<br>21/24 31/18 56/21<br>72/8 75/9 75/9 83/24<br>85/19 85/20 130/24 |

|                             |                             |                             |
|-----------------------------|-----------------------------|-----------------------------|
| <b>A</b>                    | <b>95/23 99/2 99/9</b>      | <b>100/19 101/7</b>         |
| <b>anything... [4]</b>      | <b>101/7 101/9 101/11</b>   | <b>application [41]</b>     |
| <b>131/16 155/12</b>        | <b>125/13 131/10</b>        | <b>7/23 14/11 52/12</b>     |
| <b>165/22 171/24</b>        | <b>131/10 132/6 132/9</b>   | <b>52/13 53/4 84/2</b>      |
| <b>anyway [2] 117/14</b>    | <b>132/22 132/25</b>        | <b>89/11 89/11 90/3</b>     |
| <b>119/18</b>               | <b>133/15 135/4 135/7</b>   | <b>90/4 90/7 90/24</b>      |
| <b>anywhere [1]</b>         | <b>138/1 138/5 143/10</b>   | <b>90/24 91/1 91/2</b>      |
| <b>139/10</b>               | <b>153/19 153/21</b>        | <b>91/13 91/15 91/17</b>    |
| <b>apologies [2] 49/24</b>  | <b>161/12 161/17</b>        | <b>91/20 91/22 91/23</b>    |
| <b>63/17</b>                | <b>161/18 161/20 162/2</b>  | <b>91/24 91/25 100/22</b>   |
| <b>apologize [1] 9/24</b>   | <b>162/6 165/8 167/25</b>   | <b>100/22 100/24</b>        |
| <b>appeal [95] 11/14</b>    | <b>168/7 168/9 169/1</b>    | <b>100/24 101/3 101/6</b>   |
| <b>11/16 11/17 13/15</b>    | <b>appealed [25] 62/22</b>  | <b>101/12 101/16</b>        |
| <b>13/18 14/6 14/9</b>      | <b>63/7 71/8 73/14 83/7</b> | <b>106/23 115/1 115/8</b>   |
| <b>14/15 21/20 23/15</b>    | <b>83/9 83/13 83/16</b>     | <b>126/21 126/25 152/7</b>  |
| <b>24/19 24/22 24/24</b>    | <b>84/8 97/11 98/10</b>     | <b>166/4 167/20 167/25</b>  |
| <b>26/1 28/4 28/4 28/16</b> | <b>98/15 98/19 102/15</b>   | <b>168/1</b>                |
| <b>28/21 61/25 62/5</b>     | <b>102/16 125/5 125/17</b>  | <b>applications [2]</b>     |
| <b>62/6 62/12 62/19</b>     | <b>131/5 132/7 133/12</b>   | <b>54/16 106/24</b>         |
| <b>63/8 64/10 68/20</b>     | <b>138/10 143/11</b>        | <b>applied [4] 126/15</b>   |
| <b>71/22 72/17 72/19</b>    | <b>151/21 151/22</b>        | <b>126/21 147/20 152/8</b>  |
| <b>72/20 72/20 72/21</b>    | <b>161/11</b>               | <b>applies [1] 141/21</b>   |
| <b>72/22 72/23 72/24</b>    | <b>appealing [4] 7/16</b>   | <b>apply [15] 7/4 8/3</b>   |
| <b>73/11 73/19 73/20</b>    | <b>24/24 98/2 160/14</b>    | <b>11/11 12/14 13/19</b>    |
| <b>73/20 73/24 74/7</b>     | <b>APPEARANCES</b>          | <b>13/20 45/1 45/7 45/8</b> |
| <b>74/8 74/11 74/16</b>     | <b>[2] 1/11 3/5</b>         | <b>89/6 89/9 89/10</b>      |
| <b>74/19 74/19 74/20</b>    | <b>appears [6] 36/2</b>     | <b>103/21 131/4 165/21</b>  |
| <b>74/20 74/25 76/16</b>    | <b>112/25 113/5 113/7</b>   | <b>applying [1] 12/13</b>   |
| <b>83/14 83/18 83/20</b>    | <b>117/5 125/10</b>         | <b>appreciate [1]</b>       |
| <b>84/10 84/11 84/13</b>    | <b>appellate [3] 7/20</b>   | <b>172/10</b>               |
| <b>85/7 85/8 85/9 85/17</b> | <b>151/22 168/23</b>        | <b>approach [3] 36/25</b>   |
| <b>85/22 85/22 85/23</b>    | <b>applicant [3] 89/6</b>   | <b>47/6 151/7</b>           |



|                            |                              |                             |
|----------------------------|------------------------------|-----------------------------|
| <b>A</b>                   | <b>arnstein.com [1]</b>      | <b>149/15 152/8 153/6</b>   |
| <b>appropriate [1] 9/1</b> | <b>1/14</b>                  | <b>154/12 157/12 158/9</b>  |
| <b>approve [1] 90/10</b>   | <b>around [7] 3/22</b>       | <b>162/3 162/15 163/12</b>  |
| <b>approved [2] 127/5</b>  | <b>10/15 12/23 136/22</b>    | <b>167/23 169/19</b>        |
| <b>132/1</b>               | <b>146/1 154/13 168/12</b>   | <b>ask [34] 23/4 23/15</b>  |
| <b>approximately [2]</b>   | <b>arrested [1] 46/16</b>    | <b>25/24 31/18 38/6</b>     |
| <b>99/25 126/4</b>         | <b>arrived [2] 143/13</b>    | <b>41/12 43/2 45/5</b>      |
| <b>April [2] 108/19</b>    | <b>145/2</b>                 | <b>49/19 53/9 65/3 66/9</b> |
| <b>108/19</b>              | <b>article [3] 141/6</b>     | <b>66/10 67/4 69/9</b>      |
| <b>April 15 [2] 108/19</b> | <b>141/22 149/18</b>         | <b>69/15 75/22 76/21</b>    |
| <b>108/19</b>              | <b>articles [2] 89/15</b>    | <b>85/22 86/1 96/16</b>     |
| <b>ARANA [4] 1/16</b>      | <b>157/11</b>                | <b>99/11 105/7 112/16</b>   |
| <b>2/8 2/10 3/10</b>       | <b>as [71] 3/24 3/24</b>     | <b>117/18 121/14 125/3</b>  |
| <b>are [250]</b>           | <b>4/22 6/4 7/9 7/21 9/4</b> | <b>127/7 134/10 137/24</b>  |
| <b>area [4] 4/25 77/3</b>  | <b>9/25 14/22 15/23</b>      | <b>144/23 153/24 167/7</b>  |
| <b>115/2 115/14</b>        | <b>16/25 20/13 24/11</b>     | <b>170/13</b>               |
| <b>aren't [2] 61/23</b>    | <b>26/1 26/8 37/1 38/6</b>   | <b>asked [19] 24/8</b>      |
| <b>142/11</b>              | <b>39/11 39/14 43/17</b>     | <b>24/19 25/23 31/19</b>    |
| <b>argue [1] 169/8</b>     | <b>45/11 47/7 58/15</b>      | <b>35/17 42/22 56/15</b>    |
| <b>argument [18] 6/6</b>   | <b>59/3 59/12 73/8</b>       | <b>58/15 65/18 67/2</b>     |
| <b>7/14 7/20 7/22 8/13</b> | <b>87/24 88/15 96/9</b>      | <b>85/17 86/7 96/21</b>     |
| <b>11/19 12/7 12/9</b>     | <b>96/9 98/17 98/17</b>      | <b>127/6 127/9 128/8</b>    |
| <b>141/19 153/23</b>       | <b>103/17 104/17 106/3</b>   | <b>143/4 148/6 170/4</b>    |
| <b>153/25 158/14</b>       | <b>109/21 110/1 112/6</b>    | <b>asking [11] 4/11</b>     |
| <b>164/20 164/20</b>       | <b>114/1 114/11 114/12</b>   | <b>33/12 57/21 61/17</b>    |
| <b>164/23 165/11</b>       | <b>116/21 116/21</b>         | <b>85/12 124/3 124/3</b>    |
| <b>165/12 170/5</b>        | <b>123/16 125/3 127/14</b>   | <b>127/8 154/10 158/6</b>   |
| <b>arguments [5] 12/5</b>  | <b>127/15 129/24</b>         | <b>168/15</b>               |
| <b>152/7 164/1 164/8</b>   | <b>132/22 134/6 134/24</b>   | <b>assert [1] 160/19</b>    |
| <b>168/23</b>              | <b>137/10 139/25 141/2</b>   | <b>asserts [1] 159/18</b>   |
| <b>arm [1] 148/3</b>       | <b>141/3 141/11 146/16</b>   | <b>assets [1] 11/1</b>      |
| <b>Arnstein [1] 1/12</b>   | <b>146/25 147/6 148/2</b>    | <b>assist [2] 25/21</b>     |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>A</b></p> <p>assist... [1] 30/23</p> <p>assistant [3] 87/1<br/>88/9 88/16</p> <p>associated [1] 54/15</p> <p>assume [3] 33/17<br/>68/16 103/14</p> <p>assumed [2] 68/18<br/>68/19</p> <p>assuming [2] 13/20<br/>125/19</p> <p>assumption [1]<br/>117/13</p> <p>ATM [1] 91/8</p> <p>attack [2] 76/2<br/>76/24</p> <p>attacked [1] 76/17</p> <p>attacking [1] 72/6</p> <p>attempt [1] 134/3</p> <p>attempted [2] 40/24<br/>105/16</p> <p>attention [1] 107/18</p> <p>attorney [39] 27/25<br/>32/22 84/16 85/16<br/>85/20 109/13 110/24<br/>114/1 114/11 114/14<br/>116/22 117/17<br/>117/18 117/23<br/>117/24 117/25 118/2<br/>118/5 118/8 118/11<br/>118/15 118/17<br/>118/23 124/22</p> | <p>126/23 144/11<br/>144/14 144/15<br/>144/17 145/4 146/8<br/>147/13 156/12<br/>156/23 161/19<br/>161/21 162/9 162/10<br/>169/2</p> <p>attorney's [14]<br/>109/12 110/17<br/>110/19 117/11 124/1<br/>131/13 140/16<br/>140/23 140/24<br/>143/13 144/24 146/4<br/>146/25 161/21</p> <p>attorney-client [4]<br/>118/2 118/17 144/14<br/>146/8</p> <p>attorneys [3] 144/18<br/>151/23 151/25</p> <p>August [12] 29/19<br/>29/20 31/15 32/2<br/>33/1 33/1 34/13<br/>34/20 77/13 125/9<br/>162/9 162/12</p> <p>August 28 [6] 32/2<br/>33/1 34/13 77/13<br/>162/9 162/12</p> <p>August 28th [3]<br/>29/19 29/20 31/15</p> <p>August 29 [1] 33/1</p> <p>authorities [1]<br/>10/24</p> | <p>authority [3] 83/25<br/>139/19 139/22</p> <p>automated [1]<br/>128/21</p> <p>automatic [1]<br/>104/10</p> <p>automatically [3]<br/>6/17 104/4 147/14</p> <p>Avenue [20] 1/24<br/>16/23 49/16 50/14<br/>54/23 55/9 84/24<br/>89/24 91/6 93/12<br/>94/10 96/22 99/15<br/>99/16 99/18 114/3<br/>114/23 115/11 147/2<br/>172/18</p> <p>avoid [1] 163/1</p> <p>aware [15] 46/24<br/>97/6 97/9 97/10<br/>97/19 97/22 98/25<br/>107/12 107/14<br/>107/14 107/15<br/>108/13 108/24<br/>125/15 125/16</p> <p>away [4] 8/20 10/12<br/>155/4 162/11</p> <p><b>B</b></p> <p>back [29] 3/23 4/1<br/>13/5 21/8 21/23<br/>25/13 26/15 27/8<br/>33/5 48/22 56/23<br/>60/19 61/2 61/2 61/3</p> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                             |                            |                             |
|-----------------------------|----------------------------|-----------------------------|
| <b>B</b>                    | <b>42/3 42/7 46/16</b>     | <b>7/16 15/4 15/7 15/8</b>  |
| <b>back... [14] 62/1</b>    | <b>54/14 57/3 59/19</b>    | <b>15/11 15/11 15/13</b>    |
| <b>62/21 65/7 67/20</b>     | <b>62/22 64/1 65/21</b>    | <b>16/16 16/17 16/25</b>    |
| <b>80/2 82/10 87/13</b>     | <b>87/11 89/13 94/2</b>    | <b>17/12 17/19 19/12</b>    |
| <b>103/1 125/7 141/11</b>   | <b>94/16 98/20 99/5</b>    | <b>23/1 23/10 23/19</b>     |
| <b>150/12 152/11</b>        | <b>100/16 103/10 108/9</b> | <b>23/19 24/5 29/13</b>     |
| <b>153/14 169/1</b>         | <b>109/11 112/17 113/5</b> | <b>31/7 31/20 32/17</b>     |
| <b>backwards [1]</b>        | <b>113/7 113/11 114/8</b>  | <b>32/19 33/8 34/11</b>     |
| <b>156/20</b>               | <b>115/2 115/13 116/6</b>  | <b>34/11 37/6 39/22</b>     |
| <b>bad [2] 42/17</b>        | <b>116/8 116/15 118/6</b>  | <b>40/22 42/3 43/8</b>      |
| <b>142/12</b>               | <b>120/12 120/14</b>       | <b>44/12 44/23 45/2</b>     |
| <b>balance [1] 154/12</b>   | <b>120/20 120/22 121/1</b> | <b>45/16 46/10 46/24</b>    |
| <b>balances [1] 148/2</b>   | <b>121/2 121/9 121/22</b>  | <b>47/23 48/2 48/24</b>     |
| <b>ball [1] 51/14</b>       | <b>123/12 124/1 124/13</b> | <b>49/2 49/15 50/5</b>      |
| <b>Baltimore [1]</b>        | <b>125/14 125/21</b>       | <b>50/14 50/23 51/23</b>    |
| <b>159/16</b>               | <b>126/15 126/21 132/7</b> | <b>52/7 52/7 53/5 53/25</b> |
| <b>Bank [1] 10/25</b>       | <b>133/12 138/4 138/6</b>  | <b>54/15 57/8 64/2 65/6</b> |
| <b>Bar [1] 16/17</b>        | <b>138/10 139/11</b>       | <b>73/24 73/25 73/25</b>    |
| <b>base [2] 5/16 48/8</b>   | <b>139/22 142/12</b>       | <b>78/21 88/6 88/25</b>     |
| <b>based [3] 110/13</b>     | <b>142/17 142/18</b>       | <b>89/2 89/9 89/16</b>      |
| <b>116/5 143/15</b>         | <b>146/18 147/14 149/2</b> | <b>89/23 90/13 90/16</b>    |
| <b>basically [1] 36/7</b>   | <b>151/24 152/17 153/6</b> | <b>90/25 91/5 91/15</b>     |
| <b>basis [3] 4/14 4/14</b>  | <b>156/21 163/23</b>       | <b>91/19 91/23 92/13</b>    |
| <b>142/8</b>                | <b>164/14 164/20</b>       | <b>92/18 93/2 93/10</b>     |
| <b>Baxter [1] 32/21</b>     | <b>164/21 164/21</b>       | <b>93/11 93/23 94/6</b>     |
| <b>be [106] 3/24 4/6</b>    | <b>164/25 165/20 166/3</b> | <b>94/14 94/14 96/9</b>     |
| <b>4/13 4/17 4/19 5/23</b>  | <b>167/3 167/13 168/3</b>  | <b>96/12 96/22 96/24</b>    |
| <b>5/24 7/16 7/16 8/9</b>   | <b>168/8 168/12 169/11</b> | <b>96/25 97/6 97/14</b>     |
| <b>11/11 11/20 12/18</b>    | <b>169/15 170/3 170/6</b>  | <b>97/20 98/4 98/10</b>     |
| <b>16/21 18/1 18/7 19/2</b> | <b>170/9 171/20 171/24</b> | <b>98/11 98/15 98/19</b>    |
| <b>25/7 29/12 34/15</b>     | <b>beach [146] 1/3 1/6</b> | <b>99/5 99/14 99/17</b>     |
| <b>36/2 36/8 36/14 37/8</b> | <b>3/7 3/8 4/12 6/22</b>   | <b>100/6 101/12 108/11</b>  |

|                      |                     |                      |
|----------------------|---------------------|----------------------|
| <b>B</b>             | 72/23 73/21 73/22   | 20/13 24/4 33/8      |
| beach... [41] 108/13 | 73/22 73/23 73/23   | 37/22 38/2 44/17     |
| 109/16 119/13 126/2  | 74/2 76/16 79/9     | 44/19 70/6 72/15     |
| 127/17 129/2 130/7   | 81/15 83/3 83/3     | 86/11 87/23 90/4     |
| 131/3 131/4 131/7    | 92/21 92/21 95/19   | 90/5 94/24 95/20     |
| 132/9 132/25 133/9   | 98/1 98/19 103/7    | 97/23 97/25 98/11    |
| 133/15 133/19        | 103/24 104/13       | 99/21 100/4 102/6    |
| 134/15 134/17 135/1  | 104/16 105/3 107/14 | 102/15 102/16 103/6  |
| 135/12 135/19        | 107/19 108/8 108/24 | 103/16 104/1 104/2   |
| 135/20 139/20        | 113/6 114/5 115/14  | 104/3 106/10 108/15  |
| 139/22 141/2 143/15  | 117/14 119/6 119/15 | 110/8 110/17 110/20  |
| 144/2 144/5 145/12   | 120/13 121/1 123/4  | 110/20 110/23        |
| 146/2 146/5 147/20   | 124/5 124/25 126/15 | 111/25 116/8 116/9   |
| 148/10 148/17 149/8  | 127/7 128/13 128/16 | 117/14 117/24        |
| 150/12 154/24 155/8  | 128/23 129/14       | 117/24 121/3 122/3   |
| 156/1 156/16 162/16  | 135/16 136/13 138/5 | 122/19 122/19        |
| 169/18               | 141/23 143/3 143/18 | 123/16 123/17 125/2  |
| Beach's [2] 61/23    | 152/16 153/10 154/5 | 125/18 129/23 130/8  |
| 74/17                | 154/5 154/17 155/10 | 130/15 146/16        |
| because [123] 4/4    | 156/3 156/22 157/3  | 147/21 151/21        |
| 4/15 4/15 6/20 6/23  | 158/20 159/7 159/9  | 151/21 153/2 153/4   |
| 7/4 7/20 8/4 8/9 9/5 | 159/20 160/10 161/5 | 158/14 163/11        |
| 9/20 9/21 9/22 11/21 | 163/6 163/9 163/23  | 163/12 163/15        |
| 12/14 12/19 14/2     | 164/11 164/22 166/2 | 163/17 169/12        |
| 18/16 19/3 19/22     | 166/9 167/17 167/24 | 169/18               |
| 22/18 28/1 28/9      | 168/11 168/13       | beer [5] 16/3 16/4   |
| 35/22 39/15 41/5     | 168/22 169/14       | 18/23 166/18 166/18  |
| 41/6 43/9 45/3 52/7  | 170/25 171/2 171/17 | before [71] 1/9 3/12 |
| 55/10 55/20 57/8     | becomes [1] 95/23   | 12/16 12/21 20/3     |
| 63/3 65/13 65/14     | been [73] 6/17 10/6 | 24/18 25/17 29/2     |
| 66/7 66/22 68/17     | 10/7 14/5 14/11     | 30/9 34/7 43/23      |
| 69/3 70/5 71/1 72/21 | 14/21 16/9 18/3     | 44/13 46/25 47/11    |

|                      |                      |                     |
|----------------------|----------------------|---------------------|
| <b>B</b>             | 6/21 7/5 8/22 18/7   | bit [1] 29/21       |
| before... [57] 48/12 | 18/9 18/10 18/11     | black [11] 49/11    |
| 48/22 48/25 48/25    | 18/25 36/9 44/12     | 50/11 61/3 69/17    |
| 50/4 52/8 54/9 54/9  | 45/2 45/3 50/9       | 69/18 69/18 89/19   |
| 56/7 56/23 57/2 57/2 | 110/13 117/5 121/16  | 130/14 138/22 139/6 |
| 57/4 57/13 57/18     | 121/18 121/19        | 140/6               |
| 57/22 57/24 57/25    | 122/19 123/3 131/18  | BLITZ [71] 1/3 3/7  |
| 61/22 62/9 67/24     | 136/11 136/12        | 3/8 15/5 15/7 15/8  |
| 69/4 71/4 78/7 78/8  | 139/23 142/24 147/5  | 15/11 15/12 15/13   |
| 78/8 95/12 95/16     | 155/9 155/9 167/10   | 34/11 44/13 44/23   |
| 95/17 96/1 96/2      | 168/11 169/23 170/1  | 46/24 47/23 48/2    |
| 97/19 100/9 100/17   | besides [1] 47/24    | 50/23 51/23 52/7    |
| 103/23 106/21 107/9  | best [5] 21/22 23/16 | 52/7 54/15 89/23    |
| 122/3 123/1 125/8    | 44/11 48/15 157/5    | 90/13 90/16 90/25   |
| 125/21 126/7 132/3   | better [1] 37/6      | 91/5 91/19 91/23    |
| 141/23 142/7 142/12  | between [6] 18/1     | 92/13 92/18 93/2    |
| 142/23 143/14        | 32/14 34/10 44/11    | 93/10 93/11 93/23   |
| 147/11 152/9 155/21  | 138/16 162/12        | 94/6 96/9 96/12     |
| 162/19 166/5 169/24  | beverages [1]        | 96/22 96/24 96/25   |
| 171/1 171/2 171/3    | 131/25               | 97/6 97/14 97/20    |
| began [1] 3/2        | big [1] 25/5         | 98/10 98/11 98/15   |
| begin [1] 159/24     | bill [8] 40/12 40/12 | 98/19 99/14 99/17   |
| beginning [3] 52/1   | 40/15 56/15 56/16    | 100/6 101/13 108/11 |
| 56/3 89/24           | 56/18 80/1 108/1     | 108/14 109/16 126/2 |
| behalf [3] 3/6 3/11  | billing [1] 88/19    | 127/17 129/2 131/3  |
| 46/24                | bills [1] 111/12     | 131/4 131/7 132/9   |
| behind [3] 23/9      | binder [12] 20/14    | 132/25 133/9 133/15 |
| 116/6 158/4          | 20/16 20/22 34/6     | 134/15 134/17 135/1 |
| being [6] 50/11 64/2 | 49/11 50/11 61/4     | 145/12 146/2 146/5  |
| 65/5 125/17 125/17   | 89/19 107/4 112/18   | 147/20 149/8        |
| 159/10               | 119/9 143/2          | Blitz's [4] 89/16   |
| believe [34] 4/3 4/9 | Biscayne [1] 1/13    | 91/15 98/4 135/12   |

|                             |                             |                             |
|-----------------------------|-----------------------------|-----------------------------|
| <b>B</b>                    | <b>86/20</b>                | <b>19/10 19/12 20/4</b>     |
| <b>block [2] 16/16</b>      | <b>brief [7] 3/14 3/24</b>  | <b>21/5 23/21 27/10</b>     |
| <b>154/5</b>                | <b>5/9 37/4 37/4 158/21</b> | <b>29/14 40/25 46/16</b>    |
| <b>blue [2] 146/13</b>      | <b>167/11</b>               | <b>72/7 75/14 88/18</b>     |
| <b>146/13</b>               | <b>briefed [1] 171/25</b>   | <b>88/22 88/23 88/24</b>    |
| <b>bold [1] 119/24</b>      | <b>briefing [1] 171/19</b>  | <b>88/25 89/1 89/2 89/3</b> |
| <b>book [11] 31/23</b>      | <b>briefly [3] 16/13</b>    | <b>89/5 89/7 89/8 89/9</b>  |
| <b>39/21 69/17 69/18</b>    | <b>89/5 167/9</b>           | <b>89/13 89/23 90/1</b>     |
| <b>120/4 130/14 138/22</b>  | <b>bring [2] 56/14</b>      | <b>90/6 91/1 91/5 94/25</b> |
| <b>139/6 140/6 168/19</b>   | <b>56/20</b>                | <b>96/1 99/5 99/6 99/15</b> |
| <b>168/21</b>               | <b>broken [1] 47/15</b>     | <b>99/15 99/21 100/4</b>    |
| <b>bookkeeping [1]</b>      | <b>brought [3] 73/13</b>    | <b>100/19 104/22</b>        |
| <b>60/21</b>                | <b>160/6 162/19</b>         | <b>105/15 107/22</b>        |
| <b>books [1] 151/8</b>      | <b>BTR [299]</b>            | <b>108/22 108/22</b>        |
| <b>boom [2] 66/24</b>       | <b>BTRs [15] 19/14</b>      | <b>109/16 116/24 122/2</b>  |
| <b>66/24</b>                | <b>19/16 19/19 25/17</b>    | <b>122/8 123/11 123/20</b>  |
| <b>both [7] 35/11 57/6</b>  | <b>55/24 57/6 58/5 92/7</b> | <b>124/11 124/18 127/5</b>  |
| <b>80/10 137/12 138/23</b>  | <b>93/15 99/14 104/2</b>    | <b>133/8 133/9 133/19</b>   |
| <b>138/25 170/4</b>         | <b>111/10 122/14</b>        | <b>134/3 134/12 134/24</b>  |
| <b>bottom [4] 61/25</b>     | <b>130/10 147/23</b>        | <b>135/10 135/16</b>        |
| <b>62/2 136/14 149/13</b>   | <b>bucks [1] 162/14</b>     | <b>135/17 135/18</b>        |
| <b>Boulevard [1] 1/13</b>   | <b>building [5] 90/8</b>    | <b>135/19 136/15 137/7</b>  |
| <b>box [6] 113/22 114/1</b> | <b>92/1 100/23 115/6</b>    | <b>137/13 138/10 139/8</b>  |
| <b>116/1 116/8 116/17</b>   | <b>127/2</b>                | <b>139/11 139/14</b>        |
| <b>158/4</b>                | <b>bunch [2] 5/6 5/7</b>    | <b>139/21 141/5 141/7</b>   |
| <b>Boxner [6] 32/23</b>     | <b>Burt [1] 1/16</b>        | <b>141/24 141/25</b>        |
| <b>32/24 32/25 118/9</b>    | <b>business [129] 4/5</b>   | <b>142/24 143/1 148/11</b>  |
| <b>118/15 145/5</b>         | <b>4/16 4/19 4/24 5/15</b>  | <b>149/17 149/19</b>        |
| <b>boy [1] 141/11</b>       | <b>5/16 5/17 7/13 8/7</b>   | <b>149/23 150/5 153/11</b>  |
| <b>brand [2] 106/23</b>     | <b>9/3 10/22 10/23 11/1</b> | <b>154/3 154/6 154/7</b>    |
| <b>107/13</b>               | <b>11/2 11/3 11/6 14/11</b> | <b>154/25 155/3 156/2</b>   |
| <b>break [3] 3/22 29/21</b> | <b>16/9 16/14 19/7</b>      | <b>156/6 157/6 157/8</b>    |

|                      |                      |                     |
|----------------------|----------------------|---------------------|
| <b>B</b>             | 15/18 64/1 105/6     | 110/14 111/4 112/24 |
| business... [17]     | 105/17 105/17 125/6  | 113/12 113/14       |
| 158/7 158/8 158/18   | calling [3] 41/19    | 114/25 115/8 116/6  |
| 158/24 159/8 159/14  | 86/21 86/23          | 116/10 116/23 118/4 |
| 159/14 159/19        | calls [2] 41/14 59/5 | 119/11 121/2 121/13 |
| 160/22 163/5 163/6   | came [23] 21/8       | 122/1 128/12 129/20 |
| 163/14 163/22 165/4  | 21/23 46/7 46/10     | 131/2 135/25 137/17 |
| 165/5 166/10 170/7   | 60/19 69/8 69/8      | 138/15 140/1 141/16 |
| businesses [14]      | 69/11 69/12 69/12    | 142/12 142/12       |
| 47/23 48/2 48/12     | 96/19 97/13 105/15   | 142/18 142/19       |
| 57/6 58/5 99/14      | 105/24 112/1 112/5   | 142/19 144/24       |
| 101/10 102/21        | 114/7 114/14 115/18  | 146/17 147/18 148/1 |
| 108/24 128/22        | 115/18 115/21        | 150/1 150/6 150/9   |
| 148/17 148/23        | 115/23 123/9         | 150/12 151/3 153/24 |
| 148/25 154/4         | can [108] 5/4 5/24   | 154/16 155/9 157/9  |
| BYERS [4] 1/21       | 5/25 11/8 11/11      | 157/10 158/4 158/7  |
| 2/12 2/14 3/10       | 11/14 11/17 11/19    | 160/25 164/1 164/2  |
| <b>C</b>             | 11/20 12/5 13/19     | 164/14 164/24 165/9 |
| C-A-R-D-E-N-O [1]    | 14/6 14/9 18/22      | 165/25 166/25 171/7 |
| 129/25               | 27/20 29/21 31/9     | 171/20              |
| cafes [1] 7/10       | 37/4 37/9 43/7 47/21 | can't [31] 3/20 5/4 |
| calculate [1] 166/15 | 47/22 49/8 56/18     | 7/21 8/4 14/7 26/21 |
| calculated [1] 106/2 | 62/12 64/17 64/24    | 37/7 37/7 37/9 38/7 |
| calendar [2] 39/2    | 65/2 65/17 66/2      | 43/5 53/7 67/22     |
| 131/14               | 66/10 69/7 75/9      | 81/15 83/24 85/19   |
| call [13] 14/17 38/5 | 75/10 78/17 85/14    | 85/19 105/12 111/7  |
| 52/8 87/20 88/23     | 85/21 86/18 89/5     | 113/5 115/25 116/17 |
| 103/17 108/7 120/14  | 89/10 94/12 94/14    | 126/15 128/19       |
| 124/8 129/20 157/16  | 94/16 94/19 94/20    | 154/23 155/8 158/19 |
| 167/18 167/19        | 95/12 100/17 103/11  | 166/8 169/8 169/17  |
| called [8] 7/9 15/9  | 104/8 105/11 109/10  | 169/19              |
|                      | 109/15 109/21 110/5  | cannot [16] 29/5    |

|                             |                              |                             |
|-----------------------------|------------------------------|-----------------------------|
| <b>C</b>                    | <b>127/15 129/8 130/20</b>   | <b>135/9 139/13 139/15</b>  |
| <b>cannot... [15] 29/18</b> | <b>136/9 137/7 137/14</b>    | <b>center [6] 16/16</b>     |
| <b>37/25 65/12 66/7</b>     | <b>142/22 142/24 143/5</b>   | <b>88/18 94/9 94/10</b>     |
| <b>68/15 113/13 114/2</b>   | <b>144/12 152/8 154/12</b>   | <b>133/23 146/21</b>        |
| <b>114/21 115/10</b>        | <b>154/19 155/11</b>         | <b>certain [6] 5/11</b>     |
| <b>120/12 121/1 121/22</b>  | <b>158/15 158/17 160/5</b>   | <b>108/17 111/22</b>        |
| <b>126/17 126/18 147/1</b>  | <b>160/8 164/2 166/6</b>     | <b>128/12 148/15 149/2</b>  |
| <b>capability [1] 38/16</b> | <b>166/11 167/1 167/4</b>    | <b>certainly [3] 7/6</b>    |
| <b>capacity [1] 88/10</b>   | <b>168/16 170/11</b>         | <b>153/15 160/16</b>        |
| <b>caps [1] 116/2</b>       | <b>cases [22] 5/6 5/6</b>    | <b>certificate [2]</b>      |
| <b>card [2] 56/21 123/5</b> | <b>5/7 5/9 5/21 5/25 6/3</b> | <b>120/12 120/25</b>        |
| <b>CARDENO [4] 2/11</b>     | <b>10/20 75/4 111/23</b>     | <b>certified [1] 137/14</b> |
| <b>87/2 129/22 129/25</b>   | <b>140/22 151/25 152/1</b>   | <b>certify [1] 172/13</b>   |
| <b>care [6] 22/24 51/1</b>  | <b>158/10 158/16</b>         | <b>cetera [1] 6/11</b>      |
| <b>74/24 123/15 163/16</b>  | <b>158/21 158/23</b>         | <b>cfjblaw.com [1]</b>      |
| <b>169/5</b>                | <b>164/24 167/22 170/2</b>   | <b>1/19</b>                 |
| <b>careful [1] 118/7</b>    | <b>170/3 170/10</b>          | <b>challenge [2] 95/14</b>  |
| <b>Carlton [2] 1/16</b>     | <b>cash [3] 23/3 59/15</b>   | <b>95/15</b>                |
| <b>3/11</b>                 | <b>123/5</b>                 | <b>chance [2] 155/10</b>    |
| <b>carries [3] 141/4</b>    | <b>cashier [6] 66/14</b>     | <b>155/16</b>               |
| <b>141/24 149/16</b>        | <b>74/1 80/11 80/13</b>      | <b>change [11] 4/23</b>     |
| <b>case [54] 1/2 4/7</b>    | <b>80/17 122/10</b>          | <b>6/20 7/5 8/5 17/19</b>   |
| <b>4/11 6/5 6/13 10/10</b>  | <b>cashier's [1] 123/5</b>   | <b>19/9 30/10 44/22</b>     |
| <b>14/4 15/5 88/12</b>      | <b>categories [3] 91/7</b>   | <b>67/22 76/19 155/5</b>    |
| <b>98/22 102/15 102/25</b>  | <b>91/18 91/24</b>           | <b>changed [3] 103/14</b>   |
| <b>104/20 104/25</b>        | <b>category [2] 91/10</b>    | <b>151/11 151/15</b>        |
| <b>105/20 106/6 112/12</b>  | <b>91/21</b>                 | <b>changes [1] 17/25</b>    |
| <b>114/19 116/6 117/11</b>  | <b>cc [3] 109/18 109/18</b>  | <b>changing [2] 72/9</b>    |
| <b>117/23 118/15</b>        | <b>109/19</b>                | <b>76/18</b>                |
| <b>118/23 120/13</b>        | <b>cease [10] 131/3</b>      | <b>chapter [3] 92/8</b>     |
| <b>120/20 121/1 124/4</b>   | <b>133/18 134/3 134/5</b>    | <b>94/23 101/9</b>          |
| <b>126/24 127/15</b>        | <b>134/8 134/12 134/15</b>   | <b>charge [3] 26/25</b>     |



|                             |                             |                            |
|-----------------------------|-----------------------------|----------------------------|
| <b>C</b>                    | <b>Cindy [1] 28/19</b>      | <b>civil [2] 131/22</b>    |
| <b>charge... [2] 70/5</b>   | <b>Circuit [5] 10/24</b>    | <b>132/17</b>              |
| <b>82/16</b>                | <b>11/5 159/1 159/16</b>    | <b>claim [23] 74/24</b>    |
| <b>charges [2] 57/15</b>    | <b>160/8</b>                | <b>84/8 85/13 156/8</b>    |
| <b>106/1</b>                | <b>circumstances [1]</b>    | <b>156/13 159/2 159/20</b> |
| <b>cheaper [1] 153/4</b>    | <b>125/14</b>               | <b>159/24 160/3 160/7</b>  |
| <b>check [40] 23/3</b>      | <b>citation [22] 13/6</b>   | <b>160/9 160/10 160/16</b> |
| <b>28/15 31/19 31/25</b>    | <b>48/23 49/1 49/15</b>     | <b>160/25 161/1 164/10</b> |
| <b>32/2 32/6 32/13 33/3</b> | <b>50/1 50/5 72/15</b>      | <b>164/12 164/13</b>       |
| <b>33/5 33/11 33/23</b>     | <b>72/18 76/15 97/15</b>    | <b>164/13 166/14</b>       |
| <b>34/1 34/14 41/22</b>     | <b>99/9 109/18 109/21</b>   | <b>166/25 167/4 168/4</b>  |
| <b>44/1 54/12 56/14</b>     | <b>109/24 109/25</b>        | <b>claiming [2] 85/25</b>  |
| <b>56/18 60/24 74/20</b>    | <b>132/17 132/22 137/5</b>  | <b>159/11</b>              |
| <b>77/17 77/20 82/3</b>     | <b>137/5 138/17 138/19</b>  | <b>claims [8] 151/20</b>   |
| <b>82/4 82/7 82/8 82/13</b> | <b>157/22</b>               | <b>160/21 165/25 166/2</b> |
| <b>82/16 82/19 82/20</b>    | <b>citations [9] 21/6</b>   | <b>167/11 167/14</b>       |
| <b>96/14 97/1 106/20</b>    | <b>50/8 98/20 109/23</b>    | <b>167/16 169/21</b>       |
| <b>106/22 123/5 161/24</b>  | <b>110/8 131/5 131/8</b>    | <b>clarification [4]</b>   |
| <b>164/7 169/7 169/7</b>    | <b>134/11 138/23</b>        | <b>131/2 131/9 143/8</b>   |
| <b>169/14</b>               | <b>cite [5] 158/15</b>      | <b>143/9</b>               |
| <b>checkbook [7] 56/20</b>  | <b>158/20 158/23 160/4</b>  | <b>clarify [4] 92/24</b>   |
| <b>69/5 70/10 70/11</b>     | <b>167/4</b>                | <b>130/24 131/16 143/4</b> |
| <b>75/21 76/7 79/25</b>     | <b>cited [8] 10/3 97/10</b> | <b>clause [1] 159/3</b>    |
| <b>checks [4] 23/24</b>     | <b>99/6 154/25 158/16</b>   | <b>clear [17] 10/10</b>    |
| <b>27/6 28/3 148/2</b>      | <b>158/17 158/21 161/7</b>  | <b>54/14 57/3 94/16</b>    |
| <b>Cheerios [1] 5/4</b>     | <b>Citroen [1] 158/24</b>   | <b>124/13 124/23 153/6</b> |
| <b>choice [1] 56/5</b>      | <b>city [238]</b>           | <b>153/10 153/13</b>       |
| <b>choose [2] 99/9</b>      | <b>city's [12] 11/17</b>    | <b>159/25 160/2 161/5</b>  |
| <b>168/11</b>               | <b>62/12 83/13 88/17</b>    | <b>163/6 164/17 165/17</b> |
| <b>chose [1] 71/13</b>      | <b>90/2 94/20 101/8</b>     | <b>166/11 167/1</b>        |
| <b>chosen [1] 168/11</b>    | <b>126/22 147/5 156/12</b>  | <b>cleared [3] 33/25</b>   |
| <b>Christmas [1] 63/18</b>  | <b>161/3 165/17</b>         | <b>122/23 163/8</b>        |

|                                                                                                                                               |                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                            |
|-----------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>C</b>                                                                                                                                      |                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                            |
| clerk [15] 62/22<br>68/12 69/5 71/13<br>75/19 76/7 81/10<br>97/1 97/1 97/3<br>131/12 143/12 151/3<br>151/9 169/14                             | 117/14 135/15<br>135/17 139/12<br>147/14 155/20 159/8<br>160/5 165/4 167/6<br>171/15 171/17                                                                                                                                                                                                                                  | 49/16 50/14 54/23<br>55/9 84/24 89/24<br>91/6 93/12 96/22<br>99/15 99/16 99/17<br>99/17 114/3 114/22<br>115/11 147/2                                                                                                       |
| clerk's [1] 143/22                                                                                                                            | closer [1] 26/20                                                                                                                                                                                                                                                                                                             | come [32] 3/23                                                                                                                                                                                                             |
| clerks [2] 60/16<br>124/17                                                                                                                    | closing [2] 42/4<br>151/15                                                                                                                                                                                                                                                                                                   | 14/19 18/14 19/21<br>61/2 62/10 67/6<br>71/25 72/1 75/3<br>75/25 75/25 75/25<br>76/23 81/14 87/13<br>99/7 100/6 107/23<br>108/1 114/5 121/5<br>123/22 124/2 124/9<br>129/10 139/16<br>144/24 152/5 155/21<br>162/10 170/24 |
| click [3] 94/12<br>116/16 116/16                                                                                                              | CO [1] 1/3                                                                                                                                                                                                                                                                                                                   | comes [4] 95/7<br>121/9 126/24 144/22                                                                                                                                                                                      |
| clicked [1] 103/14                                                                                                                            | code [43] 8/5 14/10<br>46/6 46/9 50/7 69/14<br>76/22 76/24 80/3<br>89/8 90/9 92/2 94/23<br>95/13 100/23 101/9<br>108/9 115/6 125/6<br>127/3 130/6 130/10<br>130/12 131/22 132/2<br>132/17 132/20 134/2<br>134/11 135/12<br>135/19 136/22<br>139/19 139/20<br>139/22 140/4 141/2<br>142/13 146/4 148/3<br>148/11 149/24 156/1 | coming [1] 152/11                                                                                                                                                                                                          |
| client [13] 4/15 6/8<br>7/23 8/16 103/6<br>108/6 108/11 115/15<br>118/2 118/17 144/14<br>146/8 152/9                                          | codes [1] 140/20                                                                                                                                                                                                                                                                                                             | command [1] 4/12                                                                                                                                                                                                           |
| clock [1] 157/23                                                                                                                              | coincidences [1]<br>169/10                                                                                                                                                                                                                                                                                                   | comment [2] 119/19<br>169/17                                                                                                                                                                                               |
| close [15] 46/18<br>68/23 76/23 103/23<br>114/2 114/16 116/22<br>117/11 123/20 125/1<br>135/12 146/25<br>155/25 163/23 165/6                  | collect [2] 101/19<br>111/12                                                                                                                                                                                                                                                                                                 | commission [3]<br>104/21 157/12<br>157/12                                                                                                                                                                                  |
| closed [31] 17/6<br>36/8 42/12 42/17<br>42/23 42/23 43/3<br>43/9 43/16 83/12<br>99/17 99/20 99/22<br>100/4 100/18 103/17<br>114/8 117/2 117/4 | College [1] 10/24                                                                                                                                                                                                                                                                                                            | common [4] 108/25<br>124/8 124/10 124/12                                                                                                                                                                                   |
|                                                                                                                                               | Collins [21] 16/23<br>47/24 47/25 48/18                                                                                                                                                                                                                                                                                      | communications [1]<br>144/14                                                                                                                                                                                               |
|                                                                                                                                               |                                                                                                                                                                                                                                                                                                                              | company [5] 16/11                                                                                                                                                                                                          |

|                                                                   |                                        |                             |
|-------------------------------------------------------------------|----------------------------------------|-----------------------------|
| <b>C</b>                                                          |                                        |                             |
| <b>company... [4]</b><br><b>89/23 90/21 90/23</b><br><b>110/5</b> | <b>confuse [1] 52/7</b>                | <b>continued [1] 41/12</b>  |
| <b>competition [1] 19/3</b>                                       | <b>confused [3] 11/22</b>              | <b>contrary [2] 128/16</b>  |
| <b>complaint [3]</b><br><b>159/18 159/20 160/8</b>                | <b>24/17 50/17</b>                     | <b>158/20</b>               |
| <b>complete [1] 4/5</b>                                           | <b>confusion [1] 68/7</b>              | <b>control [1] 26/17</b>    |
| <b>completed [1] 3/21</b>                                         | <b>consider [1] 171/22</b>             | <b>convenience [2]</b>      |
| <b>complex [1] 140/23</b>                                         | <b>considered [1]</b><br><b>166/12</b> | <b>15/22 76/21</b>          |
| <b>compliance [7] 90/9</b>                                        | <b>consistent [2] 41/8</b>             | <b>conversation [6]</b>     |
| <b>92/2 127/3 130/6</b>                                           | <b>156/6</b>                           | <b>22/17 66/13 118/15</b>   |
| <b>132/18 148/3 149/24</b>                                        | <b>conspicuously [2]</b>               | <b>118/22 145/9 156/14</b>  |
| <b>computer [2] 78/9</b>                                          | <b>59/12 59/20</b>                     | <b>conversations [5]</b>    |
| <b>136/5</b>                                                      | <b>conspiracy [2] 8/1</b>              | <b>144/17 145/4 145/8</b>   |
| <b>computer-generated</b>                                         | <b>158/5</b>                           | <b>145/18 145/22</b>        |
| <b>[1] 136/5</b>                                                  | <b>constitution [1]</b>                | <b>convince [1] 154/21</b>  |
| <b>concept [1] 160/20</b>                                         | <b>160/24</b>                          | <b>convinced [1] 169/2</b>  |
| <b>conclusion [4] 59/6</b>                                        | <b>constitutional [4]</b>              | <b>copy [8] 37/13 47/6</b>  |
| <b>62/14 142/3 144/8</b>                                          | <b>153/19 159/17</b>                   | <b>61/14 61/16 61/19</b>    |
| <b>concurrent [1]</b>                                             | <b>159/18 160/20</b>                   | <b>81/6 81/7 140/3</b>      |
| <b>170/10</b>                                                     | <b>constitutions [1]</b>               | <b>corner [2] 50/23</b>     |
| <b>conducting [1] 99/5</b>                                        | <b>155/2</b>                           | <b>69/22</b>                |
| <b>conducts [2] 141/4</b>                                         | <b>contact [3] 21/24</b>               | <b>corporation [1] 15/8</b> |
| <b>149/16</b>                                                     | <b>46/24 137/13</b>                    | <b>correct [183]</b>        |
| <b>confer [1] 140/22</b>                                          | <b>contacted [1]</b>                   | <b>corrected [1] 122/12</b> |
| <b>confidence [1] 118/5</b>                                       | <b>161/20</b>                          | <b>correcting [1] 7/3</b>   |
| <b>confidences [1]</b>                                            | <b>contained [1]</b>                   | <b>correction [1] 131/2</b> |
| <b>118/2</b>                                                      | <b>146/20</b>                          | <b>correctly [2] 149/21</b> |
| <b>confirm [1] 36/3</b>                                           | <b>contend [1] 10/6</b>                | <b>154/2</b>                |
| <b>confirmation [1]</b>                                           | <b>content [1] 145/9</b>               | <b>cost [1] 44/21</b>       |
| <b>98/17</b>                                                      | <b>context [2] 106/6</b>               | <b>Costello [1] 159/4</b>   |
|                                                                   | <b>111/10</b>                          | <b>could [72] 8/10 9/5</b>  |
|                                                                   | <b>continue [2] 29/6</b>               | <b>13/15 13/18 14/5</b>     |
|                                                                   | <b>163/22</b>                          | <b>14/15 18/14 26/18</b>    |
|                                                                   |                                        | <b>26/20 37/18 40/5</b>     |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>C</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| could... [61] 49/6<br>56/3 56/11 66/22<br>67/1 80/1 89/19 91/4<br>93/5 94/8 99/11<br>100/6 105/11 105/16<br>106/4 114/13 114/14<br>116/8 116/8 116/9<br>116/15 117/8 117/9<br>117/13 122/9 122/10<br>122/23 122/25<br>122/25 123/6 123/6<br>123/7 126/21 128/4<br>129/2 130/4 130/14<br>131/19 135/18<br>138/10 139/11 145/1<br>149/12 152/10 153/1<br>153/16 155/7 157/19<br>157/22 161/8 161/24<br>163/10 164/5 164/7<br>164/7 166/7 166/7<br>166/14 168/14 170/3<br>171/21 | counter [12] 22/5<br>22/6 22/11 22/15<br>23/10 35/15 64/17<br>105/23 111/18<br>115/16 127/17<br>127/23<br>counties [1] 6/11<br>country [3] 21/8<br>154/4 156/5<br>couple [4] 21/13<br>58/16 149/5 170/1<br>course [15] 14/13<br>21/18 27/10 38/18<br>41/1 44/25 52/10<br>56/21 59/25 78/18<br>114/18 114/19<br>140/24 141/24<br>163/21<br>court [56] 1/1 1/24<br>3/3 4/10 4/11 7/18<br>9/1 10/24 11/9 12/6<br>12/7 12/9 16/13<br>16/21 20/24 21/22<br>22/3 23/16 24/1<br>38/20 39/11 41/20<br>51/3 55/12 85/24<br>86/7 94/16 94/20<br>95/19 99/12 111/14<br>130/16 131/12<br>143/12 146/17<br>155/17 159/21<br>160/17 160/18 161/3 | 164/9 164/23 165/1<br>165/24 165/25 166/3<br>166/9 167/3 167/7<br>167/15 167/16 170/6<br>171/14 171/17 172/7<br>172/18<br>Court's [1] 25/12<br>courtesy [6] 104/7<br>108/4 108/5 108/5<br>108/7 108/8<br>courtroom [2] 65/22<br>152/21<br>courts [1] 12/11<br>covered [1] 127/11<br>create [2] 71/24<br>72/8<br>created [2] 93/9<br>93/9<br>Creating [1] 68/7<br>credit [2] 56/21<br>123/5<br>critical [2] 5/15 9/18<br>cross [13] 2/6 2/9<br>2/13 36/20 47/4 47/8<br>51/11 51/13 87/9<br>101/25 102/2 135/23<br>136/19<br>cross-examination<br>[6] 36/20 47/4 47/8<br>51/13 102/2 136/19<br>cross-examine [1]<br>51/11 |

|                                                                                                                                                                     |                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                           |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>C</b>                                                                                                                                                            |                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                           |
| <b>CRR [2] 1/23<br/>172/17</b>                                                                                                                                      | <b>damages [5] 160/10<br/>160/13 166/23<br/>166/23 166/25</b>                                                                                                                                                   | <b>96/5 103/16 106/9<br/>106/12 106/16<br/>108/19 108/20</b>                                                                                                                                                                                              |
| <b>crystal [1] 159/25</b>                                                                                                                                           | <b>dancing [1] 91/11</b>                                                                                                                                                                                        | <b>116/24 116/25 125/2</b>                                                                                                                                                                                                                                |
| <b>CSR [2] 1/23 172/17</b>                                                                                                                                          | <b>DANIEL [1] 1/16</b>                                                                                                                                                                                          | <b>125/5 137/19 146/2</b>                                                                                                                                                                                                                                 |
| <b>cure [2] 142/16<br/>150/1</b>                                                                                                                                    | <b>database [4] 99/13<br/>99/21 113/9 119/2</b>                                                                                                                                                                 | <b>161/9 169/9 170/20</b>                                                                                                                                                                                                                                 |
| <b>current [3] 6/9<br/>17/21 19/22</b>                                                                                                                              | <b>date [25] 12/21<br/>31/18 32/16 40/18<br/>49/21 52/1 55/18<br/>57/7 58/4 66/18 79/2<br/>92/14 93/7 96/20<br/>108/17 108/18<br/>108/19 108/21 112/1<br/>113/12 113/13<br/>116/23 122/19<br/>144/25 162/23</b> | <b>day-to-day [1]<br/>88/17</b>                                                                                                                                                                                                                           |
| <b>custom [1] 27/10</b>                                                                                                                                             | <b>dated [9] 36/16 37/8<br/>37/10 55/2 69/25<br/>103/1 109/4 131/24<br/>138/14</b>                                                                                                                              | <b>days [31] 21/14 26/1<br/>62/13 62/22 63/8<br/>67/24 72/21 74/2<br/>74/12 81/13 97/19<br/>99/25 100/6 132/7<br/>132/9 132/24 132/25<br/>133/13 133/15 135/5<br/>138/1 138/1 138/13<br/>138/18 138/18<br/>138/25 139/1 149/9<br/>152/11 163/7 167/11</b> |
| <b>customer [19] 5/16<br/>48/8 88/17 94/9 95/1<br/>95/14 96/19 104/13<br/>105/15 105/24 106/3<br/>107/15 107/22 112/1<br/>112/9 112/10 112/10<br/>112/13 115/18</b> | <b>dates [5] 21/21<br/>44/16 56/1 68/6<br/>168/23</b>                                                                                                                                                           | <b>days' [1] 138/10</b>                                                                                                                                                                                                                                   |
| <b>customer's [1]<br/>96/19</b>                                                                                                                                     | <b>day [39] 23/9 33/2<br/>33/4 36/10 39/10<br/>40/3 40/5 41/13<br/>41/13 42/16 42/17<br/>42/24 46/25 55/24<br/>81/17 81/20 81/20<br/>84/15 84/15 84/15<br/>88/17 88/17 95/19</b>                                | <b>deadlines [1] 168/23</b>                                                                                                                                                                                                                               |
| <b>customers [5] 94/14<br/>104/7 105/25 112/8<br/>128/1</b>                                                                                                         |                                                                                                                                                                                                                 | <b>deal [12] 17/18<br/>25/25 28/2 34/15<br/>62/11 71/1 75/4<br/>84/14 111/9 125/10<br/>142/8 151/20</b>                                                                                                                                                   |
| <b>cut [2] 28/10 109/14</b>                                                                                                                                         |                                                                                                                                                                                                                 | <b>dealing [8] 20/9<br/>23/19 25/25 26/11<br/>26/18 29/13 30/16<br/>157/5</b>                                                                                                                                                                             |
| <b>CV [1] 1/2</b>                                                                                                                                                   |                                                                                                                                                                                                                 | <b>deals [1] 111/3</b>                                                                                                                                                                                                                                    |
| <b>D</b>                                                                                                                                                            |                                                                                                                                                                                                                 | <b>dealt [3] 109/3</b>                                                                                                                                                                                                                                    |
| <b>D-O-A-R [1] 14/23</b>                                                                                                                                            |                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                           |
| <b>d/b/a [2] 15/11<br/>15/12</b>                                                                                                                                    |                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                           |
| <b>daily [5] 111/11<br/>111/11 121/4 122/4<br/>142/8</b>                                                                                                            |                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                           |

|                            |                            |                             |
|----------------------------|----------------------------|-----------------------------|
| <b>D</b>                   | <b>50/4 61/6 61/8 61/8</b> | <b>defendants' [17]</b>     |
| <b>dealt... [2] 117/25</b> | <b>61/15 63/11 64/9</b>    | <b>49/21 50/12 50/19</b>    |
| <b>142/7</b>               | <b>68/14 97/7 97/10</b>    | <b>51/25 52/12 52/14</b>    |
| <b>debt [1] 95/23</b>      | <b>131/24 132/2</b>        | <b>54/20 54/21 61/3</b>     |
| <b>debts [1] 94/22</b>     | <b>December 21st [1]</b>   | <b>69/17 69/19 71/16</b>    |
| <b>December [48] 26/8</b>  | <b>50/2</b>                | <b>130/15 130/17</b>        |
| <b>30/8 43/21 48/12</b>    | <b>December 22 [1]</b>     | <b>138/22 140/5 151/2</b>   |
| <b>48/22 49/1 49/16</b>    | <b>30/8</b>                | <b>defense [1] 144/17</b>   |
| <b>49/19 49/22 49/24</b>   | <b>December 25 [1]</b>     | <b>delay [1] 169/8</b>      |
| <b>50/2 50/4 61/4 61/6</b> | <b>63/16</b>               | <b>deliver [1] 32/13</b>    |
| <b>61/8 61/8 61/15</b>     | <b>December 25th [1]</b>   | <b>delivered [10] 32/17</b> |
| <b>63/10 63/11 63/16</b>   | <b>63/10</b>               | <b>33/2 34/14 96/23</b>     |
| <b>64/9 65/7 66/15</b>     | <b>December 27 [1]</b>     | <b>136/8 136/11 136/21</b>  |
| <b>67/12 67/24 68/3</b>    | <b>68/8</b>                | <b>137/3 137/4 137/16</b>   |
| <b>68/8 68/14 68/19</b>    | <b>December 27th [2]</b>   | <b>demonstrate [1] 4/9</b>  |
| <b>69/6 70/15 70/18</b>    | <b>66/15 68/3</b>          | <b>demonstrates [1]</b>     |
| <b>70/24 71/4 71/8</b>     | <b>decide [1] 130/12</b>   | <b>155/14</b>               |
| <b>72/15 73/4 73/8</b>     | <b>decides [1] 11/14</b>   | <b>denial [4] 101/6</b>     |
| <b>73/17 75/23 76/14</b>   | <b>decision [9] 7/25</b>   | <b>101/20 101/22</b>        |
| <b>97/7 97/10 106/8</b>    | <b>11/15 13/14 13/15</b>   | <b>160/14</b>               |
| <b>131/24 132/2 138/16</b> | <b>13/18 14/6 14/9</b>     | <b>denied [9] 7/18 8/23</b> |
| <b>153/1</b>               | <b>101/13 154/17</b>       | <b>11/11 14/11 101/10</b>   |
| <b>December 1 [1]</b>      | <b>decline [1] 160/20</b>  | <b>147/21 168/3 168/6</b>   |
| <b>67/24</b>               | <b>deed [1] 89/12</b>      | <b>168/8</b>                |
| <b>December 16 [7]</b>     | <b>defend [3] 154/16</b>   | <b>deny [2] 147/23</b>      |
| <b>48/12 48/22 49/1</b>    | <b>155/16 158/7</b>        | <b>167/7</b>                |
| <b>49/19 61/4 70/18</b>    | <b>defendant [5] 1/7</b>   | <b>department [39]</b>      |
| <b>76/14</b>               | <b>1/16 9/12 87/20</b>     | <b>23/1 63/22 63/25</b>     |
| <b>December 2016 [3]</b>   | <b>170/4</b>               | <b>64/3 64/13 66/16</b>     |
| <b>43/21 71/8 72/15</b>    | <b>defendants [6] 3/9</b>  | <b>66/21 68/12 75/20</b>    |
| <b>December 21 [15]</b>    | <b>3/11 86/23 129/20</b>   | <b>80/14 81/10 88/9</b>     |
| <b>49/16 49/22 49/24</b>   | <b>150/14 158/13</b>       | <b>90/6 90/8 90/8 90/8</b>  |

|                             |                             |                              |
|-----------------------------|-----------------------------|------------------------------|
| <b>D</b>                    | <b>desk [2] 105/6 112/5</b> | <b>78/13 78/24 79/7</b>      |
| <b>department... [23]</b>   | <b>destroy [1] 75/14</b>    | <b>80/8 80/10 80/24</b>      |
| <b>90/9 94/5 100/23</b>     | <b>destroyed [1] 4/19</b>   | <b>81/1 81/2 81/4 81/5</b>   |
| <b>100/25 100/25</b>        | <b>destruction [1] 4/4</b>  | <b>81/5 81/6 81/8 81/9</b>   |
| <b>101/13 101/15</b>        | <b>detached [1] 111/21</b>  | <b>85/6 85/9 85/17</b>       |
| <b>101/16 111/17</b>        | <b>determination [1]</b>    | <b>100/4 104/12 104/13</b>   |
| <b>114/25 115/8 119/15</b>  | <b>127/2</b>                | <b>104/13 105/10</b>         |
| <b>120/11 120/16</b>        | <b>determine [1] 36/12</b>  | <b>105/21 108/1 111/1</b>    |
| <b>120/25 127/1 127/1</b>   | <b>determines [1]</b>       | <b>112/12 113/6 114/11</b>   |
| <b>127/4 130/6 132/18</b>   | <b>126/14</b>               | <b>131/11 143/21</b>         |
| <b>140/13 140/13</b>        | <b>dictate [2] 124/8</b>    | <b>143/22 143/24 144/2</b>   |
| <b>163/18</b>               | <b>124/10</b>               | <b>144/7 152/15 152/15</b>   |
| <b>departments [12]</b>     | <b>did [189]</b>            | <b>152/19 152/24</b>         |
| <b>90/5 90/10 91/3</b>      | <b>didn't [113] 10/15</b>   | <b>153/13 155/22 156/4</b>   |
| <b>91/25 101/2 101/17</b>   | <b>10/16 11/21 13/6</b>     | <b>157/18 159/12 161/8</b>   |
| <b>101/17 106/21</b>        | <b>13/14 19/23 19/24</b>    | <b>161/12 161/13 162/6</b>   |
| <b>106/22 115/5 115/9</b>   | <b>22/12 24/19 26/22</b>    | <b>162/23 163/4 163/6</b>    |
| <b>148/4</b>                | <b>27/5 28/7 28/10</b>      | <b>163/9 164/5 164/6</b>     |
| <b>depends [2] 140/18</b>   | <b>28/16 30/25 39/15</b>    | <b>164/19 165/1 165/22</b>   |
| <b>140/19</b>               | <b>40/6 40/9 46/14</b>      | <b>168/25</b>                |
| <b>depicting [1] 93/7</b>   | <b>46/20 49/5 53/13</b>     | <b>difference [3] 27/14</b>  |
| <b>deposit [1] 33/11</b>    | <b>55/17 55/18 55/20</b>    | <b>138/2 138/6</b>           |
| <b>deposited [1] 33/8</b>   | <b>56/4 56/15 57/10</b>     | <b>different [19] 5/22</b>   |
| <b>deprived [1] 10/8</b>    | <b>57/12 60/2 60/2 60/4</b> | <b>21/8 25/2 28/20</b>       |
| <b>deputy [3] 32/21</b>     | <b>60/4 60/5 60/25</b>      | <b>58/16 62/19 62/19</b>     |
| <b>118/11 145/4</b>         | <b>61/13 63/9 67/10</b>     | <b>63/11 80/17 82/19</b>     |
| <b>describe [4] 22/3</b>    | <b>67/14 68/20 68/21</b>    | <b>143/16 144/11</b>         |
| <b>22/10 89/5 151/4</b>     | <b>70/3 70/10 70/16</b>     | <b>144/22 145/1 148/4</b>    |
| <b>describing [1] 91/1</b>  | <b>70/19 71/5 72/20</b>     | <b>152/6 155/12 165/3</b>    |
| <b>description [1] 37/4</b> | <b>72/21 72/21 72/22</b>    | <b>168/14</b>                |
| <b>designee [2] 11/18</b>   | <b>73/20 74/9 74/20</b>     | <b>differently [3] 64/18</b> |
| <b>101/11</b>               | <b>74/21 76/8 76/11</b>     | <b>168/16 168/18</b>         |

|                              |                              |                              |
|------------------------------|------------------------------|------------------------------|
| <b>D</b>                     | <b>128/9</b>                 | <b>140/8 146/23</b>          |
| <b>direct [14] 2/5 2/8</b>   | <b>distinction [2] 25/6</b>  | <b>does [36] 13/20 16/2</b>  |
| <b>2/12 15/1 60/5 64/5</b>   | <b>123/12</b>                | <b>16/6 17/6 33/18 45/4</b>  |
| <b>87/6 87/7 88/2 89/18</b>  | <b>distinctly [1] 68/2</b>   | <b>47/23 75/25 87/17</b>     |
| <b>109/22 122/8 130/2</b>    | <b>district [15] 1/1 1/1</b> | <b>90/6 93/14 95/1 99/2</b>  |
| <b>146/4</b>                 | <b>11/13 16/19 16/21</b>     | <b>99/6 99/19 100/19</b>     |
| <b>direction [5] 102/19</b>  | <b>16/25 17/1 17/4</b>       | <b>101/6 110/5 110/5</b>     |
| <b>110/24 117/11</b>         | <b>17/14 17/21 18/12</b>     | <b>112/4 113/17 119/13</b>   |
| <b>117/16 117/17</b>         | <b>18/14 18/20 18/24</b>     | <b>128/12 128/15</b>         |
| <b>directly [1] 131/12</b>   | <b>159/21</b>                | <b>130/10 130/12</b>         |
| <b>director [4] 87/1</b>     | <b>disturbances [1]</b>      | <b>133/17 134/2 134/11</b>   |
| <b>88/9 88/16 130/6</b>      | <b>160/6</b>                 | <b>135/4 139/13 149/23</b>   |
| <b>disagree [2] 5/8 10/9</b> | <b>division [1] 113/10</b>   | <b>162/9 162/12 164/10</b>   |
| <b>disclose [1] 118/2</b>    | <b>do [182]</b>              | <b>166/17</b>                |
| <b>discovered [1]</b>        | <b>DOAR [12] 2/4 3/8</b>     | <b>doesn't [21] 13/20</b>    |
| <b>157/18</b>                | <b>14/18 14/19 14/20</b>     | <b>27/13 33/17 65/23</b>     |
| <b>discovery [1] 158/3</b>   | <b>14/23 25/12 47/6</b>      | <b>71/24 76/23 81/16</b>     |
| <b>discuss [3] 3/12 3/20</b> | <b>47/10 51/1 127/17</b>     | <b>102/18 104/2 104/19</b>   |
| <b>144/13</b>                | <b>127/23</b>                | <b>105/22 123/10</b>         |
| <b>discussed [1] 139/2</b>   | <b>Doar's [1] 156/11</b>     | <b>123/13 128/24 152/5</b>   |
| <b>dismiss [6] 79/13</b>     | <b>docket [1] 131/14</b>     | <b>158/15 163/3 163/10</b>   |
| <b>79/15 79/15 80/3</b>      | <b>document [32]</b>         | <b>164/11 165/6 165/25</b>   |
| <b>80/5 157/2</b>            | <b>20/23 32/10 34/7</b>      | <b>dog [1] 5/25</b>          |
| <b>dismissal [1] 160/8</b>   | <b>36/1 42/3 42/3 45/10</b>  | <b>doing [9] 11/2 11/6</b>   |
| <b>dismissed [2]</b>         | <b>45/15 96/21 107/9</b>     | <b>25/7 47/12 71/21</b>      |
| <b>159/21 166/3</b>          | <b>113/6 113/12 113/13</b>   | <b>72/12 104/24 144/6</b>    |
| <b>display [1] 59/11</b>     | <b>115/15 116/1 117/1</b>    | <b>161/13</b>                |
| <b>dispute [3] 10/20</b>     | <b>117/7 119/11 120/19</b>   | <b>dollar [6] 71/23 72/1</b> |
| <b>12/18 12/20</b>           | <b>120/23 123/24</b>         | <b>82/20 106/19 161/23</b>   |
| <b>disregard [1]</b>         | <b>131/21 132/5 132/14</b>   | <b>163/5</b>                 |
| <b>128/19</b>                | <b>133/4 134/22 137/17</b>   | <b>dollars [8] 70/15</b>     |
| <b>disregarded [1]</b>       | <b>137/18 139/10 140/7</b>   | <b>71/14 72/2 76/25</b>      |



|                      |                     |                      |
|----------------------|---------------------|----------------------|
| <b>D</b>             |                     |                      |
| dollars... [4] 77/1  | 74/15 75/6 76/12    | 155/11 155/14        |
| 97/17 152/25 153/12  | 76/13 79/2 79/18    | 163/14 164/8 166/7   |
| don't [163] 3/16     | 81/12 81/12 85/12   | 166/8 171/20         |
| 4/20 5/7 5/11 5/22   | 86/1 86/3 87/4      | door [5] 16/16 46/15 |
| 6/4 7/11 8/8 8/11    | 102/21 104/16 105/1 | 46/18 155/19 166/8   |
| 8/13 9/11 9/13 9/21  | 105/5 105/21 105/21 | doors [1] 46/21      |
| 9/21 10/12 11/7      | 107/1 107/10 109/14 | DORAN [6] 2/4 3/7    |
| 12/14 12/18 18/16    | 111/2 111/14 112/9  | 14/18 14/20 14/23    |
| 19/10 20/3 20/13     | 112/16 114/13 115/7 | 51/1                 |
| 20/18 22/16 22/20    | 117/18 117/20       | doubt [2] 50/1 59/3  |
| 30/8 33/15 33/15     | 118/13 119/15 124/3 | down [66] 7/23 9/9   |
| 33/21 34/1 34/16     | 124/7 124/20 125/6  | 9/15 13/7 24/11      |
| 36/21 37/14 40/16    | 126/22 127/24       | 25/13 26/25 29/21    |
| 40/17 42/20 43/9     | 131/18 137/12       | 33/24 34/25 35/10    |
| 43/10 43/19 43/19    | 137/21 139/15       | 35/14 37/17 38/8     |
| 44/5 44/15 45/3 47/1 | 147/22 148/4 148/6  | 38/13 39/5 39/12     |
| 47/16 49/3 50/6      | 148/20 148/22       | 46/12 46/21 54/11    |
| 51/12 52/5 53/17     | 148/24 151/23       | 54/16 56/17 57/21    |
| 53/23 54/13 55/20    | 151/24 155/6 156/24 | 58/6 63/21 63/24     |
| 55/21 55/23 56/6     | 159/12 160/11       | 65/4 78/5 78/6 78/10 |
| 56/18 56/18 57/12    | 162/22 164/15       | 78/11 78/13 78/15    |
| 57/14 57/24 57/25    | 165/10 166/1 166/2  | 78/21 79/25 83/12    |
| 58/4 58/10 58/11     | 166/15 166/22       | 86/18 116/2 116/24   |
| 58/12 58/20 58/21    | 166/24 167/4 167/4  | 120/6 125/1 127/19   |
| 58/22 59/1 59/1 59/2 | 167/18 167/23       | 129/17 135/12        |
| 59/24 60/23 61/1     | 167/24 168/10       | 139/12 139/16        |
| 61/1 63/19 64/11     | 168/17 169/5 170/17 | 139/21 146/2 146/5   |
| 65/14 65/25 66/4     | 171/2 171/12 172/2  | 148/12 149/1 149/23  |
| 66/13 68/5 68/16     | done [18] 6/15 13/9 | 150/9 152/8 155/8    |
| 68/17 69/3 69/10     | 86/22 109/11 112/5  | 155/25 156/15        |
| 71/17 74/1 74/8      | 112/6 123/21 124/1  | 159/15 160/5 163/23  |
|                      | 129/5 153/2 155/11  | 165/6 166/14 167/6   |

|                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                           |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>D</b>                                                                                                                                                                                                                                                                                                     | duties [1] 88/15<br>dyslexia [1] 63/17                                                                                                                                                                                                                                                                                                                                                                               | 161/13 161/14<br>165/18                                                                                                                                                                                                                                                                                                                                                                                                   |
| down... [3] 169/13<br>169/13 169/24                                                                                                                                                                                                                                                                          | <b>E</b>                                                                                                                                                                                                                                                                                                                                                                                                             | elect [1] 142/19                                                                                                                                                                                                                                                                                                                                                                                                          |
| downside [1] 154/22                                                                                                                                                                                                                                                                                          | each [3] 51/11 54/1<br>87/5                                                                                                                                                                                                                                                                                                                                                                                          | electronically [3]<br>90/7 101/1 101/22                                                                                                                                                                                                                                                                                                                                                                                   |
| drink [1] 78/17                                                                                                                                                                                                                                                                                              | earana [1] 1/19                                                                                                                                                                                                                                                                                                                                                                                                      | elements [1] 4/10                                                                                                                                                                                                                                                                                                                                                                                                         |
| Drive [4] 16/16<br>16/24 94/9 154/6                                                                                                                                                                                                                                                                          | earlier [6] 24/1<br>43/20 100/21 109/22<br>116/25 122/14                                                                                                                                                                                                                                                                                                                                                             | Eleven [2] 41/25<br>42/3                                                                                                                                                                                                                                                                                                                                                                                                  |
| driver's [2] 108/16<br>108/17                                                                                                                                                                                                                                                                                | early [3] 49/2 49/17<br>129/12                                                                                                                                                                                                                                                                                                                                                                                       | Eleventh [3] 10/24<br>11/5 160/7                                                                                                                                                                                                                                                                                                                                                                                          |
| due [41] 4/5 4/6<br>8/15 8/20 11/23<br>95/23 97/23 97/25<br>98/1 98/20 98/21<br>99/10 99/10 100/2<br>106/1 108/20 108/21<br>115/22 152/5 152/9<br>156/3 156/4 159/3<br>159/5 159/7 159/21<br>159/24 160/1 160/1<br>160/3 160/6 160/7<br>160/9 160/19 162/4<br>162/7 164/12 164/13<br>169/22 169/22<br>169/24 | earning [1] 159/19<br>easily [1] 105/17<br>east [1] 16/24<br>Eatonville [1] 160/4<br>echo [1] 121/14<br>Education [1] 10/25<br>Edward [1] 141/3<br>effect [2] 10/21<br>11/12<br>effort [1] 12/21<br>efforts [1] 161/4<br>eight [1] 125/10<br>either [24] 11/7 20/8<br>27/3 35/5 35/12<br>35/12 37/17 48/12<br>48/23 52/23 71/19<br>102/14 109/11<br>109/22 110/24<br>123/21 124/11<br>124/14 126/13<br>142/19 142/22 | else [12] 20/7 38/2<br>41/12 54/15 86/21<br>106/13 116/9 123/21<br>131/16 152/4 157/11<br>171/24<br>emailing [1] 28/1<br><b>EMERGENCY</b> [1]<br>1/9<br>emotionally [1]<br>152/10<br>encompass [1]<br>160/21<br>end [5] 8/2 8/3<br>25/14 29/17 143/24<br>ended [1] 151/22<br>ending [2] 26/5 42/9<br>ends [1] 95/2<br>EnerGov [1] 147/6<br>enforcement [21]<br>46/6 46/10 50/7<br>69/14 76/22 76/24<br>80/3 130/10 130/12 |
| duly [3] 14/21 87/23<br>129/23                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                           |
| during [13] 4/14<br>14/13 39/5 94/7 96/9<br>104/14 105/14<br>121/21 124/18<br>129/14 129/15<br>161/23 165/19                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                           |

|                                                                                                                                |                                                                                                                                           |                                                                                                                                                                                                 |
|--------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>E</b>                                                                                                                       | <b>165/20 166/5 170/9<br/>172/14</b>                                                                                                      | <b>eventually [1]<br/>161/17</b>                                                                                                                                                                |
| <b>enforcement... [12]<br/>134/2 134/11 135/12<br/>136/22 139/19<br/>139/20 141/3 141/12<br/>146/4 148/3 148/11<br/>149/15</b> | <b>entitlement [1]<br/>155/14</b>                                                                                                         | <b>ever [19] 48/23 50/5<br/>61/21 72/24 74/11<br/>74/12 75/5 82/3<br/>82/16 85/2 85/24<br/>96/10 96/12 118/15<br/>124/3 124/5 147/11<br/>158/5 158/11</b>                                       |
| <b>enforcements [1]<br/>148/25</b>                                                                                             | <b>equity [1] 163/21</b>                                                                                                                  | <b>EVERETT [1] 1/21</b>                                                                                                                                                                         |
| <b>engaged [2] 88/24<br/>91/9</b>                                                                                              | <b>error [1] 88/14</b>                                                                                                                    | <b>every [23] 41/13<br/>41/13 60/24 72/11<br/>78/7 81/20 81/20<br/>84/15 84/15 84/15<br/>90/19 93/15 93/21<br/>96/5 105/5 105/7<br/>105/9 108/25 155/25<br/>155/25 162/16<br/>164/25 170/19</b> |
| <b>English [3] 47/15<br/>47/17 47/21</b>                                                                                       | <b>ESQ [4] 1/12 1/16<br/>1/21 1/22</b>                                                                                                    | <b>everybody [7] 29/21<br/>82/22 82/23 82/23<br/>104/18 164/17 172/5</b>                                                                                                                        |
| <b>enough [7] 87/14<br/>110/23 122/23<br/>136/18 160/12 167/2<br/>167/6</b>                                                    | <b>essence [2] 153/23<br/>153/25</b>                                                                                                      | <b>everyone [1] 152/19</b>                                                                                                                                                                      |
| <b>ENRIQUE [2] 1/16<br/>3/10</b>                                                                                               | <b>essentially [4] 4/9<br/>9/3 104/23 171/9</b>                                                                                           | <b>everything [19] 41/8<br/>75/16 75/18 152/10<br/>155/11 155/11 157/9<br/>157/11 157/19<br/>157/21 162/11<br/>162/14 163/8 164/22<br/>168/13 168/13<br/>168/15 168/18<br/>168/18</b>           |
| <b>entered [5] 122/12<br/>122/21 131/6 143/19<br/>146/18</b>                                                                   | <b>establish [1] 166/16</b>                                                                                                               |                                                                                                                                                                                                 |
| <b>enterprise [2]<br/>146/19 147/5</b>                                                                                         | <b>established [2] 43/5<br/>166/22</b>                                                                                                    |                                                                                                                                                                                                 |
| <b>entertainment [5]<br/>91/11 114/3 114/22<br/>115/11 147/1</b>                                                               | <b>establishment [1]<br/>91/11</b>                                                                                                        |                                                                                                                                                                                                 |
| <b>entire [2] 161/2<br/>161/24</b>                                                                                             | <b>estimate [1] 87/11</b>                                                                                                                 |                                                                                                                                                                                                 |
| <b>entities [1] 148/5</b>                                                                                                      | <b>et [1] 6/11</b>                                                                                                                        |                                                                                                                                                                                                 |
| <b>entitled [8] 12/6<br/>12/7 13/18 158/3</b>                                                                                  | <b>even [16] 18/16 71/5<br/>71/13 76/22 78/6<br/>106/10 111/19<br/>114/14 129/8 129/11<br/>160/11 162/3 163/16<br/>166/15 167/4 168/7</b> |                                                                                                                                                                                                 |
|                                                                                                                                | <b>evening [1] 18/1</b>                                                                                                                   |                                                                                                                                                                                                 |
|                                                                                                                                | <b>event [4] 46/25<br/>94/21 160/16 163/2</b>                                                                                             |                                                                                                                                                                                                 |

|                             |                             |                             |
|-----------------------------|-----------------------------|-----------------------------|
| <b>E</b>                    | <b>exclude [1] 144/16</b>   | <b>138/20 140/5 143/2</b>   |
| <b>evidence [15] 4/8</b>    | <b>exclusively [1]</b>      | <b>149/12 150/21 151/2</b>  |
| <b>7/11 11/19 12/2</b>      | <b>48/10</b>                | <b>exhibits [12] 6/21</b>   |
| <b>20/17 81/11 87/18</b>    | <b>excuse [9] 29/1</b>      | <b>20/17 47/6 49/4 49/6</b> |
| <b>89/20 95/17 150/16</b>   | <b>30/25 34/18 44/18</b>    | <b>89/18 100/21 119/1</b>   |
| <b>152/12 152/20</b>        | <b>73/1 77/7 77/7 84/20</b> | <b>119/2 119/2 130/15</b>   |
| <b>155/23 168/2 168/2</b>   | <b>86/4</b>                 | <b>140/5</b>                |
| <b>evident [1] 9/4</b>      | <b>excused [5] 86/19</b>    | <b>exist [1] 113/16</b>     |
| <b>exact [5] 55/18</b>      | <b>129/18 129/19</b>        | <b>existed [1] 163/13</b>   |
| <b>55/24 57/7 73/3</b>      | <b>150/11 150/13</b>        | <b>existence [1] 111/24</b> |
| <b>164/2</b>                | <b>exercised [1] 153/18</b> | <b>existing [2] 10/11</b>   |
| <b>exactly [28] 5/19</b>    | <b>exhausting [1]</b>       | <b>91/18</b>                |
| <b>22/16 22/20 23/1</b>     | <b>167/23</b>               | <b>expect [4] 96/1 99/6</b> |
| <b>33/16 46/14 57/13</b>    | <b>exhibit [63] 20/13</b>   | <b>134/2 134/12</b>         |
| <b>58/20 66/4 66/6</b>      | <b>26/2 36/1 36/7 37/2</b>  | <b>experience [1]</b>       |
| <b>66/13 68/22 69/3</b>     | <b>39/18 39/19 40/11</b>    | <b>144/20</b>               |
| <b>69/10 71/17 72/12</b>    | <b>40/11 40/21 41/20</b>    | <b>expiration [5] 92/16</b> |
| <b>72/21 73/8 74/1 74/9</b> | <b>41/20 42/1 42/5</b>      | <b>93/24 108/18 108/19</b>  |
| <b>75/14 78/13 79/2</b>     | <b>43/13 69/17 71/16</b>    | <b>159/2</b>                |
| <b>80/6 117/16 167/15</b>   | <b>89/20 89/21 89/22</b>    | <b>expire [6] 54/1 92/6</b> |
| <b>168/4 168/5</b>          | <b>89/23 91/4 91/4 91/5</b> | <b>92/11 122/14 122/18</b>  |
| <b>examination [14]</b>     | <b>91/8 91/12 92/24</b>     | <b>161/6</b>                |
| <b>2/3 15/1 36/20 47/4</b>  | <b>93/5 93/6 93/7 96/16</b> | <b>expired [31] 7/21</b>    |
| <b>47/8 51/13 60/5 64/5</b> | <b>96/17 96/18 99/11</b>    | <b>9/19 9/19 10/1 10/11</b> |
| <b>88/2 102/2 128/6</b>     | <b>99/12 99/13 107/4</b>    | <b>10/13 10/19 11/10</b>    |
| <b>130/2 136/19 149/6</b>   | <b>107/17 107/20 109/1</b>  | <b>12/19 13/2 54/9</b>      |
| <b>examine [1] 51/11</b>    | <b>109/8 109/23 109/25</b>  | <b>55/18 55/24 57/5</b>     |
| <b>examined [3] 14/21</b>   | <b>111/5 119/9 120/3</b>    | <b>57/6 59/4 60/1 60/2</b>  |
| <b>87/23 129/23</b>         | <b>120/4 120/6 122/11</b>   | <b>70/6 81/22 92/25</b>     |
| <b>example [1] 144/22</b>   | <b>130/17 130/22</b>        | <b>99/23 103/17 103/19</b>  |
| <b>except [1] 19/18</b>     | <b>131/19 132/12 133/3</b>  | <b>114/16 115/14</b>        |
| <b>exception [1] 167/22</b> | <b>134/20 136/24 137/2</b>  | <b>117/15 126/16</b>        |

|                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>E</b>                                                                                                                                                                                                                                                                                             | failing [2] 133/7<br>134/24<br>fails [1] 159/20<br>failure [3] 141/12<br>149/23 150/3<br>fair [11] 18/5 32/9<br>48/8 111/17 117/1<br>117/7 117/20 143/17<br>148/21 165/17<br>165/22<br>false [1] 123/8<br>familiar [13] 8/12<br>15/4 15/9 15/18<br>17/11 17/15 61/22<br>89/16 103/2 109/8<br>109/13 111/19<br>119/12<br>family [3] 154/17<br>157/8 157/9<br>far [2] 87/11 96/9<br>favor [1] 153/22<br>Fed.Appx [1]<br>159/17<br>federal [16] 11/8<br>13/2 160/23 161/3<br>164/9 164/10 165/24<br>165/25 166/2 166/8<br>167/3 167/10 167/14<br>167/16 170/6 171/9<br>federally [2] 10/19<br>164/11<br>fee [4] 57/15 57/18 | 70/7 104/6<br>felicetti [5] 1/23<br>1/25 172/17 172/17<br>172/19<br>fellow [3] 51/11<br>163/4 163/18<br>few [11] 4/18 17/25<br>18/17 22/7 23/22<br>24/15 26/1 32/18<br>89/18 119/10 156/7<br>field [1] 136/4<br>Fields [2] 1/16 3/11<br>Fifth [1] 16/22<br>figure [1] 116/6<br>figuring [1] 153/7<br>file [7] 72/17 72/24<br>85/24 166/3 169/1<br>171/11 171/16<br>filed [11] 63/8 73/19<br>73/20 74/16 86/2<br>86/12 140/3 143/5<br>156/8 162/2 167/19<br>files [1] 151/24<br>filing [4] 83/14<br>119/4 145/5 145/12<br>fill [4] 89/10 90/23<br>90/25 91/22<br>filled [2] 84/2 90/24<br>finance [33] 22/2<br>22/19 23/1 63/21<br>63/25 64/2 64/13<br>66/14 66/16 66/21 |
| expired... [3] 158/22<br>158/23 158/25<br>expires [4] 92/7<br>93/17 100/19 108/17<br>explain [5] 23/16<br>94/16 94/20 99/12<br>131/2<br>explaining [1]<br>127/10<br>explanation [1] 69/2<br>extend [1] 160/20<br>extent [2] 59/5<br>160/18<br>extra [3] 70/15<br>112/21 152/24<br>extremely [1] 25/3 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>F</b>                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| face [5] 64/1 64/2<br>66/21 66/21 152/5<br>facility [1] 91/9<br>facing [1] 53/12<br>fact [11] 7/14 8/18<br>8/19 9/18 14/13<br>18/25 41/15 64/6<br>87/13 109/23 166/2<br>facts [7] 8/11 13/5<br>165/12 165/14<br>165/14 165/16<br>165/21<br>factual [1] 9/25                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |

|                              |                               |                              |
|------------------------------|-------------------------------|------------------------------|
| <b>F</b>                     | <b>first [53] 3/5 5/8 6/7</b> | <b>floor [2] 22/4 35/15</b>  |
| <b>finance... [23] 68/12</b> | <b>12/9 14/17 14/21</b>       | <b>FLORIDA [16] 1/1</b>      |
| <b>69/12 75/20 80/13</b>     | <b>20/23 21/6 22/4</b>        | <b>1/3 1/6 1/13 1/18</b>     |
| <b>80/17 81/10 82/8</b>      | <b>27/22 34/17 34/19</b>      | <b>1/25 6/9 6/10 6/10</b>    |
| <b>87/1 88/9 88/16 90/6</b>  | <b>35/15 50/15 50/16</b>      | <b>10/25 15/8 16/6 89/7</b>  |
| <b>100/25 113/10 115/6</b>   | <b>52/4 60/6 63/12 65/7</b>   | <b>155/2 155/7 172/19</b>    |
| <b>119/15 120/11</b>         | <b>70/7 70/7 72/21</b>        | <b>flsd.uscourts.gov [2]</b> |
| <b>120/16 120/24 122/5</b>   | <b>87/20 87/23 90/24</b>      | <b>1/25 172/19</b>           |
| <b>122/8 127/4 147/24</b>    | <b>95/12 101/14 102/4</b>     | <b>focus [1] 25/12</b>       |
| <b>163/18</b>                | <b>114/4 114/10 119/22</b>    | <b>focused [1] 87/12</b>     |
| <b>financial [3] 38/16</b>   | <b>123/15 123/23 126/3</b>    | <b>folder [2] 59/17</b>      |
| <b>38/18 44/23</b>           | <b>126/7 129/23 133/22</b>    | <b>59/18</b>                 |
| <b>find [9] 63/10 63/12</b>  | <b>141/6 141/17 141/18</b>    | <b>folks [7] 24/1 142/12</b> |
| <b>69/12 69/13 111/3</b>     | <b>141/25 142/17 143/3</b>    | <b>151/20 153/9 157/13</b>   |
| <b>112/19 124/15 125/2</b>   | <b>146/20 149/18 151/7</b>    | <b>167/13 171/12</b>         |
| <b>140/12</b>                | <b>152/5 156/8 156/9</b>      | <b>follow [3] 89/6</b>       |
| <b>fine [18] 98/8 99/3</b>   | <b>156/9 156/13 159/11</b>    | <b>101/4 165/23</b>          |
| <b>100/14 106/7 121/4</b>    | <b>166/12</b>                 | <b>followed [2] 154/2</b>    |
| <b>122/4 122/5 125/20</b>    | <b>fiscal [27] 19/18</b>      | <b>155/23</b>                |
| <b>125/21 125/21</b>         | <b>89/24 90/13 90/19</b>      | <b>following [6] 3/2</b>     |
| <b>142/15 148/7 161/10</b>   | <b>91/16 92/3 92/10</b>       | <b>39/4 39/10 45/24</b>      |
| <b>161/23 162/8 163/2</b>    | <b>93/8 94/1 94/7 95/2</b>    | <b>93/2 122/13</b>           |
| <b>163/15 163/17</b>         | <b>96/10 96/13 96/18</b>      | <b>follows [4] 9/25</b>      |
| <b>fined [1] 142/12</b>      | <b>103/14 103/20</b>          | <b>14/22 87/24 129/24</b>    |
| <b>fines [6] 94/22 132/7</b> | <b>104/14 108/23 114/5</b>    | <b>food [2] 5/25 91/9</b>    |
| <b>133/12 161/15 163/1</b>   | <b>114/7 122/16 123/1</b>     | <b>forced [1] 167/24</b>     |
| <b>163/16</b>                | <b>129/14 129/15</b>          | <b>foregoing [1] 172/13</b>  |
| <b>finish [3] 3/23 15/15</b> | <b>134/18 147/20</b>          | <b>forever [1] 169/18</b>    |
| <b>58/19</b>                 | <b>163/16</b>                 | <b>forged [2] 53/3 53/4</b>  |
| <b>finished [1] 114/6</b>    | <b>five [8] 3/16 9/13</b>     | <b>forgot [1] 13/7</b>       |
| <b>fire [5] 90/8 92/1</b>    | <b>46/15 46/18 60/12</b>      | <b>form [6] 73/4 73/8</b>    |
| <b>100/23 115/6 127/2</b>    | <b>76/20 116/24 148/16</b>    | <b>109/12 131/22</b>         |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
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| <p><b>F</b></p> <p>form... [2] 132/17<br/>137/6</p> <p>format [1] 137/4</p> <p>formats [1] 145/1</p> <p>former [2] 23/18<br/>29/12</p> <p>forms [1] 144/22</p> <p>forth [1] 141/14</p> <p>forum [3] 165/10<br/>165/11 165/15</p> <p>found [2] 24/3 60/6</p> <p>foundation [5]<br/>33/13 42/14 43/4<br/>44/8 119/20</p> <p>four [10] 4/10 7/8<br/>8/6 17/5 17/5 19/5<br/>76/20 148/15 157/20<br/>157/20</p> <p>Fourteenth [2]<br/>158/19 170/8</p> <p>fourth [2] 119/24<br/>120/6</p> <p>frame [1] 99/22</p> <p>frankly [1] 164/18</p> <p>frequently [1]<br/>140/21</p> <p>Friday [18] 35/5<br/>35/13 37/18 38/9<br/>39/7 46/3 46/22<br/>81/17 81/17 81/18<br/>123/20 124/16</p> | <p>124/18 171/5 171/6<br/>171/13 171/14<br/>171/15</p> <p>Friedman [1] 160/4</p> <p>front [13] 26/3<br/>31/23 32/18 76/6<br/>89/19 125/9 125/12<br/>125/13 125/15<br/>125/16 146/13<br/>156/16 169/1</p> <p>frustrations [1]<br/>115/25</p> <p>full [5] 15/25 17/3<br/>18/15 32/8 166/21</p> <p>functions [2] 88/17<br/>88/20</p> <p>fundamental [7]<br/>156/5 156/7 156/10<br/>157/6 160/2 160/20<br/>160/23</p> <p>further [11] 47/3<br/>87/17 101/23 128/3<br/>135/22 139/12<br/>139/16 149/3 150/8<br/>150/15 150/16</p> <p>futility [1] 167/19</p> <p>future [1] 4/17</p> <hr/> <p><b>G</b></p> <p>GARY [3] 1/22 3/10<br/>47/10</p> <p>gave [12] 13/8 32/19<br/>32/21 32/25 33/23</p> | <p>45/10 77/20 82/15<br/>115/21 117/11 155/7<br/>169/7</p> <p>general [4] 48/7<br/>67/5 88/15 124/22</p> <p>generally [4] 17/11<br/>118/11 142/21<br/>166/12</p> <p>generate [2] 154/11<br/>158/7</p> <p>generated [1] 136/5</p> <p>generating [2] 88/19<br/>154/16</p> <p>gentleman [4]<br/>123/17 136/22 154/3<br/>157/7</p> <p>gentleman's [1]<br/>139/21</p> <p>get [92] 3/12 4/1<br/>6/18 7/12 7/21 8/2<br/>8/4 8/9 8/21 10/7<br/>10/7 11/21 12/12<br/>13/6 13/7 13/16<br/>14/14 24/8 24/8<br/>24/25 25/3 25/14<br/>26/20 27/1 27/7 29/1<br/>29/5 30/23 31/1 31/2<br/>34/25 35/17 39/5<br/>39/12 44/13 49/5<br/>61/8 64/19 65/24<br/>67/17 68/4 68/6 69/2<br/>69/8 72/6 75/3 75/12</p> |
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| <b>G</b>             |                      |                      |
|----------------------|----------------------|----------------------|
| get... [45] 75/13    | 40/4 40/6 40/6 40/9  | 48/14 49/9 51/11     |
| 75/21 76/8 85/19     | 40/17 40/19 40/19    | 51/25 54/11 54/15    |
| 85/19 87/12 94/19    | 40/20 45/2 45/8      | 56/23 61/3 63/10     |
| 99/23 102/4 103/7    | 45/20 46/11 46/18    | 63/16 67/2 69/13     |
| 108/18 110/14 112/9  | 47/6 56/15 56/16     | 70/23 72/11 77/10    |
| 112/10 112/13 122/5  | 56/25 62/10 62/10    | 78/21 78/24 79/3     |
| 122/6 123/23 123/24  | 70/25 70/25 71/3     | 79/5 80/16 96/6      |
| 124/1 124/7 124/7    | 71/15 71/23 71/23    | 107/19 108/6 112/19  |
| 124/22 125/9 127/11  | 71/25 76/24 87/14    | 113/4 113/22 116/1   |
| 127/14 127/18        | 101/18 101/20        | 116/7 119/16 120/5   |
| 127/19 149/24        | 101/21 115/16        | 122/10 124/14        |
| 151/17 154/14        | 115/20 115/22        | 124/20 127/12        |
| 155/17 157/19 158/3  | 117/17 125/24 151/9  | 128/23 130/14        |
| 158/4 161/4 162/8    | 151/9 155/16 156/4   | 131/11 132/5 139/4   |
| 164/21 167/2 170/25  | 159/24 165/7 167/12  | 140/6 140/16 141/11  |
| 171/2 171/7 171/8    | 167/18 169/7 169/14  | 141/17 142/1 143/21  |
| 171/15 172/6         | 170/10               | 143/21 143/22        |
| gets [5] 7/17 110/12 | given [15] 3/25      | 149/24 150/12 156/2  |
| 119/6 127/5 156/15   | 36/10 36/22 40/3     | 157/6 162/11 166/3   |
| getting [9] 13/5     | 40/14 40/21 45/15    | 169/6 169/7 169/13   |
| 27/17 28/12 28/23    | 45/19 48/7 58/16     | 169/13               |
| 30/15 31/4 50/17     | 105/19 147/21 153/7  | goes [3] 27/8 160/18 |
| 61/18 76/17          | 161/15 163/13        | 170/18               |
| Gil [1] 3/7          | gives [1] 160/3      | going [60] 4/7 5/3   |
| give [68] 6/19 10/16 | giving [4] 72/7      | 6/21 7/24 7/25 8/9   |
| 13/11 13/17 14/8     | 112/21 115/3 172/9   | 8/10 8/15 8/16 9/2   |
| 14/15 20/15 23/2     | go [76] 4/8 7/18 8/3 | 9/7 9/15 9/21 14/15  |
| 23/2 23/3 25/24 27/3 | 9/12 14/2 22/5 23/24 | 19/2 20/19 25/8      |
| 27/5 28/20 31/19     | 24/11 25/13 27/14    | 26/25 35/21 36/22    |
| 31/19 32/12 34/1     | 33/23 34/3 34/24     | 43/1 45/8 46/16 69/1 |
| 34/22 37/11 37/18    | 35/10 38/6 39/5      | 69/1 72/8 76/1 76/1  |
|                      | 39/12 39/14 48/14    | 76/2 81/13 86/20     |



| <b>G</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | <b>157/25</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <b>H</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| going... [29] 87/3<br>87/4 87/8 87/11<br>89/12 89/18 95/15<br>95/17 103/23 109/7<br>118/1 139/24 151/12<br>151/17 153/22<br>153/23 156/19 162/7<br>162/10 162/11<br>162/13 163/23 165/6<br>166/2 168/2 168/8<br>169/15 169/16<br>170/12<br>gone [8] 84/12<br>105/18 114/6 122/3<br>126/11 157/13<br>157/15 161/8<br>good [17] 5/16 14/16<br>15/3 88/4 88/5 95/3<br>103/19 108/23<br>122/16 130/4 136/18<br>151/14 168/21 169/6<br>169/6 172/4 172/8<br>got [25] 7/15 8/2 8/5<br>8/24 14/6 20/6 21/7<br>22/18 27/11 51/10<br>53/10 57/9 57/9 64/1<br>67/24 75/21 119/8<br>120/8 139/1 139/2<br>155/19 157/20 163/8<br>164/25 169/13<br>gotten [2] 13/9 | governed [1] 89/7<br>government [1]<br>39/2<br>governments [1]<br>6/10<br>grab [1] 87/14<br>grandfathered [2]<br>9/5 164/21<br>grant [2] 7/25<br>101/14<br>granted [2] 125/7<br>168/7<br>great [3] 67/11<br>67/13 67/15<br>grounds [5] 11/12<br>36/4 118/2 119/21<br>160/9<br>group [1] 153/7<br>guess [1] 139/2<br>guidance [2] 105/19<br>140/24<br>guilty [5] 95/20<br>121/3 121/11 122/2<br>122/4<br>guy [10] 21/19 27/18<br>27/22 27/25 28/1<br>74/19 74/23 157/25<br>167/18 169/19<br>guys [2] 8/12 13/8 | H-E-R-N-A-N [1]<br>130/1<br>had [137] 3/15 6/17<br>10/6 13/9 13/16 18/3<br>19/16 19/18 19/19<br>20/24 24/1 24/3 24/3<br>25/16 28/2 28/21<br>29/19 29/20 30/2<br>31/6 31/10 32/16<br>34/14 36/2 37/22<br>38/1 38/16 39/16<br>40/8 41/6 42/13<br>44/23 48/22 50/4<br>50/8 52/4 56/5 58/6<br>59/22 61/16 61/18<br>61/21 61/21 64/7<br>64/14 65/6 65/7<br>65/11 65/13 66/13<br>66/22 67/16 67/25<br>68/3 68/13 68/21<br>70/6 70/10 70/12<br>70/15 72/11 72/15<br>73/11 73/20 79/19<br>79/22 81/1 81/1 81/7<br>81/24 84/14 84/18<br>84/23 85/1 85/2 85/2<br>85/4 85/14 92/15<br>95/19 96/12 96/25<br>97/7 97/9 98/7 98/10<br>98/17 98/19 99/25<br>100/2 102/6 103/1 |

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| <b>H</b>                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| had... [45] 103/15<br>103/16 103/21<br>103/22 105/7 106/8<br>106/20 114/5 117/2<br>118/15 118/22<br>123/16 123/21<br>123/22 124/10<br>124/14 124/20<br>125/18 125/19<br>126/10 129/5 139/2<br>142/24 144/14<br>144/17 145/4 145/8<br>147/20 152/22<br>152/25 153/8 154/9<br>156/14 158/24 161/9<br>161/11 161/13<br>161/14 161/20 162/2<br>163/2 163/14 165/17<br>165/19 167/11 | handed [7] 21/18<br>21/19 24/18 24/21<br>70/2 82/16 97/1<br>handle [1] 140/21<br>handles [1] 88/18<br>handling [1] 103/22<br>hands [1] 106/15<br>handwriting [6]<br>32/6 52/14 52/16<br>52/18 53/20 53/22<br>handwritten [5]<br>136/2 136/4 137/5<br>137/11 138/1<br>hang [1] 163/14<br>happen [14] 81/13<br>90/21 100/25 104/12<br>104/13 105/19<br>105/21 107/24<br>114/11 124/2 124/9<br>137/10 142/12<br>154/19<br>happened [22]<br>10/15 20/3 20/5<br>22/10 46/5 55/21<br>55/21 56/6 60/13<br>75/15 77/25 78/7<br>78/8 105/13 105/22<br>106/6 114/13 147/14<br>154/18 158/5 162/21<br>164/22<br>happening [1] 72/13<br>happens [5] 64/19 | 95/6 162/11 168/25<br>169/15<br>happy [3] 5/9<br>167/12 170/23<br>hard [5] 18/10 21/22<br>28/2 68/24 172/5<br>harm [9] 8/17<br>154/15 154/24 155/1<br>158/8 158/8 166/13<br>166/23 167/1<br>Harold [6] 29/10<br>29/11 30/5 41/19<br>79/5 169/17<br>has [56] 3/19 6/8<br>6/10 6/11 10/8 14/1<br>14/11 16/9 17/12<br>20/14 25/8 37/6<br>39/11 51/3 51/13<br>59/19 70/5 86/11<br>89/2 89/9 94/11<br>94/24 99/21 99/22<br>100/4 101/9 102/16<br>104/2 104/3 110/20<br>113/18 113/19<br>115/14 117/14 121/2<br>121/3 121/10 122/2<br>126/15 142/16<br>144/11 151/15<br>152/22 153/7 154/3<br>155/21 157/8 157/9<br>159/5 160/12 160/14<br>162/15 164/11 |

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| <b>H</b>                                                                                                   |                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| has... [3] 164/19<br>164/20 169/18                                                                         | 14/12 84/18 85/3<br>102/5 142/19 156/3<br>162/16 162/18<br>162/22 172/9                                                                                                          | 152/23 153/6 154/2<br>154/13 158/6 160/2<br>160/14 161/2 161/5<br>167/14 169/23 170/9                                                                                                                                                                                                                                                                                                                                                                         |
| hasn't [4] 43/4<br>65/20 151/11 164/8                                                                      | hearings [2] 141/14<br>154/15                                                                                                                                                    | hereby [2] 109/19<br>172/13                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| have [350]                                                                                                 | Hearsay [1] 43/7                                                                                                                                                                 | HERNAN [4] 2/11                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| haven't [6] 5/6 36/2<br>62/9 95/19 95/20<br>157/25                                                         | heartbroken [2]<br>170/23 170/24                                                                                                                                                 | 87/2 129/22 129/25                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| having [10] 14/21<br>21/5 30/14 46/11<br>65/14 83/12 87/23<br>93/2 129/23 148/12                           | held [2] 100/13<br>163/11                                                                                                                                                        | hey [3] 24/20 114/15<br>169/13                                                                                                                                                                                                                                                                                                                                                                                                                                |
| he [224]                                                                                                   | help [10] 17/18<br>23/23 24/4 24/5 31/1<br>102/9 112/8 116/6<br>119/14 135/25                                                                                                    | him [62] 7/13 7/25<br>8/20 8/24 8/25 9/2<br>13/11 13/17 14/3<br>14/5 20/15 24/18<br>24/22 25/3 25/7<br>28/20 29/17 29/17<br>31/1 31/2 34/1 36/10<br>43/2 43/8 43/10<br>64/17 65/24 112/19<br>113/2 115/16 115/21<br>115/22 124/3 124/5<br>124/15 152/8 152/16<br>152/18 153/4 153/10<br>153/22 154/6 154/9<br>154/11 154/11<br>154/15 154/22 155/4<br>155/25 156/4 157/15<br>157/24 158/6 158/7<br>161/15 161/21<br>163/13 168/15 169/4<br>169/6 169/7 169/24 |
| he's [10] 4/16 14/6<br>58/16 65/18 65/19<br>65/24 144/17 163/4<br>163/5 169/6                              | helped [1] 24/2                                                                                                                                                                  | himself [2] 154/16                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| head [1] 140/13                                                                                            | helping [1] 23/20                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| heads [2] 115/3<br>115/13                                                                                  | her [19] 23/14 23/15<br>23/22 24/8 24/11<br>24/19 24/19 24/21<br>25/23 25/24 25/24<br>25/24 26/24 27/3<br>27/4 27/5 27/6 38/6<br>38/7                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| heads-up [2] 115/3<br>115/13                                                                               | here [38] 3/9 4/1 6/4<br>6/8 6/14 7/16 9/16<br>10/9 43/8 56/9 59/3<br>66/24 76/8 85/20<br>85/21 104/12 104/13<br>106/4 115/4 119/11<br>121/14 123/23 124/6<br>131/3 138/19 147/4 |                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| hear [16] 8/8 8/11<br>8/13 8/15 8/16 9/2<br>9/7 9/11 25/8 26/21<br>43/11 53/7 53/13<br>131/14 140/1 162/23 |                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| heard [6] 8/11 9/10<br>124/13 165/16<br>168/13 168/19                                                      |                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| hearing [11] 3/4                                                                                           |                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

|                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                      |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>H</b>                                                                                                                                                                                                                                                                                                                                                                                                                | <b>hold [4] 16/6 67/21<br/>120/20 120/22</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <b>hour [7] 6/14 21/3<br/>51/10 63/11 87/5<br/>87/12 157/16</b>                                                                                                                                                                                                                                                                                                      |
| <b>himself... [1] 158/7</b>                                                                                                                                                                                                                                                                                                                                                                                             | <b>holder [1] 93/14</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <b>hours [16] 6/13<br/>17/13 17/21 17/25<br/>18/4 18/4 18/8 61/18<br/>61/20 76/22 81/24<br/>87/12 116/25 124/19<br/>132/1 132/19</b>                                                                                                                                                                                                                                 |
| <b>hire [5] 25/21 29/17<br/>29/17 31/1 75/2</b>                                                                                                                                                                                                                                                                                                                                                                         | <b>holds [1] 113/16</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <b>how [48] 16/9 17/3<br/>23/2 23/4 23/5 23/22<br/>24/16 30/4 37/9 40/5<br/>44/11 44/17 44/19<br/>44/21 47/12 50/8<br/>51/13 52/20 56/18<br/>56/19 66/9 67/11<br/>69/2 69/3 69/15<br/>75/21 76/8 76/19<br/>79/18 85/21 86/14<br/>87/3 87/8 88/10<br/>103/8 111/9 119/7<br/>120/22 130/8 140/15<br/>140/17 145/1 148/10<br/>148/14 148/17<br/>148/22 150/1 153/10</b> |
| <b>hired [13] 9/8 17/18<br/>24/1 24/11 25/16<br/>29/23 30/5 31/2 74/4<br/>74/6 74/24 127/19<br/>161/19</b>                                                                                                                                                                                                                                                                                                              | <b>home [1] 54/5</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <b>HUDSON [8] 1/12<br/>2/5 2/9 2/13 3/6 7/22<br/>151/10 167/9</b>                                                                                                                                                                                                                                                                                                    |
| <b>hiring [3] 153/4<br/>153/5 153/5</b>                                                                                                                                                                                                                                                                                                                                                                                 | <b>honest [1] 37/8</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <b>human [2] 64/2 65/5</b>                                                                                                                                                                                                                                                                                                                                           |
| <b>his [50] 4/18 5/20<br/>8/20 11/18 24/17<br/>36/8 51/13 67/22<br/>67/24 71/10 103/7<br/>103/22 105/25 106/9<br/>106/15 110/4 110/5<br/>115/20 115/22<br/>118/13 126/21<br/>126/25 127/19<br/>144/17 153/16<br/>153/18 153/19 154/3<br/>154/17 154/17<br/>155/19 156/22 158/8<br/>159/7 161/6 161/14<br/>162/8 162/9 163/5<br/>163/14 164/6 164/19<br/>165/4 165/18 169/2<br/>169/4 169/11 169/11<br/>169/12 170/5</b> | <b>Honor [65] 3/8 3/25<br/>4/11 4/18 4/24 5/9<br/>5/14 6/3 7/12 8/7<br/>8/14 9/3 9/16 10/10<br/>10/23 20/12 20/19<br/>33/13 35/23 35/25<br/>36/15 36/25 42/14<br/>42/19 47/5 58/15<br/>62/15 62/25 65/18<br/>65/24 71/9 86/5<br/>86/17 87/19 107/6<br/>110/9 113/3 117/4<br/>118/19 120/4 133/23<br/>136/3 138/4 138/15<br/>140/10 144/8 144/18<br/>144/20 146/10 148/2<br/>149/3 150/10 150/17<br/>150/20 151/11 152/7<br/>153/3 154/22 155/15<br/>163/19 163/25<br/>168/16 170/9 171/18<br/>172/1</b> | <b>hung [1] 49/5</b>                                                                                                                                                                                                                                                                                                                                                 |
| <b>history [2] 9/25<br/>89/16</b>                                                                                                                                                                                                                                                                                                                                                                                       | <b>HONORABLE [1]<br/>1/9</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <b>hurricane [5] 78/3<br/>78/4 78/16 162/18</b>                                                                                                                                                                                                                                                                                                                      |
|                                                                                                                                                                                                                                                                                                                                                                                                                         | <b>Hopefully [1]<br/>154/20</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                      |

|                                                                                                            |                                          |                                                                                                   |
|------------------------------------------------------------------------------------------------------------|------------------------------------------|---------------------------------------------------------------------------------------------------|
| <b>H</b>                                                                                                   | important [8] 4/4                        | 163/3 164/4                                                                                       |
| hurricane... [1]<br>169/8                                                                                  | 25/3 61/25 62/4 62/5<br>62/6 127/7 156/7 | information [3]<br>62/1 115/20 115/22                                                             |
| <b>I</b>                                                                                                   | imposed [1] 125/20                       | infraction [1]<br>131/22                                                                          |
| I'd [2] 20/12 111/14                                                                                       | imposes [1] 125/21                       | initial [2] 136/1<br>158/21                                                                       |
| I'll [1] 117/21                                                                                            | impossible [2] 36/18<br>46/13            | injunction [7] 1/9<br>3/4 4/1 4/10 9/1<br>154/15 167/2                                            |
| I'm [14] 7/2 45/5<br>49/20 105/3 109/7<br>116/18 118/19 119/3<br>120/2 121/14 124/6<br>138/17 139/4 150/20 | improper [1] 159/15                      | instance [1] 5/18                                                                                 |
| I-N [1] 121/15                                                                                             | inaccurate [2] 121/8<br>121/15           | instead [4] 8/10<br>73/25 74/1 131/4                                                              |
| idea [12] 33/10<br>34/13 34/16 43/16<br>44/3 77/17 109/19<br>114/24 119/9 147/9<br>147/13 163/4            | inappropriate [1]<br>64/21               | institution [1]<br>118/14                                                                         |
| identify [1] 14/7                                                                                          | include [2] 17/6<br>67/23                | instruct [1] 118/1                                                                                |
| III [1] 1/12                                                                                               | included [1] 138/11                      | instructed [2]<br>100/16 106/3                                                                    |
| imagine [2] 107/22<br>164/24                                                                               | including [2] 25/17<br>30/21             | instruction [2]<br>28/20 28/21                                                                    |
| immediately [11]<br>4/12 105/18 110/15<br>128/23 133/18 134/3<br>134/8 135/9 139/12<br>139/14 139/16       | inconsistent [1]<br>103/8                | instructions [1]<br>128/19                                                                        |
| impacted [1] 98/4                                                                                          | incorporation [1]<br>89/15               | intake [3] 90/7<br>100/24 101/16                                                                  |
| impeachment [1]<br>36/7                                                                                    | incorrectly [1]<br>105/2                 | intended [1] 7/13                                                                                 |
| implicated [1]<br>159/18                                                                                   | indeed [1] 115/23                        | intends [1] 126/20                                                                                |
|                                                                                                            | independent [2]<br>99/4 99/9             | intentional [1] 7/5                                                                               |
|                                                                                                            | indicate [2] 31/6<br>37/21               | interest [17] 4/21<br>6/1 10/18 10/19 11/7<br>11/8 158/24 159/3<br>159/10 159/11<br>159/12 159/13 |
|                                                                                                            | indicated [4] 4/2<br>4/22 39/11 122/2    |                                                                                                   |
|                                                                                                            | indicates [1] 117/10                     |                                                                                                   |
|                                                                                                            | inequitable [2]                          |                                                                                                   |

|                               |                              |                              |
|-------------------------------|------------------------------|------------------------------|
| <b>I</b>                      | <b>106/4 108/4 115/21</b>    | <b>85/21 95/12 96/2</b>      |
| <b>interest... [5] 159/19</b> | <b>121/13 122/7 122/10</b>   | <b>96/7 99/3 100/17</b>      |
| <b>159/23 160/23</b>          | <b>128/17 128/18</b>         | <b>101/19 102/24</b>         |
| <b>164/11 170/6</b>           | <b>invoices [2] 98/4</b>     | <b>105/19 119/7 129/11</b>   |
| <b>interested [1] 8/9</b>     | <b>106/14</b>                | <b>130/10 130/12</b>         |
| <b>interesting [2]</b>        | <b>invoke [1] 3/18</b>       | <b>140/17 147/23 159/9</b>   |
| <b>116/21 157/18</b>          | <b>involved [5] 24/9</b>     | <b>159/10 159/23 160/2</b>   |
| <b>interests [2] 5/12</b>     | <b>30/16 119/8 152/6</b>     | <b>161/1</b>                 |
| <b>155/3</b>                  | <b>165/1</b>                 | <b>issued [25] 49/16</b>     |
| <b>internal [4] 6/22</b>      | <b>involvement [2]</b>       | <b>50/1 50/13 72/15</b>      |
| <b>126/22 153/9 167/17</b>    | <b>15/7 119/7</b>            | <b>92/3 92/8 95/22 97/4</b>  |
| <b>internally [1] 36/8</b>    | <b>involves [1] 4/4</b>      | <b>97/18 97/20 98/17</b>     |
| <b>interpretation [1]</b>     | <b>involving [1] 118/23</b>  | <b>102/10 106/21</b>         |
| <b>140/15</b>                 | <b>Irma [3] 78/3 78/4</b>    | <b>107/13 107/21</b>         |
| <b>interrupting [1]</b>       | <b>78/16</b>                 | <b>125/14 128/22 129/6</b>   |
| <b>9/24</b>                   | <b>irreparable [6] 8/17</b>  | <b>129/7 132/17 134/23</b>   |
| <b>interview [3] 105/5</b>    | <b>154/24 155/1 166/13</b>   | <b>136/24 157/22 162/8</b>   |
| <b>105/7 105/9</b>            | <b>166/23 167/1</b>          | <b>163/12</b>                |
| <b>introduce [1]</b>          | <b>irreplaceable [3]</b>     | <b>issues [4] 24/5 112/8</b> |
| <b>150/21</b>                 | <b>5/1 8/18 8/18</b>         | <b>134/11 162/23</b>         |
| <b>inundated [1]</b>          | <b>IRS [1] 108/20</b>        | <b>issuing [2] 94/21</b>     |
| <b>164/25</b>                 | <b>is [462]</b>              | <b>134/2</b>                 |
| <b>investigated [1]</b>       | <b>isn't [6] 8/22 86/8</b>   | <b>it [432]</b>              |
| <b>112/3</b>                  | <b>95/15 114/5 157/7</b>     | <b>it's [138] 4/3 4/24</b>   |
| <b>investigations [1]</b>     | <b>159/23</b>                | <b>4/24 4/24 5/2 7/6 7/7</b> |
| <b>140/23</b>                 | <b>Israel [5] 21/8 21/11</b> | <b>8/18 8/18 9/4 9/4</b>     |
| <b>invoice [24] 39/22</b>     | <b>60/13 60/17 152/11</b>    | <b>14/5 15/22 16/15</b>      |
| <b>55/2 56/25 69/23</b>       | <b>issuance [2] 159/5</b>    | <b>16/17 16/22 18/8</b>      |
| <b>70/16 70/18 76/14</b>      | <b>159/6</b>                 | <b>18/10 18/16 19/2</b>      |
| <b>82/15 93/14 93/23</b>      | <b>issue [29] 4/12 5/2</b>   | <b>20/3 20/8 21/3 22/4</b>   |
| <b>94/6 94/8 96/18</b>        | <b>5/10 6/14 7/7 12/15</b>   | <b>22/6 23/22 23/25</b>      |
| <b>96/20 97/20 106/2</b>      | <b>30/21 35/21 84/9</b>      | <b>25/3 26/17 26/17</b>      |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
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| <b>I</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 136/13 138/3 139/23<br>140/5 141/1 141/23<br>143/18 144/21<br>149/13 156/9 158/20<br>160/12 164/4 164/17<br>166/9 167/5 168/2<br>168/6 168/8 170/14<br>171/13<br>item [2] 119/24<br>120/6<br>items [1] 99/4<br>its [16] 90/13 90/17<br>92/13 93/14 93/23<br>96/10 96/13 96/25<br>98/5 98/12 104/23<br>108/13 129/2 129/5<br>144/5 152/5<br>itself [2] 137/6 140/8 | 38/25 47/3 51/15<br>105/22 116/20<br>117/21 121/2 122/12<br>125/24 126/14<br>153/24 154/11<br>157/14 158/6 158/10<br>169/20 170/1 170/19<br>171/19<br>judicial [4] 35/6<br>38/20 110/5 157/10<br>July [17] 27/1 29/17<br>29/18 29/23 53/25<br>55/2 90/18 93/9<br>93/17 93/21 95/1<br>100/1 100/2 108/13<br>108/15 129/1 138/17<br>July 1 [2] 55/2 93/9<br>July 16 [1] 108/15<br>jump [2] 24/23<br>141/16<br>jumping [1] 34/5<br>June [80] 10/4 12/23<br>12/25 13/6 20/2 21/9<br>21/23 21/25 22/8<br>25/14 25/20 27/1<br>53/3 60/8 60/9 60/10<br>60/13 63/15 65/4<br>65/4 66/18 66/19<br>66/22 68/5 68/10<br>68/11 69/25 70/2<br>71/7 72/14 72/25<br>73/3 73/6 73/7 73/18 |
| it's... [108] 27/10<br>34/10 35/5 36/7<br>36/12 36/15 37/8<br>37/9 39/25 40/2<br>40/16 42/5 42/9<br>42/17 43/9 43/23<br>46/13 49/4 49/9<br>49/22 51/13 54/19<br>56/22 57/20 60/4<br>62/10 62/19 62/20<br>63/17 64/21 64/21<br>66/18 68/16 68/24<br>68/25 68/25 69/2<br>69/3 69/22 69/25<br>71/6 71/23 71/23<br>77/1 80/17 81/16<br>83/6 85/21 86/2<br>88/24 89/25 91/7<br>95/17 100/21 100/21<br>102/15 102/15<br>102/18 103/24 104/1<br>106/1 106/1 107/1<br>107/6 108/22 108/25<br>109/12 111/11<br>111/11 112/17 113/1<br>115/3 115/4 116/12<br>119/11 121/14<br>121/19 124/12<br>124/21 125/6 127/7<br>127/8 128/21 129/5<br>131/9 136/7 136/7 | <b>J</b><br>Jackson [1] 159/16<br>Jennin [1] 3/7<br>jill [5] 1/23 1/25<br>172/17 172/17<br>172/19<br>job [3] 41/15 111/12<br>111/12<br>JOHN [1] 1/9<br>Jorden [1] 1/16<br>journal [1] 60/23<br>judge [28] 1/10 7/2<br>7/6 7/17 9/1 25/5<br>29/6 35/8 36/22                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                       |
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| <b>J</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 98/10 98/23 107/13<br>107/18 107/21<br>138/14 161/13<br>June 26 [1] 10/4<br>June 27 [18] 21/9<br>21/25 25/20 66/18<br>68/5 68/11 70/2<br>72/14 76/15 82/9<br>82/11 82/15 96/20<br>97/13 105/14 105/22<br>107/11 115/21<br>June 27th [20] 60/8<br>60/9 65/4 66/19<br>66/22 68/10 69/25<br>71/7 75/20 76/7<br>96/25 97/7 97/24<br>97/25 102/25 103/16<br>106/2 107/14 107/23<br>109/17<br>jurisdiction [3] 63/3<br>170/10 171/9<br>just [51] 20/22<br>39/11 42/22 46/20<br>48/7 49/5 49/6 50/10<br>58/6 59/12 71/14<br>71/15 71/25 72/1<br>72/2 73/11 73/15<br>75/16 76/25 76/25<br>80/1 81/14 82/14<br>84/5 92/24 94/16<br>98/23 101/15 104/5<br>106/16 106/18 110/5 | 112/1 115/3 119/24<br>120/6 120/11 125/13<br>125/24 128/23 131/9<br>141/16 148/2 148/3<br>150/21 157/23<br>163/10 163/12<br>165/23 166/9 171/13<br>justice [1] 154/13 |
| June... [45] 74/12<br>74/17 75/20 75/24<br>76/7 76/15 80/2 82/9<br>82/10 82/11 82/15<br>96/20 96/25 97/7<br>97/13 97/19 97/24<br>97/25 98/10 98/23<br>102/25 103/16<br>105/14 105/22 106/2<br>107/11 107/13<br>107/14 107/18<br>107/21 107/23<br>109/17 110/10<br>115/21 132/20<br>133/10 136/24<br>138/12 138/14<br>138/17 138/19<br>138/25 152/11<br>157/24 161/13<br>June 15 [1] 53/3<br>June 1st [1] 13/6<br>June 2017 [1]<br>110/10<br>June 25 [13] 60/10<br>60/13 63/15 72/25<br>73/7 74/12 75/24<br>132/20 133/10<br>138/12 138/19<br>138/25 152/11<br>June 25th [11] 65/4<br>73/3 74/17 97/19 | <b>K</b><br>keep [3] 5/24 66/17<br>165/5<br>kept [1] 102/5<br>kicking [1] 63/17<br>kids [1] 154/17<br>kind [7] 5/22 18/22<br>18/23 23/24 62/20<br>163/3 163/21<br>knew [14] 55/18<br>55/22 55/24 60/24<br>71/20 72/17 72/18<br>73/11 78/15 153/14<br>153/15 153/15<br>156/20 170/25<br>know [114] 4/7 5/22<br>6/4 8/11 8/11 9/21<br>10/2 14/6 16/19<br>17/22 19/4 20/11<br>20/13 21/21 23/21<br>27/6 28/18 28/21<br>33/15 33/15 33/17<br>33/20 33/21 34/5<br>36/12 36/21 37/9                                                                                                                                                                                       |                                                                                                                                                                       |



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| <b>K</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | knowing [2] 6/19<br>115/5                                                                                                                                                                                                                                                                                                                                                        | 152/11 161/7 163/7<br>163/7                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| know... [87] 38/8<br>41/11 41/21 42/12<br>43/10 43/19 51/12<br>53/23 56/15 56/19<br>57/15 57/17 59/19<br>62/12 62/19 63/19<br>68/16 68/21 69/3<br>71/5 71/25 72/3 72/8<br>72/22 74/1 74/8 75/4<br>76/19 76/23 78/11<br>78/13 79/2 81/17<br>83/6 83/24 86/3 96/9<br>105/5 105/10 105/21<br>105/21 105/22<br>105/24 111/14<br>112/16 112/20<br>114/13 115/7 116/17<br>117/18 117/20<br>118/13 124/21 125/6<br>127/6 127/24 128/8<br>136/9 137/21 137/21<br>138/4 140/3 144/11<br>147/3 148/6 148/8<br>148/19 148/24<br>148/25 151/23 154/8<br>154/8 154/12 154/18<br>154/20 154/23 156/3<br>156/24 157/10<br>157/12 162/22<br>163/22 165/5 167/3<br>168/1 169/19 170/14 | knowledge [17]<br>23/17 109/8 110/3<br>116/5 127/16 127/22<br>127/24 132/9 132/25<br>133/9 134/15 134/17<br>135/1 135/7 137/17<br>146/22 149/8<br>known [2] 147/6<br>169/18<br>knows [3] 43/2 43/7<br>164/17                                                                                                                                                                     | law [16] 7/17 10/10<br>12/6 12/8 46/6 86/7<br>114/12 156/6 159/25<br>160/10 160/12<br>160/25 161/1 166/11<br>167/1 170/11<br>laws [2] 139/23<br>140/20<br>lawsuit [16] 83/20<br>83/22 83/24 84/11<br>85/22 85/24 86/2<br>86/12 118/14 118/24<br>118/25 119/4 145/5<br>145/10 145/13 156/2<br>lawyer [6] 21/19<br>27/19 29/12 156/11<br>169/2 169/18<br>lawyers [4] 85/14<br>169/4 169/12 169/12<br>lay [1] 88/23<br>lead [3] 20/11 29/18<br>64/19<br>leading [6] 24/18<br>27/11 27/13 28/13<br>44/6 64/21<br>learn [1] 19/5<br>learned [3] 151/19<br>156/19 167/24<br>lease [1] 89/12<br>least [5] 39/1 125/4 |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | <b>L</b>                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | lack [4] 37/6 109/7<br>110/2 146/22<br>lacks [1] 152/9<br>language [1] 138/10<br>Lappen [1] 159/4<br>last [11] 10/14 14/23<br>18/3 18/17 19/5 21/1<br>29/2 76/20 87/25<br>127/6 157/12<br>lasted [1] 44/3<br>late [16] 21/23 22/8<br>29/23 54/10 54/11<br>57/15 57/18 70/5<br>70/7 73/21 73/22<br>73/23 82/15 104/6<br>106/1 106/14<br>later [9] 10/3 10/5<br>12/25 21/14 144/25 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

|                      |                       |                     |
|----------------------|-----------------------|---------------------|
| <b>L</b>             | 113/22 114/4 114/21   | 56/8 57/22 57/22    |
| least... [3] 142/25  | 116/1 119/18 119/22   | 59/11 59/18 59/19   |
| 168/19 170/20        | 122/7 122/11 124/13   | 59/22 60/24 64/14   |
| leave [3] 3/20 82/22 | 124/21 139/6 142/1    | 65/8 65/12 65/17    |
| 82/23                | 153/20 156/14         | 66/3 66/7 67/6 70/3 |
| left [3] 50/22 50/23 | letter [7] 28/3 28/4  | 70/5 70/13 75/12    |
| 116/1                | 28/6 120/11 120/24    | 75/13 81/21 84/19   |
| left-hand [1] 50/23  | 136/5 137/13          | 84/24 85/21 88/24   |
| legal [6] 8/25 59/6  | letting [1] 154/15    | 89/14 89/14 89/16   |
| 62/14 141/18 142/3   | level [4] 95/16       | 90/13 92/18 92/18   |
| 144/8                | 102/16 102/17 119/6   | 92/21 93/14 93/17   |
| legally [1] 7/15     | license [137] 4/13    | 98/12 99/19 100/5   |
| legion [1] 10/20     | 4/24 5/2 5/5 5/18     | 100/18 102/10 106/9 |
| Lehr [1] 1/12        | 5/24 6/4 6/8 6/8 6/16 | 108/17 108/17       |
| less [3] 9/13 19/3   | 6/18 6/19 6/23 7/6    | 120/12 120/25       |
| 111/19               | 7/7 7/21 7/23 7/25    | 121/22 131/4 135/2  |
| let [22] 9/20 22/12  | 8/4 8/4 8/20 9/19     | 149/9 155/6 155/7   |
| 26/24 36/12 61/2     | 9/23 10/1 10/4 10/11  | 158/23 158/25 159/2 |
| 71/24 76/1 79/20     | 10/12 10/16 10/19     | 159/5 159/6 159/11  |
| 82/18 86/6 96/16     | 11/10 11/21 11/25     | 159/12 161/4 161/6  |
| 99/11 102/4 112/16   | 12/6 12/8 12/13       | 161/8 164/15 164/16 |
| 123/23 125/3 137/2   | 12/14 12/19 13/1      | 164/19 165/18       |
| 141/1 154/11 157/23  | 13/2 13/4 13/10       | 167/18 169/16 170/7 |
| 158/7 161/6          | 13/12 13/17 13/18     | licensed [2] 5/23   |
| let's [37] 7/19 9/12 | 13/20 13/20 13/22     | 148/23              |
| 21/21 24/16 25/13    | 13/24 14/14 16/6      | licenses [7] 5/11   |
| 29/21 34/3 43/11     | 19/8 19/9 19/11       | 5/14 5/17 5/21 5/22 |
| 46/2 50/4 50/10      | 20/10 21/5 22/12      | 6/1 6/7             |
| 50/22 63/10 67/2     | 23/6 23/11 23/23      | licensing [3] 5/1   |
| 77/3 77/10 87/12     | 24/21 25/14 36/8      | 24/5 161/1          |
| 87/13 94/1 103/14    | 40/2 45/1 45/2 45/7   | lien [1] 88/19      |
| 104/15 106/7 113/8   | 45/8 45/9 52/8 55/10  | life [1] 158/11     |

|                             |                               |                            |
|-----------------------------|-------------------------------|----------------------------|
| <b>L</b>                    | <b>18/23 18/23 18/25</b>      | <b>lockbox [3] 94/10</b>   |
| <b>like [32] 13/15 19/8</b> | <b>19/19 30/9 45/9 55/1</b>   | <b>94/10 123/7</b>         |
| <b>20/12 23/20 23/20</b>    | <b>75/14 76/21 82/8</b>       | <b>Lockhart [1] 159/1</b>  |
| <b>29/14 43/9 55/6 58/6</b> | <b>90/1 91/9 104/22</b>       | <b>long [8] 16/9 87/3</b>  |
| <b>59/15 59/17 66/6</b>     | <b>114/3 114/22 115/10</b>    | <b>87/4 87/8 88/10</b>     |
| <b>66/24 66/24 66/25</b>    | <b>125/1 132/3 147/1</b>      | <b>130/8 161/19 170/21</b> |
| <b>71/16 72/2 72/2</b>      | <b>154/4 154/23 158/25</b>    | <b>longer [2] 115/2</b>    |
| <b>72/17 73/11 73/15</b>    | <b>166/17 166/20</b>          | <b>115/13</b>              |
| <b>80/2 80/6 81/16</b>      | <b>166/21</b>                 | <b>look [40] 20/23</b>     |
| <b>82/14 82/19 108/16</b>   | <b>Liquors [2] 15/25</b>      | <b>20/24 31/24 33/5</b>    |
| <b>116/12 127/8 156/15</b>  | <b>18/7</b>                   | <b>37/11 40/18 42/23</b>   |
| <b>165/1 170/5</b>          | <b>list [2] 32/9 36/2</b>     | <b>45/10 53/9 53/10</b>    |
| <b>likelihood [2]</b>       | <b>listed [2] 91/8</b>        | <b>55/6 61/11 61/13</b>    |
| <b>164/10 166/1</b>         | <b>132/22</b>                 | <b>69/22 75/20 89/19</b>   |
| <b>line [14] 22/6 32/8</b>  | <b>listen [1] 46/18</b>       | <b>91/4 91/12 93/5</b>     |
| <b>63/2 70/7 70/7</b>       | <b>litigate [1] 154/12</b>    | <b>96/16 99/11 107/17</b>  |
| <b>113/14 113/15</b>        | <b>litigation [1] 4/14</b>    | <b>109/1 109/25 112/16</b> |
| <b>113/16 116/13</b>        | <b>little [7] 24/17 29/21</b> | <b>112/23 113/14</b>       |
| <b>116/16 116/20</b>        | <b>47/15 87/12 117/7</b>      | <b>114/21 116/13</b>       |
| <b>116/23 117/10</b>        | <b>165/3 170/23</b>           | <b>116/21 119/18</b>       |
| <b>133/22</b>               | <b>live [2] 51/8 51/17</b>    | <b>123/24 130/17</b>       |
| <b>link [2] 94/11 94/12</b> | <b>lives [1] 51/6</b>         | <b>133/17 138/12 139/6</b> |
| <b>liquor [59] 4/25 5/5</b> | <b>LLP [1] 1/12</b>           | <b>146/16 153/14</b>       |
| <b>5/5 5/18 5/20 5/21</b>   | <b>located [3] 16/15</b>      | <b>164/20 166/1</b>        |
| <b>6/4 6/7 6/8 6/8 6/12</b> | <b>89/24 91/9</b>             | <b>looked [1] 109/21</b>   |
| <b>6/23 7/8 8/6 11/13</b>   | <b>locating [1] 119/2</b>     | <b>looking [6] 41/24</b>   |
| <b>15/10 15/11 15/12</b>    | <b>location [14] 16/13</b>    | <b>42/8 120/4 147/3</b>    |
| <b>15/13 15/18 15/25</b>    | <b>16/18 48/7 52/9</b>        | <b>147/4 171/3</b>         |
| <b>16/2 16/7 16/13</b>      | <b>52/10 55/5 59/12</b>       | <b>looks [2] 116/12</b>    |
| <b>16/15 17/3 17/3 17/5</b> | <b>74/25 93/12 93/25</b>      | <b>146/18</b>              |
| <b>17/8 17/13 18/15</b>     | <b>99/19 99/23 166/13</b>     | <b>Lord [1] 13/7</b>       |
| <b>18/19 18/22 18/22</b>    | <b>166/17</b>                 | <b>lose [7] 5/15 5/24</b>  |

|                              |                            |                             |
|------------------------------|----------------------------|-----------------------------|
| <b>L</b>                     | <b>main [1] 165/11</b>     | <b>Malik's [2] 41/15</b>    |
| <b>lose... [5] 124/11</b>    | <b>maintaining [1]</b>     | <b>53/22</b>                |
| <b>152/22 152/23 165/5</b>   | <b>159/19</b>              | <b>man [1] 111/12</b>       |
| <b>169/16</b>                | <b>make [23] 11/19</b>     | <b>manage [2] 88/17</b>     |
| <b>losing [3] 154/25</b>     | <b>12/5 12/8 13/14</b>     | <b>99/13</b>                |
| <b>163/4 163/5</b>           | <b>27/14 56/18 66/24</b>   | <b>manager [17] 11/18</b>   |
| <b>loss [1] 152/25</b>       | <b>72/2 74/15 86/8</b>     | <b>11/20 84/16 84/18</b>    |
| <b>lost [3] 154/3 166/12</b> | <b>101/13 107/1 111/7</b>  | <b>84/23 85/1 85/2 85/3</b> |
| <b>166/15</b>                | <b>117/13 123/10 127/2</b> | <b>85/4 85/16 101/10</b>    |
| <b>lot [2] 68/25 143/18</b>  | <b>154/17 163/10 164/1</b> | <b>104/21 110/25</b>        |
| <b>loud [1] 113/24</b>       | <b>164/2 164/7 166/5</b>   | <b>124/24 136/13</b>        |
| <b>lunch [2] 3/22 86/20</b>  | <b>166/14</b>              | <b>136/15 166/5</b>         |
| <b>M</b>                     | <b>makes [4] 18/25</b>     | <b>manager's [3] 85/7</b>   |
| <b>M-A-R-Q-U-E-Z [1]</b>     | <b>98/21 165/3 166/11</b>  | <b>110/16 110/19</b>        |
| <b>88/1</b>                  | <b>making [11] 6/25</b>    | <b>Mangos [2] 16/17</b>     |
| <b>machine [1] 91/8</b>      | <b>11/3 29/25 128/13</b>   | <b>154/7</b>                |
| <b>made [18] 7/1 7/24</b>    | <b>128/15 128/24</b>       | <b>MANUEL [4] 2/7</b>       |
| <b>8/18 12/20 93/2</b>       | <b>151/24 157/16</b>       | <b>86/24 87/22 87/25</b>    |
| <b>104/3 104/3 104/9</b>     | <b>157/17 157/17 166/6</b> | <b>many [21] 16/17</b>      |
| <b>110/20 111/15</b>         | <b>malignant [2] 7/9</b>   | <b>17/3 24/16 30/4</b>      |
| <b>123/12 125/11 129/2</b>   | <b>154/7</b>               | <b>44/11 44/15 44/15</b>    |
| <b>129/14 151/24</b>         | <b>Malik [30] 20/9</b>     | <b>44/15 44/16 76/10</b>    |
| <b>153/13 156/22</b>         | <b>21/18 21/24 22/23</b>   | <b>76/19 105/17 115/5</b>   |
| <b>156/22</b>                | <b>23/16 23/18 24/3</b>    | <b>123/4 128/22 148/10</b>  |
| <b>MAGISTRATE [1]</b>        | <b>24/18 24/20 24/21</b>   | <b>148/14 148/17</b>        |
| <b>1/10</b>                  | <b>24/23 24/24 25/16</b>   | <b>148/22 153/10 169/9</b>  |
| <b>mail [5] 51/19 90/19</b>  | <b>25/21 26/15 26/22</b>   | <b>mark [1] 37/1</b>        |
| <b>94/25 123/7 123/7</b>     | <b>26/25 27/16 32/15</b>   | <b>marked [3] 20/13</b>     |
| <b>mailed [3] 90/18</b>      | <b>38/6 38/8 41/11</b>     | <b>45/11 146/16</b>         |
| <b>136/6 136/7</b>           | <b>44/12 54/19 66/11</b>   | <b>market [11] 15/19</b>    |
| <b>mailings [1] 100/1</b>    | <b>66/12 74/22 74/23</b>   | <b>15/21 16/2 18/12</b>     |
|                              | <b>82/23 85/5</b>          | <b>19/14 19/16 40/2</b>     |

|                            |                            |                             |
|----------------------------|----------------------------|-----------------------------|
| <b>M</b>                   | <b>131/6 131/12 131/14</b> | <b>23/24 30/9 33/17</b>     |
| <b>market... [4] 40/13</b> | <b>143/12 143/14</b>       | <b>37/8 43/8 57/14 58/4</b> |
| <b>40/15 47/25 58/21</b>   | <b>143/22 143/24</b>       | <b>63/18 68/18 72/20</b>    |
| <b>markets [1] 48/7</b>    | <b>144/23 161/18</b>       | <b>73/25 74/1 76/20</b>     |
| <b>markings [1] 36/16</b>  | <b>162/15 162/20 165/7</b> | <b>119/3 121/14 135/24</b>  |
| <b>MARQUEZ [6] 2/7</b>     | <b>168/20 168/22</b>       | <b>162/23</b>               |
| <b>86/24 87/22 87/25</b>   | <b>168/24</b>              | <b>mayor [4] 7/9 23/18</b>  |
| <b>88/4 101/23</b>         | <b>master's [2] 73/14</b>  | <b>104/21 154/6</b>         |
| <b>master [78] 7/17</b>    | <b>119/16</b>              | <b>me [141] 7/3 9/14</b>    |
| <b>28/20 29/19 29/20</b>   | <b>masters [2] 29/14</b>   | <b>9/14 9/15 15/15 20/3</b> |
| <b>30/3 30/16 63/3</b>     | <b>124/17</b>              | <b>20/8 20/11 22/12</b>     |
| <b>77/14 78/8 80/8</b>     | <b>matter [14] 4/3 4/4</b> | <b>22/19 23/1 23/20</b>     |
| <b>95/16 95/17 95/18</b>   | <b>10/15 81/16 86/12</b>   | <b>23/23 23/25 24/25</b>    |
| <b>98/11 98/21 99/2</b>    | <b>105/15 106/8 106/19</b> | <b>26/17 26/24 27/7</b>     |
| <b>102/11 102/15</b>       | <b>111/11 114/12 125/8</b> | <b>27/14 29/1 29/18</b>     |
| <b>102/16 102/17</b>       | <b>131/9 169/15 172/14</b> | <b>30/25 31/19 33/12</b>    |
| <b>103/23 103/25 107/7</b> | <b>Matthew [1] 159/1</b>   | <b>34/18 35/21 35/21</b>    |
| <b>107/20 109/3 109/12</b> | <b>maximize [1]</b>        | <b>36/12 38/3 39/16</b>     |
| <b>111/7 111/8 111/9</b>   | <b>116/11</b>              | <b>40/6 40/6 40/9 40/17</b> |
| <b>111/19 111/20</b>       | <b>maximum [1] 87/7</b>    | <b>40/19 40/19 40/20</b>    |
| <b>111/22 120/13</b>       | <b>may [30] 6/23 7/4</b>   | <b>44/18 45/6 45/8</b>      |
| <b>120/14 120/20 121/1</b> | <b>11/11 13/9 14/11</b>    | <b>45/20 46/11 46/12</b>    |
| <b>121/6 121/10 121/10</b> | <b>29/6 36/25 47/6</b>     | <b>46/14 46/15 46/18</b>    |
| <b>121/12 121/12</b>       | <b>62/25 111/24 112/17</b> | <b>46/19 46/20 49/13</b>    |
| <b>121/21 122/2 122/3</b>  | <b>115/2 120/20 125/1</b>  | <b>49/19 51/7 52/7 53/9</b> |
| <b>122/6 122/7 122/9</b>   | <b>128/8 129/17 132/7</b>  | <b>53/10 54/19 56/7</b>     |
| <b>122/9 122/21 123/25</b> | <b>133/12 138/4 138/6</b>  | <b>56/15 56/16 61/2</b>     |
| <b>124/15 124/17</b>       | <b>139/25 141/7 144/14</b> | <b>61/17 63/14 65/9</b>     |
| <b>124/20 124/21 125/8</b> | <b>144/14 149/19 151/7</b> | <b>65/10 65/12 66/4</b>     |
| <b>125/9 125/12 125/14</b> | <b>151/21 152/17 153/6</b> | <b>67/5 67/18 68/24</b>     |
| <b>125/15 125/17</b>       | <b>155/25</b>              | <b>70/11 70/21 71/3</b>     |
| <b>125/19 125/20 131/5</b> | <b>maybe [18] 23/24</b>    | <b>71/18 71/24 72/6</b>     |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>M</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>me... [67]</b> 73/1 74/13<br>75/11 75/11 75/12<br>75/13 75/13 76/1<br>76/2 76/25 77/7 77/7<br>78/18 79/3 79/5 79/7<br>79/9 81/3 81/5 81/9<br>81/13 81/15 82/4<br>82/18 82/22 82/24<br>83/4 83/4 83/9 84/20<br>85/12 85/17 85/21<br>85/22 86/4 86/6<br>96/16 99/11 102/4<br>102/9 105/2 105/17<br>107/5 107/15 109/14<br>109/22 111/1 112/16<br>112/21 113/24<br>122/13 123/23 124/3<br>125/3 125/24 126/9<br>135/25 137/2 137/17<br>141/1 146/17 151/9<br>153/24 169/7 170/1<br>170/5 171/15 | <b>meaning [2]</b> 131/11<br>152/4<br><b>means [7]</b> 99/21<br>109/20 113/18<br>113/18 141/3 147/9<br>149/15<br><b>meant [1]</b> 63/15<br><b>mechanisms [3]</b><br>123/4 141/12 141/13<br><b>meet [4]</b> 47/13 47/14<br>144/23 170/24<br><b>meeting [6]</b> 32/14<br>84/23 85/1 85/2 85/4<br>156/12<br><b>members [2]</b> 96/23<br>105/9<br><b>mentioned [2]</b> 100/8<br>112/1<br><b>merchant [1]</b> 91/10<br><b>Meridian [2]</b> 22/4<br>94/10<br><b>merits [1]</b> 166/1<br><b>met [4]</b> 47/11 64/1<br>65/5 77/14<br><b>methods [1]</b> 100/8<br><b>Miami [82]</b> 1/3 1/6<br>1/13 1/17 1/18 1/24<br>1/25 4/12 6/22 7/16<br>16/25 17/12 17/19<br>19/12 23/1 23/10<br>23/19 23/19 24/5<br>29/13 31/7 31/20 | 32/17 32/19 33/8<br>34/11 37/5 39/22<br>40/22 42/3 43/8 45/2<br>45/16 46/10 48/24<br>49/2 49/15 50/5<br>50/13 53/5 53/25<br>55/2 57/8 61/22 64/2<br>65/6 73/24 73/25<br>73/25 73/25 74/17<br>77/23 78/21 88/6<br>88/25 89/2 89/9<br>94/14 99/5 119/13<br>130/7 133/19 135/10<br>135/19 135/20<br>139/19 139/22 141/2<br>143/15 144/2 144/5<br>148/10 148/17<br>150/12 151/19<br>154/23 155/8 156/1<br>156/16 162/16<br>172/18 172/19<br><b>microphone [4]</b><br>26/20 36/24 40/1<br>53/7<br><b>mid [1]</b> 126/3<br><b>mid-October [1]</b><br>126/3<br><b>middle [4]</b> 37/7<br>113/22 114/1 162/17<br><b>might [4]</b> 115/1<br>115/13 116/6 156/21<br><b>million [1]</b> 163/5 |

|                             |                             |                             |
|-----------------------------|-----------------------------|-----------------------------|
| <b>M</b>                    | <b>124/18 170/25 171/1</b>  | <b>161/10 161/10</b>        |
| <b>mind [3] 48/17 72/4</b>  | <b>171/2 171/3 171/16</b>   | <b>167/20</b>               |
| <b>137/24</b>               | <b>money [37] 11/24</b>     | <b>more [26] 8/8 8/9</b>    |
| <b>mine [4] 46/20 49/8</b>  | <b>12/2 13/16 23/2</b>      | <b>8/13 19/2 19/2 26/7</b>  |
| <b>49/9 49/9</b>            | <b>24/20 27/3 27/5 27/7</b> | <b>33/11 51/10 68/23</b>    |
| <b>minimize [1] 116/10</b>  | <b>41/3 44/21 57/20</b>     | <b>86/14 87/12 127/7</b>    |
| <b>minimum [1] 152/8</b>    | <b>69/6 70/12 70/19</b>     | <b>140/21 140/23</b>        |
| <b>minutes [5] 3/16</b>     | <b>76/12 76/12 97/14</b>    | <b>148/15 148/15 149/9</b>  |
| <b>9/13 9/16 46/15</b>      | <b>101/19 102/6 102/6</b>   | <b>153/24 156/7 164/19</b>  |
| <b>46/18</b>                | <b>103/15 105/4 106/9</b>   | <b>166/13 167/12</b>        |
| <b>Mischaracterizes [1]</b> | <b>106/16 106/18 107/2</b>  | <b>167/12 170/1 170/10</b>  |
| <b>71/9</b>                 | <b>110/14 111/13 123/5</b>  | <b>171/8</b>                |
| <b>Mischaracterizing</b>    | <b>123/18 123/19</b>        | <b>morning [10] 15/3</b>    |
| <b>[1] 121/23</b>           | <b>123/23 126/13</b>        | <b>18/2 36/1 49/17</b>      |
| <b>misconstruing [1]</b>    | <b>163/11 166/23</b>        | <b>49/18 50/2 71/5</b>      |
| <b>9/18</b>                 | <b>166/23 166/25</b>        | <b>117/3 122/13 171/16</b>  |
| <b>misled [1] 11/22</b>     | <b>moneys [1] 95/11</b>     | <b>most [7] 60/22</b>       |
| <b>missed [1] 99/24</b>     | <b>monies [12] 94/25</b>    | <b>102/21 108/24</b>        |
| <b>misspoke [1] 119/3</b>   | <b>97/4 102/13 102/14</b>   | <b>152/22 154/4 156/10</b>  |
| <b>mistake [2] 30/8</b>     | <b>102/21 103/12</b>        | <b>158/10</b>               |
| <b>115/16</b>               | <b>106/14 113/20</b>        | <b>motion [3] 1/9 157/2</b> |
| <b>mistaken [1] 26/7</b>    | <b>113/20 121/11</b>        | <b>167/8</b>                |
| <b>mistakes [3] 61/1</b>    | <b>121/13 123/15</b>        | <b>motivations [1]</b>      |
| <b>61/1 74/15</b>           | <b>month [13] 4/18</b>      | <b>154/8</b>                |
| <b>moment [8] 19/2</b>      | <b>18/17 19/5 24/15</b>     | <b>motive [1] 104/21</b>    |
| <b>35/23 72/4 97/18</b>     | <b>33/11 34/4 34/13</b>     | <b>mouth [1] 105/2</b>      |
| <b>98/5 124/22 125/24</b>   | <b>98/7 153/7 153/8</b>     | <b>move [9] 51/15</b>       |
| <b>140/1</b>                | <b>162/12 166/8 169/8</b>   | <b>72/11 77/3 77/10</b>     |
| <b>Monday [16] 38/19</b>    | <b>months [14] 10/3</b>     | <b>78/9 132/12 133/3</b>    |
| <b>38/22 39/10 45/21</b>    | <b>10/5 12/21 12/25</b>     | <b>134/20 170/14</b>        |
| <b>45/21 45/22 45/23</b>    | <b>17/12 18/3 60/1 60/3</b> | <b>moved [4] 114/8</b>      |
| <b>45/24 79/16 122/13</b>   | <b>70/6 72/14 161/7</b>     | <b>116/8 116/9 138/17</b>   |

|                            |                             |                             |
|----------------------------|-----------------------------|-----------------------------|
| <b>M</b>                   | <b>29/16 29/23 29/25</b>    | <b>multiple [3] 9/9</b>     |
| <b>movement [1] 75/3</b>   | <b>30/15 31/6 31/10</b>     | <b>152/14 152/21</b>        |
| <b>moving [1] 51/14</b>    | <b>32/12 32/14 32/14</b>    | <b>municipalities [1]</b>   |
| <b>Mr [14] 2/5 2/6 2/8</b> | <b>32/16 33/23 34/14</b>    | <b>6/11</b>                 |
| <b>2/9 2/10 2/12 2/13</b>  | <b>34/22 41/11 44/12</b>    | <b>must [3] 62/21 89/6</b>  |
| <b>2/14 14/19 25/12</b>    | <b>77/5 77/13 77/18</b>     | <b>152/4</b>                |
| <b>28/8 47/6 88/4</b>      | <b>153/5</b>                | <b>MXE [10] 16/19</b>       |
| <b>101/23</b>              | <b>Mr. Shir [8] 28/12</b>   | <b>16/21 16/22 16/25</b>    |
| <b>Mr. [37] 3/7 7/22</b>   | <b>28/19 28/23 29/1</b>     | <b>17/4 17/14 17/21</b>     |
| <b>28/12 28/19 28/23</b>   | <b>29/9 41/11 44/12</b>     | <b>18/12 18/14 18/24</b>    |
| <b>29/1 29/9 29/16</b>     | <b>153/5</b>                | <b>my [111] 3/7 4/15</b>    |
| <b>29/23 29/25 30/15</b>   | <b>Ms [2] 24/3 26/25</b>    | <b>6/8 8/16 13/6 15/15</b>  |
| <b>31/6 31/10 32/12</b>    | <b>Ms. [14] 21/24</b>       | <b>20/4 22/17 24/20</b>     |
| <b>32/14 32/14 32/16</b>   | <b>25/16 25/21 26/15</b>    | <b>24/25 25/12 31/2</b>     |
| <b>32/25 33/23 34/14</b>   | <b>27/16 38/6 38/8</b>      | <b>39/2 39/15 41/22</b>     |
| <b>34/22 41/11 41/11</b>   | <b>41/11 41/15 44/12</b>    | <b>46/10 46/12 47/10</b>    |
| <b>44/12 44/12 47/10</b>   | <b>53/22 74/22 74/23</b>    | <b>47/15 48/17 48/22</b>    |
| <b>77/5 77/13 77/18</b>    | <b>153/5</b>                | <b>49/24 50/7 53/15</b>     |
| <b>118/9 127/17 127/23</b> | <b>Ms. Aiken [1] 153/5</b>  | <b>56/21 61/8 63/17</b>     |
| <b>151/10 153/5 153/5</b>  | <b>Ms. Malik [11]</b>       | <b>66/7 67/6 67/11</b>      |
| <b>156/11 167/9</b>        | <b>21/24 25/16 25/21</b>    | <b>67/18 67/19 68/15</b>    |
| <b>Mr. Alex [1] 118/9</b>  | <b>26/15 27/16 38/6</b>     | <b>68/15 69/5 69/7 69/8</b> |
| <b>Mr. Boxner [1]</b>      | <b>38/8 41/11 44/12</b>     | <b>69/11 69/13 69/13</b>    |
| <b>32/25</b>               | <b>74/22 74/23</b>          | <b>70/11 70/19 70/21</b>    |
| <b>Mr. Doar [3] 47/10</b>  | <b>Ms. Malik's [2]</b>      | <b>70/25 70/25 71/21</b>    |
| <b>127/17 127/23</b>       | <b>41/15 53/22</b>          | <b>75/4 75/13 75/14</b>     |
| <b>Mr. Doar's [1]</b>      | <b>much [19] 3/17 8/8</b>   | <b>75/18 75/21 75/21</b>    |
| <b>156/11</b>              | <b>8/13 19/2 19/2 23/2</b>  | <b>76/4 76/6 76/7 77/2</b>  |
| <b>Mr. Doran [1] 3/7</b>   | <b>23/4 23/5 27/14 40/5</b> | <b>82/5 82/19 82/24</b>     |
| <b>Mr. Hudson [3]</b>      | <b>44/17 44/19 44/21</b>    | <b>83/5 84/13 85/10</b>     |
| <b>7/22 151/10 167/9</b>   | <b>56/19 69/15 75/21</b>    | <b>91/19 96/22 100/25</b>   |
| <b>Mr. Rosen [19]</b>      | <b>76/8 86/14 167/21</b>    | <b>101/15 103/6 103/10</b>  |



|                      |                      |                      |
|----------------------|----------------------|----------------------|
| <b>M</b>             | near [1] 4/17        | 20/3 26/23 47/11     |
| my... [43] 105/9     | nearly [1] 99/25     | 55/6 55/7 55/8 63/7  |
| 105/17 108/6 108/11  | necessary [2] 4/10   | 63/8 70/18 71/8      |
| 111/11 111/12 114/9  | 4/13                 | 73/14 73/19 74/14    |
| 114/25 115/8 115/15  | need [45] 3/12 3/20  | 74/16 82/3 82/4 82/6 |
| 115/20 115/23        | 4/9 5/5 7/11 10/16   | 82/6 82/8 82/13      |
| 117/14 118/25 119/1  | 12/8 19/11 20/18     | 82/16 82/18 82/19    |
| 119/6 119/7 120/12   | 25/3 37/13 40/1      | 82/20 82/25 82/25    |
| 120/24 120/25 121/5  | 53/13 65/21 67/5     | 82/25 82/25 83/3     |
| 122/5 122/8 123/22   | 67/18 68/21 70/21    | 83/3 83/7 83/9 83/13 |
| 123/22 123/23        | 71/18 71/22 78/17    | 83/14 83/16 83/18    |
| 123/24 124/2 124/4   | 82/24 86/1 89/14     | 83/20 83/21 83/23    |
| 127/4 143/9 144/20   | 89/15 95/11 100/19   | 84/2 84/8 84/10      |
| 151/11 151/12        | 100/20 104/16        | 84/11 84/12 84/18    |
| 151/14 152/9 153/11  | 114/11 116/7 117/16  | 84/23 86/2 97/11     |
| 153/23 153/25        | 117/20 121/4 122/5   | 105/3 152/16 158/1   |
| 154/20 157/4 158/11  | 122/6 123/15 123/22  | 158/4 161/11 161/23  |
| 162/18               | 124/7 130/24 131/16  | 161/24               |
| <b>N</b>             | 149/24 151/24        | new [52] 6/18 6/19   |
| name [13] 14/23      | 167/11 171/12        | 6/23 7/23 7/25 8/4   |
| 15/4 19/9 20/9 27/20 | needed [2] 110/24    | 8/4 10/7 10/8 11/11  |
| 27/22 27/25 47/10    | 124/1                | 12/8 12/13 12/14     |
| 50/23 52/25 52/25    | needs [7] 25/4 99/5  | 13/4 13/7 13/20      |
| 87/25 118/4          | 100/16 123/12        | 13/20 18/15 18/16    |
| named [1] 28/19      | 125/21 164/23        | 18/19 30/10 45/1     |
| narrative [2] 4/23   | 165/23               | 45/2 45/3 45/7 45/8  |
| 155/5                | negates [1] 159/2    | 63/11 68/17 71/24    |
| Natural [1] 159/1    | negotiated [1]       | 71/25 72/9 84/2 84/9 |
| naturally [3] 9/19   | 125/17               | 89/6 90/21 90/23     |
| 10/13 11/10          | negotiation [1]      | 91/20 91/23 101/3    |
| nature [1] 9/3       | 156/18               | 101/12 103/21        |
|                      | never [57] 4/17 6/19 | 106/23 106/24        |

|                             |                             |                            |
|-----------------------------|-----------------------------|----------------------------|
| <b>N</b>                    |                             |                            |
| <b>new... [9] 107/13</b>    | <b>23/4 24/15 26/14</b>     | <b>157/3 158/8 158/8</b>   |
| <b>126/21 147/20</b>        | <b>28/24 31/5 33/21</b>     | <b>158/22 158/24 159/5</b> |
| <b>154/23 161/4 161/12</b>  | <b>38/18 38/24 40/6</b>     | <b>159/9 159/17 159/17</b> |
| <b>165/20 167/25 168/1</b>  | <b>40/9 42/14 43/4 44/3</b> | <b>160/2 160/9 162/18</b>  |
| <b>news [2] 151/14</b>      | <b>44/5 44/8 45/7 45/24</b> | <b>163/4 164/11 164/12</b> |
| <b>168/21</b>               | <b>47/3 48/1 49/22 50/1</b> | <b>164/13 164/13</b>       |
| <b>next [26] 16/16</b>      | <b>52/17 52/19 52/22</b>    | <b>165/13 167/15</b>       |
| <b>23/13 27/17 28/25</b>    | <b>52/24 53/21 53/23</b>    | <b>167/16 169/15</b>       |
| <b>29/9 30/12 37/2</b>      | <b>59/3 62/24 63/9</b>      | <b>169/21 169/22 170/6</b> |
| <b>38/19 38/22 39/10</b>    | <b>64/20 66/12 76/18</b>    | <b>170/8 171/16 172/1</b>  |
| <b>42/16 42/23 42/24</b>    | <b>77/16 77/17 78/2</b>     | <b>172/3</b>               |
| <b>45/24 62/8 87/13</b>     | <b>79/13 80/13 80/15</b>    | <b>nobody [8] 9/5</b>      |
| <b>114/21 116/13</b>        | <b>80/15 80/24 81/10</b>    | <b>18/22 51/12 72/9</b>    |
| <b>116/20 124/9 129/20</b>  | <b>83/9 84/5 84/6 86/22</b> | <b>83/3 83/4 154/2</b>     |
| <b>132/12 138/16</b>        | <b>87/19 97/4 98/6 99/4</b> | <b>155/12</b>              |
| <b>154/21 163/16</b>        | <b>101/15 101/23 104/3</b>  | <b>noise [3] 66/24</b>     |
| <b>171/14</b>               | <b>104/9 106/18 106/22</b>  | <b>66/25 160/5</b>         |
| <b>Nice [2] 47/13 47/14</b> | <b>108/8 109/19 110/9</b>   | <b>none [5] 86/15 94/8</b> |
| <b>night [2] 18/2</b>       | <b>114/10 114/13</b>        | <b>124/4 125/4 169/25</b>  |
| <b>171/16</b>               | <b>114/19 115/2 115/5</b>   | <b>nonpayment [4]</b>      |
| <b>nightclub [1] 160/5</b>  | <b>115/13 115/18</b>        | <b>114/2 116/22 146/25</b> |
| <b>nine [8] 10/3 10/4</b>   | <b>117/16 118/16 119/6</b>  | <b>147/14</b>              |
| <b>12/21 12/25 60/1</b>     | <b>119/15 127/22 128/3</b>  | <b>normal [6] 127/15</b>   |
| <b>60/3 70/6 161/7</b>      | <b>130/11 130/13</b>        | <b>131/10 143/11</b>       |
| <b>no [145] 1/2 4/15</b>    | <b>132/11 133/2 133/11</b>  | <b>143/21 144/12</b>       |
| <b>7/15 7/19 8/21 8/25</b>  | <b>133/16 134/16 135/3</b>  | <b>151/20</b>              |
| <b>9/21 10/13 10/15</b>     | <b>135/8 135/22 139/2</b>   | <b>normally [4] 102/20</b> |
| <b>10/17 10/18 10/18</b>    | <b>139/18 145/12</b>        | <b>104/24 142/20</b>       |
| <b>10/20 11/20 12/21</b>    | <b>147/10 147/12</b>        | <b>168/14</b>              |
| <b>13/2 13/17 13/22</b>     | <b>147/19 148/9 148/25</b>  | <b>North [1] 94/13</b>     |
| <b>13/23 14/1 22/25</b>     | <b>150/8 150/15 150/17</b>  | <b>Northwest [2] 51/3</b>  |
|                             | <b>150/18 151/1 155/23</b>  | <b>55/11</b>               |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                             |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>N</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 142/17 142/25 150/2<br>157/10 157/24<br>notices [18] 53/25<br>54/7 60/16 93/22<br>94/18 95/1 97/20<br>97/23 108/3 108/4<br>108/5 108/5 108/12<br>108/14 125/5 137/12<br>141/13 141/17<br>notify [2] 18/21 95/9<br>notifying [1] 54/1<br>November [2] 1/4<br>172/17<br>now [51] 5/1 7/4 8/3<br>9/4 11/10 13/4 13/19<br>15/25 16/22 17/25<br>24/23 25/7 33/24<br>46/19 47/23 54/20<br>63/10 67/2 75/16<br>76/22 76/22 79/25<br>81/21 93/5 95/13<br>97/6 97/9 97/19<br>98/23 106/6 107/14<br>107/15 108/3 110/13<br>115/1 115/4 125/4<br>126/11 126/12 133/3<br>133/17 134/20<br>153/22 154/18<br>155/12 156/19<br>157/20 159/13<br>160/18 164/9 169/5<br>number [19] 5/12 | 9/6 9/7 18/4 21/1<br>22/6 42/5 42/6 50/19<br>61/4 64/1 107/5<br>109/18 111/5 113/19<br>122/5 128/18 135/25<br>164/24<br>numbers [3] 107/19<br>109/21 109/25 |
| not [217]<br>note [9] 32/8 115/4<br>115/5 115/7 116/15<br>147/9 147/11 147/21<br>166/11<br>notes [3] 146/18<br>151/24 167/17<br>nothing [12] 86/17<br>103/14 106/13<br>139/15 149/3 151/20<br>152/1 152/22 152/25<br>154/18 168/14<br>168/21<br>notice [53] 35/7<br>38/20 57/9 57/10<br>60/2 60/5 72/24 74/6<br>74/11 83/14 93/9<br>93/10 94/11 94/11<br>95/22 102/23 102/23<br>104/6 104/7 106/25<br>107/1 108/7 108/7<br>108/8 108/8 108/9<br>108/13 108/15<br>108/18 108/21 110/6<br>132/8 132/10 132/24<br>133/1 133/7 133/17<br>133/18 134/23 135/9<br>135/25 137/15<br>137/25 138/13<br>139/12 139/16<br>142/11 142/14 | <b>O</b><br>o'clock [3] 46/6 46/9<br>155/20<br>O'SULLIVAN [1]<br>1/9<br>oath [6] 14/21 56/9<br>87/23 105/1 129/23<br>143/5<br>object [8] 27/11<br>36/4 63/2 109/7<br>110/2 118/2 119/20<br>170/19<br>objected [1] 17/16<br>objecting [1] 64/22<br>objection [30] 36/15<br>42/14 59/5 62/14<br>64/16 64/23 65/18<br>71/9 109/9 110/7<br>112/14 115/17<br>117/19 118/17<br>121/23 127/8 141/18<br>142/3 144/8 145/6<br>145/14 145/19<br>145/23 145/25 146/6                                                                                                                                                                                                               |                                                                                                                                                             |

|                             |                             |                             |
|-----------------------------|-----------------------------|-----------------------------|
| <b>O</b>                    | <b>16/2 16/6 16/9 16/13</b> | <b>46/6 46/9 52/1 56/3</b>  |
| <b>objection... [5]</b>     | <b>16/15 16/16 16/24</b>    | <b>57/16 79/23 79/24</b>    |
| <b>146/8 146/22 147/15</b>  | <b>17/6 18/7 18/12</b>      | <b>80/12 82/13 83/7</b>     |
| <b>147/22 151/1</b>         | <b>19/14 19/16 19/19</b>    | <b>83/10 83/11 84/10</b>    |
| <b>obligated [3] 13/11</b>  | <b>39/15 40/2 40/12</b>     | <b>89/25 91/6 92/9 94/2</b> |
| <b>13/13 167/21</b>         | <b>40/15 40/25 41/23</b>    | <b>94/3 95/3 107/16</b>     |
| <b>obtain [16] 33/24</b>    | <b>44/13 44/23 47/24</b>    | <b>108/23 119/8 122/13</b>  |
| <b>61/14 89/1 89/8 98/5</b> | <b>47/25 48/14 48/14</b>    | <b>122/16 126/3 126/4</b>   |
| <b>98/12 100/20 133/7</b>   | <b>48/18 48/20 48/23</b>    | <b>126/5 126/10 129/9</b>   |
| <b>133/18 134/4 134/17</b>  | <b>48/23 49/1 49/16</b>     | <b>129/12 134/23 135/1</b>  |
| <b>134/24 135/9 135/18</b>  | <b>50/4 50/5 50/8 52/4</b>  | <b>135/13 136/22</b>        |
| <b>139/14 150/5</b>         | <b>55/1 55/17 56/2 56/4</b> | <b>137/20 146/1 158/2</b>   |
| <b>obtained [2] 141/8</b>   | <b>56/10 56/11 56/24</b>    | <b>October 1 [13] 8/24</b>  |
| <b>149/20</b>               | <b>56/25 57/9 57/10</b>     | <b>38/23 52/1 56/3</b>      |
| <b>obtaining [3] 141/6</b>  | <b>57/13 57/22 57/25</b>    | <b>57/16 89/25 91/6</b>     |
| <b>141/25 149/18</b>        | <b>58/6 58/8 58/9 58/21</b> | <b>94/2 94/3 95/3</b>       |
| <b>obtains [1] 134/12</b>   | <b>58/22 58/25 58/25</b>    | <b>108/23 122/16 158/2</b>  |
| <b>obvious [1] 85/19</b>    | <b>59/4 60/7 60/24</b>      | <b>October 11 [2]</b>       |
| <b>obviously [2] 143/3</b>  | <b>60/25 69/22 79/6</b>     | <b>126/5 126/10</b>         |
| <b>157/7</b>                | <b>79/10 79/19 79/22</b>    | <b>October 1st [3]</b>      |
| <b>occasionally [1]</b>     | <b>80/2 82/8 84/24</b>      | <b>38/19 39/1 44/14</b>     |
| <b>168/25</b>               | <b>108/11 109/16 154/5</b>  | <b>October 1th [1]</b>      |
| <b>occasions [1] 152/22</b> | <b>157/18</b>               | <b>92/9</b>                 |
| <b>occupation [2] 19/9</b>  | <b>October [63] 8/24</b>    | <b>October 2 [1] 38/24</b>  |
| <b>130/5</b>                | <b>29/2 36/17 38/19</b>     | <b>October 2nd [4]</b>      |
| <b>occupational [6]</b>     | <b>38/23 38/24 39/1</b>     | <b>39/4 39/11 45/23</b>     |
| <b>19/8 52/8 88/24</b>      | <b>39/4 39/11 39/13</b>     | <b>122/13</b>               |
| <b>120/12 120/25</b>        | <b>39/13 39/14 40/4</b>     | <b>October 3 [9] 39/13</b>  |
| <b>121/22</b>               | <b>40/9 40/10 40/15</b>     | <b>39/13 39/14 40/4</b>     |
| <b>Ocean [78] 15/9</b>      | <b>40/22 44/3 44/14</b>     | <b>40/15 40/22 79/23</b>    |
| <b>15/12 15/13 15/18</b>    | <b>45/20 45/21 45/23</b>    | <b>79/24 80/12</b>          |
| <b>15/19 15/21 15/25</b>    | <b>45/25 46/2 46/3 46/5</b> | <b>October 6 [7] 83/10</b>  |

|                             |                             |                             |
|-----------------------------|-----------------------------|-----------------------------|
| <b>O</b>                    | <b>officer [2] 66/14</b>    | <b>one [88] 5/12 6/13</b>   |
| <b>October 6... [6]</b>     | <b>82/22</b>                | <b>6/21 8/6 8/16 9/6</b>    |
| <b>83/11 84/10 134/23</b>   | <b>officers [4] 136/21</b>  | <b>10/8 10/12 11/25</b>     |
| <b>135/1 135/13 137/20</b>  | <b>139/20 148/11 149/1</b>  | <b>14/8 20/15 21/21</b>     |
| <b>October 6th [10]</b>     | <b>official [3] 1/24</b>    | <b>26/7 30/8 30/9 30/12</b> |
| <b>36/17 45/25 46/2</b>     | <b>118/13 172/18</b>        | <b>30/12 30/13 35/23</b>    |
| <b>46/3 46/5 46/6 46/9</b>  | <b>often [1] 111/9</b>      | <b>40/17 42/13 43/20</b>    |
| <b>82/13 83/7 146/1</b>     | <b>oh [1] 155/6</b>         | <b>43/25 43/25 44/3</b>     |
| <b>October 9 [1] 40/10</b>  | <b>okay [46] 23/7 25/13</b> | <b>45/12 55/9 60/16</b>     |
| <b>off [4] 28/10 49/8</b>   | <b>26/15 26/17 28/11</b>    | <b>60/25 64/11 67/24</b>    |
| <b>109/14 119/13</b>        | <b>30/4 37/11 38/19</b>     | <b>69/18 69/18 69/19</b>    |
| <b>offender [1] 136/6</b>   | <b>38/25 40/21 42/5</b>     | <b>72/2 75/8 75/8 75/9</b>  |
| <b>office [50] 22/13</b>    | <b>47/23 48/5 49/15</b>     | <b>75/9 81/17 95/3</b>      |
| <b>23/14 73/15 73/24</b>    | <b>49/24 52/11 54/20</b>    | <b>96/22 98/25 100/6</b>    |
| <b>74/7 78/9 78/9 94/13</b> | <b>55/9 58/11 61/3 61/5</b> | <b>100/21 103/19 105/5</b>  |
| <b>94/15 95/7 96/20</b>     | <b>63/10 65/22 67/7</b>     | <b>105/7 105/9 105/17</b>   |
| <b>105/16 107/23</b>        | <b>69/17 82/12 84/22</b>    | <b>107/11 108/23</b>        |
| <b>109/12 110/5 110/12</b>  | <b>90/16 98/1 98/23</b>     | <b>112/21 115/25</b>        |
| <b>110/16 110/17</b>        | <b>101/18 101/20</b>        | <b>124/21 127/6 127/7</b>   |
| <b>110/19 110/19 114/2</b>  | <b>101/21 103/5 115/25</b>  | <b>127/19 136/10</b>        |
| <b>115/19 115/23</b>        | <b>118/14 120/5 133/24</b>  | <b>136/11 136/23</b>        |
| <b>116/22 117/11</b>        | <b>136/18 137/4 139/2</b>   | <b>136/23 137/3 137/25</b>  |
| <b>119/16 120/15</b>        | <b>146/11 150/19 151/6</b>  | <b>138/1 138/12 138/13</b>  |
| <b>120/24 121/5 121/6</b>   | <b>159/14 165/4</b>         | <b>138/21 139/2 142/25</b>  |
| <b>121/10 121/12 122/6</b>  | <b>old [9] 81/21 98/7</b>   | <b>150/20 151/9 152/7</b>   |
| <b>122/9 122/9 123/6</b>    | <b>107/12 126/11 139/2</b>  | <b>153/15 154/3 155/18</b>  |
| <b>123/22 124/1 124/3</b>   | <b>154/12 157/15</b>        | <b>157/20 157/20</b>        |
| <b>131/13 140/17</b>        | <b>161/10 161/11</b>        | <b>158/10 161/6 161/22</b>  |
| <b>140/23 140/25</b>        | <b>once [10] 10/14</b>      | <b>165/21 166/5 166/13</b>  |
| <b>143/13 143/23</b>        | <b>12/23 35/14 37/18</b>    | <b>166/19 167/5 167/23</b>  |
| <b>144/24 146/4 146/25</b>  | <b>95/16 100/18 101/17</b>  | <b>167/24</b>               |
| <b>156/12 161/21</b>        | <b>104/9 125/20 162/1</b>   | <b>one-year [1] 11/25</b>   |

|                                                                                                                                  |                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                               |
|----------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>O</b>                                                                                                                         |                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                               |
| ones [4] 5/13 101/18<br>115/10 127/1                                                                                             | operating [14] 10/4<br>13/1 17/9 89/13<br>89/13 98/24 99/7<br>139/8 141/7 142/25<br>149/8 149/19 158/18<br>164/14                                                                                                                                    | 110/1 110/12 110/23<br>111/1 111/3 111/4<br>111/24 112/2 112/4<br>122/11 122/21 123/5<br>123/16 131/6 131/13<br>135/20 143/6 143/14<br>145/1 145/2 162/13                                                                     |
| ongoing [1] 103/24                                                                                                               | operation [2] 17/13<br>159/14                                                                                                                                                                                                                        | orders [4] 111/9<br>111/20 143/19<br>144/21                                                                                                                                                                                   |
| online [14] 89/10<br>94/12 123/6 126/2<br>126/3 126/7 128/12<br>128/15 128/17<br>128/19 128/23<br>128/24 129/2 161/25            | operations [8] 106/4<br>131/3 134/3 134/8<br>134/12 134/15<br>135/12 141/24                                                                                                                                                                          | ordinance [30] 6/20<br>6/24 8/19 11/12<br>18/17 18/18 18/21<br>21/3 30/10 45/3 45/4<br>71/5 71/24 71/25<br>72/9 72/9 76/18<br>76/19 132/1 134/25<br>138/5 138/8 138/9<br>150/23 151/3 153/19<br>155/25 159/4 164/14<br>164/17 |
| only [17] 6/13 16/4<br>19/5 42/12 48/2 58/5<br>68/13 106/24 124/16<br>139/2 141/23 152/21<br>161/5 161/9 166/18<br>167/11 171/19 | operator [1] 149/25                                                                                                                                                                                                                                  | ordinances [9]<br>17/11 17/16 17/19<br>18/4 139/23 140/20<br>141/2 142/11 155/13                                                                                                                                              |
| open [17] 3/3 18/14<br>18/22 41/6 41/7<br>68/24 76/23 79/19<br>80/19 111/14 139/8<br>150/6 154/11 154/16<br>154/23 158/6 166/8   | opportunity [5]<br>10/9 20/24 36/3<br>36/13 101/7                                                                                                                                                                                                    | ordinary [3] 11/4<br>114/18 114/19                                                                                                                                                                                            |
| opened [2] 78/14<br>80/19                                                                                                        | opposed [2] 43/17<br>137/10                                                                                                                                                                                                                          | original [2] 50/13<br>108/4                                                                                                                                                                                                   |
| opening [2] 3/14<br>18/19                                                                                                        | opposing [2] 149/11<br>150/24                                                                                                                                                                                                                        | originally [1] 157/8                                                                                                                                                                                                          |
| opens [1] 167/18                                                                                                                 | order [56] 29/20<br>34/8 34/9 34/10<br>34/15 34/17 34/19<br>34/20 34/20 46/13<br>64/14 65/7 67/6<br>67/16 67/19 68/14<br>71/6 71/19 75/13<br>79/3 80/22 81/1 81/2<br>81/2 81/5 81/11<br>82/24 85/20 90/16<br>99/23 107/7 107/20<br>109/1 109/4 109/5 | other [45] 3/19 5/3<br>6/10 11/6 13/19                                                                                                                                                                                        |
| operate [9] 19/12<br>89/3 135/17 135/20<br>150/6 155/8 156/6<br>158/8 164/16                                                     |                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                               |
| operates [1] 48/3                                                                                                                |                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                               |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>O</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| other... [40] 18/11<br>21/24 25/16 39/14<br>40/25 47/23 53/13<br>68/17 68/18 69/19<br>72/5 88/19 103/12<br>103/15 106/14<br>106/20 108/12<br>108/14 110/10<br>116/17 116/23<br>121/21 125/14<br>137/17 137/25<br>141/22 141/23 144/5<br>147/23 148/10<br>150/14 152/4 153/20<br>153/21 155/25 156/1<br>158/15 160/22<br>165/14 168/22<br>others [3] 104/22<br>140/21 154/25<br>Otherwise [2]<br>158/10 164/24<br>our [74] 4/5 6/16 7/7<br>10/22 10/22 42/19<br>49/4 73/20 88/17<br>89/8 90/5 93/7 94/9<br>94/10 94/10 94/11<br>94/11 94/11 94/14<br>94/23 95/7 95/18<br>96/5 96/19 99/13<br>99/14 99/21 100/4<br>100/21 100/22 101/1 | 101/9 101/22 104/2<br>104/3 105/15 105/25<br>106/3 106/5 106/13<br>106/22 107/23<br>108/22 110/16<br>110/17 112/5 112/7<br>112/12 113/5 113/7<br>113/9 114/14 115/4<br>115/18 115/19<br>115/25 116/7 116/24<br>119/2 121/9 123/6<br>123/11 127/24 128/1<br>146/18 147/23 152/7<br>155/5 155/14 155/22<br>157/19 158/21<br>164/18 169/22<br>ours [1] 49/7<br>ourselves [1] 155/16<br>out [61] 4/15 7/13<br>8/6 24/3 42/12 42/17<br>42/23 42/23 43/3<br>43/9 43/16 60/6<br>63/10 63/12 69/12<br>69/13 72/6 84/2<br>89/11 90/18 90/19<br>90/23 90/25 90/25<br>91/22 93/21 93/22<br>94/18 95/1 100/1<br>104/22 105/18 106/7<br>106/15 108/4 108/5<br>108/10 111/2 111/3<br>111/7 111/12 113/24 | 114/15 116/6 116/14<br>116/20 123/25<br>128/13 128/15<br>135/25 136/4 136/5<br>137/13 153/7 154/6<br>154/7 154/14 157/3<br>157/23 166/9 172/6<br>outcome [2] 126/13<br>165/2<br>outline [1] 4/7<br>outset [1] 9/17<br>outside [3] 4/18<br>131/25 132/18<br>outstanding [46]<br>30/4 64/7 65/6 65/13<br>66/23 68/13 71/8<br>94/22 94/25 95/6<br>95/8 95/10 95/10<br>95/13 97/4 97/7 97/9<br>100/12 100/15<br>102/13 102/14<br>102/21 102/25 103/8<br>103/12 106/7 106/19<br>107/11 109/3 109/15<br>109/17 110/12 112/4<br>113/18 113/19<br>113/20 113/21<br>123/14 128/14 129/5<br>129/6 129/8 129/11<br>161/10 161/15 162/8<br>over [12] 17/11 22/7<br>22/17 62/8 66/14 |

|                            |                            |                             |
|----------------------------|----------------------------|-----------------------------|
| <b>O</b>                   | <b>29/15 99/6</b>          | <b>106/13 112/2 114/8</b>   |
| <b>over... [7] 66/24</b>   | <b>Ownership [1]</b>       | <b>122/25 122/25</b>        |
| <b>81/21 85/20 85/21</b>   | <b>155/2</b>               | <b>125/18 125/21 126/3</b>  |
| <b>100/18 103/15</b>       | <b>owns [1] 48/2</b>       | <b>126/10 129/6 129/9</b>   |
| <b>162/14</b>              | <b>P</b>                   | <b>129/12 153/1 153/14</b>  |
| <b>overruled [17]</b>      | <b>P.A [1] 1/16</b>        | <b>153/15 161/9 161/14</b>  |
| <b>33/14 43/7 59/7</b>     | <b>p.m [8] 7/10 18/1</b>   | <b>161/15 161/23</b>        |
| <b>62/16 63/5 64/23</b>    | <b>30/13 117/4 122/18</b>  | <b>161/25 163/11</b>        |
| <b>71/11 109/9 110/4</b>   | <b>123/20 136/22</b>       | <b>paper [11] 40/6 40/8</b> |
| <b>121/25 141/20 142/4</b> | <b>139/21</b>              | <b>46/17 46/20 68/22</b>    |
| <b>145/15 145/25</b>       | <b>package [2] 11/13</b>   | <b>68/25 101/15 112/17</b>  |
| <b>146/24 147/16</b>       | <b>47/24</b>               | <b>146/13 152/13</b>        |
| <b>147/25</b>              | <b>page [23] 2/3 20/23</b> | <b>163/14</b>               |
| <b>overseas [1] 21/7</b>   | <b>33/5 34/6 39/17</b>     | <b>papers [3] 7/22 8/12</b> |
| <b>owe [5] 75/21 76/8</b>  | <b>39/18 42/23 52/12</b>   | <b>59/10</b>                |
| <b>107/1 121/11 152/25</b> | <b>52/13 52/20 62/8</b>    | <b>PAPPAS [4] 1/22</b>      |
| <b>owed [11] 69/15</b>     | <b>119/24 120/2 120/3</b>  | <b>2/6 3/11 47/10</b>       |
| <b>95/11 96/21 97/4</b>    | <b>131/1 132/5 133/23</b>  | <b>paragraph [2] 131/1</b>  |
| <b>97/14 102/13 102/22</b> | <b>140/6 140/7 140/9</b>   | <b>143/9</b>                |
| <b>103/12 113/20</b>       | <b>146/21 149/13</b>       | <b>paragraph 6 [2]</b>      |
| <b>121/13 123/15</b>       | <b>149/13</b>              | <b>131/1 143/9</b>          |
| <b>owes [2] 94/25</b>      | <b>pages [5] 1/7 91/12</b> | <b>paralegal [1] 3/7</b>    |
| <b>106/14</b>              | <b>119/10 172/2 172/4</b>  | <b>part [9] 8/1 25/25</b>   |
| <b>owing [3] 82/14</b>     | <b>paid [45] 27/4 32/8</b> | <b>27/13 31/3 42/19</b>     |
| <b>94/22 97/13</b>         | <b>40/15 41/22 42/13</b>   | <b>44/9 96/5 106/3</b>      |
| <b>own [8] 15/13 15/22</b> | <b>43/25 58/20 70/18</b>   | <b>111/11</b>               |
| <b>15/23 47/23 58/5</b>    | <b>71/14 79/16 94/8</b>    | <b>partake [1] 91/2</b>     |
| <b>124/14 140/15 156/6</b> | <b>94/19 94/24 96/6</b>    | <b>partial [1] 113/19</b>   |
| <b>owner [7] 15/8 48/5</b> | <b>97/16 98/16 99/5</b>    | <b>participated [1]</b>     |
| <b>96/1 100/20 127/17</b>  | <b>100/13 100/17</b>       | <b>144/2</b>                |
| <b>137/7 158/24</b>        | <b>102/14 103/15</b>       | <b>particular [7] 5/9</b>   |
| <b>owners [3] 23/21</b>    | <b>103/22 106/8 106/12</b> | <b>117/24 137/7 137/14</b>  |



| <b>P</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                            |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| particular... [3]<br>140/22 142/24 152/1                                                                                                                                                                                                                                                                                                                                                                                                                                            | 98/7 98/12 99/7<br>99/22 99/25 100/3<br>102/23 103/11<br>103/12 104/8 104/13<br>105/3 105/10 105/16<br>105/16 106/4 107/18<br>108/1 108/1 112/11<br>122/7 122/10 123/4<br>123/4 123/6 123/6<br>123/9 123/17 123/23<br>124/6 126/2 126/7<br>128/23 131/4 131/8<br>141/12 142/19<br>148/22 152/12<br>152/13 152/15<br>152/15 152/19<br>152/19 152/24<br>153/16 154/16 161/8<br>161/9 161/22 162/11<br>162/13 163/4 163/6<br>163/7 164/4 164/19<br>165/18 | 100/7 100/8 100/10<br>102/18 102/20<br>103/13 104/2 104/3<br>104/9 107/1 110/20<br>112/3 123/7 123/7<br>123/10 123/13 126/8<br>126/10 126/12<br>126/14 128/9 128/13<br>128/16 128/24 129/2<br>129/14 164/5 |
| parties [1] 3/20                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                        | payments [2]<br>128/17 128/18                                                                                                                                                                              |
| party [1] 159/5                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                        | pays [2] 95/5 95/7                                                                                                                                                                                         |
| past [3] 17/12 29/2<br>41/8                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                        | penalty [1] 106/1                                                                                                                                                                                          |
| path [2] 144/11<br>144/12                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                        | pending [3] 4/14<br>102/11 102/11                                                                                                                                                                          |
| pay [128] 21/25<br>22/17 22/19 23/4<br>23/5 23/24 24/11<br>26/24 26/24 27/6<br>34/2 40/5 40/24<br>44/23 54/12 56/22<br>57/2 64/14 65/7<br>65/16 66/2 66/9 67/6<br>67/12 67/19 69/6<br>69/7 69/8 69/11<br>70/12 70/15 70/20<br>70/21 70/24 71/7<br>71/13 71/19 72/1<br>72/3 76/12 76/13<br>76/14 76/15 76/25<br>76/25 79/3 79/5<br>79/12 79/22 80/1<br>80/5 80/8 81/14<br>81/15 81/20 82/24<br>83/4 83/4 85/6 90/18<br>92/18 92/21 93/23<br>93/25 94/12 94/14<br>95/1 95/2 96/1 98/5 |                                                                                                                                                                                                                                                                                                                                                                                                                                                        | people [19] 20/11<br>23/20 29/14 62/11<br>64/13 69/2 70/25<br>71/1 71/21 72/11<br>73/13 84/14 84/14<br>85/17 88/23 105/6<br>111/17 111/21<br>127/22                                                        |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | paying [9] 6/18<br>25/17 94/6 100/13<br>104/5 106/16 106/18<br>161/6 163/1                                                                                                                                                                                                                                                                                                                                                                             | people's [1] 156/10                                                                                                                                                                                        |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | payment [43] 9/22<br>39/25 56/22 85/10<br>92/13 93/2 94/17<br>95/9 96/4 96/10<br>96/12 96/15 97/2<br>97/3 98/17 99/3                                                                                                                                                                                                                                                                                                                                   | per [4] 114/1 116/21<br>126/23 146/25                                                                                                                                                                      |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                        | percent [2] 5/20<br>48/11                                                                                                                                                                                  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                        | perfect [3] 47/18<br>47/19 47/22                                                                                                                                                                           |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                        | perhaps [1] 126/20                                                                                                                                                                                         |

|                             |                             |                             |
|-----------------------------|-----------------------------|-----------------------------|
| <b>P</b>                    | <b>3/6</b>                  | <b>26/20 31/23 31/23</b>    |
| <b>period [8] 11/25</b>     | <b>phone [1] 41/13</b>      | <b>34/6 35/17 39/19</b>     |
| <b>91/6 92/9 95/2 99/24</b> | <b>physically [4] 22/1</b>  | <b>39/21 41/20 45/10</b>    |
| <b>125/5 138/16 170/21</b>  | <b>22/3 40/14 40/21</b>     | <b>46/8 65/3 66/3 87/21</b> |
| <b>permit [1] 126/15</b>    | <b>piece [3] 112/17</b>     | <b>89/19 93/5 127/21</b>    |
| <b>permits [1] 94/23</b>    | <b>146/13 163/14</b>        | <b>129/21 130/4 137/2</b>   |
| <b>permitted [2] 115/2</b>  | <b>pieces [1] 152/13</b>    | <b>171/21</b>               |
| <b>115/14</b>               | <b>place [5] 16/15</b>      | <b>plenty [1] 70/12</b>     |
| <b>permitting [3] 148/4</b> | <b>101/14 135/7 151/18</b>  | <b>plus [1] 98/7</b>        |
| <b>161/1 165/1</b>          | <b>160/12</b>               | <b>pmhudson [1] 1/14</b>    |
| <b>person [22] 14/10</b>    | <b>placed [3] 116/9</b>     | <b>podium [1] 86/8</b>      |
| <b>22/14 22/15 61/12</b>    | <b>131/14 143/14</b>        | <b>point [25] 6/5 7/20</b>  |
| <b>63/22 63/24 65/5</b>     | <b>plaintiff [17] 1/4</b>   | <b>10/9 10/18 14/7 14/8</b> |
| <b>68/10 78/24 79/25</b>    | <b>1/12 3/5 3/6 11/14</b>   | <b>19/23 19/25 20/12</b>    |
| <b>82/15 86/25 89/10</b>    | <b>15/5 20/13 86/21</b>     | <b>21/16 27/12 31/6</b>     |
| <b>96/23 110/14 122/22</b>  | <b>87/17 160/6 161/6</b>    | <b>64/5 81/21 98/14</b>     |
| <b>123/5 124/9 139/10</b>   | <b>161/12 161/22 162/2</b>  | <b>103/24 126/23</b>        |
| <b>141/4 149/16 152/21</b>  | <b>162/25 164/1 164/18</b>  | <b>154/23 161/14</b>        |
| <b>personal [7] 61/13</b>   | <b>plaintiff's [6] 1/9</b>  | <b>162/24 162/25</b>        |
| <b>109/7 110/2 127/16</b>   | <b>49/12 113/1 146/16</b>   | <b>163/25 164/22 165/9</b>  |
| <b>127/22 127/24</b>        | <b>160/21 161/4</b>         | <b>171/16</b>               |
| <b>146/22</b>               | <b>plaintiffs [4] 11/10</b> | <b>points [1] 116/20</b>    |
| <b>personally [15] 9/8</b>  | <b>36/1 160/15 160/19</b>   | <b>police [4] 136/21</b>    |
| <b>21/23 22/8 25/13</b>     | <b>planning [5] 90/8</b>    | <b>139/20 148/11 149/1</b>  |
| <b>33/23 34/24 35/14</b>    | <b>92/1 100/23 115/6</b>    | <b>policeman [1] 46/10</b>  |
| <b>35/17 39/12 47/16</b>    | <b>127/2</b>                | <b>policemen [1] 46/11</b>  |
| <b>54/11 61/11 63/21</b>    | <b>Plantation [1] 51/4</b>  | <b>policies [1] 127/14</b>  |
| <b>74/4 80/16</b>           | <b>plausibility [1]</b>     | <b>policy [1] 62/12</b>     |
| <b>pertaining [1]</b>       | <b>157/3</b>                | <b>pops [1] 116/17</b>      |
| <b>115/22</b>               | <b>play [1] 106/7</b>       | <b>position [3] 4/16</b>    |
| <b>pertains [1] 115/19</b>  | <b>please [24] 14/17</b>    | <b>88/8 130/8</b>           |
| <b>PHILLIP [2] 1/12</b>     | <b>15/15 20/24 21/22</b>    | <b>possess [1] 133/9</b>    |

|                             |                             |                             |
|-----------------------------|-----------------------------|-----------------------------|
| <b>P</b>                    | <b>132/19</b>               | <b>87/2 87/9 111/19</b>     |
| <b>possibility [1]</b>      | <b>presence [1] 77/7</b>    | <b>137/19 142/8 145/24</b>  |
| <b>114/17</b>               | <b>present [3] 77/5</b>     | <b>146/1 151/14 162/3</b>   |
| <b>possible [7] 3/25</b>    | <b>77/13 160/11</b>         | <b>problem [30] 20/1</b>    |
| <b>18/8 18/10 18/16</b>     | <b>presentation [1]</b>     | <b>24/3 25/17 26/16</b>     |
| <b>19/3 60/4 84/17</b>      | <b>153/8</b>                | <b>26/19 26/23 29/14</b>    |
| <b>Postal [1] 93/21</b>     | <b>presented [2] 35/25</b>  | <b>31/2 34/12 36/22</b>     |
| <b>posted [3] 59/15</b>     | <b>111/1</b>                | <b>38/18 42/19 56/22</b>    |
| <b>59/19 59/22</b>          | <b>presently [2] 17/3</b>   | <b>58/17 75/4 75/7 75/7</b> |
| <b>PostSecondary [1]</b>    | <b>17/8</b>                 | <b>75/10 76/12 76/13</b>    |
| <b>10/25</b>                | <b>preserve [1] 122/23</b>  | <b>81/14 84/1 85/6</b>      |
| <b>potential [1] 141/13</b> | <b>prevent [4] 18/19</b>    | <b>102/18 102/20</b>        |
| <b>potentially [1] 36/6</b> | <b>128/24 141/7 149/19</b>  | <b>105/14 106/17 124/6</b>  |
| <b>power [2] 75/16</b>      | <b>prevented [4] 6/15</b>   | <b>139/3 170/17</b>         |
| <b>75/18</b>                | <b>6/17 94/6 164/14</b>     | <b>problems [2] 23/21</b>   |
| <b>practice [4] 95/19</b>   | <b>previously [1] 25/16</b> | <b>81/25</b>                |
| <b>96/5 102/22 105/25</b>   | <b>principal [1] 3/8</b>    | <b>procedural [11] 4/6</b>  |
| <b>predicate [1] 20/18</b>  | <b>print [1] 122/9</b>      | <b>142/1 142/5 144/6</b>    |
| <b>predisposed [1]</b>      | <b>printed [3] 52/25</b>    | <b>152/9 159/21 159/24</b>  |
| <b>124/25</b>               | <b>96/23 137/15</b>         | <b>160/6 160/9 164/13</b>   |
| <b>preempted [2] 6/10</b>   | <b>printout [2] 93/7</b>    | <b>169/22</b>               |
| <b>6/12</b>                 | <b>96/21</b>                | <b>procedure [13]</b>       |
| <b>preliminary [5] 1/9</b>  | <b>prior [11] 24/2</b>      | <b>12/10 12/13 90/2</b>     |
| <b>3/4 4/1 4/10 154/14</b>  | <b>92/13 92/16 93/23</b>    | <b>94/5 94/20 122/22</b>    |
| <b>Prepaid [1] 10/25</b>    | <b>103/1 106/8 118/14</b>   | <b>132/5 144/7 149/25</b>   |
| <b>prepare [1] 130/20</b>   | <b>118/23 119/4 145/5</b>   | <b>155/24 160/11</b>        |
| <b>prepared [5] 34/15</b>   | <b>145/12</b>               | <b>160/14 166/3</b>         |
| <b>120/24 137/8 137/18</b>  | <b>privilege [2] 118/17</b> | <b>procedures [6]</b>       |
| <b>137/19</b>               | <b>146/9</b>                | <b>74/17 83/13 127/14</b>   |
| <b>preparing [3]</b>        | <b>probably [16] 22/19</b>  | <b>128/9 131/11 154/2</b>   |
| <b>118/25 119/1 124/4</b>   | <b>31/2 38/3 69/10</b>      | <b>proceed [1] 20/20</b>    |
| <b>prescribed [1]</b>       | <b>69/10 69/11 72/16</b>    | <b>proceeding [5]</b>       |

|                             |                              |                             |
|-----------------------------|------------------------------|-----------------------------|
| <b>P</b>                    | <b>169/24</b>                | <b>155/6 158/18 158/22</b>  |
| <b>proceeding... [5]</b>    | <b>processed [1] 112/2</b>   | <b>158/24 159/3 159/10</b>  |
| <b>102/11 121/21</b>        | <b>processes [2] 101/8</b>   | <b>159/12 159/13</b>        |
| <b>143/24 168/20</b>        | <b>161/3</b>                 | <b>159/19 159/23</b>        |
| <b>168/22</b>               | <b>processing [1] 90/2</b>   | <b>160/22 164/11 170/6</b>  |
| <b>proceedings [3] 3/2</b>  | <b>produce [1] 113/6</b>     | <b>proposition [1]</b>      |
| <b>87/16 172/14</b>         | <b>professional [18]</b>     | <b>158/18</b>               |
| <b>process [70] 4/6 4/6</b> | <b>9/8 9/8 20/9 62/11</b>    | <b>prosecuting [1]</b>      |
| <b>6/16 8/15 8/21 11/15</b> | <b>69/2 70/25 71/1</b>       | <b>111/22</b>               |
| <b>11/18 11/23 14/2</b>     | <b>71/21 72/11 73/13</b>     | <b>protect [3] 11/8</b>     |
| <b>24/2 89/5 94/5 101/4</b> | <b>74/3 74/6 75/2 75/2</b>   | <b>155/2 159/13</b>         |
| <b>101/9 101/11 102/4</b>   | <b>75/6 75/8 84/14 85/5</b>  | <b>protectable [2] 5/12</b> |
| <b>103/9 104/17 104/18</b>  | <b>professionals [4]</b>     | <b>158/19</b>               |
| <b>104/18 104/19</b>        | <b>17/18 69/4 74/24</b>      | <b>protected [7] 10/19</b>  |
| <b>104/23 105/11</b>        | <b>127/19</b>                | <b>10/23 11/7 159/3</b>     |
| <b>111/19 123/11</b>        | <b>profit [3] 11/3 88/25</b> | <b>160/23 164/11</b>        |
| <b>132/22 142/15</b>        | <b>159/20</b>                | <b>169/16</b>               |
| <b>143/16 143/16 144/6</b>  | <b>profitable [3] 16/11</b>  | <b>protections [3]</b>      |
| <b>151/23 152/5 152/9</b>   | <b>16/12 19/3</b>            | <b>142/1 142/5 144/6</b>    |
| <b>152/16 152/17</b>        | <b>profits [2] 166/12</b>    | <b>protective [1] 4/20</b>  |
| <b>152/18 154/9 155/18</b>  | <b>166/15</b>                | <b>protocol [1] 131/11</b>  |
| <b>155/19 156/3 156/4</b>   | <b>program [1] 147/4</b>     | <b>protocols [1] 143/11</b> |
| <b>156/17 159/3 159/5</b>   | <b>progress [1] 29/25</b>    | <b>prove [3] 155/9</b>      |
| <b>159/7 159/21 159/24</b>  | <b>prohibited [1] 58/24</b>  | <b>155/16 158/5</b>         |
| <b>160/1 160/2 160/3</b>    | <b>prohibits [1] 11/13</b>   | <b>provide [2] 25/4</b>     |
| <b>160/7 160/7 160/9</b>    | <b>prominently [1]</b>       | <b>121/13</b>               |
| <b>160/19 161/13 162/7</b>  | <b>59/11</b>                 | <b>provided [2] 105/25</b>  |
| <b>163/1 164/2 164/8</b>    | <b>properly [1] 159/21</b>   | <b>115/15</b>               |
| <b>164/12 164/13</b>        | <b>property [25] 4/21</b>    | <b>provides [1] 159/4</b>   |
| <b>165/17 165/22 168/6</b>  | <b>6/1 10/18 10/19 11/2</b>  | <b>providing [1] 119/1</b>  |
| <b>168/8 168/12 169/5</b>   | <b>11/3 11/7 11/8 13/2</b>   | <b>proving [1] 155/10</b>   |
| <b>169/22 169/23</b>        | <b>155/1 155/2 155/3</b>     | <b>provision [1] 141/22</b> |

|                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>P</b>                                                                                                                                                                                                                                                                                                                    | questions [10] 25/12<br>25/12 47/3 86/1<br>101/23 128/3 128/4<br>135/22 137/24 150/8<br>quick [2] 107/17<br>172/9<br>quickly [2] 170/15<br>172/6<br>Quiet [1] 86/4<br>quo [2] 4/2 4/15                                                                                                                                                                                                                                | 117/1 117/7 117/13<br>120/22 141/21<br>ready [2] 69/6 78/18<br>real [1] 72/10<br>realize [5] 19/25<br>20/2 20/4 163/9<br>163/10<br>realized [2] 13/1<br>19/21<br>really [9] 8/13 11/20<br>105/10 105/13 114/4<br>131/9 148/3 157/21<br>167/5<br>realm [1] 114/17<br>reapplied [1] 126/21<br>reapplies [1] 126/24<br>reapply [9] 6/23<br>99/24 114/22 114/25<br>115/8 115/10 126/20<br>126/23 147/1<br>reapplying [1]<br>126/23<br>reason [15] 20/4<br>22/19 28/6 28/9<br>48/24 74/2 74/8<br>74/21 103/16 114/10<br>119/5 138/2 158/19<br>161/5 162/2<br>reasonable [1]<br>155/10<br>reasons [3] 39/14<br>76/18 167/7 |
| pulled [2] 116/12<br>119/13<br>punishment [1]<br>163/20<br>purpose [1] 38/13<br>pursuant [1] 125/13<br>pursue [2] 160/25<br>166/25<br>pursued [2] 160/16<br>162/25<br>put [12] 4/8 4/15<br>7/13 8/6 60/4 60/4<br>104/22 105/1 123/16<br>147/23 153/11<br>157/24                                                             | <b>R</b><br>radar [1] 119/4<br>rarely [1] 158/14<br>rather [4] 25/9<br>131/12 143/12 169/2<br>ratify [1] 131/15<br>reach [2] 111/2<br>114/15<br>reached [2] 31/10<br>123/25<br>read [24] 5/6 8/12<br>37/9 47/16 47/18<br>47/18 47/21 47/22<br>62/8 68/25 109/5<br>113/14 113/16<br>113/22 113/24<br>119/11 120/10<br>139/24 139/25<br>140/15 140/17 141/1<br>146/20 149/21<br>reading [9] 32/9<br>109/18 109/20 111/2 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Q</b><br>quarter [1] 87/14<br>quarters [1] 116/2<br>question [33] 15/15<br>19/24 42/17 42/22<br>47/15 48/22 53/9<br>57/21 64/24 65/3<br>65/20 66/1 66/3<br>74/13 76/4 76/6 77/2<br>82/5 82/19 83/5 84/5<br>86/7 91/19 110/22<br>125/3 127/6 127/21<br>135/24 144/16 164/9<br>165/10 169/21 170/8<br>questioning [1] 63/2 |                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

|                             |                             |                             |
|-----------------------------|-----------------------------|-----------------------------|
| <b>R</b>                    | <b>48/23 49/1 50/5 50/8</b> | <b>100/4</b>                |
| <b>rebuttal [1] 36/6</b>    | <b>55/7 55/9 61/21 90/4</b> | <b>rectangle [2] 37/6</b>   |
| <b>recall [14] 19/10</b>    | <b>97/20 108/13 119/25</b>  | <b>146/21</b>               |
| <b>35/4 35/10 43/21</b>     | <b>120/7 120/11 120/24</b>  | <b>rectangular [1]</b>      |
| <b>43/23 45/18 47/2</b>     | <b>142/25</b>               | <b>158/4</b>                |
| <b>55/20 68/2 107/10</b>    | <b>receiving [2] 108/14</b> | <b>red [3] 113/14</b>       |
| <b>124/3 124/5 148/10</b>   | <b>139/11</b>               | <b>113/15 113/16</b>        |
| <b>153/17</b>               | <b>recent [1] 157/11</b>    | <b>redirect [6] 2/10</b>    |
| <b>receipt [36] 14/11</b>   | <b>recess [2] 87/16</b>     | <b>2/14 86/16 128/6</b>     |
| <b>19/7 19/10 21/5 40/7</b> | <b>172/7</b>                | <b>149/4 149/6</b>          |
| <b>40/14 40/16 40/20</b>    | <b>recognize [10] 49/19</b> | <b>reduced [4] 17/13</b>    |
| <b>41/22 88/22 88/23</b>    | <b>49/25 53/19 53/19</b>    | <b>18/4 18/8 163/2</b>      |
| <b>89/1 89/3 89/9 89/23</b> | <b>72/9 112/24 131/21</b>   | <b>refer [2] 121/5</b>      |
| <b>90/1 91/5 132/8</b>      | <b>132/14 133/4 134/22</b>  | <b>121/12</b>               |
| <b>132/24 133/8 133/10</b>  | <b>recognized [1]</b>       | <b>reference [2] 133/22</b> |
| <b>133/19 134/24</b>        | <b>65/21</b>                | <b>139/13</b>               |
| <b>135/10 135/17</b>        | <b>recognizes [1] 16/25</b> | <b>referenced [1]</b>       |
| <b>135/18 137/14</b>        | <b>recollection [2]</b>     | <b>142/11</b>               |
| <b>139/14 141/5 141/6</b>   | <b>105/8 119/14</b>         | <b>referendum [1]</b>       |
| <b>141/8 141/25 143/1</b>   | <b>recommend [2]</b>        | <b>157/11</b>               |
| <b>149/17 149/18</b>        | <b>171/20 171/21</b>        | <b>referring [3] 74/3</b>   |
| <b>149/20</b>               | <b>recommendation [1]</b>   | <b>136/23 136/24</b>        |
| <b>receipts [3] 88/18</b>   | <b>170/18</b>               | <b>refresh [1] 119/14</b>   |
| <b>89/7 138/10</b>          | <b>record [19] 6/22</b>     | <b>refund [1] 126/13</b>    |
| <b>receive [16] 20/2</b>    | <b>20/17 36/2 36/7</b>      | <b>refusal [1] 85/7</b>     |
| <b>51/19 53/24 54/20</b>    | <b>36/12 113/1 113/16</b>   | <b>refuse [2] 123/9</b>     |
| <b>55/6 55/8 55/11</b>      | <b>113/18 113/23</b>        | <b>123/10</b>               |
| <b>55/11 61/11 61/13</b>    | <b>120/10 134/5 140/1</b>   | <b>refused [11] 9/22</b>    |
| <b>101/15 102/22</b>        | <b>141/1 150/21 152/20</b>  | <b>11/24 41/2 41/3 41/4</b> |
| <b>108/12 108/20</b>        | <b>155/9 155/23 161/5</b>   | <b>71/7 76/14 76/15</b>     |
| <b>110/16 110/18</b>        | <b>162/24</b>               | <b>84/13 85/13 128/9</b>    |
| <b>received [16] 34/24</b>  | <b>records [2] 42/20</b>    | <b>regarding [8] 31/7</b>   |

|                                                                                      |                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                        |
|--------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>R</b>                                                                             |                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                        |
| regarding... [7]<br>34/11 42/4 42/9<br>84/19 84/24 99/3<br>145/10                    | relies [1] 152/3<br>reloader [1] 44/9<br>rely [4] 140/15<br>141/16 168/14<br>168/15                                                                                                                                                                                                                                        | 19/23 22/12 22/12<br>22/17 23/5 23/10<br>23/23 29/19 37/25<br>38/7 38/9 39/15<br>39/16 45/5 54/8                                                                                                                                                       |
| register [1] 59/15                                                                   | relying [2] 155/12                                                                                                                                                                                                                                                                                                         | 54/12 54/13 54/14                                                                                                                                                                                                                                      |
| regular [5] 15/22<br>111/11 116/12<br>124/18 131/10                                  | 170/4                                                                                                                                                                                                                                                                                                                      | 54/16 55/17 56/5<br>56/5 56/7 56/10                                                                                                                                                                                                                    |
| regulation [1] 6/12                                                                  | remained [1] 78/15                                                                                                                                                                                                                                                                                                         | 56/24 57/12 57/13                                                                                                                                                                                                                                      |
| regulatory [9] 90/5<br>91/3 100/23 101/1<br>101/17 101/17 115/9<br>126/25 127/1      | remedies [1] 167/23                                                                                                                                                                                                                                                                                                        | 57/16 57/18 57/24<br>57/25 58/6 58/7 58/8                                                                                                                                                                                                              |
| rejected [3] 123/2<br>123/3 127/5                                                    | remedy [7] 8/21<br>8/22 11/23 95/11<br>160/12 167/15<br>167/16                                                                                                                                                                                                                                                             | 64/14 65/7 65/12<br>65/17 66/2 66/7<br>66/10 66/22 67/1                                                                                                                                                                                                |
| relate [1] 165/14                                                                    | remember [45]<br>21/22 22/16 22/20<br>24/22 34/1 40/16<br>40/16 40/17 44/15<br>49/3 50/6 53/17<br>54/13 55/21 55/23<br>56/1 56/7 57/12<br>57/14 58/4 58/10<br>58/11 58/12 58/20<br>58/21 58/22 59/1<br>59/1 59/2 60/2 64/11<br>65/14 65/23 65/25<br>66/4 66/13 69/10<br>71/17 77/25 78/3<br>78/4 78/5 79/2 79/18<br>114/16 | 68/14 68/15 69/7<br>70/3 79/6 79/20<br>90/13 90/17 92/13<br>93/15 99/22 100/4<br>104/2 104/4 108/25<br>165/18                                                                                                                                          |
| Related [1] 51/23                                                                    |                                                                                                                                                                                                                                                                                                                            | renewal [37] 6/16<br>53/25 54/7 55/5<br>55/20 57/9 57/10<br>90/18 90/19 92/22<br>93/8 93/9 93/10<br>93/22 93/23 94/11<br>94/11 94/18 95/1<br>99/22 99/24 100/1<br>100/3 102/23 102/23<br>104/1 104/5 104/6<br>104/7 104/10 106/25<br>107/1 108/7 108/8 |
| relative [1] 108/12                                                                  |                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                        |
| relatively [1] 4/17                                                                  |                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                        |
| release [9] 95/18<br>102/17 103/11 107/2<br>111/25 123/13<br>123/14 125/18<br>125/22 |                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                        |
| released [2] 102/10<br>110/21                                                        |                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                        |
| relevance [1] 119/20                                                                 |                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                        |
| relevant [2] 6/13 7/7                                                                |                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                        |
| relied [2] 139/20<br>155/12                                                          | renew [66] 8/20<br>8/24 10/7 11/25<br>12/16 12/20 12/21                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                        |
| relief [2] 8/25 165/7                                                                |                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                        |

|                                                                                                                          |                                                                                                                                                                                        |                                                     |
|--------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------|
| <b>R</b>                                                                                                                 |                                                                                                                                                                                        |                                                     |
| renewal... [3] 108/9<br>108/18 159/6                                                                                     | representing [1]<br>96/24                                                                                                                                                              | 84/1 85/5 99/3 131/8                                |
| renewals [1] 113/9                                                                                                       | reprint [2] 96/18<br>105/24                                                                                                                                                            | resolved [12] 26/22<br>37/22 63/3 71/14             |
| renewed [16] 6/17<br>36/9 55/10 55/15<br>55/17 56/2 56/4<br>56/10 56/24 57/22<br>58/9 58/25 79/22<br>120/13 121/1 121/22 | request [1] 62/22                                                                                                                                                                      | 80/1 80/4 80/7 81/14                                |
| renewing [6] 6/16<br>25/17 25/20 38/13<br>38/16 58/25                                                                    | requested [1]<br>137/14                                                                                                                                                                | 100/16 103/17 162/1<br>162/8                        |
| rental [1] 148/24                                                                                                        | requesting [1] 124/5                                                                                                                                                                   | resolving [1] 110/12                                |
| reopen [1] 8/25                                                                                                          | require [3] 135/19<br>141/13 145/8                                                                                                                                                     | respond [3] 170/21<br>171/12 171/13                 |
| repay [1] 27/4                                                                                                           | required [9] 88/25<br>89/10 90/16 91/21<br>134/24 141/5 141/7<br>149/17 149/19                                                                                                         | response [2] 37/24<br>171/13                        |
| repeat [4] 31/9<br>53/13 117/9 127/21                                                                                    | requirement [1]<br>108/8                                                                                                                                                               | responsibilities [1]<br>88/15                       |
| rephrase [2] 73/2<br>84/21                                                                                               | requirements [1]<br>142/12                                                                                                                                                             | responsible [1]<br>118/11                           |
| replied [1] 36/9                                                                                                         | requires [2] 89/13<br>156/2                                                                                                                                                            | rest [3] 32/6 115/25<br>116/23                      |
| reply [1] 114/2                                                                                                          | requiring [1] 6/18                                                                                                                                                                     | restored [1] 4/16                                   |
| report [2] 26/15<br>170/18                                                                                               | resolution [2] 31/7<br>99/2                                                                                                                                                            | result [6] 7/21 82/6<br>101/6 154/3 154/10<br>158/9 |
| reported [2] 1/23<br>27/16                                                                                               | resolve [29] 21/17<br>23/21 26/16 26/18<br>26/22 29/5 29/14<br>29/18 31/2 34/12<br>67/6 67/11 67/16<br>67/18 67/20 67/25<br>68/3 68/13 68/15<br>70/16 70/21 70/24<br>71/18 75/10 82/24 | retained [3] 27/25<br>29/16 30/23                   |
| Reporter [2] 1/24<br>172/18                                                                                              |                                                                                                                                                                                        | retaliation [1] 156/8                               |
| representative [1]<br>96/19                                                                                              |                                                                                                                                                                                        | return [1] 137/14                                   |
| representatives [1]<br>96/25                                                                                             |                                                                                                                                                                                        | returned [1] 21/13                                  |
|                                                                                                                          |                                                                                                                                                                                        | revealing [1] 145/9                                 |
|                                                                                                                          |                                                                                                                                                                                        | revenue [3] 88/19<br>154/11 154/16                  |
|                                                                                                                          |                                                                                                                                                                                        | revenue-generating<br>[1] 88/19                     |
|                                                                                                                          |                                                                                                                                                                                        | review [1] 100/24                                   |



|                             |                              |                             |
|-----------------------------|------------------------------|-----------------------------|
| <b>R</b>                    | <b>96/7 98/5 98/25</b>       | <b>23/18 26/22 28/2</b>     |
| <b>reviewed [1] 101/18</b>  | <b>102/19 104/12 106/8</b>   | <b>32/14 38/3 54/19</b>     |
| <b>revoked [1] 8/22</b>     | <b>106/10 107/24 113/2</b>   | <b>66/11 66/12 81/2</b>     |
| <b>revoking [1] 10/11</b>   | <b>116/14 120/16</b>         | <b>82/23 85/5</b>           |
| <b>ridiculous [1]</b>       | <b>122/14 124/16</b>         | <b>rolled [2] 10/15</b>     |
| <b>163/24</b>               | <b>126/12 133/22</b>         | <b>12/23</b>                |
| <b>rigged [1] 156/20</b>    | <b>140/13 142/8 142/17</b>   | <b>Rosen [25] 29/10</b>     |
| <b>right [129] 7/15</b>     | <b>142/20 143/5 143/17</b>   | <b>29/11 29/16 29/23</b>    |
| <b>7/20 7/22 13/3 14/16</b> | <b>144/19 146/2 152/1</b>    | <b>29/25 30/5 30/15</b>     |
| <b>16/22 17/25 24/3</b>     | <b>153/18 153/19</b>         | <b>31/6 31/10 32/12</b>     |
| <b>42/5 45/10 46/19</b>     | <b>153/19 154/18</b>         | <b>32/14 32/14 32/16</b>    |
| <b>47/11 47/12 48/10</b>    | <b>154/21 154/24 155/1</b>   | <b>33/23 34/14 34/22</b>    |
| <b>49/2 50/1 50/2 50/10</b> | <b>155/3 155/6 156/5</b>     | <b>41/11 41/19 44/12</b>    |
| <b>50/18 51/17 51/25</b>    | <b>156/10 157/6 158/18</b>   | <b>77/5 77/13 77/18</b>     |
| <b>52/6 53/6 56/2 56/4</b>  | <b>158/22 159/5 159/7</b>    | <b>82/23 153/5 169/17</b>   |
| <b>59/15 59/16 59/20</b>    | <b>159/18 160/2 160/23</b>   | <b>route [7] 90/7 91/2</b>  |
| <b>59/22 60/19 60/23</b>    | <b>162/17 163/18</b>         | <b>92/1 101/1 101/16</b>    |
| <b>61/4 61/19 61/25</b>     | <b>165/10 166/21</b>         | <b>115/9 126/25</b>         |
| <b>62/2 62/6 62/21</b>      | <b>166/24 166/25</b>         | <b>routed [3] 90/5</b>      |
| <b>63/21 65/16 66/9</b>     | <b>169/23 169/24</b>         | <b>91/24 100/22</b>         |
| <b>67/17 68/2 68/20</b>     | <b>171/13</b>                | <b>RPR [2] 1/23 172/17</b>  |
| <b>69/22 70/8 70/13</b>     | <b>right-hand [2]</b>        | <b>rule [2] 3/18 170/17</b> |
| <b>71/16 71/23 72/5</b>     | <b>51/25 69/22</b>           | <b>ruled [1] 125/20</b>     |
| <b>72/5 72/10 72/12</b>     | <b>rights [6] 13/21</b>      | <b>rules [1] 125/20</b>     |
| <b>72/15 72/18 72/18</b>    | <b>155/2 156/5 156/7</b>     | <b>ruling [1] 98/21</b>     |
| <b>72/20 72/22 73/9</b>     | <b>157/6 160/21</b>          | <b>run [3] 113/9 157/23</b> |
| <b>75/17 76/7 76/22</b>     | <b>rise [2] 159/24 160/3</b> | <b>161/20</b>               |
| <b>76/22 77/21 77/25</b>    | <b>risk [1] 153/11</b>       | <b>running [5] 121/4</b>    |
| <b>78/11 79/4 79/22</b>     | <b>road [1] 166/14</b>       | <b>122/4 160/22 165/5</b>   |
| <b>80/1 80/2 80/9 80/11</b> | <b>Rochelle [18] 20/9</b>    | <b>170/7</b>                |
| <b>80/19 80/25 81/24</b>    | <b>21/18 22/13 22/21</b>     | <b>runs [2] 95/23 98/2</b>  |
| <b>83/19 91/25 95/15</b>    | <b>22/23 23/14 23/16</b>     |                             |

|                             |                              |                             |
|-----------------------------|------------------------------|-----------------------------|
| <b>S</b>                    | <b>145/14 151/17</b>         | <b>153/22 153/23 155/6</b>  |
| <b>S.E [1] 1/17</b>         | <b>sandwich [1] 87/15</b>    | <b>155/13 157/3 158/13</b>  |
| <b>said [49] 9/4 9/22</b>   | <b>satellite [3] 94/13</b>   | <b>158/22 160/18</b>        |
| <b>13/6 13/16 13/17</b>     | <b>94/14 123/6</b>           | <b>163/21 165/25</b>        |
| <b>14/7 14/14 24/20</b>     | <b>Saturday [2] 122/19</b>   | <b>167/17 168/17</b>        |
| <b>24/21 24/22 28/16</b>    | <b>122/20</b>                | <b>saying [20] 5/25</b>     |
| <b>28/17 28/18 29/23</b>    | <b>save [2] 57/18 57/20</b>  | <b>7/15 8/3 10/14 10/17</b> |
| <b>33/1 33/4 41/25</b>      | <b>saved [1] 36/19</b>       | <b>12/25 24/22 51/12</b>    |
| <b>53/10 53/12 53/14</b>    | <b>Savings [1] 10/25</b>     | <b>57/1 58/8 58/24</b>      |
| <b>53/16 57/2 61/21</b>     | <b>saw [6] 21/7 21/8</b>     | <b>67/21 67/22 67/23</b>    |
| <b>63/15 65/23 69/11</b>    | <b>21/13 80/19 83/24</b>     | <b>74/7 105/11 110/17</b>   |
| <b>71/14 73/22 73/23</b>    | <b>170/24</b>                | <b>115/16 159/13</b>        |
| <b>75/16 77/10 81/10</b>    | <b>say [70] 4/20 4/24</b>    | <b>169/12</b>               |
| <b>84/12 105/12 108/3</b>   | <b>5/5 5/6 5/21 6/1 9/21</b> | <b>says [46] 6/22 7/22</b>  |
| <b>110/13 123/22</b>        | <b>9/21 10/22 11/20</b>      | <b>9/20 11/1 11/5 14/1</b>  |
| <b>124/13 126/22</b>        | <b>11/22 13/23 23/5</b>      | <b>14/8 14/10 32/8 39/2</b> |
| <b>127/15 134/6 150/5</b>   | <b>24/19 25/8 25/8 25/9</b>  | <b>51/1 52/25 59/12</b>     |
| <b>152/18 156/14 158/1</b>  | <b>30/9 32/25 34/12</b>      | <b>59/19 60/23 61/25</b>    |
| <b>158/2 165/4 168/25</b>   | <b>37/24 39/18 48/8</b>      | <b>62/3 62/21 64/20</b>     |
| <b>170/4</b>                | <b>48/11 53/8 53/10</b>      | <b>65/24 71/16 72/17</b>    |
| <b>sale [2] 6/14 17/21</b>  | <b>54/14 67/11 67/13</b>     | <b>73/12 73/15 114/1</b>    |
| <b>sales [11] 5/20 6/13</b> | <b>67/15 69/5 69/10</b>      | <b>116/21 117/5 119/11</b>  |
| <b>90/1 91/9 91/10</b>      | <b>74/3 74/22 75/20</b>      | <b>131/3 132/7 134/5</b>    |
| <b>91/10 114/3 114/22</b>   | <b>76/7 77/9 95/14</b>       | <b>135/9 135/25 137/25</b>  |
| <b>115/11 132/18 147/1</b>  | <b>102/5 104/25 105/1</b>    | <b>138/1 138/13 139/15</b>  |
| <b>same [22] 9/13 11/5</b>  | <b>105/10 111/17</b>         | <b>149/15 155/24</b>        |
| <b>27/18 40/24 42/17</b>    | <b>111/21 114/15</b>         | <b>161/18 162/5 162/13</b>  |
| <b>55/18 55/24 57/7</b>     | <b>115/10 122/7 123/8</b>    | <b>164/14 164/17 166/4</b>  |
| <b>62/20 65/19 72/4</b>     | <b>127/4 127/25 137/19</b>   | <b>168/10</b>               |
| <b>73/3 73/8 87/9 110/1</b> | <b>139/13 142/5 143/18</b>   | <b>scales [1] 154/13</b>    |
| <b>115/21 116/14</b>        | <b>151/10 152/15</b>         | <b>schedule [3] 3/22</b>    |
| <b>137/19 141/11 142/3</b>  | <b>152/15 153/10</b>         | <b>95/16 144/25</b>         |

|                             |                              |                             |
|-----------------------------|------------------------------|-----------------------------|
| <b>S</b>                    | <b>143/2 144/24 146/13</b>   | <b>sent [11] 20/22</b>      |
| <b>SCOTT [2] 1/21</b>       | <b>158/9 163/9 168/17</b>    | <b>21/10 28/15 60/16</b>    |
| <b>3/10</b>                 | <b>seek [2] 14/12</b>        | <b>74/6 74/8 74/25</b>      |
| <b>screaming [1]</b>        | <b>140/24</b>                | <b>93/20 100/1 108/9</b>    |
| <b>156/16</b>               | <b>seem [2] 25/7 163/3</b>   | <b>136/5</b>                |
| <b>screen [1] 80/19</b>     | <b>seems [5] 32/9 33/8</b>   | <b>sentence [4] 114/4</b>   |
| <b>screenshot [4] 37/5</b>  | <b>120/14 120/19 170/5</b>   | <b>114/10 114/21</b>        |
| <b>99/13 113/5 113/7</b>    | <b>seen [10] 34/7 61/21</b>  | <b>146/20</b>               |
| <b>scrivener [1] 88/14</b>  | <b>104/15 107/9 143/3</b>    | <b>separate [2] 17/1</b>    |
| <b>second [15] 1/17</b>     | <b>143/6 147/11 158/11</b>   | <b>112/17</b>               |
| <b>30/13 33/5 48/13</b>     | <b>167/17 168/1</b>          | <b>separation [2] 21/4</b>  |
| <b>52/11 52/13 61/2</b>     | <b>seize [1] 134/6</b>       | <b>148/2</b>                |
| <b>67/21 72/2 86/25</b>     | <b>self [1] 9/4</b>          | <b>September [62]</b>       |
| <b>117/10 119/24 120/3</b>  | <b>self-evident [1] 9/4</b>  | <b>9/19 9/25 10/14</b>      |
| <b>142/18 166/17</b>        | <b>sell [8] 5/3 5/4 5/25</b> | <b>12/16 12/19 34/4</b>     |
| <b>section [8] 14/10</b>    | <b>16/2 16/6 17/3 132/3</b>  | <b>34/21 35/2 36/16</b>     |
| <b>89/8 139/13 139/23</b>   | <b>166/17</b>                | <b>39/16 54/2 54/9</b>      |
| <b>141/1 141/12 141/23</b>  | <b>selling [7] 21/3 30/9</b> | <b>56/24 57/5 57/14</b>     |
| <b>149/11</b>               | <b>30/13 49/2 49/17</b>      | <b>57/23 57/24 58/2</b>     |
| <b>Sections [1] 14/12</b>   | <b>71/4 131/25</b>           | <b>59/4 77/23 78/1</b>      |
| <b>see [41] 6/22 12/4</b>   | <b>send [18] 7/22 28/3</b>   | <b>78/12 78/16 78/22</b>    |
| <b>21/1 21/6 33/6 34/17</b> | <b>28/6 73/23 73/24</b>      | <b>78/22 78/24 79/6</b>     |
| <b>34/19 34/20 37/7</b>     | <b>74/19 74/19 74/19</b>     | <b>79/19 80/6 80/13</b>     |
| <b>46/20 50/24 52/12</b>    | <b>74/20 93/14 93/21</b>     | <b>82/7 83/9 89/25 91/7</b> |
| <b>52/13 62/2 62/23</b>     | <b>93/22 94/18 108/4</b>     | <b>92/7 92/10 92/11</b>     |
| <b>71/21 72/12 107/21</b>   | <b>108/5 111/12 122/6</b>    | <b>92/25 93/24 94/2</b>     |
| <b>111/7 115/25 116/3</b>   | <b>137/13</b>                | <b>94/3 95/2 95/4 100/3</b> |
| <b>116/4 116/7 116/23</b>   | <b>sending [1] 148/11</b>    | <b>103/19 108/24 109/4</b>  |
| <b>117/8 119/18 119/22</b>  | <b>sends [1] 104/7</b>       | <b>111/24 122/12</b>        |
| <b>119/25 124/1 126/14</b>  | <b>sense [7] 11/2 11/4</b>   | <b>122/15 122/17</b>        |
| <b>133/24 136/18</b>        | <b>123/10 124/8 124/10</b>   | <b>122/18 122/20</b>        |
| <b>138/22 138/24 141/9</b>  | <b>124/12 163/10</b>         | <b>122/22 123/1 123/16</b>  |

|                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>S</b>                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>September... [6]</b><br>129/1 131/6 158/1<br>162/12 162/19<br>162/19 | <b>September 7th [2]</b><br>78/12 162/19<br><b>September 8th [1]</b><br>111/24<br><b>September 9th [1]</b><br>78/1<br>serial [1] 113/19<br>series [3] 17/11 18/3<br>158/23<br>served [1] 88/10<br>service [4] 18/15<br>88/18 93/21 94/9<br>serving [1] 7/10<br>set [11] 20/18 75/11<br>75/11 75/13 78/19<br>83/6 121/3 153/23<br>154/9 154/22 157/25<br>settle [1] 112/4<br>settled [1] 110/18<br><b>Seven [2]</b> 107/6<br>111/6<br>several [5] 29/5<br>127/18 140/20 148/3<br>148/13<br>shall [1] 84/4<br>shame [2] 77/6<br>77/10<br>shareholder [1]<br>48/5<br>she [22] 20/9 20/10<br>20/11 23/18 23/19<br>23/21 23/23 23/24 | 23/24 24/14 26/11<br>26/15 26/17 26/18<br>26/20 26/22 27/4<br>27/6 27/6 27/16<br>28/20 41/18<br>she's [1] 26/18<br>Shir [15] 21/19<br>27/18 27/25 28/1<br>28/12 28/19 28/23<br>29/1 29/9 41/11<br>44/12 74/19 74/23<br>153/5 169/19<br>short [1] 148/24<br>short-term [1]<br>148/24<br>shorten [1] 171/19<br>shorter [3] 157/17<br>157/17 157/17<br>should [18] 7/16<br>7/18 11/20 36/19<br>42/3 42/7 57/8 59/18<br>76/5 87/14 105/12<br>117/18 151/21<br>164/20 164/21<br>165/20 165/21<br>171/24<br>shouldn't [4] 163/21<br>169/11 169/12 170/6<br>show [10] 7/11 7/24<br>12/3 22/19 46/17<br>65/9 65/10 68/22<br>95/17 165/21 |

|                             |                             |                             |
|-----------------------------|-----------------------------|-----------------------------|
| <b>S</b>                    | <b>79/11 136/13 137/6</b>   | <b>sitting [9] 60/1</b>     |
| <b>showed [7] 64/6</b>      | <b>similar [4] 90/24</b>    | <b>66/15 66/15 66/21</b>    |
| <b>65/6 65/11 82/14</b>     | <b>108/16 108/19</b>        | <b>67/4 69/5 75/19 76/6</b> |
| <b>109/23 155/19</b>        | <b>108/22</b>               | <b>83/25</b>                |
| <b>156/11</b>               | <b>simple [6] 4/3</b>       | <b>situation [13] 54/13</b> |
| <b>showing [2] 36/17</b>    | <b>100/21 111/24 116/8</b>  | <b>55/23 57/12 58/10</b>    |
| <b>113/2</b>                | <b>154/1 162/13</b>         | <b>58/20 58/21 58/23</b>    |
| <b>shown [2] 150/24</b>     | <b>simply [7] 67/4</b>      | <b>59/1 59/2 71/17</b>      |
| <b>162/3</b>                | <b>90/18 98/12 104/1</b>    | <b>72/22 74/2 156/1</b>     |
| <b>shows [5] 36/7 42/16</b> | <b>104/5 107/1 163/12</b>   | <b>six [7] 18/4 72/14</b>   |
| <b>52/1 99/14 99/16</b>     | <b>since [7] 10/6 88/11</b> | <b>98/7 161/10 161/10</b>   |
| <b>shut [22] 46/12</b>      | <b>100/1 105/21 107/15</b>  | <b>163/6 167/20</b>         |
| <b>46/21 78/5 78/6 78/9</b> | <b>130/9 162/6</b>          | <b>six-month-old [1]</b>    |
| <b>78/11 78/13 78/15</b>    | <b>single [3] 96/5</b>      | <b>98/7</b>                 |
| <b>116/24 128/13</b>        | <b>158/15 158/17</b>        | <b>small [1] 23/21</b>      |
| <b>128/15 139/16</b>        | <b>sir [44] 15/15 20/22</b> | <b>so [194]</b>             |
| <b>139/20 146/2 146/5</b>   | <b>21/16 37/17 39/24</b>    | <b>sole [2] 48/5 48/5</b>   |
| <b>149/1 149/23 152/8</b>   | <b>40/18 42/1 42/8</b>      | <b>solve [3] 31/11</b>      |
| <b>155/8 156/15 159/15</b>  | <b>43/19 44/11 53/8</b>     | <b>102/18 112/8</b>         |
| <b>169/24</b>               | <b>53/9 57/15 61/9 63/7</b> | <b>solved [2] 105/18</b>    |
| <b>shutting [2] 46/15</b>   | <b>64/24 65/2 65/16</b>     | <b>106/16</b>               |
| <b>148/12</b>               | <b>66/1 66/2 69/18</b>      | <b>solves [1] 102/20</b>    |
| <b>side [5] 51/25 53/6</b>  | <b>70/23 76/4 76/6 76/9</b> | <b>some [41] 7/16</b>       |
| <b>116/23 117/2 158/15</b>  | <b>77/5 77/7 78/11</b>      | <b>19/23 19/25 20/4</b>     |
| <b>sign [4] 46/20 74/11</b> | <b>81/19 85/15 86/4</b>     | <b>22/19 22/20 23/24</b>    |
| <b>74/13 79/3</b>           | <b>86/18 93/13 95/25</b>    | <b>24/4 28/6 28/9 29/25</b> |
| <b>signature [11] 32/4</b>  | <b>102/1 125/23 129/4</b>   | <b>30/2 31/6 68/23</b>      |
| <b>52/20 52/21 52/23</b>    | <b>129/17 134/9 134/20</b>  | <b>68/23 68/24 74/3</b>     |
| <b>53/3 53/4 53/15</b>      | <b>137/21 140/12</b>        | <b>74/21 75/3 78/17</b>     |
| <b>53/19 53/20 53/22</b>    | <b>147/18 150/9</b>         | <b>79/11 79/15 102/5</b>    |
| <b>111/7</b>                | <b>sit [3] 9/15 59/3</b>    | <b>105/19 111/21 119/7</b>  |
| <b>signed [4] 34/15</b>     | <b>153/6</b>                | <b>125/14 137/24</b>        |

|                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>S</b>                                                                                                                                                                                                                                                                                        | <b>sometime [6] 29/23<br/>54/10 58/4 107/16<br/>119/8 126/3</b>                                                                                                                                                           | <b>speak [4] 36/24 46/8<br/>107/15 124/5</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>some... [13] 140/20<br/>142/15 142/15<br/>143/16 146/18<br/>151/22 156/10 158/3<br/>163/21 164/20 165/7<br/>167/12 167/13</b>                                                                                                                                                                | <b>sometimes [9] 21/21<br/>23/24 54/11 108/3<br/>122/4 136/7 136/7<br/>142/18 144/22</b>                                                                                                                                  | <b>speaking [2] 28/19<br/>109/22</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>somebody [5] 20/7<br/>115/15 140/3 157/17<br/>164/25</b>                                                                                                                                                                                                                                     | <b>somewhat [1]<br/>168/24</b>                                                                                                                                                                                            | <b>special [87] 7/17<br/>16/18 18/25 28/20<br/>29/13 29/19 29/20<br/>30/3 30/15 63/3<br/>73/14 77/14 78/8<br/>80/7 95/15 95/16<br/>95/18 98/11 98/21<br/>99/2 102/11 102/15<br/>102/16 102/16<br/>103/23 103/24 107/7<br/>107/19 109/3 109/11<br/>111/7 111/8 111/9<br/>111/19 111/20<br/>111/22 119/16<br/>120/13 120/14<br/>120/20 121/1 121/6<br/>121/10 121/10<br/>121/12 121/12<br/>121/21 122/2 122/3<br/>122/6 122/7 122/9<br/>122/9 122/21 123/25<br/>124/15 124/17<br/>124/17 124/20<br/>124/21 125/8 125/9<br/>125/12 125/13<br/>125/15 125/17<br/>125/19 125/20 131/5<br/>131/6 131/12 131/14</b> |
| <b>Somehow [1] 125/8</b>                                                                                                                                                                                                                                                                        | <b>somewhere [4]<br/>59/19 60/23 116/9<br/>154/14</b>                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>someone [20] 18/14<br/>21/10 23/9 40/22<br/>43/8 45/15 53/3 53/3<br/>64/17 95/5 95/7<br/>116/12 121/4 121/9<br/>121/11 122/6 123/9<br/>124/10 137/8 156/14</b>                                                                                                                               | <b>song [1] 111/15</b>                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>someone's [1] 94/24</b>                                                                                                                                                                                                                                                                      | <b>soon [2] 98/17<br/>122/23</b>                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>something [36] 15/9<br/>15/18 22/5 38/2 40/3<br/>43/9 53/12 53/16<br/>56/6 59/15 59/17<br/>66/6 66/24 66/25<br/>71/4 81/13 81/16<br/>86/6 95/16 102/11<br/>103/22 109/11<br/>109/22 110/16<br/>110/18 115/19 119/6<br/>119/18 123/21 124/6<br/>151/23 152/4 152/6<br/>156/3 171/11 172/6</b> | <b>sooner [1] 171/7</b>                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|                                                                                                                                                                                                                                                                                                 | <b>sorry [28] 7/2 14/14<br/>19/24 28/10 31/9<br/>32/12 42/2 49/20<br/>53/17 66/17 68/8<br/>73/5 77/8 78/17 86/5<br/>86/10 94/2 109/6<br/>111/5 118/19 119/3<br/>120/2 121/14 138/17<br/>139/4 150/20 158/2<br/>159/17</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|                                                                                                                                                                                                                                                                                                 | <b>sort [4] 66/6 119/7<br/>143/16 151/22</b>                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|                                                                                                                                                                                                                                                                                                 | <b>South [2] 1/13 16/16</b>                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|                                                                                                                                                                                                                                                                                                 | <b>SOUTHERN [1]<br/>1/1</b>                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|                                                                                                                                                                                                                                                                                                 | <b>southwest [1] 16/23</b>                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

|          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|----------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>S</b> | <b>118/25 119/1 122/5<br/>122/8 124/17 127/24<br/>128/8<br/>stage [1] 158/5<br/>stake [1] 164/12<br/>stand [5] 6/4 22/6<br/>64/22 65/21 86/8<br/>standard [5] 95/18<br/>106/3 137/10 143/16<br/>143/18<br/>standing [1] 156/16<br/>start [10] 21/21<br/>42/17 50/4 50/22<br/>87/10 113/8 114/4<br/>156/5 157/6 157/8<br/>started [3] 3/13<br/>12/24 24/18<br/>starting [2] 39/4<br/>39/11<br/>starts [1] 116/13<br/>state [37] 6/9 6/9<br/>7/18 11/15 12/5 12/6<br/>12/8 12/9 12/9 12/10<br/>12/11 16/6 85/24<br/>86/12 89/14 89/14<br/>92/8 108/9 114/16<br/>122/14 133/18 135/4<br/>138/15 143/13 155/7<br/>159/20 160/10<br/>160/12 160/17<br/>160/25 161/1 161/1<br/>164/23 165/1 166/3</b> | <b>167/15 167/16<br/>stated [2] 105/2<br/>150/2<br/>statement [10] 6/25<br/>103/10 121/7 121/9<br/>121/17 121/18 123/8<br/>143/4 143/17 156/22<br/>statements [1] 88/19<br/>states [5] 1/1 1/10<br/>21/13 133/12 157/7<br/>status [4] 4/2 4/15<br/>99/20 114/8<br/>statute [6] 7/5 92/8<br/>108/9 138/3 139/25<br/>152/3<br/>statutes [5] 89/7<br/>140/16 140/17 152/4<br/>155/13<br/>stay [2] 8/19 41/15<br/>staying [2] 151/25<br/>152/1<br/>step [10] 86/18<br/>102/18 117/21<br/>117/21 118/6 118/6<br/>129/17 142/17<br/>142/18 150/9<br/>stick [1] 151/12<br/>still [10] 4/2 69/4<br/>80/19 81/15 99/10<br/>131/9 135/16 161/7<br/>162/7 169/9<br/>stipulate [2] 86/4</b> |
|----------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                        |                       |                      |
|------------------------|-----------------------|----------------------|
| <b>S</b>               |                       |                      |
| stipulate... [1] 86/11 | subject [1] 36/11     | 120/19 155/10        |
| stipulated [3]         | submit [8] 89/11      | suing [1] 169/11     |
| 143/19 144/20          | 89/14 89/15 91/20     | Suite [4] 1/13 1/18  |
| 144/25                 | 92/13 96/10 100/21    | 1/24 172/18          |
| stood [1] 152/9        | 101/3                 | summation [1]        |
| stop [4] 5/3 27/13     | submitted [6] 88/12   | 157/14               |
| 75/25 76/1             | 91/23 96/12 100/7     | Sunday [2] 39/1      |
| store [27] 4/25 5/24   | 101/12 164/5          | 171/16               |
| 15/11 15/13 15/22      | subordinate [1]       | supervisor [4] 112/6 |
| 15/25 17/5 18/15       | 111/18                | 124/4 124/5 124/8    |
| 18/22 18/22 18/23      | subsection [3] 141/2  | supervisors [2]      |
| 18/23 18/25 46/10      | 141/21 141/23         | 105/17 124/4         |
| 46/12 47/24 50/2       | substantially [2]     | supplemental [4]     |
| 50/7 59/22 59/24       | 17/13 18/8            | 141/4 149/16 152/4   |
| 75/14 76/21 76/21      | substantive [7] 4/6   | 155/24               |
| 125/1 154/4 154/23     | 160/1 160/1 160/3     | supposed [4] 59/13   |
| 166/20                 | 160/7 160/19 164/12   | 154/19 164/16 167/3  |
| stores [11] 7/8 8/6    | success [2] 164/10    | Supreme [1] 10/24    |
| 11/13 17/3 17/8        | 166/1                 | sure [21] 5/21 13/13 |
| 17/14 18/11 18/19      | successful [5] 24/14  | 25/1 38/10 56/6      |
| 60/21 81/25 104/22     | 28/23 29/25 30/15     | 61/20 65/9 65/9      |
| story [3] 151/11       | 31/4                  | 94/23 105/3 106/10   |
| 151/12 157/19          | successfully [1]      | 109/6 113/6 116/17   |
| Street [3] 1/17 16/23  | 166/14                | 116/20 137/21        |
| 16/23                  | such [2] 141/6        | 137/22 142/7 153/14  |
| strike [5] 18/11       | 149/18                | 154/13 167/12        |
| 36/13 47/2 48/13       | sudden [2] 24/23      | surprise [2] 126/6   |
| 125/2                  | 169/8                 | 126/9                |
| strongest [1] 170/5    | sufficient [1] 111/25 | survive [2] 4/17     |
| stuff [3] 23/20        | suggest [3] 144/13    | 18/7                 |
| 155/13 168/15          | 147/13 167/5          | surviving [1] 20/4   |
|                        | suggests [3] 88/13    | suspended [1] 8/23   |



|                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                            |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>S</b>                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                            |
| suspense [3] 106/11<br>126/12 126/15                                                                                                                                                                                                                                                                                        | 12/2 20/23 22/6<br>22/24 35/6 36/13<br>38/20 41/3 75/13<br>86/20 87/3 87/4 87/8<br>91/2 91/4 93/5 96/16<br>99/11 107/17 109/6<br>110/5 112/23 117/21<br>119/18 123/15 134/6<br>135/7 142/16 142/23<br>146/16 150/11 155/4<br>157/10 162/12<br>164/23 165/4 166/5<br>168/7 169/5 170/25 | 75/23 84/15 84/16<br>84/16 85/9 85/13<br>92/16 110/8 140/9<br>161/2 161/3 166/19<br>170/21                                                                                                 |
| Sustained [8] 28/14<br>44/7 118/18 118/20<br>144/9 145/20 146/7<br>146/11                                                                                                                                                                                                                                                   | targeted [3] 7/8 7/9<br>7/10                                                                                                                                                                                                                                                           |                                                                                                                                                                                            |
| sworn [3] 14/21<br>87/23 129/23                                                                                                                                                                                                                                                                                             | targeting [1] 7/12                                                                                                                                                                                                                                                                     |                                                                                                                                                                                            |
| system [41] 23/22<br>38/1 38/3 85/24 93/7<br>101/22 104/2 104/3<br>106/14 113/5 113/7<br>113/8 113/11 114/14<br>115/4 115/6 115/7<br>115/19 116/5 116/7<br>116/10 116/18<br>123/17 126/8 126/22<br>128/12 128/15<br>128/17 128/19<br>128/21 146/19 147/3<br>147/5 147/7 147/8<br>147/21 156/20 162/4<br>164/24 165/1 167/17 | tax [37] 14/11 19/7<br>19/10 21/5 88/18<br>88/22 88/23 88/24<br>89/1 89/3 89/7 89/9<br>89/23 90/1 91/5 99/4<br>108/19 108/22<br>108/23 111/12 133/8<br>133/10 133/19<br>134/24 135/10<br>135/16 135/18<br>138/10 139/14 141/5<br>141/6 141/7 141/25<br>143/1 149/17 149/18<br>149/19   |                                                                                                                                                                                            |
| <b>T</b>                                                                                                                                                                                                                                                                                                                    | taken [4] 33/10<br>87/16 125/7 167/20                                                                                                                                                                                                                                                  |                                                                                                                                                                                            |
| tab [9] 20/22 31/23<br>39/21 42/7 49/11<br>50/11 54/21 130/17<br>131/19                                                                                                                                                                                                                                                     | taking [7] 7/6 7/6<br>10/12 24/20 46/19<br>68/25 118/6                                                                                                                                                                                                                                 |                                                                                                                                                                                            |
| take [45] 3/22 9/16<br>9/22 11/19 11/24                                                                                                                                                                                                                                                                                     | talk [14] 7/19 8/10<br>40/1 46/2 46/17<br>48/15 50/10 53/7<br>83/25 94/1 104/15<br>104/16 122/11<br>156/14<br>talked [3] 98/23<br>149/11 160/15<br>talking [30] 6/7<br>22/25 26/2 28/15<br>31/25 39/6 53/6 57/3<br>57/4 57/4 58/14<br>66/12 66/16 70/23<br>73/17 74/22 75/8            | taxes [1] 108/20<br>technical [1] 155/13<br>technically [2]<br>82/25 162/7<br>technique [1]<br>157/16<br>tell [53] 9/14 9/15<br>16/13 16/21 18/18<br>20/24 22/14 22/15<br>23/1 31/10 31/14 |

|                              |                             |                              |
|------------------------------|-----------------------------|------------------------------|
| <b>T</b>                     | <b>term [1] 148/24</b>      | <b>101/24 128/2 129/16</b>   |
| <b>tell... [42] 32/16</b>    | <b>terminology [1]</b>      | <b>129/17 150/9 150/10</b>   |
| <b>32/19 35/20 35/21</b>     | <b>110/18</b>               | <b>158/12 167/8 171/23</b>   |
| <b>37/7 37/9 40/5 40/11</b>  | <b>terms [1] 11/8</b>       | <b>172/8 172/9</b>           |
| <b>41/4 41/20 49/13</b>      | <b>testified [16] 14/22</b> | <b>Thanks [2] 136/18</b>     |
| <b>68/12 74/13 78/18</b>     | <b>24/24 60/5 63/24</b>     | <b>172/5</b>                 |
| <b>81/15 86/6 105/2</b>      | <b>64/5 87/24 104/5</b>     | <b>Thanksgiving [2]</b>      |
| <b>105/11 105/11</b>         | <b>104/17 104/17</b>        | <b>171/14 172/8</b>          |
| <b>105/13 105/25 107/5</b>   | <b>107/11 114/12 126/6</b>  | <b>that [715]</b>            |
| <b>109/14 109/15</b>         | <b>127/14 129/24</b>        | <b>that's [107] 4/18 5/2</b> |
| <b>109/21 111/4 112/24</b>   | <b>147/22 152/10</b>        | <b>6/9 7/7 7/25 8/15 9/1</b> |
| <b>113/12 113/13 118/4</b>   | <b>testify [4] 36/9</b>     | <b>9/14 10/23 19/11</b>      |
| <b>118/8 130/4 137/17</b>    | <b>36/22 64/18 128/12</b>   | <b>20/4 28/17 28/18</b>      |
| <b>146/17 146/17</b>         | <b>testifying [4] 56/9</b>  | <b>33/4 36/21 38/3</b>       |
| <b>146/17 149/24</b>         | <b>58/13 64/17 110/4</b>    | <b>38/24 39/1 42/1</b>       |
| <b>149/25 153/9 155/18</b>   | <b>testimony [19] 3/20</b>  | <b>42/11 42/25 43/20</b>     |
| <b>169/6 170/1</b>           | <b>3/21 8/9 23/11 24/17</b> | <b>45/11 49/21 50/18</b>     |
| <b>telling [4] 25/7 68/2</b> | <b>56/12 57/11 67/23</b>    | <b>51/17 52/18 52/23</b>     |
| <b>157/5 169/4</b>           | <b>67/25 71/10 103/6</b>    | <b>54/15 56/11 57/11</b>     |
| <b>tells [1] 89/12</b>       | <b>104/1 121/24 123/2</b>   | <b>61/4 61/16 63/24</b>      |
| <b>temporarily [1]</b>       | <b>125/4 143/15 163/17</b>  | <b>64/19 67/8 67/13</b>      |
| <b>158/7</b>                 | <b>164/6 168/19</b>         | <b>69/18 75/12 75/14</b>     |
| <b>temporary [1] 4/14</b>    | <b>than [18] 3/19 5/22</b>  | <b>92/15 92/21 93/19</b>     |
| <b>ten [14] 61/4 68/23</b>   | <b>13/19 21/24 25/9</b>     | <b>94/18 95/6 95/18</b>      |
| <b>132/24 132/25</b>         | <b>28/21 63/11 68/23</b>    | <b>96/5 96/20 96/20</b>      |
| <b>133/13 133/15 135/4</b>   | <b>140/21 144/11</b>        | <b>103/22 107/24</b>         |
| <b>138/1 138/3 138/10</b>    | <b>148/15 148/15 149/9</b>  | <b>108/21 109/20 112/6</b>   |
| <b>138/13 138/18</b>         | <b>153/4 156/7 164/19</b>   | <b>112/7 114/4 114/16</b>    |
| <b>138/25 172/4</b>          | <b>165/14 166/13</b>        | <b>114/24 116/15</b>         |
| <b>tender [1] 110/14</b>     | <b>thank [19] 3/24 7/2</b>  | <b>117/20 118/5 119/7</b>    |
| <b>tendered [4] 13/16</b>    | <b>15/17 35/8 38/25</b>     | <b>120/18 123/8 125/5</b>    |
| <b>102/6 161/24 164/7</b>    | <b>83/2 88/21 95/9</b>      | <b>125/12 126/11</b>         |

|                              |                             |                              |
|------------------------------|-----------------------------|------------------------------|
| <b>T</b>                     | <b>23/2 23/4 30/18</b>      | <b>149/18 150/5 152/25</b>   |
| <b>that's... [40] 126/12</b> | <b>30/19 30/20 30/22</b>    | <b>153/19 153/24</b>         |
| <b>126/12 126/24 127/4</b>   | <b>37/21 46/12 46/17</b>    | <b>156/15 161/7 161/12</b>   |
| <b>129/8 136/4 136/15</b>    | <b>46/17 48/15 49/8</b>     | <b>162/3 163/15 165/11</b>   |
| <b>142/20 146/2 146/16</b>   | <b>56/15 68/2 73/11</b>     | <b>168/8 169/6 170/18</b>    |
| <b>146/20 148/4 148/6</b>    | <b>80/10 82/17 83/25</b>    | <b>170/19 170/20</b>         |
| <b>148/21 149/12</b>         | <b>95/9 98/2 99/23</b>      | <b>there [166] 4/15 5/5</b>  |
| <b>149/25 151/14</b>         | <b>100/15 100/16</b>        | <b>5/7 5/11 5/23 6/1 6/3</b> |
| <b>153/16 154/14 156/3</b>   | <b>103/11 105/7 105/7</b>   | <b>7/19 8/21 8/22 8/22</b>   |
| <b>156/15 156/22 157/3</b>   | <b>115/20 121/5 121/12</b>  | <b>8/25 10/13 10/18</b>      |
| <b>157/4 157/18 158/5</b>    | <b>121/13 122/10</b>        | <b>10/23 11/12 12/12</b>     |
| <b>159/10 160/4 161/2</b>    | <b>124/22 125/2 128/24</b>  | <b>12/18 17/8 18/3</b>       |
| <b>162/5 162/23 164/6</b>    | <b>142/13 147/23</b>        | <b>19/21 19/25 20/25</b>     |
| <b>164/22 166/7 167/6</b>    | <b>149/24 153/9 154/14</b>  | <b>22/5 22/7 22/17 25/5</b>  |
| <b>167/15 168/4 168/4</b>    | <b>157/17 157/17</b>        | <b>26/8 33/5 36/17 38/8</b>  |
| <b>169/19 171/13</b>         | <b>159/15 162/6</b>         | <b>38/13 42/21 46/19</b>     |
| <b>their [32] 7/20 7/21</b>  | <b>then [65] 8/10 11/19</b> | <b>49/13 49/13 51/6</b>      |
| <b>7/22 8/19 11/23</b>       | <b>12/10 12/10 13/18</b>    | <b>52/12 52/25 54/14</b>     |
| <b>11/24 12/2 12/7</b>       | <b>23/5 23/13 24/8</b>      | <b>59/3 60/1 61/9 66/14</b>  |
| <b>12/16 37/24 38/1</b>      | <b>36/12 51/3 54/7 62/8</b> | <b>66/15 66/16 67/4</b>      |
| <b>87/20 91/18 93/15</b>     | <b>75/24 75/24 76/23</b>    | <b>68/10 68/11 69/5</b>      |
| <b>95/2 95/19 97/18</b>      | <b>76/24 77/1 77/1 78/9</b> | <b>69/20 70/2 77/15</b>      |
| <b>99/22 100/1 100/5</b>     | <b>79/16 79/22 79/22</b>    | <b>77/21 77/22 82/23</b>     |
| <b>100/7 104/8 104/14</b>    | <b>80/5 81/18 87/1 90/7</b> | <b>86/11 91/8 94/5</b>       |
| <b>112/2 122/25 123/2</b>    | <b>90/22 91/2 91/24</b>     | <b>94/21 97/3 97/5</b>       |
| <b>129/20 139/11</b>         | <b>94/1 95/6 95/23 96/6</b> | <b>100/12 102/10</b>         |
| <b>148/22 153/9 155/24</b>   | <b>97/5 100/13 101/18</b>   | <b>102/13 102/25 103/7</b>   |
| <b>159/13</b>                | <b>102/4 102/23 107/19</b>  | <b>104/9 104/20 105/12</b>   |
| <b>them [53] 10/8</b>        | <b>117/17 125/21</b>        | <b>105/14 105/14 106/7</b>   |
| <b>10/12 10/16 11/25</b>     | <b>126/25 129/5 131/13</b>  | <b>106/18 107/11</b>         |
| <b>12/12 12/15 21/13</b>     | <b>136/4 140/23 141/6</b>   | <b>107/12 109/23</b>         |
| <b>21/18 21/19 23/2</b>      | <b>143/13 144/25</b>        | <b>109/24 110/7 112/17</b>   |

|                             |                              |                             |
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| <b>T</b>                    | <b>169/13 169/13</b>         | <b>thing [13] 11/5</b>      |
| <b>there... [86] 112/19</b> | <b>169/21 169/22 170/6</b>   | <b>72/12 103/24 108/25</b>  |
| <b>113/14 114/10</b>        | <b>170/8 170/9 171/15</b>    | <b>143/3 153/2 155/24</b>   |
| <b>114/24 115/13</b>        | <b>there's [25] 5/25 6/4</b> | <b>155/25 161/9 165/6</b>   |
| <b>115/19 116/2 116/5</b>   | <b>6/5 10/18 10/20</b>       | <b>167/11 170/18 172/2</b>  |
| <b>116/7 117/16 117/24</b>  | <b>10/20 36/16 43/4</b>      | <b>things [12] 6/12</b>     |
| <b>120/20 121/2 121/10</b>  | <b>103/6 104/10 106/13</b>   | <b>8/16 22/7 25/2 25/16</b> |
| <b>122/4 122/22 124/6</b>   | <b>108/8 119/7 121/4</b>     | <b>118/12 142/12</b>        |
| <b>125/25 127/19</b>        | <b>122/4 123/4 123/14</b>    | <b>153/20 153/25</b>        |
| <b>128/13 128/16</b>        | <b>128/17 128/23</b>         | <b>155/21 162/17</b>        |
| <b>130/14 130/18</b>        | <b>132/22 139/15 157/3</b>   | <b>169/15</b>               |
| <b>130/24 131/1 131/16</b>  | <b>158/8 160/12 169/9</b>    | <b>think [64] 3/15</b>      |
| <b>132/5 132/6 132/24</b>   | <b>thereafter [2] 12/22</b>  | <b>12/18 12/23 17/25</b>    |
| <b>136/1 136/3 137/4</b>    | <b>134/18</b>                | <b>18/16 22/4 25/2</b>      |
| <b>138/2 138/2 138/2</b>    | <b>therefore [2] 6/18</b>    | <b>32/21 34/20 42/1</b>     |
| <b>138/6 138/11 138/15</b>  | <b>36/17</b>                 | <b>42/9 43/20 44/22</b>     |
| <b>139/10 140/17</b>        | <b>Thereupon [1] 3/1</b>     | <b>45/20 45/20 45/20</b>    |
| <b>140/20 141/12</b>        | <b>these [33] 7/8 20/17</b>  | <b>45/21 45/21 49/8</b>     |
| <b>142/11 142/14</b>        | <b>21/6 21/10 21/17</b>      | <b>50/6 50/6 50/21 52/5</b> |
| <b>143/18 145/1 151/20</b>  | <b>51/12 62/8 63/4</b>       | <b>54/22 57/24 57/25</b>    |
| <b>152/12 152/12</b>        | <b>76/17 86/1 91/17</b>      | <b>60/18 61/10 63/15</b>    |
| <b>152/13 152/17</b>        | <b>95/10 95/10 95/11</b>     | <b>63/16 65/14 69/16</b>    |
| <b>152/21 154/8 154/24</b>  | <b>107/21 110/7 110/17</b>   | <b>72/4 78/6 79/21</b>      |
| <b>154/24 155/23 156/6</b>  | <b>118/12 119/9 119/13</b>   | <b>81/12 81/16 81/17</b>    |
| <b>157/2 158/17 158/22</b>  | <b>125/4 134/2 134/11</b>    | <b>83/5 87/4 88/12</b>      |
| <b>158/23 159/9 159/23</b>  | <b>140/16 140/17 151/7</b>   | <b>104/5 104/16 122/14</b>  |
| <b>160/2 160/9 160/10</b>   | <b>157/13 162/17</b>         | <b>123/12 124/7 124/13</b>  |
| <b>162/18 162/22</b>        | <b>162/23 164/1 167/12</b>   | <b>136/24 140/4 152/19</b>  |
| <b>164/12 164/12</b>        | <b>169/15 169/21</b>         | <b>153/13 161/4 162/1</b>   |
| <b>164/13 167/15</b>        | <b>they [368]</b>            | <b>163/9 163/25 165/13</b>  |
| <b>167/16 167/22 168/6</b>  | <b>they're [1] 166/9</b>     | <b>165/17 165/21</b>        |
| <b>168/20 168/21 169/9</b>  | <b>thin [1] 156/13</b>       | <b>166/15 166/22</b>        |

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| <b>T</b>                    | <b>61/21 81/14 106/20</b>   | <b>37/17 38/8 39/7 78/5</b> |
| <b>think... [4] 166/23</b>  | <b>134/6 171/4</b>          | <b>78/7 78/22 78/24</b>     |
| <b>166/24 167/24</b>        | <b>thousand [14] 70/15</b>  | <b>81/18 122/12 124/15</b>  |
| <b>168/18</b>               | <b>71/14 71/22 72/1</b>     | <b>156/11 171/14</b>        |
| <b>thinking [3] 49/24</b>   | <b>72/2 76/25 77/1</b>      | <b>Thursdays [1]</b>        |
| <b>63/18 139/1</b>          | <b>82/20 97/17 106/18</b>   | <b>124/16</b>               |
| <b>thinks [4] 14/4 14/5</b> | <b>152/24 153/1 153/11</b>  | <b>ticket [13] 62/2</b>     |
| <b>165/20 171/24</b>        | <b>161/23</b>               | <b>62/13 62/21 63/7</b>     |
| <b>third [6] 26/8 30/14</b> | <b>three [36] 6/12 17/5</b> | <b>63/8 64/9 64/15 73/3</b> |
| <b>42/25 43/2 52/20</b>     | <b>17/8 19/5 21/1 30/6</b>  | <b>73/12 73/15 125/7</b>    |
| <b>159/1</b>                | <b>30/16 30/18 30/19</b>    | <b>169/1 169/2</b>          |
| <b>this [305]</b>           | <b>30/20 31/12 32/9</b>     | <b>tickets [7] 24/19</b>    |
| <b>those [44] 5/6 5/8</b>   | <b>34/11 42/13 42/16</b>    | <b>24/21 24/24 24/25</b>    |
| <b>5/13 5/14 5/17 6/3</b>   | <b>42/21 43/25 63/4</b>     | <b>65/4 73/6 73/8</b>       |
| <b>12/5 17/16 17/19</b>     | <b>65/18 65/19 65/23</b>    | <b>time [77] 3/17 10/6</b>  |
| <b>30/7 30/16 30/17</b>     | <b>68/3 68/13 80/7</b>      | <b>13/10 13/12 14/7</b>     |
| <b>48/2 48/7 54/7 81/25</b> | <b>85/14 109/2 109/15</b>   | <b>19/21 21/21 21/24</b>    |
| <b>90/10 90/17 97/23</b>    | <b>109/16 109/23 110/7</b>  | <b>24/2 24/2 24/4 27/7</b>  |
| <b>98/4 98/10 98/19</b>     | <b>112/4 116/2 131/5</b>    | <b>27/18 28/2 29/5 30/4</b> |
| <b>100/6 107/17 109/25</b>  | <b>131/8 153/16 161/17</b>  | <b>30/11 31/10 33/2</b>     |
| <b>122/23 130/14</b>        | <b>through [25] 4/8</b>     | <b>34/24 37/21 38/17</b>    |
| <b>140/21 140/22</b>        | <b>11/15 11/17 15/13</b>    | <b>38/18 39/4 40/24</b>     |
| <b>141/13 145/18</b>        | <b>51/11 89/25 91/7</b>     | <b>41/13 41/13 42/13</b>    |
| <b>145/22 148/25 149/1</b>  | <b>92/9 95/3 101/7</b>      | <b>43/25 50/10 57/3</b>     |
| <b>153/16 153/20</b>        | <b>108/23 122/16</b>        | <b>60/6 61/14 62/19</b>     |
| <b>155/18 162/1 162/2</b>   | <b>124/18 131/10</b>        | <b>63/12 64/5 68/22</b>     |
| <b>163/1 163/16 164/7</b>   | <b>131/11 141/17</b>        | <b>69/1 71/13 73/11</b>     |
| <b>167/7 168/22</b>         | <b>143/22 144/21 162/6</b>  | <b>75/3 75/7 76/10</b>      |
| <b>though [5] 55/9</b>      | <b>164/1 164/8 164/23</b>   | <b>76/18 76/19 76/19</b>    |
| <b>71/13 77/21 114/19</b>   | <b>165/7 165/23 166/3</b>   | <b>76/21 81/21 87/14</b>    |
| <b>151/15</b>               | <b>Thursday [17] 35/2</b>   | <b>91/6 91/21 93/18</b>     |
| <b>thought [6] 49/19</b>    | <b>35/3 35/5 35/6 35/12</b> | <b>93/19 95/22 97/6</b>     |

|                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>T</b>                                                                                                                                                                           | <b>told [50] 9/10 9/14 23/9 24/1 24/24 25/24 26/17 34/14 37/18 38/3 38/5 38/7 39/16 41/8 43/8 43/10 46/12 46/12 46/15 46/18 56/11 64/6 64/13 64/14 64/17 65/12 65/16 66/1 66/4 66/22 67/1 67/5 67/16 67/18 67/25 70/21 71/18 77/20 79/3 79/5 79/9 80/2 83/9 103/7 103/11 122/14 127/17 127/23 155/7 155/19</b> | <b>127/25 127/25 transcription [1] 172/14 Transport [1] 159/16 trap [2] 72/6 75/11 treat [2] 5/21 5/22 trick [1] 81/13 tried [26] 8/2 9/7 14/13 21/19 21/25 22/17 22/19 34/4 44/13 46/17 56/10 56/24 57/2 58/8 70/21 72/6 80/6 81/20 85/5 103/7 105/3 123/2 123/3 126/7 152/10 152/13 tries [2] 29/14 104/18 trigger [1] 142/14 triggered [1] 107/22 Tropical [1] 16/17 true [3] 38/24 156/21 166/19 try [33] 3/24 17/19 21/16 23/21 24/11 25/14 25/23 30/23 33/24 34/2 34/25 38/9 39/5 39/12 41/12 57/18 57/20 58/22 70/20 70/23 75/3 75/6 75/7 75/7</b> |
| <b>time... [22] 98/1 99/22 100/8 109/6 125/5 126/7 127/7 128/18 129/1 134/18 138/5 138/16 139/8 153/10 161/20 164/25 165/18 167/13 168/12 170/22 171/19 172/3</b>                  | <b>too [11] 3/17 8/8 8/13 49/2 49/8 49/17 73/21 73/22 73/23 166/17 169/9</b>                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>timeliness [1] 36/4</b>                                                                                                                                                         | <b>took [5] 8/20 34/13 74/24 87/12 163/16</b>                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>timely [7] 98/10 98/15 98/19 151/21 151/22 162/2 165/18</b>                                                                                                                     | <b>top [6] 41/15 113/14 116/9 149/13 151/25 152/1</b>                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>times [16] 6/19 9/9 24/16 32/18 44/11 44/15 44/15 44/16 65/19 65/19 65/23 76/20 127/18 148/10 152/14 153/10</b>                                                                 | <b>tough [1] 46/19</b>                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>title [1] 118/13</b>                                                                                                                                                            | <b>tourists [1] 48/8</b>                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>today [27] 4/8 6/22 7/12 7/24 8/16 9/2 18/14 45/1 51/8 56/9 59/3 76/22 101/3 104/17 105/1 110/13 123/23 151/19 154/11 154/18 155/10 155/19 165/16 167/24 168/1 168/13 172/6</b> | <b>Tower [1] 1/17</b>                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>together [1] 40/17</b>                                                                                                                                                          | <b>Town [1] 160/4</b>                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|                                                                                                                                                                                    | <b>trade [1] 50/23</b>                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|                                                                                                                                                                                    | <b>trained [3] 112/7</b>                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

|                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                       |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>T</b>                                                                                                                                                                        | two [49] 6/5 8/16<br>9/7 9/16 21/1 21/6<br>25/2 30/10 30/16<br>33/2 33/4 44/3 46/6<br>46/9 46/10 48/2 57/6<br>58/5 58/5 58/7 67/24<br>68/17 80/17 81/13<br>87/12 87/13 97/19<br>97/20 98/10 98/15<br>98/19 99/4 107/12<br>107/17 109/25<br>110/10 128/4 136/21<br>139/19 152/11<br>154/21 155/21<br>158/10 161/22 163/7<br>167/11 170/19<br>170/20 170/20 | ultimately [3]<br>115/10 126/2 151/22<br>unable [1] 38/11<br>uncontroverted [2]<br>86/2 168/2                                                                                                                                                                                                                         |
| try... [9] 75/10 84/1<br>124/15 127/19<br>152/10 155/13 163/1<br>170/25 172/6                                                                                                   | 58/5 58/5 58/7 67/24<br>68/17 80/17 81/13<br>87/12 87/13 97/19<br>97/20 98/10 98/15<br>98/19 99/4 107/12<br>107/17 109/25<br>110/10 128/4 136/21<br>139/19 152/11<br>154/21 155/21<br>158/10 161/22 163/7<br>167/11 170/19<br>170/20 170/20                                                                                                               | under [20] 12/6 12/8<br>14/12 26/17 56/9<br>105/1 112/16 113/10<br>117/10 125/6 125/6<br>125/14 139/13<br>142/10 142/13<br>142/22 143/5 143/9<br>156/9 170/8                                                                                                                                                          |
| trying [19] 4/23<br>4/23 8/21 10/6 10/7<br>24/8 25/6 27/1 65/24<br>69/2 70/3 84/14<br>127/10 140/12 155/5<br>156/1 157/9 157/25<br>164/4                                        | type [7] 16/14 48/23<br>90/6 91/1 115/2<br>142/15 146/18                                                                                                                                                                                                                                                                                                  | underneath [2]<br>116/16 133/22                                                                                                                                                                                                                                                                                       |
| Tuesday [2] 79/17<br>81/18                                                                                                                                                      | typed [3] 114/13<br>115/5 115/7                                                                                                                                                                                                                                                                                                                           | understand [44]<br>7/14 9/12 11/21<br>16/21 16/22 18/21<br>19/11 19/24 25/10<br>26/1 28/17 29/4<br>29/22 30/25 34/9<br>34/10 38/1 38/2<br>46/14 47/1 66/7 67/5<br>67/8 67/10 68/5<br>68/15 69/1 74/9 75/6<br>81/12 85/12 86/9<br>102/4 104/18 111/1<br>111/2 125/3 139/25<br>148/6 162/15 163/12<br>164/5 164/6 165/9 |
| tumor [1] 7/9                                                                                                                                                                   | types [3] 5/11 5/17<br>16/6                                                                                                                                                                                                                                                                                                                               | understanding [8]<br>18/18 19/6 27/4 27/5                                                                                                                                                                                                                                                                             |
| tumors [1] 154/7                                                                                                                                                                | typical [2] 102/22<br>137/5                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                       |
| turn [24] 16/17<br>20/22 31/23 34/6<br>39/17 41/20 43/13<br>49/5 49/6 49/11<br>50/11 52/6 52/11<br>52/11 54/20 62/8<br>69/17 107/4 119/9<br>119/24 131/19 137/2<br>143/2 149/12 | typically [2] 102/20<br>142/17                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                       |
| turning [1] 40/11                                                                                                                                                               | typo [1] 88/13                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                       |
| Twenty [2] 60/12<br>125/10                                                                                                                                                      | <b>U</b>                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                       |
| Twenty-eight [1]<br>125/10                                                                                                                                                      | U.S [4] 11/1 21/10<br>93/21 155/1                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                       |
| Twenty-five [1]<br>60/12                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                       |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>U</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 17/25 68/15 82/13<br>94/2 98/1 98/21<br>100/2 100/13 102/14<br>103/12 122/21 125/4<br>129/1 129/12 133/18<br>134/12 135/9 135/17<br>139/14 141/7 149/19<br>154/17 158/3 162/8<br>unusual [1] 168/25<br>up [37] 13/6 14/19<br>46/8 49/6 50/22 61/2<br>64/22 65/21 75/11<br>75/12 75/13 80/19<br>83/6 87/10 112/19<br>115/3 115/13 116/12<br>116/17 141/11<br>143/24 150/6 151/22<br>153/23 154/9 154/11<br>154/22 155/19<br>156/11 157/25 158/6<br>162/3 163/14 164/23<br>165/4 167/18 170/14<br>upcoming [1] 90/19<br>updated [2] 38/2<br>38/4<br>upon [1] 168/14<br>upper [3] 50/22<br>50/23 69/22<br>us [38] 6/15 6/17<br>6/18 6/19 18/18<br>22/10 32/18 40/11<br>71/24 72/6 72/6 72/7 | 72/8 77/20 89/12<br>94/23 95/17 101/18<br>101/21 106/14<br>112/24 114/15 118/4<br>118/8 122/14 130/4<br>144/22 146/17<br>153/23 155/7 155/7<br>155/8 155/16 167/5<br>167/15 167/25<br>170/25 172/9<br>use [8] 90/21 90/23<br>115/2 115/5 115/13<br>120/12 120/25<br>124/21<br>used [7] 18/1 29/12<br>110/18 143/10 155/3<br>155/20 155/24<br>users [1] 113/11<br>using [3] 42/20<br>66/17 157/15<br>usually [18] 20/6<br>20/8 20/11 21/1<br>22/24 23/23 54/3<br>57/9 59/14 59/17<br>59/23 61/1 61/1<br>62/10 119/6 136/3<br>142/14 149/25<br>utility [1] 88/18 |
| understanding... [4]<br>27/6 27/8 142/10<br>162/18<br>understood [2] 8/14<br>68/19<br>unequivocally [1]<br>10/10<br>unfair [2] 120/21<br>156/17<br>unfortunate [2]<br>166/9 167/5<br>Ungaro [2] 170/19<br>171/19<br>unique [12] 4/25<br>4/25 4/25 8/17 8/17<br>9/3 9/4 9/5 16/15<br>16/18 19/1 19/2<br>UNITED [4] 1/1<br>1/10 21/13 157/7<br>unjust [1] 158/10<br>unless [2] 104/2<br>116/18<br>unlicensed [1]<br>148/23<br>unnecessary [1]<br>114/5<br>unpaid [1] 9/23<br>unsuccessful [5]<br>25/20 27/16 28/12<br>29/9 41/18<br>until [26] 3/21 7/10 | <b>V</b><br>vacated [1] 149/1<br>vague [1] 164/15<br>valid [2] 6/9 82/1                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |



|                              |                             |                             |
|------------------------------|-----------------------------|-----------------------------|
| <b>V</b>                     | <b>20/10 22/18 22/20</b>    | <b>85/9 95/5 95/8 95/13</b> |
| <b>valuable [2] 124/11</b>   | <b>25/25 26/1 26/5 26/7</b> | <b>95/13 95/14 95/22</b>    |
| <b>154/4</b>                 | <b>26/8 26/13 26/23</b>     | <b>95/23 97/7 97/9</b>      |
| <b>varies [1] 148/15</b>     | <b>28/3 28/4 29/5 29/18</b> | <b>97/11 97/17 97/21</b>    |
| <b>variety [1] 144/21</b>    | <b>30/2 30/8 30/14</b>      | <b>97/23 98/24 100/12</b>   |
| <b>various [2] 91/25</b>     | <b>34/12 37/25 39/16</b>    | <b>100/16 103/1 103/3</b>   |
| <b>153/24</b>                | <b>42/4 42/9 42/12</b>      | <b>103/16 106/13</b>        |
| <b>Vaster [1] 158/24</b>     | <b>43/14 43/16 43/18</b>    | <b>107/12 107/19</b>        |
| <b>verify [1] 113/6</b>      | <b>43/23 46/11 46/13</b>    | <b>108/12 121/2 121/3</b>   |
| <b>version [1] 137/11</b>    | <b>60/16 61/4 61/11</b>     | <b>122/8 125/4 128/14</b>   |
| <b>very [25] 4/3 4/3 4/3</b> | <b>61/16 61/18 61/23</b>    | <b>128/16 128/24</b>        |
| <b>7/22 8/18 14/16</b>       | <b>62/10 63/11 64/7</b>     | <b>131/22 131/23</b>        |
| <b>16/12 16/15 16/18</b>     | <b>65/6 65/11 65/13</b>     | <b>131/24 131/25 132/2</b>  |
| <b>46/19 46/19 50/16</b>     | <b>65/17 66/2 66/23</b>     | <b>132/20 133/7 133/12</b>  |
| <b>57/3 57/21 68/24</b>      | <b>67/11 67/16 67/20</b>    | <b>133/17 133/18</b>        |
| <b>70/7 108/16 108/22</b>    | <b>67/22 68/14 68/16</b>    | <b>134/23 135/5 136/1</b>   |
| <b>121/2 124/10 153/25</b>   | <b>68/19 68/21 68/22</b>    | <b>136/1 136/4 137/12</b>   |
| <b>156/7 156/13 156/13</b>   | <b>68/23 68/24 68/24</b>    | <b>137/15 137/25</b>        |
| <b>161/9</b>                 | <b>68/25 69/6 69/13</b>     | <b>138/14 139/11</b>        |
| <b>vet [1] 5/24</b>          | <b>69/13 70/22 70/23</b>    | <b>142/14 142/25</b>        |
| <b>veterinarian [1]</b>      | <b>70/24 71/2 71/3 71/3</b> | <b>153/15 160/19</b>        |
| <b>5/23</b>                  | <b>71/8 71/15 71/18</b>     | <b>violations [90] 9/23</b> |
| <b>via [1] 93/21</b>         | <b>71/19 71/22 72/1</b>     | <b>21/1 21/17 21/20</b>     |
| <b>view [8] 4/5 7/7</b>      | <b>72/4 72/5 72/7 72/7</b>  | <b>23/14 23/20 25/18</b>    |
| <b>141/16 155/5 155/22</b>   | <b>72/7 73/4 75/23</b>      | <b>25/24 26/2 28/1 28/5</b> |
| <b>157/19 164/18</b>         | <b>75/24 75/24 76/16</b>    | <b>29/13 30/1 30/4 30/7</b> |
| <b>169/22</b>                | <b>76/24 79/9 79/10</b>     | <b>31/8 31/11 32/9</b>      |
| <b>views [2] 154/20</b>      | <b>79/11 79/12 79/13</b>    | <b>33/24 35/22 37/21</b>    |
| <b>156/10</b>                | <b>79/15 79/19 80/1</b>     | <b>41/5 41/6 41/7 42/13</b> |
| <b>Vintage [1] 94/9</b>      | <b>80/3 80/5 80/7 80/7</b>  | <b>42/21 43/25 61/22</b>    |
| <b>violated [1] 104/23</b>   | <b>82/6 82/24 83/7</b>      | <b>62/20 63/4 63/22</b>     |
| <b>violation [157] 20/2</b>  | <b>83/11 83/12 84/10</b>    | <b>63/25 65/15 66/8</b>     |

| <b>V</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | <b>W</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>violations... [56]</b><br><b>66/9 67/6 67/18</b><br><b>67/21 67/23 68/4</b><br><b>68/13 68/23 72/25</b><br><b>73/3 74/12 74/17</b><br><b>76/2 76/17 80/20</b><br><b>81/15 81/24 82/1</b><br><b>95/10 96/6 98/11</b><br><b>98/15 102/21 103/8</b><br><b>104/9 107/13 107/18</b><br><b>107/21 109/2 109/15</b><br><b>110/13 110/17</b><br><b>111/10 112/5 113/20</b><br><b>113/21 116/2 116/16</b><br><b>117/10 122/23</b><br><b>128/22 129/6 129/8</b><br><b>129/11 131/7 134/2</b><br><b>141/22 143/20 150/2</b><br><b>153/16 161/12</b><br><b>161/18 161/22 162/1</b><br><b>162/3 163/2</b><br><b>violator [3] 142/16</b><br><b>144/23 150/1</b><br><b>vis [6] 13/22 13/22</b><br><b>13/23 13/23 13/25</b><br><b>13/25</b><br><b>Vis-a-vis [3] 13/22</b><br><b>13/23 13/25</b><br><b>visits [1] 45/18</b><br><b>Volume [1] 1/6</b><br><b>voluntarily [1] 71/7</b> | <b>wait [2] 15/15 58/14</b><br><b>waited [1] 64/1</b><br><b>waiting [1] 126/13</b><br><b>waive [3] 72/20</b><br><b>72/22 153/20</b><br><b>waived [3] 72/18</b><br><b>144/5 168/22</b><br><b>walked [2] 103/6</b><br><b>106/15</b><br><b>want [61] 3/14 3/16</b><br><b>3/17 5/3 5/10 6/5 8/8</b><br><b>8/13 9/11 9/13 9/13</b><br><b>10/16 11/22 12/10</b><br><b>12/14 12/15 13/4</b><br><b>25/8 36/1 39/15</b><br><b>46/14 46/20 46/20</b><br><b>48/15 48/16 49/5</b><br><b>51/11 54/14 57/3</b><br><b>61/3 65/21 74/15</b><br><b>84/13 87/15 107/18</b><br><b>107/19 107/24</b><br><b>109/14 112/9 112/9</b><br><b>112/10 112/12</b><br><b>113/24 123/22</b><br><b>123/24 124/6 124/7</b><br><b>127/6 132/12 133/17</b><br><b>153/13 153/25</b><br><b>163/22 167/19</b><br><b>169/21 170/1 170/3</b><br><b>170/14 171/9 171/12</b><br><b>172/2</b> | <b>wanted [14] 8/6</b><br><b>12/15 24/7 67/14</b><br><b>90/21 91/1 125/1</b><br><b>150/21 154/6 154/6</b><br><b>157/8 157/13 157/15</b><br><b>157/21</b><br><b>wanting [1] 90/23</b><br><b>wants [2] 89/8 164/3</b><br><b>warned [1] 139/11</b><br><b>warranty [1] 89/12</b><br><b>was [249]</b><br><b>wasn't [20] 8/22</b><br><b>8/23 8/23 38/12</b><br><b>42/25 43/2 43/5 71/1</b><br><b>72/5 72/5 76/16</b><br><b>77/22 105/12 107/14</b><br><b>122/21 131/10</b><br><b>143/11 153/9 156/15</b><br><b>162/7</b><br><b>water [1] 78/17</b><br><b>way [29] 7/18 8/11</b><br><b>8/25 11/8 12/12</b><br><b>28/17 48/15 48/16</b><br><b>53/13 60/21 65/19</b><br><b>71/19 83/6 108/3</b><br><b>114/15 115/5 115/21</b><br><b>116/5 137/10 141/21</b><br><b>142/20 143/10</b><br><b>143/21 143/22 146/8</b><br><b>154/19 157/25 159/7</b><br><b>163/9</b><br><b>ways [1] 6/5</b> |

|                             |                             |                             |
|-----------------------------|-----------------------------|-----------------------------|
| <b>W</b>                    | <b>165/16 169/18</b>        | <b>54/11 60/13 64/6</b>     |
| <b>we [289]</b>             | <b>169/19</b>               | <b>67/4 68/10 69/4 70/2</b> |
| <b>weapon [1] 155/4</b>     | <b>well-known [1]</b>       | <b>73/3 73/8 75/19 76/6</b> |
| <b>website [3] 94/12</b>    | <b>169/18</b>               | <b>77/5 77/7 77/13</b>      |
| <b>119/13 119/17</b>        | <b>went [59] 9/8 13/7</b>   | <b>77/14 77/23 82/1</b>     |
| <b>Wednesday [5] 78/6</b>   | <b>20/6 21/25 22/1 22/8</b> | <b>92/7 97/10 100/1</b>     |
| <b>171/4 171/8 171/11</b>   | <b>22/13 22/17 22/18</b>    | <b>100/2 100/12 101/3</b>   |
| <b>171/15</b>               | <b>22/20 22/22 23/14</b>    | <b>101/6 101/12 102/11</b>  |
| <b>week [10] 30/10</b>      | <b>24/18 24/20 24/21</b>    | <b>102/13 103/8 106/2</b>   |
| <b>39/4 39/5 39/6 39/10</b> | <b>25/13 27/18 29/10</b>    | <b>107/12 107/12</b>        |
| <b>78/8 126/3 157/12</b>    | <b>34/1 35/14 37/17</b>     | <b>107/13 107/21 109/3</b>  |
| <b>162/16 171/14</b>        | <b>38/8 38/13 45/5</b>      | <b>109/3 109/16 109/23</b>  |
| <b>weekend [1] 77/25</b>    | <b>45/18 56/17 57/21</b>    | <b>117/2 118/25 121/4</b>   |
| <b>weeks [7] 4/18 30/10</b> | <b>58/5 63/21 63/24</b>     | <b>123/2 123/3 124/25</b>   |
| <b>44/3 163/7 170/19</b>    | <b>63/25 65/4 66/11</b>     | <b>125/5 125/8 125/15</b>   |
| <b>170/20 170/21</b>        | <b>69/4 71/21 78/25</b>     | <b>126/20 129/6 129/8</b>   |
| <b>weigh [1] 90/10</b>      | <b>79/2 79/3 79/16</b>      | <b>129/11 135/17</b>        |
| <b>welcome [2] 3/16</b>     | <b>79/25 80/5 80/8</b>      | <b>145/18 145/22 150/5</b>  |
| <b>51/12</b>                | <b>80/11 80/13 80/17</b>    | <b>154/8 155/17 156/17</b>  |
| <b>well [37] 3/15 4/22</b>  | <b>81/17 81/18 81/20</b>    | <b>162/1 162/7 166/14</b>   |
| <b>10/22 10/23 11/11</b>    | <b>83/20 83/22 84/11</b>    | <b>169/23 170/23</b>        |
| <b>12/8 12/23 13/23</b>     | <b>85/22 114/7 122/7</b>    | <b>170/24 171/4</b>         |
| <b>15/23 24/12 26/8</b>     | <b>127/19 137/15</b>        | <b>weren't [2] 77/21</b>    |
| <b>36/11 38/6 39/14</b>     | <b>142/23 143/12</b>        | <b>152/17</b>               |
| <b>47/7 49/4 54/14</b>      | <b>152/12</b>               | <b>west [1] 16/24</b>       |
| <b>57/15 58/15 58/16</b>    | <b>were [84] 9/23 10/3</b>  | <b>what [250]</b>           |
| <b>60/11 105/14 116/21</b>  | <b>11/21 13/1 21/10</b>     | <b>what's [16] 11/23</b>    |
| <b>121/2 126/22 132/23</b>  | <b>22/11 22/25 25/20</b>    | <b>20/13 48/15 55/21</b>    |
| <b>135/16 138/12</b>        | <b>30/4 30/7 33/24</b>      | <b>55/21 69/1 72/8</b>      |
| <b>139/13 140/20</b>        | <b>35/25 38/5 38/11</b>     | <b>72/12 75/14 78/7</b>     |
| <b>148/18 148/23</b>        | <b>40/4 40/4 42/16</b>      | <b>113/14 116/7 126/23</b>  |
| <b>156/21 156/25</b>        | <b>42/21 45/1 53/12</b>     | <b>147/3 154/10 154/15</b>  |

| W                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
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| <p> <b>whatever [10] 4/13</b><br/> <b>11/22 12/16 14/6</b><br/> <b>103/16 105/18</b><br/> <b>110/18 167/19</b><br/> <b>167/20 167/21</b><br/> <b>whatsoever [3]</b><br/> <b>42/15 59/3 94/8</b><br/> <b>when [101] 7/17</b><br/> <b>10/10 13/23 19/10</b><br/> <b>19/21 20/23 21/6</b><br/> <b>21/7 21/8 21/23</b><br/> <b>22/10 22/25 24/2</b><br/> <b>24/7 25/20 27/16</b><br/> <b>30/15 31/14 32/12</b><br/> <b>32/25 33/2 34/14</b><br/> <b>34/17 34/19 34/20</b><br/> <b>34/24 37/8 37/9 38/5</b><br/> <b>40/4 40/15 49/1</b><br/> <b>49/13 53/9 53/12</b><br/> <b>54/14 55/17 56/2</b><br/> <b>56/9 56/17 56/23</b><br/> <b>57/12 58/8 58/20</b><br/> <b>58/25 62/10 64/19</b><br/> <b>65/4 68/10 68/11</b><br/> <b>68/25 70/2 71/20</b><br/> <b>74/3 74/22 75/19</b><br/> <b>75/25 75/25 76/1</b><br/> <b>76/2 76/6 76/23</b><br/> <b>76/23 77/13 78/13</b><br/> <b>78/13 78/18 79/14</b><br/> <b>79/22 80/6 82/7</b> </p> | <p> <b>83/12 86/7 92/6 93/8</b><br/> <b>93/18 93/20 96/6</b><br/> <b>97/13 104/25 105/10</b><br/> <b>110/12 116/16 119/6</b><br/> <b>125/10 128/22 129/5</b><br/> <b>134/2 134/11 137/18</b><br/> <b>138/9 144/20 145/22</b><br/> <b>147/14 152/11 159/4</b><br/> <b>165/5 167/18 169/6</b><br/> <b>170/12 170/24</b><br/> <b>where [30] 8/24</b><br/> <b>14/7 17/12 20/15</b><br/> <b>22/1 22/3 42/25 51/8</b><br/> <b>51/17 62/24 67/12</b><br/> <b>69/7 89/12 91/17</b><br/> <b>94/14 99/13 112/16</b><br/> <b>112/20 113/9 133/21</b><br/> <b>138/9 138/17 138/19</b><br/> <b>139/10 154/5 156/1</b><br/> <b>156/14 158/9 158/14</b><br/> <b>160/5</b><br/> <b>whether [19] 4/6</b><br/> <b>4/13 4/17 6/4 13/13</b><br/> <b>26/15 38/8 90/10</b><br/> <b>99/9 101/14 108/18</b><br/> <b>108/20 127/4 128/8</b><br/> <b>128/8 130/12 142/15</b><br/> <b>145/7 165/10</b><br/> <b>which [52] 5/13 6/16</b><br/> <b>15/5 17/6 20/2 21/19</b><br/> <b>27/18 28/16 39/6</b><br/> <b>45/4 45/18 49/16</b> </p> | <p> <b>64/11 67/23 68/20</b><br/> <b>68/22 71/5 71/8</b><br/> <b>88/12 88/18 89/18</b><br/> <b>89/20 90/18 92/24</b><br/> <b>93/17 94/5 107/17</b><br/> <b>107/20 109/1 109/15</b><br/> <b>116/24 117/2 122/11</b><br/> <b>122/18 122/22 126/7</b><br/> <b>130/15 130/17 131/7</b><br/> <b>131/19 137/6 138/21</b><br/> <b>141/5 141/24 143/14</b><br/> <b>147/5 149/17 152/3</b><br/> <b>158/22 160/15</b><br/> <b>161/23 168/1</b><br/> <b>while [8] 9/23 11/1</b><br/> <b>21/10 67/4 69/4</b><br/> <b>118/25 140/12</b><br/> <b>154/11</b><br/> <b>white [13] 20/22</b><br/> <b>69/18 107/4 112/18</b><br/> <b>113/22 114/1 116/1</b><br/> <b>119/9 120/4 143/2</b><br/> <b>146/14 146/20 158/4</b><br/> <b>who [24] 3/9 11/16</b><br/> <b>11/18 20/6 23/3</b><br/> <b>23/16 29/11 32/19</b><br/> <b>51/6 54/18 67/13</b><br/> <b>77/18 86/23 91/24</b><br/> <b>99/6 111/4 114/13</b><br/> <b>115/5 115/7 117/23</b><br/> <b>118/8 141/24 147/23</b><br/> <b>152/21</b> </p> |

|                             |                            |                             |
|-----------------------------|----------------------------|-----------------------------|
| <b>W</b>                    | <b>84/8 84/21 87/10</b>    | <b>63/7 74/12 114/16</b>    |
| <b>whoever [2] 111/3</b>    | <b>94/17 95/18 96/2</b>    | <b>125/2 125/5 132/7</b>    |
| <b>165/7</b>                | <b>96/4 96/6 102/4</b>     | <b>132/9 132/24 132/25</b>  |
| <b>Whom [1] 32/12</b>       | <b>102/9 103/11 103/13</b> | <b>133/12 133/15 135/4</b>  |
| <b>whose [1] 14/11</b>      | <b>110/2 120/10 120/15</b> | <b>168/7 168/8</b>          |
| <b>why [43] 8/17 9/1</b>    | <b>121/14 128/17 134/3</b> | <b>without [24] 8/20</b>    |
| <b>9/3 33/10 33/21</b>      | <b>134/10 134/12</b>       | <b>10/4 12/13 13/1 29/4</b> |
| <b>34/13 36/8 41/4</b>      | <b>138/22 139/16</b>       | <b>29/18 72/8 82/6</b>      |
| <b>42/12 42/22 43/2</b>     | <b>142/14 144/16</b>       | <b>83/24 83/25 91/11</b>    |
| <b>43/16 44/3 55/17</b>     | <b>144/23 145/7 158/9</b>  | <b>93/2 98/24 99/7</b>      |
| <b>55/18 55/20 55/21</b>    | <b>166/11 167/13</b>       | <b>139/12 139/16 141/6</b>  |
| <b>76/5 79/8 91/19</b>      | <b>168/12 169/5 170/10</b> | <b>141/25 142/25 145/8</b>  |
| <b>92/15 94/18 114/24</b>   | <b>170/13 170/25 171/7</b> | <b>149/8 149/18 161/6</b>   |
| <b>117/16 135/15</b>        | <b>171/8 171/22 172/3</b>  | <b>164/16</b>               |
| <b>136/12 137/10 138/2</b>  | <b>172/6</b>               | <b>witness [20] 3/19</b>    |
| <b>138/6 144/11 147/13</b>  | <b>willing [1] 163/7</b>   | <b>14/17 20/12 36/9</b>     |
| <b>151/16 151/25</b>        | <b>window [2] 106/5</b>    | <b>36/25 37/11 43/6</b>     |
| <b>152/24 154/8 154/8</b>   | <b>116/12</b>              | <b>86/19 87/11 87/20</b>    |
| <b>154/20 156/3 157/24</b>  | <b>windows [3] 80/18</b>   | <b>109/8 118/1 129/19</b>   |
| <b>162/12 167/16 168/5</b>  | <b>116/10 116/11</b>       | <b>129/21 140/1 147/23</b>  |
| <b>168/17</b>               | <b>wine [5] 16/3 16/4</b>  | <b>150/11 150/13</b>        |
| <b>wife [1] 23/18</b>       | <b>18/23 166/18 166/18</b> | <b>152/20 162/5</b>         |
| <b>will [71] 3/18 3/22</b>  | <b>wishes [1] 95/14</b>    | <b>witnesses [5] 87/13</b>  |
| <b>3/23 3/24 4/8 4/17</b>   | <b>withheld [2] 14/2</b>   | <b>87/18 150/14 150/15</b>  |
| <b>4/19 5/16 7/11 9/16</b>  | <b>14/5</b>                | <b>155/18</b>               |
| <b>11/19 12/2 12/4</b>      | <b>withhold [2] 98/16</b>  | <b>woke [1] 13/6</b>        |
| <b>12/18 12/20 14/8</b>     | <b>102/14</b>              | <b>woman [3] 20/8</b>       |
| <b>35/6 36/9 36/11</b>      | <b>withholding [1]</b>     | <b>22/23 28/19</b>          |
| <b>36/13 36/14 37/1</b>     | <b>94/24</b>               | <b>won [1] 8/5</b>          |
| <b>38/20 49/5 49/9</b>      | <b>within [21] 11/25</b>   | <b>won't [3] 104/4</b>      |
| <b>49/11 50/11 51/15</b>    | <b>33/2 33/4 46/15</b>     | <b>112/19 172/3</b>         |
| <b>61/8 63/2 71/15 73/2</b> | <b>61/18 62/13 62/22</b>   | <b>wonder [3] 151/16</b>    |

| <b>W</b>                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|--------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| wonder... [2] 151/25<br>154/19 | 67/23 88/23 89/14<br>89/15 90/4 90/4<br>90/21 90/23 90/25<br>91/2 92/1 94/1 94/6<br>95/8 96/1 96/13<br>96/15 97/1 97/3 97/4<br>97/16 97/17 97/23<br>97/25 98/4 98/11<br>98/16 98/16 99/24<br>100/10 100/13<br>100/15 100/24<br>100/25 101/1 101/4<br>101/11 101/13 102/6<br>102/13 102/17<br>103/10 103/10<br>103/17 103/19<br>103/21 104/1 104/24<br>105/4 105/18 106/3<br>106/9 106/10 106/12<br>106/12 106/15 108/3<br>108/5 108/15 109/11<br>110/20 111/2 112/2<br>112/3 112/5 112/6<br>112/7 113/11 114/8<br>114/11 114/20<br>114/25 115/8 115/9<br>115/10 115/20<br>115/22 117/14<br>117/16 117/23<br>117/24 120/22 121/5<br>121/9 121/11 122/5<br>122/8 122/18 122/19 | 123/8 123/9 123/10<br>123/12 123/14<br>123/17 123/18<br>123/19 123/24<br>123/25 124/8 124/9<br>124/10 124/20<br>125/14 125/17 126/6<br>126/8 126/9 129/6<br>129/7 129/11 137/19<br>139/22 140/12<br>140/15 140/16<br>140/22 140/24<br>142/17 142/18<br>143/21 144/13<br>147/13 147/21<br>152/16 153/4 153/11<br>157/1 157/3 157/4<br>157/23 157/24 158/1<br>158/1 159/23 160/4<br>160/16 161/15<br>163/11 163/12<br>163/13 163/13<br>163/15 163/17<br>163/23 164/25<br>165/19 167/7 167/20<br>170/25<br>wouldn't [18] 9/20<br>56/25 79/20 98/20<br>102/9 102/10 103/23<br>106/16 109/2 110/23<br>111/21 119/16 123/3<br>124/11 143/18 |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                               |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|
| <p><b>W</b></p> <p>wouldn't... [3]<br/> 152/18 157/22 162/3<br/> write [3] 32/2 60/25<br/> 169/14<br/> writing [2] 73/11<br/> 73/14<br/> written [9] 62/22<br/> 63/8 72/17 72/24<br/> 73/19 74/11 74/16<br/> 83/14 136/4<br/> wrong [12] 11/24<br/> 12/1 66/17 72/11<br/> 73/24 74/7 74/9<br/> 74/25 76/16 155/11<br/> 165/22 170/3<br/> wronged [1] 155/17<br/> wrongfully [2] 14/2<br/> 84/13<br/> wrote [10] 60/24<br/> 64/6 82/3 82/13<br/> 82/16 82/19 82/20<br/> 82/20 111/3 111/4</p> | <p>8/2 8/3 10/15 11/25<br/> 14/13 18/17 29/2<br/> 29/3 31/16 52/4 54/1<br/> 55/24 55/25 55/25<br/> 56/3 56/10 57/10<br/> 58/6 58/6 58/7 60/24<br/> 61/8 76/20 81/21<br/> 89/24 90/19 90/20<br/> 91/16 91/20 92/3<br/> 92/7 92/10 93/3 93/8<br/> 93/15 93/17 94/1<br/> 94/7 95/2 95/3 96/10<br/> 96/13 96/18 100/18<br/> 103/1 103/14 103/20<br/> 104/14 106/8 108/23<br/> 108/25 114/5 114/7<br/> 122/16 123/1 129/14<br/> 129/15 134/18<br/> 148/14 148/17 158/9<br/> 161/24 163/17<br/> 164/19 165/19<br/> 167/20<br/> year-to-year [1]<br/> 4/13</p> | <p>65/20 168/15<br/> you [1038]<br/> young [2] 157/9<br/> 167/13<br/> your [226]<br/> yours [2] 49/7 49/7</p> |
| <p><b>Y</b></p> <p>yeah [16] 31/3 35/3<br/> 37/23 39/15 42/9<br/> 55/11 58/4 59/10<br/> 60/10 61/10 62/7<br/> 74/23 79/21 80/5<br/> 80/12 82/2<br/> year [68] 4/13 4/13</p>                                                                                                                                                                                                                                                                                                                  | <p>years [7] 19/18<br/> 23/23 27/8 53/24<br/> 90/13 90/17 154/21<br/> yes [247]<br/> yesterday [6] 3/15<br/> 3/25 4/2 4/22 9/10<br/> 9/14<br/> yet [4] 20/14 42/13</p>                                                                                                                                                                                                                                                                                                                                                                                  | <p><b>Z</b></p> <p>Zero [1] 169/25<br/> zoning [2] 17/1<br/> 127/2</p>                                        |

# **EXHIBIT L**



IN AND BEFORE THE SPECIAL MASTER OF  
THE CITY OF MIAMI BEACH

CODE VIOLATION CASE NOS. CC2016-01704  
CC2017-03102  
CC2017-03103

BEACH BLITZ, CO. c/o  
DOAR, DORON,

Petitioner,

vs.

CITY OF MIAMI BEACH,

Respondent.

---

**AGREED ORDER**

This cause came before the Special Master of the City of Miami Beach, upon stipulation and agreement of Harold Rosen, Esquire, on behalf of Beach Blitz, Co. c/o Doar, Doron, 865 Collins Avenue, #D, Miami Beach (hereinafter referenced as the "Petitioner"), and Deputy City Attorney, Aleksandr Boksner, counsel to Respondent, the City of Miami Beach (hereinafter referenced as the "City"), regarding the above-styled appeal before the Special Master of certain violation(s) against the real property which is located at 865 Collins Avenue, #D, Miami Beach, Florida (the "Property") and the Code Enforcement matter referenced below in this Agreed Order. Respective counsel to City and the Petitioner having agreed to the terms of this Order,

IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. Petitioner, Beach Blitz Co. c/o Doron Doar admit to the legitimacy of the violation charged under Citation/Violation Nos. CC2016-01704, CC2017-03102 and CC2017-03103, and recognize that the violation was properly issued by the City of Miami Beach.


EXHIBIT

F

2. Citation/Violation Nos. CC2016-01704, CC2017-03102 and CC2017-03103 are hereby AFFIRMED. The Parties stipulate that a factual basis exists to establish this offense violation by the appropriate legal standard for this proceeding, and the City shall not need to establish the legitimacy.

3. The Petitioner shall be assessed a fine in the amount of One Thousand (\$1,000.00) Dollars, which shall be due within thirty (30) days of the entry of this Agreed Order.

DONE AND ORDERED by the Special Master of the City of Miami Beach, this 20<sup>th</sup> day of September, 2017.

  
\_\_\_\_\_  
SPECIAL MASTER  
As Special Master for the City of Miami Beach

Copies furnished to:

Aleksandr Boksner, First Assistant City Attorney at sandracaba@miamibeachfl.gov  
Harold Rosen, 407 Lincoln Road, Suite 2A, Miami Beach, Florida 33139

8.22.17  
PAID  
CH # 2238  
1000.00



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## Search Results

| Case Number                  | Address         | Type                | Status | District | Opened     | Closed     | Project |
|------------------------------|-----------------|---------------------|--------|----------|------------|------------|---------|
| <a href="#">CC2017-03102</a> | 865 COLLINS AVE | City Code Violation | Closed | MXE      | 06/25/2017 | 10/04/2017 |         |

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## Search Results

| Case Number                  | Address         | Type                | Status | District | Opened     | Closed     | Project |
|------------------------------|-----------------|---------------------|--------|----------|------------|------------|---------|
| <a href="#">CC2017-03103</a> | 865 COLLINS AVE | City Code Violation | Closed | MXE      | 06/25/2017 | 10/04/2017 |         |

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## Search Results

| Case Number                  | Address         | Type                | Status    | District | Opened     | Closed     | Project |
|------------------------------|-----------------|---------------------|-----------|----------|------------|------------|---------|
| <a href="#">CC2016-01704</a> | 865 COLLINS AVE | City Code Violation | Fine Paid | MXE      | 12/22/2016 | 10/13/2017 |         |

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# **EXHIBIT O**

Code Compliance Department  
555 - 17th Street  
Miami Beach, Florida 33139  
Tele: 305.673.7555  
Fax: 305.673.7012

## Notice of Violation

|                               |                                                                                 |                                   |                          |
|-------------------------------|---------------------------------------------------------------------------------|-----------------------------------|--------------------------|
| <b>Violation Notice Date:</b> | Date 10/6/2017                                                                  | Time 5:00 PM                      | Case Number CC2017-03686 |
| <b>Address of Violation:</b>  | 865 COLLINS AVE                                                                 |                                   |                          |
| <b>Parcel Number:</b>         | 0242032560040                                                                   |                                   |                          |
| <b>Legal Description:</b>     | THE SKYLARK CONDO UNIT D UNDIV 3 167% INT IN COMMON ELEMENTS OFF REC 20580-1711 |                                   |                          |
| <b>Violator Name:</b>         | Beach Blitz Co. DSA Ocean 9 Liquor O/O Doron Dear                               |                                   |                          |
| <b>Mailing Address:</b>       | 13441 NW 5th Court                                                              | City and State Ft. Lauderdale, FL | Zip Code 33325           |

The City of Miami Beach Code Compliance Department has determined that the above Property has violated the Miami Beach Code of Laws and Ordinances (the "City Code"). This violation is the 2nd offense, and this Notice of Violation carries a fine (and other monetary charges) of \$500.00. Specifically, Code Compliance Officer Manny Bastos has found there to be a violation(s) of the City Code, which is/are:

Article V, Section 102-377. Any person failing to obtain a Business Tax Receipt as required by this article.

**Reference:** Failing to obtain Business Tax Receipt, 2nd Offense

Cease immediately until you obtain a Business Tax Receipt from the City of Miami Beach.

A Violation of this Section shall be subject to the following fines:

Any person who shall carry on or conduct any business for which a tax receipt is required by this article without first obtaining such tax receipt shall be issued a violation for the first offense which shall have a civil fine of \$1000.00. The enhanced enforcement for this violation shall be pursuant to subsection 102-377(d).

In addition to the above a continued violation of subsection 102-377(a) for a period of thirty (30) days or more without first obtaining a tax receipt shall be punished by imprisonment not to exceed 60 days or by imposition of a fine not to exceed \$500.00 or both.

Failure to comply will result in your prosecution before the City of Miami Beach Special Master. The Special Master may impose fines of up to \$1,000.00 per day for noncompliance and up to \$5,000.00 per day for recurring violations. Failure to pay imposed fines will lead to placement of liens upon the real and personal property of violators which will be foreclosed upon or otherwise collected as provided by this code.

If you are aggrieved by the decision of the Code Inspector in issuing this notice of violation, you may appeal. To appeal the violations submit an application for appeal within **Ten (10)** days of receipt of this notice of violation to the appropriate board or the Office of the Special Master 1700 Convention Center Dr., Miami Beach, FL 33139. A check for \$100 (administrative charges) must accompany the request along with the case number.

|                                        |                                           |                          |                                                 |
|----------------------------------------|-------------------------------------------|--------------------------|-------------------------------------------------|
| <b>Issuing Code Compliance Officer</b> | Name<br>Manny Bastos                      | Badge #<br>704           | Phone and Extension<br>(305) 673-7555 ext. 6803 |
|                                        | E-mail<br>EmmanuelBastos@miamibeachfl.gov |                          |                                                 |
| Received By:                           | Compliance Date<br>10/06/2017             | Received Date<br>5:00 PM | Received Time<br>5:00 PM                        |

### ADA Information

To request this material in accessible format, sign language interpreters, information on access for persons with disabilities, and/or any accommodation to review any document or participate in any City-sponsored proceeding, please contact 305.604.2489 (voice), 305.673.7524 (fax) or 305.673.7218 (TTY) five (5) days in advance to initiate your request. TTY users may also call 711 (Florida Relay Service).

Manny Bastos

EXHIBIT

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

CASE NO: \_\_\_\_\_

BEACH BLITZ CO., a Florida  
Corporation d/b/a OCEAN 9 LIQUOR, and  
d/b/a as OCEAN 11 MARKET,

Plaintiff,

v.

CITY OF MIAMI BEACH, FLORIDA,  
a municipal corporation of the State of Florida,  
PHILIP LEVINE, an individual, JIMMY  
MORALES, an individual, MICKEY  
STEINBERG, an individual, RICKY ARRIOLA,  
an individual, MICHAEL GREICO, an individual,  
JOY MALAKOFF, an individual, KRISTEN  
ROSEN GONZALEZ, an individual,  
JOHN ELIZABETH ALEMAN, an individual,  
RAUL J. AGUILA, an individual, and  
ALEKSANDR BOKSNER, an individual

Defendants.

\_\_\_\_\_ /

**COMPLAINT**

Plaintiff, BEACH BLITZ CO., a Florida corporation d/b/a OCEAN 9 LIQUOR and d/b/a as OCEAN 11 MARKET, through undersigned counsel, sues Defendants, CITY OF MIAMI BEACH, FLORIDA, a municipal corporation of the State of Florida, PHILIP LEVINE, an individual, JIMMY MORALES, an individual, MICKEY STEINBERG, an individual, RICKY ARRIOLA, an individual, MICHAEL GREICO, an individual, JOY MALAKOFF, an individual, KRISTEN ROSEN GONZALEZ, an individual, JOHN ELIZABETH ALEMAN, an individual, RAUL J. AGUILA, an individual and ALEKSANDR BOKSNER, an individual, and alleges:

**INTRODUCTION AND NATURE OF ACTION**

Approximately two years ago, principally through the actions of Mayor Philip Levine and



Commissioner Ricky Arriola, the City of Miami Beach, commenced coordinate process to address the chronic crime problem on Miami Beach and in particular the area known worldwide as South Beach. South Beach has been an entertainment and party mecca known internationally for over thirty (30) years. That reputation has created hundreds of millions, if not billions of dollars in revenue for the State of Florida and most particularly, Miami-Dade County and the City of Miami Beach. South Beach remains a worldwide go to party destination to this day.

Allegedly based upon the complaints of citizens of Miami Beach<sup>1</sup>, a series of meetings occurred internally within the City that included various commissioners, the Mayor, the City Manager, the City Attorney, the Chief of Police, code enforcement officials, and other relevant participants and stakeholders. The result of those meetings includes a targeted plan to materially restrict liquor sales within the MXE district, the heart of South Beach, as well as the CD-2 district which is immediately adjacent to and west of the MXE district.<sup>2</sup>

Unfortunately, what started as a legislatively legitimate attempt to control crime (albeit through a process not directly related to controlling crime, but to severely restrict the sale of alcohol) has resulted in an intentional, malicious and now illegal campaign against certain specific establishments that sell liquor including targeted clubs and all four package stores in the MXE district.

In fact, Mayor Philip Levine was quoted by the Miami Herald in the Opinion published by the Herald on October 26, 2017, calling certain businesses on South Beach that sell liquor “malignant tumors.” The Mayor’s malicious intent is clear. The Herald recognized that maliciousness in its Opinion, without directly saying so, opining that the advocates for alcohol sales restrictions (the Mayor and the Commissioners) were overreaching and the effect was “legally shaky”. In fact, the Herald recommended that the citizens of Miami Beach vote against a referendum arranged by Mayor Levine and Commissioner Arriola, to reduce the hours of

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<sup>1</sup> Relatively few actual citizens live in South Beach as the area is primarily a venue for businesses, *e.g.* hotels, restaurants, entertainment venues and retail stores.

<sup>2</sup> See Definition of MXE district at ¶¶19-21, below.

operation of outdoor café components of nightclubs from 5:00 a.m. to 2:00 a.m. A copy of the Herald's Opinion is attached as Exhibit "A".

In addition to the referendum directed to Mayor Levine's "malignant tumors", the Mayor and certain commissioners along with staff,<sup>3</sup> have internally targeted four package liquor stores within the MXE district and peppered those stores with improper code enforcement violations, intentional police blockades restricting access to certain of those stores, and most recently an egregious forced closing of one of those stores, Plaintiff's Ocean 9 Liquor, without due process. The cessation of operations by Ocean 9 Liquor was accomplished by overt threat by two Miami Beach police officers and one code enforcement officer, to place the owner of the store in jail if he did not voluntarily close his store because of an alleged dispute over a several hundred dollar Business Tax Receipt ("**BTR**"), otherwise known as an occupational license fee. That store remains closed today – 24 days later.

Over 15 employees are left without jobs and the City has no defense or excuse other than Ocean 9 Liquor was allegedly a few months delinquent in paying a few hundred dollar occupational license fee the City itself affirmatively prevented from being paid because of the pendency of a special master proceeding dealing with the very violation and thereafter, an inability to timely update its "system". After preventing payment, the City refused to issue a current BTR even though that very violation was resolved through the City's special master process. Plaintiff attempted on multiple occasions to obtain the BTR, once having resolved all pending violations. In spite of a valid and binding resolution of the BTR issue and others by Agreed Order dated September 28, 2017, Plaintiff's principal was physically prevented from obtaining a BTR until he was threatened with jail if he did not close the store at 865 Collins Ave on Friday, October 6, 2017.

Even more telling, the closure was one day after a meeting by Plaintiff's counsel with a Deputy City Attorney to voice objection to the ongoing, systematic reduction of business hours

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<sup>3</sup> Staff includes all employees of the City which are not elected.

for the sale of the alcohol by package stores in the MXE district. According to Deputy City Attorney Boksner, the closure that Friday was not likely coincidental. An interesting admission.

Mayor Levine's overzealous campaign, countenanced to date by the Commission cannot be allowed. The result as applied to Plaintiff is in violation of federal and state laws and results in an improper taking without due process and other intentional, malicious and irreparably harmful acts as more fully set forth herein below. As such, Plaintiff files the instant complaint seeking redress (1) for the City's wrongful and unconstitutional closing of one of Plaintiff's locations and (2) to declare invalid and enjoin the City's arbitrary, capricious and unreasonable ordinances designed to bankrupt the four package stores in the MXE district.

### **JURISDICTION AND VENUE**

1. This is an action for declaratory and injunctive relief and damages, pursuant to the Fourteenth Amendment of the United States Constitution and 42 U.S.C §1983.

2. This Court has original jurisdiction pursuant to 28 U.S.C. 1331 and 1343 over Plaintiff's causes of action under the Constitution of the United States, 42 U.S.C. §1983 and Declaratory Judgment Act, 28 U.S.C §2201 and 2202.

3. This Court has personal jurisdiction over Defendants in that they are located and/or reside in the Southern District of Florida

4. Venue is proper in the Southern District of Florida pursuant to 28. U.S.C. 1391(a) in that Defendants are subject to personal jurisdiction within the Southern District of Florida and the events which give rise to this action occurred within the Southern District of Florida.

### **THE PARTIES**

5. Plaintiff, BEACH BLITZ CO., is a Florida corporation with its principal place of business in Miami Beach, Florida. Plaintiff does business as OCEAN 9 LIQUOR and OCEAN 11 MARKET and services South Beach, Florida, with a wide variety of packaged beer, wine, liquor, and related supplies. Plaintiff's locations are at 865 Collins Avenue and 1100 Collins Avenue. Plaintiff offers free delivery to the surrounding area of hotels, residences, and the beach. In addition OCEAN 9 LIQUOR maintains a live disc jockey on the premises and has at

all times relevant been licenses to so. Plaintiff is a package store<sup>4</sup> providing sales of packaged liquor. Plaintiff has been operated at its locations since approximately 2003 pursuant to written lease agreements which require the operation of a retail liquor store. Doron Doar is Plaintiff's principal and was threatened with imprisonment if he refused to close the store located at 865 Collins Avenue on October 6, 2017.

6. Defendant, CITY OF MIAMI BEACH, FLORIDA (the “City”) is a municipal corporation organized under the laws of the State of Florida. It is governed by the laws and constitution of the United States of America, the laws and constitution of the State of Florida and by its municipal Charter and Code. Pursuant to applicable law, the City regulates the location, size, hours of operation, and minimum patron age for alcoholic beverage establishments within its borders.

7. Defendant, PHILIP LEVINE, is an adult individual, the Mayor of the City, and otherwise *sui juris*. Mayor Levine is a principal leader in the City's goal to terminate the sale of alcohol in the MXE district and other parts of the City. The City's goal appears to be limitless as it includes putting small businesses (“malignant tumors”) out of business.

8. JIMMY MORALES is an adult individual, the City Manager, and otherwise *sui juris*.

9. Defendant, MICKEY STEINBERG is an adult individual, a Commissioner for the City and otherwise *sui juris*.

10. Defendant, RICKY ARRIOLA is an adult individual, a Commissioner for the City and otherwise *sui juris*.

11. Defendant, MICHAEL GREICO is an adult individual, a Commissioner for the City and otherwise *sui juris*. Commissioner Greico recently resigned his commission set but was a Commissioner at all times relevant.

12. Defendant JOY MALAKOFF is an adult individual, a Commissioner for the City

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<sup>4</sup> The City defines a package store as any store primarily engaged in the business of selling alcoholic beverages for off-premises consumption and that has a license for package sales from the State Division of Beverages and Tobacco in the classification of 1-APS, 2-APS, or PS.

and otherwise *sui juris*.

13. Defendant KRISTEN ROSEN GONZALEZ is an adult individual, a Commissioner for the City and otherwise *sui juris*.

14. Defendant JOHN ELIZABETH ALEMAN is an adult individual, a Commissioner for the City and otherwise *sui juris*.

15. Defendant RAUL J. AGUILA is an adult individual, the City Attorney for the City and otherwise *sui juris*.

16. Defendant, ALEKSANDR BOKSNER, is an adult individual, a Chief Deputy City Attorney for the City and otherwise *sui juris*. Mr. Boksner is a principal player in the actions resulting in the unlawful closure of Plaintiff's store at 865 Collins Avenue.

17. At all relevant times described herein, the Commission as an expression of municipal policy and on behalf of the City adopted the Code Sections and Ordinances discussed below acting through its duly authorized agents, Mayor Levine, Manager Morales and the Commissioner Defendants, and Alek Boksner.

18. At all times alleged herein, the City and its officials, employees and agents were acting under color of state and local law.

### **GENERAL ALLEGATIONS**

#### **A. The MXE District**

19. The MXE Mixed Use Entertainment ("MXE") district is characterized by a variety of uses, ranging in intensity from apartment buildings and retail stores to restaurants and entertainment establishments, which attract a large volume of pedestrians and vehicular traffic. Comparatively, few actual citizens of Miami Beach reside in the MXE district.

20. The MXE district was designed by the City to encourage the substantial restoration of existing structures, allow for new construction and the coexistence of multiple private businesses and entertainment uses.

21. The MXE district is composed of the area between Ocean Drive to Washington Avenue on the east and west side and 5<sup>th</sup> Street to 15<sup>th</sup> Street on the north and south side. Said

otherwise, the MXE district is the heart of South Beach as it is known worldwide. See Exhibit B.

22. Plaintiff operates 2 package stores within the MXE district.

23. There are 2 other package stores in the MXE district, other than Plaintiff's stores.

**B. Ocean 9 and the Neighborhood**

24. Plaintiff's store at 865 Collins Avenue is located directly across the street from the residence of Mitch Novick, a principal in a well-known, vocal opponent of the sale of liquor on South Beach. Mr. Novick and Mayor Levine are well-known to one another.

25. Upon information and belief, Mr. Novick has made at least 6 unsubstantiated noise complaints with respect to Plaintiff's business from the period of May 2016 to September 2017, and numerous "informal" complaints directly to some of the Defendants and the City police department.

26. Access to Plaintiff's store at 865 Collins Avenue is routinely impaired by the City and its officers, agents and employees. Specifically, 9<sup>th</sup> street between Collins Avenue and Ocean Drive is routinely shut down not allowing vehicle or pedestrian traffic. The shutdown occurs without explanation and is only affected on 9<sup>th</sup> street, the street coincidentally which Mr. Novick's residence overlooks. No other streets are routinely barricaded.

**C. The City's Action Plan against Liquor Stores and Sales**

27. Beginning in 2016, the City commenced a campaign to limit and/or severely curtail the sale of alcohol in the MXE district. According to the City, the package sales of alcoholic beverages in the MXE district encourage individuals to consume alcoholic beverages in the City's parks, and on the City's streets and sidewalks. The alleged basis for the proposed restrictions was to reduce crime in the MXE district and South Beach in general.

28. Regulation of the sale of alcoholic beverages is a legitimate legislative province so long as any such ordinance is not arbitrary or capricious and is reasonable in the context of its implementation and effect. Cities may only regulate certain aspects of the sale of alcohol and said regulation may not otherwise impair state law on the sale of alcohol.

29. The City apparently concluded that the consumption of open containers of

alcoholic beverages in public places disturbs the quiet enjoyment of the community, causes undesirable noise, and contributes to litter, noxious odors, and the general degradation of the City. There is no direct finding that the four package stores in the MXE district are a causal link to any crime in that district. Nor is there actual support that eliminating one or such packages stores will improve the crime problem. None of those package stores are in violation of any law that would impair their right to operate.

30. The City concluded it was in its best interest and to serve the health, safety, and welfare of its residents and visitors, to prohibit package stores and package sales of alcoholic beverages in the MXE district. As such, the Commission passed an ordinance that determined that going forward from the effective date of Ordinance No. 2016-4047 no new package stores would be allowed in the MXE district. The 4 existing stores were unaffected, including Plaintiff's stores.

31. Little did Plaintiff or the other package store owners know at that time that a trap was being set.

32. Further forward with the plan against alcohol sales, the City concluded that it was in its best interest and to serve the health, safety, and welfare of its residents and visitors, to substantially reduce the allowable time periods during which alcohol could be sold. Thus, began the systematic passage of a series of overreaching, unreasonable ordinances designed to bankrupt the four package stores by systematically reducing their legal hours of sale. In less than a year, the proposed reduction will be a reduction from a 16 hour period to a 10 hour period. Most hours being eliminated are at peak sale time.

**D. The City's Code Relative to the Business Tax Receipt**

33. All business owners operating within City are required to obtain a Business Tax Receipt (formerly known as an Occupational License) (a "BTR"). A BTR license is essentially a tax on the operation of a business.

34. A BTR license is valid from October 1<sup>st</sup> to September 30<sup>th</sup> of the following year and must be renewed prior to the commencement of the new fiscal year on October 1, 2017.

35. The Code provides penalties for failure to obtain a valid BTR license, including routine fines. There are enhanced penalties for multiple violations regarding operating without a valid BTR that include incarceration and/or proceedings to enjoin operation of the business.<sup>5</sup> Section 102.377, Miami Beach City Code.

36. The Code also states that the City may prevent a business from operating until the required tax receipt is obtained.

37. On or before October 1, 2015, Plaintiff applied for and obtained a BTR license identified as RL-10005692 for the store located at 865 Collins Avenue.

38. Since approximately June 2017, when Plaintiff discovered it needed to renew its BTR license, Plaintiff has been attempting to renew the BTR for the store on 865 Collins Avenue.

39. Plaintiff has been intentionally thwarted by the City from doing so as more fully described below.

40. The City has intentionally, unilaterally and arbitrarily refused to renew Plaintiff's BTR license for its store at 865 Collins Avenue, despite accepting and retaining all fees relative to same. The City continued to cite Plaintiff for not having its BTR license for the store located at 865 Collins Avenue even after Plaintiff tendered payment of the licensee fee and penalties for being tardy.

41. That refusal is now the basis for the City's position that Plaintiff may never reopen because his "new" proposed use as a package store is a non-conforming use pursuant to 2016 Ordinance No. 2016-4047. The trap is sprung. One store down; three to go.

42. The City intentionally prevented Plaintiff from updating his license yet now says that because Plaintiff didn't timely update its license it is barred from future operation. Those actions are not only unlawful and in bad faith, they are unconstitutional on their face. It is a well-known principal of law that a party may not relay on a failed legal condition when that

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<sup>5</sup> Such actions, of course, would require Constitutional due process.



party caused the very failure relief upon.

**E. The City's Code relative to the Sale of Alcohol**

43. Chapter 6 of the City Code establishes minimum regulations for the sale and consumption of alcoholic beverages throughout the City, and district-specific alcoholic beverage regulations are set forth in Chapter 142.

44. In its current form, the Code allows package stores to sell alcoholic beverages, whether as a permitted main or accessory use, for off-premises consumption between the hours of 9:00 a.m. and 10:00 p.m.<sup>6</sup> Section 6-3 City Code.

45. As more fully discussed below the time periods during which package stores may sell alcoholic beverages has changed at least over 3 times in the course of six months

**F. The Ordinances Designed to Restrict the Sale of Alcohol<sup>7</sup>**

46. On October 19, 2016, the Mayor and the City Commission adopted Ordinance No. 2016-4047, which altered the allowed uses within the MXE district. Specifically, Ordinance No. 2016-4047 prohibits package stores and package sales of alcoholic beverages by any retail store or alcoholic beverage establishment with in the MXE district.<sup>8</sup> Additionally, the Ordinance prohibits entertainment in package stores.<sup>9</sup> See Exhibit C.

47. On November 9, 2016, the Mayor and City Commission adopted Ordinance No. 2016-4058, which prohibited package liquor sales at retail stores (including package, grocery, convenience, and any other retail stores, as well as gasoline stations/service stations) and alcoholic beverage establishments before 10:00 a.m. (instead of 8:00 a.m.) each day. See Exhibit D.

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<sup>6</sup> These restrictions appear not apply to big chain stores such as Walgreens which operates in the MXE district and the MXE district seems to specifically change direction to exclude another Walgreens location.

<sup>7</sup> The ordinances discussed in this section are collectively referred to as "Ordinances".

<sup>8</sup> All legal package stores in operation at the time the Ordinance was passed were grandfathered in as a matter of law.

<sup>9</sup> Plaintiff's store at 865 Collins Avenue operated on that date and lawfully provided entertainment in that store as it was licensed by the City to do.

48. On March 1, 2017, the City Commission reviewed a prior version of this Ordinance, which proposed to prohibit package liquor sales before 9:00 a.m. However, following discussion on this item, the City Commission directed staff to revise the proposed Ordinance to prohibit package liquor sales before 8:00 a.m.

49. On April 26, 2017, the Mayor and City Commission reviewed the revised ordinance and directed the City Attorney's Office to prepare a revised draft ordinance that further restricted the hours of package liquor sales in the MXE district and citywide between 10:00 a.m. and 10:00 p.m.

50. On June 7 2017, Ordinance No. 2017-4101 was enacted again changing the hours of package liquor sales in the MXE district and specifically differentiating the rights of persons in the MXE district when compared to those in other districts. There is no rational nexus between the ordinance and the problem sought to be solved, crime.

51. Specifically Ordinance No. 2017-4101 provided that retail package stores could sell alcohol between the hours of 8:00 a.m. and midnight. See Exhibit E.

52. However, Ordinance No. 2017-4101 specifically stated that notwithstanding the citywide hours, package stores within the MXE district would only be permitted to sell alcoholic beverages between the hours 10:00 a.m. and 10:00 p.m. Id.

53. Approximately 3 months later, the City passed Ordinance No. 2017-4131 which further restricted the sale of alcohol by package stores in the MXE district. See Exhibit F. Ordinance No. 2017-4131 now set the time period as the hours between 9:00 am. and 10:00 p.m.

54. Apparently unhappy with the restrictions, in September 2017, Defendants proposed again attempted to change the hours of package liquor sales in the MXE district. See Exhibit G. Specifically, the September Ordinance proposed that package stores within the MXE district would only be permitted to sell alcoholic beverages between the hours 10:00 a.m. and 8:00 p.m.

55. A first reading of the September Ordinance was held on September 13, 2017.

56. A second reading of the September Ordinance is currently scheduled for October

31, 2017. If passed, the hours of package liquor sales in the MXE district will be restricted to between 10:00 a.m. and 8 p.m.

57. If passed, the September Ordinance would be the 4<sup>th</sup> change to the hours of package liquor sales in the MXE district in the span of 10 months

**G. The Alleged Code Violations by Plaintiff Giving Rise to Closure of Plaintiff's Store**

**a. December 2016**

58. On Wednesday, December 21, 2016 at 8:39 a.m. a Code Compliance officer presented Plaintiff with a notice of violation alleging a violation of Section 6-3(1)(A) of the City Code. In the notice, the City Code Compliance officer states that the violation was based upon Plaintiff's sale of alcoholic beverages between the hours of midnight and 10:00 a.m. The violation was identified as Case Number 2016-11719. See Exhibit H.

59. Subsequently, Plaintiff was provided a different sheet of paper for the December violation. See Exhibit I. This paper identified the Case Number as CC2016-01704 but maintained a violation of Section 6-3(1)(A) of the City Code. Id.

60. In this notice, the violation stated that Section 6-3(1)(A) of the City Code provides that retail stores in the MXE district for package sales only may make sales of alcohol for off-premises consumption between the hours of 8:00 a.m. and midnight.

61. The violation was issued at 8:39 a.m. – thus within the then existing lawful time periods for sale.

62. As more fully discussed below, Plaintiff appealed the December violation, invoking the jurisdiction of the Special Master.

**b. June 2017**

63. On Sunday, June 25, 2017 at 11:30 p.m., a Code Compliance Officer presented the following notices of violation to Plaintiff:

- Violation identified as Code Case Number CC2017-03102. This violation alleged that Plaintiff had violated . See Exhibit J.
- Violation identified as Code Case Number CC2017-03103. This

violation alleged that Plaintiff had violated Article V, Section 102-377 of the City Code by failing to obtain a Business Tax Receipt. See Exhibit K.

64. The June BTR notice provided that it was a 1<sup>st</sup> offense and carried a fine (and other monetary charges) of \$1,000.00. Id.

65. The June BTR notice further set forth the following penalties:

- a 1<sup>st</sup> violation – a civil fine of \$1000.00
- enhanced enforcement pursuant to subsection 102-377(d)<sup>10</sup>
- imprisonment not to exceed 60 days or by imposition of a fine not to exceed \$500.00 or both if the violation continued for a period of thirty (30) days or more.

Id.

66. Significantly, the June notices set forth that “failure to comply will result in your prosecution before the City of Miami Beach Special Master. The Special Master may impose fines of up to \$1,000 per day for noncompliance and up to \$5,000 per day for recurring violations. Failure to pay imposed fines will lead to placement of liens upon the real and personal property of violators which will be foreclosed on otherwise collected as provided the City code.” Id.

67. The June notice provides that “fines and/or violations may be appealed within ten (10) days of receipt of the notice of violation. To appeal a fine and/or violation submit a written request for an appeal to the Clerk of the Special Master....”

68. The June notice does not provide that failure to comply will result in the immediate closing of the package store by the City Code Compliance Officer. Id.

**i. Plaintiff appeals the fines and/or violations of the December and June notices**

69. Consistent with the Code and as set forth in the violation notices, Plaintiff

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<sup>10</sup> Subsection 102-377(d) of the City Code provides “In addition to the above, a continued violation of subsection 102-377(a) for a period of 30 days or more without first obtaining a tax receipt, shall be punished by imprisonment not to exceed 60 days or by imposition of a fine not to exceed \$500.00 or both.”

appealed the December and June violations to the Special Master. The Special Master accepted jurisdiction and proceeded in the ordinary course.

70. A hearing was held on the appeal to the Special Master on August 28, 2017. At that time, the parties advised the Special Master that they had reached an agreement which would resolve the violations. The agreement required Plaintiff to pay a fine in the sum of One Thousand (\$1,000.00) Dollars. The Special Master approved the agreement.

71. As a result, on the very same day, Plaintiff issued Check No. 2738 in the sum of \$1,000.00. However, because a written order had not been issued by the Special Master, the City would not accept the payment as an order had not been submitted and entered into the “system”. This entry into the “system” is necessary to lift the restriction on tendering payment to, *inter alia*, renew the BTR license.

72. On Thursday, September 28, 2017, a full month after reaching an agreement, the Special Master issued an agreed order affirming Citations CC2016-01704, CC2017-03102 and CC2017-03103. See Exhibit L.

73. In its agreed order the Special Master assed a fine in the amount of One Thousand (\$1,000.00) Dollars against Plaintiff. Id. The order required Plaintiff to pay the fine within thirty (30) days of the entry of the agreed order – to wit: October 28, 2017. Id.

74. From Thursday, September 28, 2017 through and including Wednesday, October 4, 2017, Plaintiff repeatedly presented payment to the City to comply with the Special Master’s order and to obtain its BTR.

75. From Thursday, September 28, 2017 through and including Wednesday, October 4, 2017, the City provided a series of reasons of why payment could not be accepted. For example, the City claimed that it could not accept payment because the Special Master’s order had not yet been put into the system.

76. Finally, on Wednesday, October 4, 2017, the City accepted Plaintiff’s payment of the \$1,000 fine.

77. The City also accepted late fees relative to the BTR; however it refused to accept

the payment to renew the BTR.

78. This fact is confirmed by the on-line registry which shows that violations CC2017-03102 and CC2017-03103 were closed on October 4, 2017. See Exhibit M.

79. Significantly, although paid the same day as the other violations, the on-line registry shows that violation CC2016-01704 was closed on October 13, 2017 (9 days after the City accepted Plaintiff's check, 16 days after the Special Master's order and 46 days after the parties had agreed to a resolution of the issues raised by the 3 violations). See Exhibit N.

80. Despite accepting the payment which was in compliance with the Special Master's order, the City has refused to allow the issuance of Plaintiff's BTR that Plaintiff had been trying to obtain since notice of the violation in June 2017.

**c. October 2017**

81. On Friday, October 6, 2017 at 5:00 p.m., quite remarkably, a Code Compliance Officer again presented a notice of violation to Plaintiff alleging that Plaintiff had violated Article V, Section 102-377 of the City Code by failing to obtain a Business Tax Receipt. See Exhibit O. The Code Case Number was set forth at CC2017-03686.

82. The October notice provided that it was 2nd offense and carried a fine (and other monetary charges) of \$500.00. Id.

83. The October notice further set forth the following penalties:

- a 1<sup>st</sup> violation – a civil fine of \$1000.00
- enhanced enforcement pursuant to subsection 102-377(d)<sup>11</sup>
- imprisonment not to exceed 60 days or by imposition of a fine not to exceed \$500.00 or both if the violation continued for a period of thirty (30) days or more.

84. Significantly, the October notice sets forth that “failure to comply will result in your prosecution before the City of Miami Beach Special Master. The Special Master may

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<sup>11</sup> Subsection 102-377(d) provides “In addition to the above, a continued violation of subsection 102-377(a) for a period of 30 days or more without first obtaining a tax receipt, shall be punished by imprisonment not to exceed 60 days or by imposition of a fine not to exceed \$500.00 or both.”

impose fines of up to \$1,000 per day for noncompliance and up to \$5,000 per day for recurring violations. Failure to pay imposed fines will lead to placement of liens upon the real and personal property of violators which will be foreclosed on otherwise collected as provided the City code.”

85. The October notice does not provide that failure to comply will result in the immediate closing of the package store by the City Code Compliance Officer.

86. The October notice was issued during the period allowed for payment of the Special Master’s fine relative to, in part, a violation of Article V, Section 102-377 of the City Code (failing to obtain a Business Tax Receipt) and after Plaintiff had made the payment required by the Special Master to resolve three violations, one of which was failure to obtain a Business Tax Receipt.

**G. Plaintiff is Closed Down by Code Enforcement for Failing to Have a BTR License**

87. On Friday, October 6, 2017 (the very same day the October notice was issued to Plaintiff), Code enforcement<sup>12</sup> coerced Plaintiff’s principal, Doron Doar, by threat of immediate imprisonment, to close Plaintiff’s business due to Plaintiff’s alleged failure to obtain a BTR.

88. The City did not serve Plaintiff with a written administrative complaint prior to closing Plaintiff’s business due to its alleged failure to obtain a BTR. Such written, administrative complaint is required by Section 102-383.

89. The City did not set a hearing or hold a hearing prior to closing down Plaintiff’s business. As such, Plaintiff was given no due process for the closure and taking of his business.

90. Since that time, the City has refused to allow Plaintiff to obtain a BTR, stating that, pursuant to Ordinance No. 2016-4047, package stores and package sales of alcoholic beverages by any retail store or alcoholic beverage establishment within the MXE district are prohibited.

**H. Plaintiff’s plight with respect to its package store at 865 Collins Avenue**

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<sup>12</sup> At that time, the Code enforcement office was accompanied by two City police officers.

91. Plaintiff has been operating Ocean 9 Liquor as a liquor store at its location on 865 Collins Avenue (half a block from Ocean Drive on 9<sup>th</sup> Street) since 2011.

92. The entrance to this package store is approximately 50 feet from the entrance to Mangos, a well-known and popular night club on South Beach.<sup>13</sup>

93. Plaintiff retained the undersigned law firm in late August or early September, 2017, relative to recent passage of ordinances restricting the sale of liquor by package stores within the MXE district.

94. At that time, Plaintiff had recently become aware of the reduction in hours for sales by package stores. The allowed period had been changed from 8:00 am to midnight to, 10:00 a.m. to 10:00 p.m., by virtue of Ordinance No. 2017-4101 becoming effective on June 7, 2017

95. Shortly after being retained, the undersigned firm, through primarily the efforts of Miguel Diaz de la Portilla, a lawyer and well-known lobbyist, it became apparent that a second ordinance was in process designed to further restrict the hours from 10:00 a.m. to 8:00 p.m.

96. Such a reduction would be catastrophic for the four package stores in the MXE district as it would effectively reduce their hours of operation by approximately 28% and lead to the likely reduction in revenue of approximately 50%.

97. Mr. Diaz de la Portilla quickly arranged meetings with the City Manager, Deputy City Attorney, Commissioner Arriola (the sponsor of the subject ordinances) and other commissioners.

98. A meeting with Deputy City Attorney, Eve A. Boutsis, was scheduled for Thursday, October 5, 2017 at 1:00 p.m., and a call with Commissioner Arriola<sup>14</sup> was scheduled, for Friday, October 6, 2017 at 2:00 p.m.

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<sup>13</sup> Upon information, Plaintiff believes Mangos is one of the so-called “malignant tumors” referred to by Mayor Levine.

<sup>14</sup> Commissioner Arriola chose not to have an in-person meeting.



99. The meeting with Deputy City Attorney Boutsis occurred and lasted for approximately an hour. The meeting was positive and allowed Mr. Diaz de la Portilla to gain further information about the City's concerns. Mr. Diaz de la Portilla advised the Deputy City Attorney that Plaintiff would be happy to meet with all of the individuals and stakeholders within the City over the course of the next 60 days to discuss how Plaintiff could assist the City in its crime prevention efforts without the passage of the more restrictive hour of operation which it was argued, were arbitrary, capricious, unreasonable and designed to force the package stores out of business in the MXE district.

100. On Friday, October 6th at 1:45 p.m., fifteen minutes before the scheduled call with Commissioner Arriola, the Commissioner's office called and abruptly canceled the call without explanation and without making provision for a further meeting. The writing was on the wall.

101. Approximately an hour later, the undersigned received a call from Plaintiff's principal indicating that a City code compliance officer and two policemen came to Plaintiff's store at 865 Collins Avenue and threatened to imprison Plaintiff's principal if he did not close the store immediately. Plaintiff also advised that it was cited for failure to have a BTR.

102. Mr. Diaz de la Portilla called Deputy City Attorney Boksner on the following Monday. Deputy City Attorney Boksner advised that the City's actions of the past few days were not likely coincidental and a long time coming. Evidence of the scheme and its perpetrators begins to emerge.

103. As of October 6, 2017, the City once again prohibited both Plaintiff and its agents from paying the BTR until the Special Master process (which took over 6 months) was concluded and in the system.<sup>15</sup> Had the City allowed payments as tendered multiple times before October 6, no violation could have been issued and Plaintiff would be operating today.

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<sup>15</sup> As previously discussed, the Agreed Order was not executed by the Special Master until Thursday, September 28, 2017. The Order was not recorded in the City's system until late the following week, effectively giving Plaintiff no time to pay the fees/fines before being closed on October 6, 2017. The Agreed Order allowed Plaintiff 30 days to pay the fees/fines. See Exhibit L.

104. On October 11, 2017, for the first time since being cited for a BTR violation, Plaintiff was actually able to pay<sup>16</sup> the appropriate fines and the fees for its BTR.

105. Those amounts remain paid to date and have not been refunded. Yet, the City refuses to issue Plaintiff a BTR now suggesting that it no longer has a conforming use because in 2016, the City passed Ordinance No. 2016-4047 prohibiting package stores from selling alcohol in the MXE district. The City reasons that since there was no “current” BTR, it cannot renew the BTR because of the conforming use ordinance. Clearly, the City dithered on allowing Plaintiff to renew his BTR for fiscal year 2016-2017 to get past the date necessary to spring its trap.

106. Said otherwise, the City intentionally ambushed Plaintiff as it was a specific target of the City, the Mayor, Commissioner Arriola and certain citizens, including Mitchell Novick who owns the building directly across the street and lives directly across the street from the entrance to Plaintiff’s store at 865 Collins Avenue.

107. All conditions precedent to the commencement and maintenance of this action have been satisfied, performed, waived, or otherwise discharged.

108. Plaintiff has retained the undersigned counsel as its attorney in this matter and is obligated to pay them a reasonable fee for their services.

**COUNT I**  
**DECLARATORY JUDGMENT/INJUNCTIVE RELIEF**  
**(Wrongful Closure)**

109. Plaintiff realleges and reincorporates by reference paragraphs 1 through 108 as if fully set forth herein.

110. On October 6, 2017, Defendants wrongfully threatened and wrongfully coerced through the threat of imprisonment, Doron Doer, Plaintiff’s principal to shut down Plaintiff’s business operations at 865 Collins Avenue.

111. Said threats and resulting closure are inconsistent with federal, state and local laws and ordinances.

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<sup>16</sup> Plaintiff made such payment through the City’s online system.

112. Said threats and resulting closure are unconstitutional and lacking due process.

113. Said threats and resulting closure are all part of Defendants' targeted plan to eliminate the Ocean 9 Liquor store at 865 Collins Avenue specifically and ultimately all package stores on South Beach.

114. The resulting closure was caused by the City's intentional failure to allow Plaintiff to obtain a BTR for over 6 months.

115. Said actions are inconsistent with Section 102.3-377(b)(2) which sets forth the City's rights and remedies relative to the BTR.

116. Moreover, said actions are inconsistent with the City's failure to allow Plaintiff to pay any associated fines and to renew or otherwise update its BTR subsequent to the Special Master's Agreed Order dated September 28, 2017.

117. The City specifically refused to allow Plaintiff or any its representative to pay the fines relative to the BTR violation within the jurisdiction of a Special Master proceeding which ended on September 28, 2017 and wrongfully closed the package store less than one week later based on the very violations dealt with in the Special Master order which had not yet been entered in the City system and which prevented Plaintiff from otherwise doing that which the City now complains about.

118. The City's actions were intentional, targeted, and clearly directed to ambush Plaintiff and allow the City to take the position that because of the conforming use change that had occurred a year early, Plaintiff could no longer obtain a new BTR and operate its package store going forward.

119. Therefore, Plaintiff is entitled to declaratory and injunctive relief.

WHEREFORE Plaintiff, BEACH BLITZ CO., a Florida corporation d/b/a OCEAN 9 LIQUOR and d/b/a as OCEAN 11 MARKET, respectfully requests the following:

1. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring the City's actions relative to the closing of Plaintiff's store at 865 Collins Avenue to be improper, unconstitutional, discriminatory and intentionally designed to ambush Plaintiff;

2. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring that Plaintiff is and was at all times in compliance with appropriate law as it had initiated the appeals with the Special Master, complying with the Agreed Order issued by the Special Master, and was prevented from paying the fines and fees necessary to continuously operate and to otherwise avoid the City's now bad faith argument that it can no longer obtain a BTR;

3. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring for purposes of all relevant periods that Plaintiff's store at 865 Collins Avenue had been operating legally and uninterrupted through its wrongful closer on October 6, 2017;

4. Immediate issuance of mandatory temporary restraining order, preliminary and permanent mandatory injunction pursuant to Fed.R.Civ. P. 65, ordering the City, its officers, agents and employees to issue Plaintiff a BTR license and allow Plaintiff to re-open its business at 865 Collins Avenue without interference from Defendants;

5. An award of attorney's fees and costs; and

6. Ordering such further relief deemed just and proper.

**COUNT II**  
**VIOLATION OF 42 U.S.C. §1983**

120. Plaintiff realleges and reincorporates by reference paragraphs 1 through 108 as if fully set forth herein.

121. Plaintiff maintains this cause of action pursuant to 42 U.S.C. §1983 and seeks monetary damages and attorneys' fees (pursuant to 42 U.S.C. §1988) for the deprivation of its property and liberty interests, as more particularly set forth herein.

122. As more particularly described herein, Defendants have established a custom, policy, pattern and practice of unlawfully targeting package stores in the MXE district in an unconstitutional and illegal fashion, not reasonably related to any legitimate result, but only designed to remove the "malignant tumors" all of which are lawfully operating small businesses.

123. Defendants have intentionally created a policy that unlawfully targets the package stores, clubs and restaurants in the MXE district.

124. This unlawful targeting is evident in the Ordinances and in the Defendants' unilateral suspension of Plaintiff's BTR without even the most minimal compliance with Code Section 102-383.

125. Defendants subjected Plaintiff to conduct that occurred under color of state law.

126. Defendants' conduct deprived Plaintiff of rights, privileges, or immunities guaranteed under federal law and the U.S. Constitution and is by definition discriminatory.

127. The Ordinances restricting the period in which alcohol may be sold by package stores constitutes irreparable harm.

128. Therefore, Plaintiff is entitled to declaratory and injunctive relief and damages.

WHEREFORE Plaintiff, BEACH BLITZ CO., a Florida corporation d/b/a OCEAN 9 LIQUOR and d/b/a as OCEAN 11 MARKET, respectfully requests the following:

1. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring the City's actions relative to the closing of Plaintiff's store at 865 Collins Avenue to be improper, unconstitutional, and intentionally designed to ambush Plaintiff without justification of law;

2. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring that Plaintiff is and was at all times in compliance with appropriate law as it had initiated the appeal with the Special Master, complying with the Agreed Order issued by the Special Master, and was prevented from paying the fines and fees necessary to continuously operate and to otherwise avoid the City's now bad faith argument that it can no longer obtain a BTR;

3. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring for purposes of all relevant periods that Plaintiff's store at 865 Collins Avenue had been operating legally and uninterrupted through its wrongful closer on October 6, 2017;

4. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring Ordinance Nos. 2016-4047, 2016-4058 and 2017-4101 unconstitutional as applied to Plaintiff because they violate numerous provision of the federal Constitution as set forth herein;

5. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring the proposed September Ordinance unconstitutional as applied to Plaintiff because it violates

numerous provision of the federal Constitution as set forth herein;

6. Immediate issuance of a mandatory temporary restraining order, preliminary and permanent mandatory injunction pursuant to Fed.R.Civ. P. 65, ordering the City, its officers, agents and employees to issue Plaintiff a BTR license and allow Plaintiff to re-open its business at 865 Collins Avenue without interference from Defendants;

7. For damages in its favor and against Defendants, CITY OF MIAMI BEACH, FLORIDA, a municipal corporation of the State of Florida, PHILIP LEVINE, an individual, JIMMY MORALES, an individual, MICKEY STEINBERG, an individual, RICKY ARRIOLA, an individual, MICHAEL GREICO, an individual, JOY MALAKOFF, an individual, KRISTEN ROSEN GONZALEZ, an individual, JOHN ELIZABETH ALEMAN, an individual, RAUL J. AGUILA, an individual, and ALEKSANDR BOKSNER, and individual, jointly and severally;

8. An award of attorney's fees and costs; and

9. Ordering such further relief deemed just and proper.

**COUNT III**  
**VIOLATION OF THE 14<sup>th</sup> AMENDMENT – SUBSTANTIVE**  
**DUE PROCESS AND TAKINGS CLAIM**

125. Plaintiff realleges and reincorporates by reference paragraphs 1 through 108 as if fully set forth herein.

126. The Due Process Clause of the Fourteenth Amendment to the United States Constitution prohibits the City from depriving any person of life, liber or process without due process of law.

127. Plaintiff has a liberty and/or property interest in conducting its lawful business of selling alcohol from its package store and receiving income from said sale.

128. The City's unilateral and arbitrary suspension of Plaintiff's BTR license and resulting closure of its business is without due process of law, *to wit*: notice and opportunity to be heard.

129. Further, the City's suspension of Plaintiff's BTR license under the Code and Ordinance No. 2016-4047 deprives Plaintiff of the liberty and/or property interest in retaining

such license, conduct sales of alcohol and/or receive income from said sales without any hearing or proceedings before such suspension and deprivation occurred.

130. In addition, the Ordinances and the City's actions in limiting the sale of alcoholic beverages by package stores in the MXE district is unreasonable and unconstitutional taking as it deprives Plaintiff of his business and the income from sales of alcoholic beverage without a legitimate and established purpose other than to put package liquor stores out of business.

131. The City's actions relative to the closing of Plaintiff's store at 865 Collins Avenue have no reasonable relation to any legitimate local government purpose. The City does not have any compelling state interest or rational basis for its actions, especially since they are limited to a 15 block perimeter between Ocean Drive and Collins Avenue and ignore the reality that alcoholic beverages may be purchased outside that perimeter (a block away) from 8:00 am to midnight. Neither has the City demonstrated the crime problem alleged to be the basis for the actions will be impacted in any fashion once these businesses are destroyed.

132. As a result, the City's actions, on their face and/or as applied are unreasonably discriminatory and violate the Due Process Clause of the Fourteenth Amendment.

133. Defendants' closing of Plaintiff's business and the Ordinances restricting the period during which alcohol may be sold constitute irreparable harm.

134. Therefore, Plaintiff is entitled to declaratory and injunctive relief and damages.

WHEREFORE Plaintiff, BEACH BLITZ CO., a Florida corporation d/b/a OCEAN 9 LIQUOR and d/b/a as OCEAN 11 MARKET, respectfully requests the following:

1. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring the City's actions relative to the closing of Plaintiff's store at 865 Collins Avenue to be improper, unconstitutional, and intentionally designed to ambush Plaintiff;

2. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring that Plaintiff is and was at all times in compliance with appropriate law as it had initiated the appeals with the Special Master, complying with the Agreed Order issued by the Special Master, and was prevented from paying the fines and fees necessary to continuously operate and to otherwise

avoid the City's now bad faith argument that it can no longer obtain a BTR;

3. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring Ordinance Nos. 2016-4047, 2016-4058 and 2017-4101 unconstitutional as applied to Plaintiff because they violate numerous provision of the federal Constitution as set forth herein;

4. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring the proposed September Ordinance unconstitutional as applied to Plaintiff because it violates numerous provision of the federal Constitution as set forth herein;

5. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring for purposes of all relevant periods that Plaintiff's store at 865 Collins Avenue had been operating legally and uninterrupted through its wrongful closer on October 6, 2017;

6. Immediate issuance of a mandatory temporary restraining order, preliminary and permanent mandatory injunction pursuant to Fed.R.Civ. P. 65, ordering the City, its officers, agents and employees to issue Plaintiff a BTR license and allow Plaintiff to re-open its business at 865 Collins Avenue without interference from Defendants;

7. For damages in its favor and against Defendants, CITY OF MIAMI BEACH, FLORIDA, a municipal corporation of the State of Florida, PHILIP LEVINE, an individual, JIMMY MORALES, an individual, MICKEY STEINBERG, an individual, RICKY ARRIOLA, an individual, MICHAEL GREICO, an individual, JOY MALAKOFF, an individual, KRISTEN ROSEN GONZALEZ, an individual, JOHN ELIZABETH ALEMAN, an individual, RAUL J. AGUILA, an individual, and ALEKSANDR BOKSNER, and individual, jointly and severally;

8. An award of attorney's fees and costs; and

9. Ordering such further relief deemed just and proper.

**COUNT IV**  
**VIOLATION OF 42 U.S.C. §1983**  
**(Retaliation for First Amendment Expression)**

135. Plaintiff realleges and reincorporates by reference paragraphs 1 through 108 as if fully set forth herein.

136. Plaintiff maintains this cause of action pursuant to 42 U.S.C. §1983 and seeks



monetary damages and attorneys' fees (pursuant to 42 U.S.C. §1988) for Defendants actions' against Plaintiff for Plaintiff's protected First Amendment Conduct.

137. Specifically, on or about October 5, 2017, Plaintiff, through his counsel met with Deputy City Attorney Boksner to discuss Plaintiffs' concerns regarding the ongoing changes to the hours in which a package store could sell alcohol.

138. At that time, Plaintiff explained that Defendant's ongoing changes to the hours were severely impacting Plaintiff's business income and that as a result Plaintiff would oppose any further reductions to the hours of operation.

139. Plaintiff's speech to Defendants is constitutionally protected.

140. In response to Plaintiff's speech, on the very next day - October 6, 2017, Code enforcement and two City police officers ordered the immediate closing of Plaintiff's store (865 Collins Avenue) or suffer imprisonment.

141. Deputy City Attorney Boksner essentially suggested that the City's actions were intentional targeted toward Plaintiff.

142. Defendants' closing of Plaintiff's business constitutes irreparable harm.

143. Therefore, Plaintiff is entitled to declaratory and injunctive relief and damages.

WHEREFORE Plaintiff, BEACH BLITZ CO., a Florida corporation d/b/a OCEAN 9 LIQUOR and d/b/a as OCEAN 11 MARKET, respectfully requests the following:

1. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring the City's actions relative to the closing of Plaintiff's store at 865 Collins Avenue to be improper, unconstitutional, and intentionally designed to ambush Plaintiff;

2. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring that Plaintiff is and was at all times in compliance with appropriate law as it had initiated the appeals with the Special Master, complying with the Agreed Order issued by the Special Master, and was prevented from paying the fines and fees necessary to continuously operate and to otherwise avoid the City's now bad faith argument that it can no longer obtain a BTR;

3. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring

Ordinance Nos. 2016-4047, 2016-4058 and 2017-4101 unconstitutional as applied to Plaintiff because they violate numerous provision of the federal Constitution as set forth herein;

4. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring the proposed September Ordinance unconstitutional as applied to Plaintiff because it violates numerous provision of the federal Constitution as set forth herein;

5. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring for purposes of all relevant periods that Plaintiff's store at 865 Collins Avenue had been operating legally and uninterrupted through its wrongful closer on October 6, 2017

6. Immediate issuance of a mandatory temporary restraining order, preliminary and permanent mandatory injunction pursuant to Fed.R.Civ. P. 65, ordering the City, its officers, agents and employees to issue Plaintiff a BTR license and allow Plaintiff to re-open its business at 865 Collins Avenue without interference from Defendants;

7. For damages in its favor and against Defendants, CITY OF MIAMI BEACH, FLORIDA, a municipal corporation of the State of Florida, PHILIP LEVINE, an individual, JIMMY MORALES, an individual, MICKEY STEINBERG, an individual, RICKY ARRIOLA, an individual, MICHAEL GREICO, an individual, JOY MALAKOFF, an individual, KRISTEN ROSEN GONZALEZ, an individual, JOHN ELIZABETH ALEMAN, an individual, RAUL J. AGUILA, an individual, and ALEKSANDR BOKSNER, and individual, jointly and severally;

8. An award of attorney's fees and costs; and

9. Ordering such further relief deemed just and proper.

**COUNT V**  
**DECLARATORY JUDGMENT/INJUNCTIVE RELIEF**  
**(Section 102-377(e) of the Code)**

144. Plaintiff realleges and reincorporates by reference paragraphs 1 through 108 as if fully set forth herein.

145. Section 102-377(e) of the City Code suggests the city may prevent a business from operating until the required BTR is obtained.

146. Said subsection is directly inconsistent with Section 102-377(b)(2) which states that a person who violates the BTR requirements may be subject to “suit for injunctive relief to enjoin operation of the business.”

147. Said inconsistency renders the Section 102-377 of the City Code vague.

148. Further, the City Code’s authorization to prevent a business from operating until the required BTR is obtained without requiring due process, violates the United States Constitution.

149. Defendants’ closing of Plaintiff’s business constitutes irreparable harm.

150. Therefore, Plaintiff is entitled to declaratory and injunctive relief.

WHEREFORE Plaintiff, BEACH BLITZ CO., a Florida corporation d/b/a OCEAN 9 LIQUOR and d/b/a as OCEAN 11 MARKET, respectfully requests the following:

1. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring Section 102-377 of the City Code unconstitutional as it violates the U.S. Constitution as set forth herein;

2. Immediate issuance of a mandatory temporary restraining order, preliminary and permanent mandatory injunction pursuant to Fed.R.Civ. P. 65, ordering the City, its officers, agents and employees to issue Plaintiff a BTR license and allow Plaintiff to re-open its business at 865 Collins Avenue without interference from Defendants; and

3. Ordering such further relief deemed just and proper.

**COUNT VI**  
**DECLARATORY JUDGMENT/INJUNCTIVE RELIEF**  
**(The Ordinances)**

151. Plaintiff realleges and reincorporates by reference paragraphs 1 through 108 as if

fully set forth herein.

152. Ordinance Nos. 2016-4047, 2016-4058, 2017-4101, 2017-4131 and the proposed September Ordinance violate Fla. Stat. 562.45 by overly restricting the lawful sale of alcohol.

153. Therefore, Plaintiff is entitled to declaratory and injunctive relief.

WHEREFORE Plaintiff, BEACH BLITZ CO., a Florida corporation d/b/a OCEAN 9 LIQUOR and d/b/a as OCEAN 11 MARKET, respectfully requests the following:

1. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring Ordinance Nos. 2016-4047, 2016-4058 and 2017-4101 unconstitutional as applied to Plaintiff because they violate numerous provision of the federal Constitution as set forth herein;

2. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring the proposed September Ordinance unconstitutional as applied to Plaintiff because it violates numerous provision of the federal Constitution as set forth herein;

3. Immediate issuance of a mandatory temporary restraining order, preliminary and permanent mandatory injunction pursuant to Fed.R.Civ. P. 65, ordering the City, its officers, agents and employees to issue Plaintiff a BTR license and allow Plaintiff to re-open its business at 865 Collins Avenue without interference from Defendants; and

4. Ordering such further relief deemed just and proper.

**COUNT VII**  
**BREACH OF FLA. STAT. 562.45**  
**(The Ordinances)**

149. Plaintiff realleges and reincorporates by reference paragraphs 1 through 108 as if fully set forth herein.

150. The State of Florida issued Plaintiff a license to sell alcohol.

151. At all times relevant, Plaintiff has held a valid license to sell alcohol.

152. Defendants' actions in passing Ordinance Nos. 2016-4047, 2016-4058, 2017-4101, 2017-4131 and proposing the September Ordinance breach Fla. Stat. 562.45 by overly restricting the lawful sale of alcohol and essentially restricting the rights afforded to Plaintiff by Fla. Stat. 562.45.

153. Defendants' actions exceed the authority delegated to Defendants' by Fla. Stat. 562.45 and is therefore, unconstitutional and void *ab initio*.

154. Defendants' closing of Plaintiff's business constitutes irreparable harm.

155. Defendants' actions have caused and continue to cause Plaintiff damages.

WHEREFORE Plaintiff, BEACH BLITZ CO., a Florida corporation d/b/a OCEAN 9 LIQUOR and d/b/a as OCEAN 11 MARKET, respectfully requests the following:

1. Entry of damages in its favor and against Defendants, CITY OF MIAMI BEACH, FLORIDA, a municipal corporation of the State of Florida, PHILIP LEVINE, an individual, JIMMY MORALES, an individual, MICKEY STEINBERG, an individual, RICKY ARRIOLA, an individual, MICHAEL GREICO, an individual, JOY MALAKOFF, an individual, KRISTEN ROSEN GONZALEZ, an individual, JOHN ELIZABETH ALEMAN, an individual, RAUL J. AGUILA, an individual, and ALEKSANDR BOKSNER, and individual, jointly and severally;

2. Immediate issuance of a mandatory temporary restraining order, preliminary and permanent mandatory injunction pursuant to Fed.R.Civ. P. 65, ordering the City, its officers, agents and employees to issue Plaintiff a BTR license and allow Plaintiff to re-open its business at 865 Collins Avenue without interference from Defendants; and

3. Ordering such further relief deemed just and proper.

Dated: October 30, 2017

**SAUL EWING ARNSTEIN & LEHR LLP**

*Counsel for Plaintiff*

200 S. Biscayne Blvd., Suite 3600  
Miami, Florida 33131

Telephone: 305-374-3330

Facsimile: 305-374-4744

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E-Mail: [ana.sharp@saul.com](mailto:ana.sharp@saul.com)

E-Mail: [mia-ctdocs@saul.com](mailto:mia-ctdocs@saul.com)

By: /s/ Phillip M. Hudson III

Phillip M. Hudson III  
Florida Bar No. 518743  
Hilda Piloto  
Florida Bar No. 0154120

# **EXHIBIT A**



## EDITORIALS

# On Miami Beach ballot: No to 2 a.m. stop to liquor sales; Yes to North Beach development plan

MIAMI HERALD EDITORIAL BOARD

OCTOBER 25, 2017 10:36 PM

Two items on the Miami Beach ballot seek to improve residents' quality of life at each end of the city. The first one is a misguided effort to stem rowdiness and crime in South Beach. The second could represent a hard-won victory for the residents of North Beach.

## Alcohol sales

A long-standing controversial issue — how late should some bars along Ocean Drive be allowed to serve liquor — is being kicked to the voters.



They are being asked to decide the future of Ocean Drive's late-night party atmosphere by considering whether the city should require certain bars to stop selling alcohol at 2 a.m. instead of the current 5 a.m.

---

## Breaking News

Be the first to know when big news breaks

Enter Email Address

**SIGN UP**

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If the measure is approved, all establishments on Ocean Drive between 5th and 15th streets, except indoor portions of bars that are completely enclosed and located entirely within hotels, are affected. Truth be told, however, the referendum is largely aimed at ending the partying at three bars/nightclub/hotels on the storied street: Mangos, the Clevelander, and Wet Willie's.

At the core is the chagrin of nearby residents who have to endure the hooting, hollering, and crime of rowdy tourists and partygoers. Miami Beach Mayor Philip Levine is on their side. He has gotten an earful of complaints and has had a contentious public exchanges with owners of the establishments.

The Editorial Board agrees with the mayor that the prickly issue should have been handled by the City Commission, but Levine says he's been unable to get a consensus there, largely because of the hefty campaign contributions the bar owners make to commissioners. Scaled-back alcohol hours in the name of public safety "is just the right thing to do," Levine told the Editorial Board.

The business owners who would be affected say the move is heavy-handed and will hurt business and employees.

"This is not punitive. ... The three locations we are focusing on are the malignant tumors, and we want to eradicate the cancer," the mayor said. Strong words.



We agree that something must be done for residents held hostage by partyers. However, this legally shaky, narrowly targeted question isn't the right course. In addition, though drinking, rowdiness and public safety are concerns, the initiative fails to address that carousers can amble over to Collins Avenue — or go to an indoor bar — to keep their party going.

On the question of a 2 a.m. end to alcohol sales on Ocean Drive, the Herald recommends **NO**.

## **North Beach**

After years of contention over the best way to turn South Beach's neglected stepsister of North Beach into a more-vibrant economic force, this referendum has preservationists, developers and, for the most part, residents on the same page. We commend these once-warring factions for coming up with a responsible, more-comprehensive redevelopment plan to create a "town center" where now there are underused, dated buildings, vacant land, and a few commercial enterprises, including a few restaurants and banks. The words "sleepy" and "tired" get used a lot.

The referendum asks if a 10-block district on either side of the main corridor of 71st Street should be "upzoned;" that is, increase floor-area ratio — FAR — which would allow for larger mixed-use buildings to draw more foot traffic, residents, and visitors.

The beauty of this proposal is that it is predicated on creating local historic districts that will protect the area's wealth of Miami Modern apartment buildings. This is key to maintaining the unique character of the low-rise residential areas, and helped bring preservationists on board. "It's really a lesson in working together, preservationist and former commissioner Nancy Liebman told the Editorial Board. "If we just continue to argue about preservation and height and development, we will go nowhere." Voters should get on board, too.

On the question to increase the FAR to create a Town Center in North Beach, the Herald recommends **YES**.

---

**Never miss a local story.**

# **EXHIBIT B**



OFFICIAL ZONING MAP  
OF THE  
CITY OF  
MIAMI BEACH  
• FLORIDA •

INCORPORATED 1915

ADOPTED 21ST DAY OF SEPTEMBER, 1989  
EFFECTIVE 1ST DAY OF OCTOBER, 1989  
AS AMENDED  
DATE OF LAST REVISION OCTOBER 17, 2011

Biscayne Bay

Atlantic Ocean

MIAMI BEACH  
PLANNING DEPARTMENT  
1700 CONVENTION CENTER DRIVE  
MIAMI BEACH, FLORIDA 33139  
P 305.673.7550 F 305.673.7559

0 0.125 0.25 0.5 0.75 1 Miles

THE PLANNING DEPARTMENT HAS STRIVED TO PROVIDE AS ACCURATE A MAP AS POSSIBLE; HOWEVER, THIS MAP IS NOT TO BE CONSTRUED AS A SURVEY INSTRUMENT. THE CITY OF MIAMI BEACH MAKES NO REPRESENTATIONS OR WARRANTIES, NOR ASSUMES ANY LIABILITY, ARISING FROM THE USE OF THIS MAP FOR AN OFFICIAL ZONING DETERMINATION. PLEASE CONTACT THE PLANNING DEPARTMENT.

ZONING DISTRICTS

|                                                |                                                                |                                                             |                                                                                             |
|------------------------------------------------|----------------------------------------------------------------|-------------------------------------------------------------|---------------------------------------------------------------------------------------------|
| RS-1 Single family residential                 | CD-3 Commercial, high intensity                                | WD-2 Waterway district                                      | CPS-4 Commercial performance standard, intensive phased bayside                             |
| RS-2 Single family residential                 | I-1 Urban light industrial                                     | RO Residential office                                       | RMPS-1 Residential mixed use performance standard                                           |
| RS-3 Single family residential                 | MXE Mixed use entertainment                                    | GC Golf course                                              | SPE Special public facilities educational district                                          |
| RS-4 Single family residential                 | HD Hospital district                                           | RPS-1 Residential performance standard, medium-low density  | TC-1 North Beach Town Center core                                                           |
| TH Townhome residential                        | MR Marine recreational                                         | RPS-2 Residential performance standard, medium density      | TC-2 North Beach Town Center mixed use                                                      |
| RM-1 Residential multifamily, low intensity    | GU Civic and government use                                    | RPS-3 Residential performance standard, medium-high density | TC-3 North Beach Town Center residential/office                                             |
| RM-2 Residential multifamily, medium intensity | CCC Convention center district                                 | RPS-4 Residential performance standard, high density        | TC-3(c) North Beach Town Center residential/office with conditional neighborhood commercial |
| RM-3 Residential multifamily, high intensity   | RM-PRD Multifamily, planned residential development district   | CPS-1 Commercial performance standard, limited mixed use    |                                                                                             |
| CD-1 Commercial, low intensity                 | RM-PRD-2 Multifamily, planned residential development district | CPS-2 Commercial performance standard, general mixed use    |                                                                                             |
| CD-2 Commercial, medium intensity              | WD-1 Waterway district                                         | CPS-3 Commercial performance standard, intensive mixed use  |                                                                                             |

FOR AN OFFICIAL ZONING DETERMINATION  
PLEASE CONTACT THE PLANNING DEPARTMENT.



# **EXHIBIT C**

**MXE PACKAGE STORE PROHIBITION**

**ORDINANCE NO. 2016-4047**

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 114 OF THE CITY CODE, ENTITLED "GENERAL PROVISIONS," SECTION 114-1, "DEFINITIONS," TO DEFINE PACKAGE STORES; AND AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS," DIVISION 13, "MXE - MIXED USE ENTERTAINMENT DISTRICT," BY AMENDING SECTION 142-544 THEREOF, ENTITLED "PROHIBITED USES," TO PROHIBIT PACKAGE STORES, PACKAGE SALES OF ALCOHOLIC BEVERAGES, AND ENTERTAINMENT USES IN PACKAGE STORES IN THE MXE DISTRICT; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

**WHEREAS**, the City of Miami Beach (the "City") regulates the location, size, hours of operation, and minimum patron age for alcoholic beverage establishments; and

**WHEREAS**, Chapter 6 of the City Code establishes minimum regulations for the sale and consumption of alcoholic beverages throughout the City, and district-specific alcoholic beverage regulations are set forth in Chapter 142; and

**WHEREAS**, the Mixed Use Entertainment ("MXE") district, which is the City's entertainment district, is characterized by a variety of uses, ranging in intensity from apartment buildings and retail stores to restaurants and entertainment establishments, which attract a large volume of pedestrians and vehicular traffic; and

**WHEREAS**, package sales of alcoholic beverages in the MXE district encourage individuals to consume alcoholic beverages in the City's parks, and on the City's streets and sidewalks; and

**WHEREAS**, the consumption of open containers of alcoholic beverages in public places disturbs the quiet enjoyment of the community, causes undesirable noise, and contributes to litter, noxious odors, and the general degradation of the City; and

**WHEREAS**, additionally, the consumption of open containers of alcoholic beverages in public places is a violation of Section 70-87 of the City Code; and

**WHEREAS**, it is therefore in the best interest of the City, and it serves the health, safety, and welfare of the City's residents and visitors, to prohibit package stores and package sales of alcoholic beverages in the MXE district; and

**WHEREAS**, in *State ex rel. Floyd v. Noel* (Fla. 1936), the Florida Supreme Court recognized that "[i]t is so well settled that no citation of authority is required to support the statement that a municipality exercising the powers inherent in municipal corporations may reasonably regulate the sale of intoxicating liquors and in providing such reasonable regulations

may prohibit the sale of such liquors within certain hours, and also may prohibit the sale of liquors within certain zones"; and

**WHEREAS**, the Florida Attorney General has opined that a municipality may regulate (1) the hours of sale, (2) zoning of locations in which alcoholic beverages may be sold, and (3) the sanitary conditions under which alcoholic beverages may be dispensed or served to the public. Florida AGO 059-73 (1959); and

**WHEREAS**, the amendments set forth below are necessary to accomplish all of the above objectives.

**NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:**

**SECTION 1.** Section 114-1 of Chapter 114 of the City Code is hereby amended as follows:

**CHAPTER 114  
GENERAL PROVISIONS**

**Sec. 114-1. – Definitions**

The following words, terms and phrases when used in this subpart B, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

\* \* \*

*Overlay district* means ~~constitutes~~ a set of regulations which are superimposed upon and supplement, but do not replace, the underlying zoning district and regulations otherwise applicable to the designated areas.

*Package store* means any store primarily engaged in the business of selling alcoholic beverages for off-premises consumption and that has a license for package sales from the State Division of Beverages and Tobacco in the classification of 1-APS, 2-APS, or PS.

\* \* \*

**SECTION 2.** Section 142-554 of Chapter 142 of the City Code is hereby amended as follows:

**CHAPTER 142  
ZONING DISTRICTS AND REGULATIONS**

\* \* \*

**ARTICLE II. – DISTRICT REGULATIONS**

\* \* \*

**DIVISION 13. – MXE MIXED USE ENTERTAINMENT DISTRICT**

\* \* \*

**Sec. 142-544. – Prohibited uses.**

The prohibited uses in the MXE mixed use entertainment district are accessory outdoor bar counters, except as provided in this chapter; package stores; and package sales of alcoholic beverages by any retail store or alcoholic beverage establishment. Additionally, entertainment uses shall be prohibited in package stores.

**SECTION 3. CODIFICATION.**

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code of the City of Miami Beach, Florida. The sections of this Ordinance may be renumbered or re-lettered to accomplish such intention, and, the word "ordinance" may be changed to "section," "article," or other appropriate word.

**SECTION 4. REPEALER.**

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**SECTION 5. SEVERABILITY.**

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

**SECTION 6. EFFECTIVE DATE.**

This Ordinance shall take effect ten days following adoption.

**PASSED and ADOPTED** this 19 day of October, 2016.

**ATTEST:**

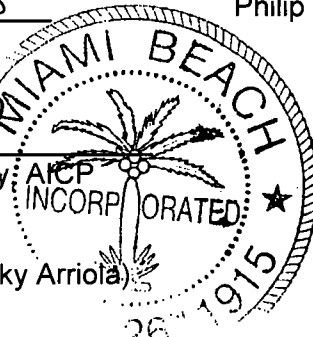
  
\_\_\_\_\_  
Rafael E. Granado, City Clerk

  
\_\_\_\_\_  
Philip Levine, Mayor

Verified By: 

\_\_\_\_\_  
Thomas R. Mooney  
Planning Director

(Sponsored by Commissioner Ricky Arriola)



APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

  
\_\_\_\_\_  
City Attorney

10/5/16  
Date

Underline denotes new language

~~Strikethrough~~ denotes removed language

Double underline denotes language added after First Reading

~~Double strikethrough~~ denotes language removed after First Reading

Ordinances - R5 O

# MIAMI BEACH

## COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission  
FROM: Jimmy L. Morales, City Manager  
DATE: October 19, 2016

11:10 a.m. Second Reading Public Hearing

SUBJECT: MXE PACKAGE STORE PROHIBITION:

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 114 OF THE CITY CODE, ENTITLED "GENERAL PROVISIONS," SECTION 114-1, "DEFINITIONS," TO DEFINE PACKAGE STORES; AND AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS," DIVISION 13, "MXE - MIXED USE ENTERTAINMENT DISTRICT," BY AMENDING SECTION 142-544 THEREOF, ENTITLED "PROHIBITED USES," TO PROHIBIT PACKAGE STORES, PACKAGE SALES OF ALCOHOLIC BEVERAGES, AND ENTERTAINMENT USES IN PACKAGE STORES IN THE MXE DISTRICT; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

---

### RECOMMENDATION

The Administration recommends that the City Commission adopt the Ordinance.

### ANALYSIS

#### BACKGROUND

On July 13, 2016, the Mayor and City Commission approved a dual referral pertaining to an LDR Amendment prohibiting package liquor stores in the MXE district to the Planning Board and the Land Use & Development Committee (LUDC). The referral was sponsored by Commissioner Ricky Arriola (item C4I).

On July 20, 2016, the LUDC discussed the item and continued it to September 21, 2016 meeting. On September 21, 2016, the Land Use Committee recommended that the proposed ordinance be adopted at Second Reading.

#### ANALYSIS

Package stores are retail uses that primarily sell alcoholic beverages and package sales are alcoholic beverages for take-out and off premises consumption. In general, the City Code allows for package stores and package sales in any area that allows retail sales. The hours and locations (distance separation) are regulated in Chapter 6 of the City Code.



The Mixed Use Entertainment ("MXE") district is characterized by a variety of uses, including hotel, bars, restaurants, entertainment establishments, apartment buildings, and retail stores which attract a large volume of pedestrians and vehicular traffic. The consumption of alcohol and the high volume of people together are sometimes problematic and were identified as issues by the Mayor's Blue Ribbon Panel on Ocean Drive and the City Commission.

Package sales of alcoholic beverages may encourage patrons to walk around with alcoholic beverages and consume alcoholic beverages in the City's parks, and on the City's streets and sidewalks. The consumption of open containers of alcoholic beverages in public places may cause undesirable noise, as well as contribute to litter and noxious odors. Also, the consumption of open containers of alcoholic beverages in public places is a violation of Section 70-87 of the City Code.

The attached ordinance creates a definition for package store in Section 114.1, the definition section of the Land Use Development Regulations (LDR's). Additionally, both package stores and package sales of alcoholic beverages are listed as a prohibited use in Section 142-544, under the MXE district regulations. Additionally, because entertainment is allowed in retail stores city wide, the following ordinance clarifies that, in the MXE district, package stores are prohibited from having entertainment.

#### **PLANNING BOARD REVIEW**

On August 23, 2016, the Planning Board (by a 6-0 vote) transmitted the proposed ordinance amendment to the City Commission with a favorable recommendation.

#### **UPDATE/SUMMARY**

As indicated previously, the Administration believes that the proposed ordinance amendment is a step in the right direction in terms of addressing tangible quality of life issues for residents and visitors alike. The subject Ordinance was approved at First Reading on September 14, 2016 and subsequently endorsed by the Land Use and Development Committee on September 21, 2016.

At the request of the item sponsor, the ordinance has been updated to include a prohibition on the package sales of alcoholic beverages by any retail store, in addition to the previous prohibition of package sales in alcoholic beverage establishment. This will prohibit the package sale of alcoholic beverages (beer, wine, liquor) in retail establishments in the MXE district.

#### **CONCLUSION**

The Administration recommends that the City Commission adopt the Ordinance.

#### **FINANCIAL INFORMATION**

In accordance with Charter Section 5.02, which requires that the "City of Miami Beach shall consider the long term economic impact (at least 5 years) of proposed legislative actions," this shall confirm that the City Administration City Administration evaluated the long term economic impact (at least 5 years) of this proposed legislative action. The proposed Ordinance is not expected to have a negative fiscal impact upon the City.

**Legislative Tracking**

Planning

**Sponsor**

Commissioner Ricky Arriola and Co-sponsored by Commissioner Joy Malakoff

**ATTACHMENTS:**

**Description**

- ▯ Ordinance

# **EXHIBIT D**

## CHAPTER 6 – ALCOHOLIC BEVERAGES

ORDINANCE NO. 2016-4058

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 6 OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, ENTITLED “ALCOHOLIC BEVERAGES,” ARTICLE I, ENTITLED “IN GENERAL,” SECTION 6-3 THEREOF, ENTITLED “HOURS OF SALE,” TO PROHIBIT PACKAGE LIQUOR SALES AT RETAIL STORES (INCLUDING PACKAGE, GROCERY, CONVENIENCE, AND ANY OTHER RETAIL STORES, AS WELL AS GASOLINE STATIONS/SERVICE STATIONS) AND ALCOHOLIC BEVERAGE ESTABLISHMENTS BEFORE 10:00 A.M. EACH DAY; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

**WHEREAS**, in Chapter 6 of the City Code, entitled “Alcoholic Beverages,” the City of Miami Beach (“City”) regulates the location, size, hours of operation, and minimum patron age for uses that permit the sale and consumption of alcoholic beverages; and

**WHEREAS**, the City’s Committee on the Homeless (“Committee”) has recommended that package liquor sales be restricted by two additional hours each morning; and

**WHEREAS**, pursuant to the Committee’s recommendation, package liquor sales should begin at 10:00 a.m. instead of 8:00 a.m. as currently authorized by the City Code; and

**WHEREAS**, it is in the best interest of the City, and it serves the health, safety, and welfare of the City’s residents and visitors, to prohibit package liquor sales at retail stores (including package, grocery, convenience, and any other retail stores, as well as gasoline service/filling stations) and alcoholic beverage establishments before 10:00 a.m. each day, because the availability of alcoholic beverages for sale and consumption early in the morning discourages the acceptance of services to end homelessness; and

**WHEREAS**, State law expressly grants the City the authority to establish its own regulations for the time for sale of alcoholic or intoxicating beverages; and

**WHEREAS**, pursuant to Section 562.14, Florida Statutes, a municipality may, by ordinance, establish hours of sale for alcoholic beverages; and

**WHEREAS**, Florida courts have rejected equal protection and due process challenges to Section 562.14, Florida Statutes (*See Wednesday Night, Inc. v. City of Fort Lauderdale* (Fla. 1973)); and

**WHEREAS**, Florida Courts have determined that it is within the police power and authority for a municipality to change the hours of regulation of alcoholic beverages, because municipalities have the statutory authority under Section 562.14, Florida Statutes, to restrict the sale of alcohol; additionally, a municipal ordinance regulating the hours of sale of alcoholic beverages may be applied to a property incorporated later into the municipality by annexation. *Village of North Palm Beach v. S & H Foster’s, Inc.*, 80 So. 3d 433 (Fla. 4th DCA 2012); and

**WHEREAS**, in *State ex rel. Floyd v. Noel* (Fla. 1936), the Florida Supreme Court recognized that “[i]t is so well settled that no citation of authority is required to support the statement that a municipality exercising the powers inherent in municipal corporations may reasonably regulate the sale of intoxicating liquors and in providing such reasonable regulations may prohibit the sale of such liquors within certain hours, and also may prohibit the sale of liquors within certain zones”; and

**WHEREAS**, the Florida Attorney General has opined that a municipality may regulate (1) the hours of sale, (2) zoning of locations in which alcoholic beverages may be sold, and (3) the sanitary conditions under which alcoholic beverages may be dispensed or served to the public. Florida AGO 059-73 (1959); and

**WHEREAS**, in fact, the Florida Attorney General has opined that different hours may be provided for in a municipal ordinance, provided there is reasonable relation to the health, safety, and morals of the community. Op. Att’y Gen. Fla., p. 497 (1950); and

**WHEREAS**, Florida courts have consistently held that alcoholic beverage establishments are not entitled to grandfather status as to hours of sale for alcoholic beverages (See *Village of North Palm Beach v. S & H Foster’s, Inc.* (Fla. 4th DCA 2012); *Other Place of Miami, Inc. v. City of Hialeah Gardens* (Fla. 3d DCA 1978)); and

**WHEREAS**, injunctive relief is not available against the enforcement of a municipal ordinance regulating the time at which alcoholic beverages may be sold, because municipalities have the statutory authority to set times for sale of alcoholic beverages. *Id.*; *Playpen S., Inc. v. City of Oakland Park*, 396 So. 2d 830 (Fla. 4th DCA 1981); and

**WHEREAS**, Florida Courts have ruled that hours of operation are not a property right. *S. Daytona Rests., Inc. v. City of S. Daytona*, 186 So. 2d 78 (Fla. 1st DCA 1966); and

**WHEREAS**, the amendments set forth below are necessary to accomplish the objectives identified above.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:**

**SECTION 1.** That Section 6-3, entitled “Hours of Sale,” of Article I, of Chapter 6, of the City Code of the City of Miami Beach is hereby amended as follows:

**CHAPTER 6**  
**ALCOHOLIC BEVERAGES**

**ARTICLE I. In General**

\* \* \*

**Sec. 6-3. Hours of sale/violations.**

- (a) The hours of sale of alcoholic beverages, whether as a permitted main or accessory use, shall require a State License, and shall be according to the following schedule, ~~except as may be otherwise provided pursuant to subsection (6):~~
- (1) *Retail stores for package sales only—Off-premises consumption.* Vendors may make sales of alcohol only for off-premises consumption between the hours of ~~8:00 a.m.~~ 10:00 a.m. and midnight.
  - (2) *Retail stores, including grocery, convenience stores, and gasoline service/filling stations.* Retail stores, including grocery, convenience stores, and gasoline service/filling stations, which primarily offer for sale products other than alcoholic beverages may only make sales of beer and wine only for off-premises consumption between the hours of ~~8:00 a.m.~~ 10:00 a.m. and midnight.
  - (3) *Alcoholic beverage establishments.* All alcoholic beverage establishments with state licensure—On-premises consumption only, may make sales of alcohol between the hours of 8:00 a.m. and 5:00 a.m.
    - (a) *Restaurants not operating as dance halls or entertainment establishments.* Restaurants with full kitchen facilities, serving full meals, licensed as alcoholic beverage establishments, but not operating as dance halls or entertainment establishments, may remain open 24 hours a day; however, alcoholic beverages may not be offered for sale or on-premises consumption between the hours of 5:00 a.m. and 8:00 a.m.
    - (b) *Restaurants also operating as dance halls or entertainment establishments.* Restaurants with full kitchen facilities, serving full meals, licensed as alcoholic beverage establishments, and also operating as dance halls, or entertainment establishments, may remain open 24 hours a day; however, alcoholic beverages may not be offered for sale or on-premises consumption between the hours of 5:00 a.m. and 8:00 a.m., and dancing and entertainment shall not be conducted between the hours of 5:00 a.m. and 10:00 a.m.
    - (c) *Other alcoholic beverage establishments.* Other alcoholic beverage establishments, not containing restaurants with full kitchen facilities, shall close at 5:00 a.m. and remain closed. No patron or other persons, other than those employed by the vendor may remain on the premises between the hours of 5:00 a.m. and 8:00 a.m.
    - (d) *Sidewalk cafes.* Notwithstanding the provisions of subsections (3)(a) through (c), alcoholic beverages shall not be offered for sale or consumption at sidewalk cafes, as defined in section 82-366 of this Code and as otherwise permitted by the City in accordance with chapter 82, article IV, division 5, subdivision II of this Code (as may be amended from time to time), between the hours of 1:30 a.m. and 8:00 a.m., and shall not be consumed at sidewalk cafes between the hours of 2:00 a.m. and 8:00 a.m. No variances may be granted from the provisions of this section 6-3(3)(d) as to the hours of sale or consumption of alcoholic beverages at sidewalk cafes.

Note: For purposes of this section, full kitchen facilities shall mean having commercial grade burners, ovens, and refrigeration units of sufficient size and quantity to accommodate the occupancy content of the establishment. Full kitchen facilities must contain grease trap interceptors, and meet all applicable city, county, and state codes.

- (4) *Off-premises package sales by alcoholic beverage establishments.* Off-premises package sales associated with alcoholic beverage establishments other than retail stores shall be permitted between the hours of 8:00 a.m. 10:00 a.m. and midnight.
- (5) *Private clubs.* Consideration of a request for a private club conditional use permit, including the hours of operation, shall be pursuant to the conditional use Procedures and Review Guidelines as listed in section 118-191, et seq. A private club, either as a permitted main or accessory use, shall only offer alcoholic beverages for sale or on-premises consumption if the private club, in accordance with section 6-2(a), secures a license for the distribution or sale of any alcoholic beverages from the division of alcoholic beverages and tobacco of the department of business and professional regulation of the state. Private clubs licensed as alcoholic beverage establishments, either as permitted main or accessory uses, shall, only offer alcoholic beverages for sale or on-premises consumption between the hours of 8:00 a.m. and 5:00 a.m., on any day of the week, provided that service is made only to members and guests of members pursuant to Florida Statutes. However, any private club permitted to remain open after 2:00 a.m. shall purchase an extra-hours license and must provide for security in its premises by hiring private security guards or off-duty police officers between the hours of 2:00 a.m. and 5:00 a.m. each day.

Private clubs securing a license from the state division of alcoholic beverages and tobacco by complying with the requirements of F.S. § 561.20 for racquetball, tennis, or golf course facilities may admit members at any time for use of such facilities, but may not serve alcoholic beverages after 2:00 a.m. each day unless such private club is the holder of an extra-hours license and complies with the above requirements.

- (6) Alcoholic beverage establishments set forth in subsections (3) and (5) permitted to remain open to serve alcoholic beverages for on-premises consumption until 5:00 a.m. may continue to serve alcoholic beverages for on-premises consumption and, if the alcoholic beverage establishment is located on Ocean Drive between 5th Street and 15th Street, for consumption at the establishment's sidewalk cafe (i) until 7:00 a.m. on January 1 (New Year's Day) or, if January 1 is on a Sunday, until 7:00 a.m. on Monday if the day that is observed as a national holiday for New Year's Day is on Monday, and (ii) until 7:00 a.m. during certain major event days or weekends as may be designated by the city commission or as may be designated by the city manager following approval by the city commission, under the following conditions:
- (a) The police department and the code compliance department of the city must be notified by a letter, received no later than 15 business days prior to either: (a) January 1, or (b) the day on which alcohol sales are to be extended, stating that the alcoholic beverage establishment intends to serve alcoholic beverages for on-premises consumption and, if the alcoholic beverage establishment is located on Ocean Drive between 5th Street and 15th Street, for consumption at the establishment's sidewalk cafe until 7:00 a.m.;
  - (b) If deemed reasonably necessary by the police chief, or the police chief's designee, off-duty police officers must be provided at the alcoholic beverage establishment until 7:00 a.m.;
  - (c) There are no pending City Code violations against the alcoholic beverage establishment;
  - (d) No delinquent or past due monies are owed to the city;
  - (e) Outdoor entertainment or open-air entertainment is not allowed;



- (f) No violation of the city's noise ordinance shall be permitted;
  - (g) No violation of the approved fire code occupancy load shall be permitted;
  - (h) All required city permits and licenses are current;
  - (i) The State License is current; and
  - (j) Any other conditions required by the city manager in order to protect the public health, safety, or welfare.
- (7) Alcoholic beverage establishments set forth in subsections (3) and (5) permitted to remain open to serve alcoholic beverages for on-premises consumption until 5:00 a.m. may continue to serve alcoholic beverages until 6:00 a.m. on the first day of daylight savings time in the spring.
- (8) The city manager may suspend the provisions of subsection (6) at any time to protect the public health, safety, or welfare.
- (9) *Penalties and enforcement.*
- (a) The following penalties shall be imposed for a violation of this section:
    - i. The penalty for the first violation by a person or entity within a 12-month period shall be a civil fine of \$1,000.00;
    - ii. The penalty for the second violation by a person or entity within a 12-month period shall be a civil fine of \$5,000.00;
    - iii. The penalty for the third violation by a person or entity within a 12-month period shall be a civil fine of \$10,000.00;
    - iv. Upon a finding by the special master that four (4) or more violations by a person or entity have occurred within a 12-month period, the city may initiate proceedings to revoke the certificate of use, business tax receipt, or certificate of occupancy of the violator.
    - v. A sidewalk cafe permittee that has been issued four (4) or more violations pursuant to this section or section 82-388 within a permit year shall be prohibited from applying for and obtaining a sidewalk cafe permit for a period of two (2) permit years following the permit year in which the sidewalk cafe permittee incurred the violations.
  - (b) Enhanced penalty. The following enhanced penalty shall be imposed, in addition to any mandatory fines set forth in subsection ~~(8)(a)~~ (9)(a) above, for violations of this section:
    - i. The sale of alcoholic beverages in violation of this section must be immediately terminated, upon confirmation by the code compliance department that a violation has occurred.
  - (c) Enforcement. The code compliance department shall enforce this section. This shall not preclude other law enforcement agencies or regulatory bodies from any action to assure compliance with this section and all applicable laws. If a code compliance officer (which, as defined in section 70-66, includes a police officer) finds a violation of this section, the code compliance officer shall issue a notice of violation in the manner prescribed in chapter 30 of this Code. The notice shall inform the violator of the nature of the violation, amount of fine for which the violator is liable, instructions and due date for paying the fine, that the violation



may be appealed by requesting an administrative hearing before a special master within ten (10) days after service of the notice of violation, and that the failure to appeal the violation within ten (10) days of service shall constitute an admission of the violation and a waiver of the right to a hearing.

- (d) Rights of violators; payment of fine; right to appear; failure to pay civil fine or to appeal; appeals from decisions of the special master.
  - i. A violator who has been served with a notice of violation must elect to either:
    - A. Pay the civil fine in the manner indicated on the notice of violation; or
    - B. Request an administrative hearing before a special master to appeal the notice of violation, which must be requested within ten (10) days of the service of the notice of violation.
  - ii. The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections 30-72 and 30-73 of this Code. Applications for hearings must be accompanied by a fee as approved by a resolution of the city commission, which shall be refunded if the named violator prevails in the appeal.
  - iii. If the named violator, after issuance of the notice of violation, fails to pay the civil fine, or fails to timely request an administrative hearing before a special master, the special master may be informed of such failure by report from the officer. The failure of the named violator to appeal the decision of the officer within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing before the special master, and shall be treated as an admission of the violation. for which fines and penalties shall be assessed accordingly.
  - iv. A certified copy of an order imposing a fine may be recorded in the public records, and thereafter shall constitute a lien upon any real or personal property owned by the violator, which may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the violator's real or personal property, but shall not be deemed to be a court judgment except for enforcement purposes. On or after the sixty-first (61st) day following the recording of any such lien that remains unpaid, the City may foreclose or otherwise execute upon the lien.
  - v. Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.
  - vi. The special master shall be prohibited from hearing the merits of the notice of violation or considering the timeliness of a request for an administrative hearing if the violator has failed to request an administrative hearing within ten (10) days of the service of the notice of violation.
  - vii. The special master shall not have discretion to alter the penalties prescribed in subsection ~~(8)(a) or (8)(b)~~ (9)(a) or (9)(b).

## **SECTION 2. CODIFICATION.**

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code of the City of Miami Beach, Florida. The sections of this Ordinance may be renumbered or

re-lettered to accomplish such intention, and, the word "ordinance" may be changed to "section," "article," or other appropriate word.

**SECTION 3. REPEALER.**

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**SECTION 4. SEVERABILITY.**

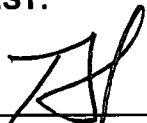
If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

**SECTION 5. EFFECTIVE DATE.**

This Ordinance shall take effect ten days following adoption.

**PASSED** and **ADOPTED** this 9 day of November, 2016.

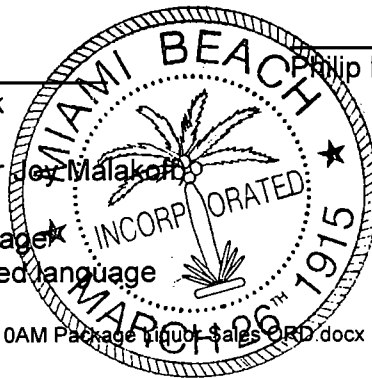
**ATTEST:**

 11/28/16  
Rafael E. Granado, City Clerk

(Sponsored by Commissioner ~~Joe~~ Malakoff)

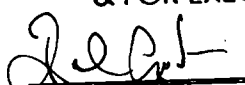
Underline denotes new language  
~~Strikethrough~~ denotes removed language

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Philip Levine, Mayor

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

 10/11/16  
City Attorney Date

NK

Ordinances - R5 I

# MIAMI BEACH

## COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission  
FROM: Jimmy L. Morales, City Manager  
DATE: November 9, 2016

**10:40 a.m. Second Reading Public Hearing**

SUBJECT: CHAPTER 6 - ALCOHOLIC BEVERAGES:

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 6 OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, ENTITLED "ALCOHOLIC BEVERAGES," ARTICLE I, ENTITLED "IN GENERAL," SECTION 6-3 THEREOF, ENTITLED "HOURS OF SALE," TO PROHIBIT PACKAGE LIQUOR SALES AT RETAIL STORES (INCLUDING PACKAGE, GROCERY, CONVENIENCE, AND ANY OTHER RETAIL STORES, AS WELL AS GASOLINE STATIONS/SERVICE STATIONS) AND ALCOHOLIC BEVERAGE ESTABLISHMENTS BEFORE 10:00 A.M. EACH DAY; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

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### RECOMMENDATION

Approve the ordinance.

### ANALYSIS

At its April 20, 2016 meeting, the Committee on the Homeless passed a resolution urging the Mayor and Commission to push back package liquor sales by two hours, from the current 8:00 a.m. to 10:00 a.m. This recommendation was specifically limited to package sales and not restaurant/bar sales. The Committee reasoned that alcohol abuse was an influencing factor in homelessness in our community and served as an impediment to engaging the homeless to accept services.

On June 8, 2016, the City Commission, at the request of Commissioner Joy Malakoff, referred the proposed ordinance to the Land Use and Development Committee at the recommendation of the Committee on the Homeless. On June 15, 2016, the Land Use Committee initially discussed the item and directed the Administration to prepare an ordinance that would be applicable to all retail stores. Pursuant to direction from the Committee, the attached ordinance was drafted. The specific revisions to Chapter 6 include the following:

- For retail package sales only (off-premises consumption), sales would only be permitted between the hours of 10:00 a.m. and midnight.
- For retail stores, including grocery, convenience stores, and gasoline service/filling stations, which primarily offer for sale products other than alcoholic beverages, the sale of beer and wine (off-premises consumption) would only be permitted between the hours of 10:00 a.m. and midnight.

The Land Use Committee approved the revised ordinance at its September 21, 2016 meeting and subsequently referred it to Commission for consideration. The Commission held the first reading for the ordinance on October 19, 2016.

In unanimously passing the ordinance at first reading, the Commission requested that the Administration return in six months with a report on the ordinance's impact. In addition, the Commission requested that a letter be sent to the Chief Executive Officers of the major retail chains in the City that permit single-serve alcohol sales asking that they follow the lead of Walgreens and voluntarily agree to prohibit these sales.

#### **CONCLUSION**

The Administration recommends that the City Commission approve the ordinance as proposed as a means of discouraging alcohol use among the homeless during morning early hours in hopes that they can be successfully engaged to accept services and end their personal homelessness.

#### **KEY INTENDED OUTCOMES SUPPORTED**

Enhance Beauty And Vibrancy Of Urban And Residential Neighborhoods; Focusing On Cleanliness, Historic Assets, In Select Neighborhoods And Redevelopment Areas

#### **Legislative Tracking**

Housing and Community Services

#### **Sponsor**

Vice-Mayor Joy Malakoff

#### **ATTACHMENTS:**

##### **Description**

- Ordinance

# MIAMI BEACH

**City of Miami Beach**, 1700 Convention Center Drive, Miami Beach, Florida 33139, [www.miamibeachfl.gov](http://www.miamibeachfl.gov)

OFFICE OF THE CITY MANAGER  
Tel: 305.673.7010, Fax: 305.673.7782

November 4, 2016

Publix Super Markets  
Attn: Corporate Sales/Marketing Dept.  
PO Box 407  
Lakeland, FL 33802-0407

Dear Corporate Sales/Marketing Dept.:

As you may be aware, at the October 19, 2016 City Commission meeting the Mayor and City Commission adopted an Ordinance on first reading to prohibit package liquor sales at retail stores (including package, grocery, convenience, and any other retail stores, as well as gasoline stations/service stations) and alcoholic beverage establishments before 10:00 A.M. each day. The second reading/public hearing of this Ordinance is scheduled for November 9, 2016.

While the City is pre-empted by the State in banning single beer container sales, certain retail establishments in the City have already volunteered to no longer sell these items. As such, the Mayor and City Commission respectfully request your cooperation in joining other retail establishments by voluntarily halting the sale of individual beer cans/bottles at your establishments within the borders of the City of Miami Beach.

Sincerely,



Jimmy L. Morales  
City Manager

Attachment:  
Proposed Ordinance

JLM/SMT/HDC/SKS/RFM

## Granado, Rafael

---

**From:** MacBride, Randi  
**Sent:** Tuesday, November 08, 2016 2:26 PM  
**To:** Granado, Rafael  
**Cc:** Hatfield, Liliam; Cardillo, Lilia; Cardeno, Hernan; Torriente, Susanne; De Pinedo, Naima  
**Subject:** RE: • Send a letter to Publix and all other major retailers asking them to stop selling individual beer cans in Miami Beach. Susanne M. Torriente to handle.  
**Attachments:** Letter Request Stop Selling Indiv Beer Containers.pdf

Good afternoon Ralph,

As requested, please see the attached example of the letter. The letters were sent to corporate and to the Store Managers of each location on Miami Beach. They went to Publix, CVS, Walgreens, Total Wine, The Fresh Market, and Whole Foods.

If you need something further please let me know.

Thanks,  
Randi

### MIAMIBEACH

**Randi F. MacBride**, Office Associate V  
CODE COMPLIANCE DEPARTMENT  
555 17th Street, Miami Beach, FL 33139  
Tel: 305-673-7000 Ext. 6169 / Fax: 786-394-4632 / [www.miamibeachfl.gov](http://www.miamibeachfl.gov)  
[randimacbride@miamibeachfl.gov](mailto:randimacbride@miamibeachfl.gov)

*We are committed to providing excellent public service and safety to all who live, work and play in our vibrant, tropical, historic community.*

---

**From:** De Pinedo, Naima  
**Sent:** Tuesday, November 08, 2016 2:19 PM  
**To:** MacBride, Randi  
**Cc:** Hatfield, Liliam; Cardillo, Lilia; Cardeno, Hernan; Torriente, Susanne; Granado, Rafael  
**Subject:** RE: • Send a letter to Publix and all other major retailers asking them to stop selling individual beer cans in Miami Beach. Susanne M. Torriente to handle.

Randi,

Please provide to Ralph.

Thanks.

### MIAMIBEACH

**Naima De Pinedo**, Office Manager  
OFFICE OF THE CITY MANAGER  
1700 Convention Center Drive, Miami Beach, FL 33139  
Tel: 305-673-7010 / Fax: 305-673-7782 / [www.miamibeachfl.gov](http://www.miamibeachfl.gov)

*We are committed to providing excellent public service to all who live, work and play in our vibrant, tropical, historic community.*

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**From:** Torriente, Susanne  
**Sent:** Tuesday, November 08, 2016 2:10 PM

**To:** Granado, Rafael

**Cc:** De Pinedo, Naima; Hatfield, Liliam; Cardillo, Lilia; Cardeno, Hernan

**Subject:** RE: • Send a letter to Publix and all other major retailers asking them to stop selling individual beer cans in Miami Beach. Susanne M. Torriente to handle.

HI – will do.

Naima or Hernan – can you forward to the Clerk's Office?

Thanks

**MIAMIBEACH**

**Susanne M. Torriente**

**Assistant City Manager/Chief Resiliency Officer**

Office of the City Manager

1700 Convention Center Drive

Miami Beach, FL 33139

305-673-7000 x6486

**susytorriente@miamibeachfl.gov**

**From:** Granado, Rafael

**Sent:** Tuesday, November 8, 2016 1:46 PM

**To:** Torriente, Susanne <[SusanneTorriente@miamibeachfl.gov](mailto:SusanneTorriente@miamibeachfl.gov)>

**Cc:** Granado, Rafael <[RafaelGranado@miamibeachfl.gov](mailto:RafaelGranado@miamibeachfl.gov)>; De Pinedo, Naima <[NaimadePinedo@miamibeachfl.gov](mailto:NaimadePinedo@miamibeachfl.gov)>;

Hatfield, Liliam <[LiliamHatfield@miamibeachfl.gov](mailto:LiliamHatfield@miamibeachfl.gov)>; Cardillo, Lilia <[LiliaCardillo@miamibeachfl.gov](mailto:LiliaCardillo@miamibeachfl.gov)>

**Subject:** • Send a letter to Publix and all other major retailers asking them to stop selling individual beer cans in Miami Beach. Susanne M. Torriente to handle.

Good afternoon Susy,

See below after-action.

Please provide us with a copy of the letter that is sent regarding the sale of individual sale of cans of beer, so we may attach it to the after action.

Regards,

**9:53:00 a.m.**

R5 AB AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 6 OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, ENTITLED "ALCOHOLIC BEVERAGES," ARTICLE I, ENTITLED "IN GENERAL," SECTION 6-3 THEREOF, ENTITLED "HOURS OF SALE," TO PROHIBIT PACKAGE LIQUOR SALES AT RETAIL STORES (INCLUDING PACKAGE, GROCERY, CONVENIENCE, AND ANY OTHER RETAIL STORES, AS WELL AS GASOLINE STATIONS/SERVICE STATIONS) AND ALCOHOLIC BEVERAGE ESTABLISHMENTS BEFORE 10:00 A.M. EACH DAY; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

**First Reading**

Housing and Community Services

Commissioner Joy Malakoff  
and Co-Sponsored by Vice-Mayor Grieco

**ACTION:** Title of the Ordinance read into the record. **Ordinance adopted on first reading.** Motion made by Commissioner Malakoff; seconded by Vice-Mayor Grieco. Ballot vote: 7-0. Second reading, Public Hearing scheduled for **November 9, 2016**. Rafael E. Granado to notice. Lilia Cardillo to place on the Commission Agenda, if received. **Maria Ruiz to handle.**

**TO DO:**

- Revisit the item six months after approved on second reading. **Maria Ruiz to handle.**
- Send a letter to Publix and all other major retailers asking them to stop selling individual beer cans in Miami Beach. **Susanne M. Torriente to handle.**

## MIAMIBEACH

**Rafael E. Granado, Esq., City Clerk**

OFFICE OF THE CITY CLERK

1700 Convention Center Drive, Miami Beach, FL 33139

Tel: 305-673-7411 [rafaelgranado@miamibeachfl.gov](mailto:rafaelgranado@miamibeachfl.gov)

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# **EXHIBIT E**

## **CHAPTER 6 – ALCOHOLIC BEVERAGES**

**ORDINANCE NO. 2017-4101**

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 6 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED “ALCOHOLIC BEVERAGES,” ARTICLE I, ENTITLED “IN GENERAL,” SECTION 6-3 THEREOF, ENTITLED “HOURS OF SALE,” TO PROHIBIT PACKAGE LIQUOR SALES BEFORE 8:00 A.M. EACH DAY AT RETAIL STORES (INCLUDING PACKAGE, GROCERY, CONVENIENCE, AND ANY OTHER RETAIL STORES, AS WELL AS GASOLINE STATIONS/SERVICE STATIONS) AND ALCOHOLIC BEVERAGE ESTABLISHMENTS AND, AS APPLICABLE TO THE MXE MIXED USE ENTERTAINMENT DISTRICT, TO AUTHORIZE PACKAGE LIQUOR SALES AT SUCH ESTABLISHMENTS BETWEEN THE HOURS OF 10:00 A.M. AND 10:00 P.M. ONLY; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

**WHEREAS**, the City of Miami Beach (“City”) regulates the location, size, hours of operation, and minimum patron age for uses that permit the sale and consumption of alcoholic beverages in Chapter 6 of the City Code, entitled “Alcoholic Beverages”; and

**WHEREAS**, on November 9, 2016, the Mayor and City Commission adopted Ordinance No. 2016-4058, which prohibited package liquor sales at retail stores (including package, grocery, convenience, and any other retail stores, as well as gasoline stations/service stations) and alcoholic beverage establishments before 10:00 a.m. (instead of 8:00 a.m.) each day; and

**WHEREAS**, since the enactment of Ordinance No. 2016-4058, the Mayor and City Commission have determined that it is in the best interest of the City, and it serves the health, safety, and welfare of the City’s residents and visitors, to prohibit package liquor sales at retail stores (including package, grocery, convenience, and any other retail stores, as well as gasoline service/filling stations) and alcoholic beverage establishments before 8:00 a.m. (instead of 10:00 a.m.) each day; and

**WHEREAS**, notwithstanding the above, the Mayor and City Commission desire to restrict package liquor sales in the MXE district from the hours of 10:00 a.m. until 10:00 p.m. only; and

**WHEREAS**, this Ordinance strikes a balance between (i) the public safety concerns associated with the sale of alcoholic beverages, on the one hand, and (ii) the convenience of the City’s residents and visitors who desire to purchase alcoholic beverages, as well as the economic vitality of the City’s retail stores, on the other hand; and

**WHEREAS**, State law expressly grants the City the authority to establish its own regulations for the time for sale of alcoholic or intoxicating beverages; and

**WHEREAS**, pursuant to Section 562.14, Florida Statutes, a municipality may, by ordinance, establish hours of sale for alcoholic beverages; and

**WHEREAS**, Florida courts have rejected equal protection and due process challenges to Section 562.14, Florida Statutes (*See Wednesday Night, Inc. v. City of Fort Lauderdale* (Fla. 1973)); and

**WHEREAS**, Florida Courts have determined that it is within the police power and authority for a municipality to change the hours of regulation of alcoholic beverages, because municipalities have the statutory authority under Section 562.14, Florida Statutes, to restrict the sale of alcohol; additionally, a municipal ordinance regulating the hours of sale of alcoholic beverages may be applied to a property incorporated later into the municipality by annexation. *Village of North Palm Beach v. S & H Foster's, Inc.*, 80 So. 3d 433 (Fla. 4th DCA 2012); and

**WHEREAS**, in *State ex rel. Floyd v. Noel* (Fla. 1936), the Florida Supreme Court recognized that "[i]t is so well settled that no citation of authority is required to support the statement that a municipality exercising the powers inherent in municipal corporations may reasonably regulate the sale of intoxicating liquors and in providing such reasonable regulations may prohibit the sale of such liquors within certain hours, and also may prohibit the sale of liquors within certain zones"; and

**WHEREAS**, the Florida Attorney General has opined that a municipality may regulate (1) the hours of sale, (2) zoning of locations in which alcoholic beverages may be sold, and (3) the sanitary conditions under which alcoholic beverages may be dispensed or served to the public. Florida AGO 059-73 (1959); and

**WHEREAS**, in fact, the Florida Attorney General has opined that different hours may be provided for in a municipal ordinance, provided there is reasonable relation to the health, safety, and morals of the community. Op. Att'y Gen. Fla., p. 497 (1950); and

**WHEREAS**, Florida courts have consistently held that alcoholic beverage establishments are not entitled to grandfather status as to hours of sale for alcoholic beverages (*See Village of North Palm Beach v. S & H Foster's, Inc.* (Fla. 4th DCA 2012); *Other Place of Miami, Inc. v. City of Hialeah Gardens* (Fla. 3d DCA 1978)); and

**WHEREAS**, injunctive relief is not available against the enforcement of a municipal ordinance regulating the time at which alcoholic beverages may be sold, because municipalities have the statutory authority to set times for sale of alcoholic beverages. *Id.*; *Playpen S., Inc. v. City of Oakland Park*, 396 So. 2d 830 (Fla. 4th DCA 1981); and

**WHEREAS**, Florida Courts have ruled that hours of operation are not a property right. *S. Daytona Rests., Inc. v. City of S. Daytona*, 186 So. 2d 78 (Fla. 1st DCA 1966); and

**WHEREAS**, the amendments set forth below are necessary to accomplish the objectives identified above.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:**

**SECTION 1.** That Section 6-3, entitled "Hours of Sale," of Article I, of Chapter 6, of the City Code of the City of Miami Beach is hereby amended as follows:

**CHAPTER 6**  
**ALCOHOLIC BEVERAGES**  
**ARTICLE I. In General**

\* \* \*

**Sec. 6-3. Hours of sale/violations.**

(a) The hours of sale of alcoholic beverages, whether as a permitted main or accessory use, shall require a State License, and shall be according to the following schedule:

(1) *Retail stores for package sales only—Off-premises consumption.* Vendors may make sales of alcohol only for off-premises consumption between the hours of ~~10:00 a.m.~~ 8:00 a.m. and midnight.

A. Notwithstanding subsection (a)(1), vendors located in the MXE mixed use entertainment district may make sales of alcohol only for off-premises consumption between the hours of 10:00 a.m. and 10:00 p.m.

(2) *Retail stores, including grocery, convenience stores, and gasoline service/filling stations.* Retail stores, including grocery, convenience stores, and gasoline service/filling stations, which primarily offer for sale products other than alcoholic beverages may only make sales of beer and wine only for off-premises consumption between the hours of ~~10:00 a.m.~~ 8:00 a.m. and midnight.

A. Notwithstanding subsection (a)(2), retail stores, including grocery, convenience stores, and gasoline service/filling stations, that are located in the MXE mixed use entertainment district, and which primarily offer for sale products other than alcoholic beverages may only make sales of beer and wine only between the hours of 10:00 a.m. and 10:00 p.m.

(3) *Alcoholic beverage establishments.* All alcoholic beverage establishments with state licensure—On-premises consumption only, may make sales of alcohol between the hours of 8:00 a.m. and 5:00 a.m.

(a) *Restaurants not operating as dance halls or entertainment establishments.* Restaurants with full kitchen facilities, serving full meals, licensed as alcoholic beverage establishments, but not operating as dance halls or entertainment establishments, may remain open 24 hours a day; however, alcoholic beverages may not be offered for sale or on-premises consumption between the hours of 5:00 a.m. and 8:00 a.m.

(b) *Restaurants also operating as dance halls or entertainment establishments.* Restaurants with full kitchen facilities, serving full meals, licensed as alcoholic beverage establishments, and also operating as dance halls, or entertainment establishments, may remain open 24 hours a day; however, alcoholic beverages may not be offered for sale or on-premises consumption between the hours of 5:00 a.m. and 8:00 a.m., and dancing and entertainment shall not be conducted between the hours of 5:00 a.m. and 10:00 a.m.

(c) *Other alcoholic beverage establishments.* Other alcoholic beverage establishments, not containing restaurants with full kitchen facilities, shall close at 5:00 a.m. and remain closed. No patron or other persons, other than those employed by the vendor may remain on the premises between the hours of 5:00 a.m. and 8:00 a.m.

- (d) *Sidewalk cafes.* Notwithstanding the provisions of subsections (3)(a) through (c), alcoholic beverages shall not be offered for sale or consumption at sidewalk cafes, as defined in section 82-366 of this Code and as otherwise permitted by the City in accordance with chapter 82, article IV, division 5, subdivision II of this Code (as may be amended from time to time), between the hours of 1:30 a.m. and 8:00 a.m., and shall not be consumed at sidewalk cafes between the hours of 2:00 a.m. and 8:00 a.m. No variances may be granted from the provisions of this section 6-3(3)(d) as to the hours of sale or consumption of alcoholic beverages at sidewalk cafes.

Note: For purposes of this section, full kitchen facilities shall mean having commercial grade burners, ovens, and refrigeration units of sufficient size and quantity to accommodate the occupancy content of the establishment. Full kitchen facilities must contain grease trap interceptors, and meet all applicable city, county, and state codes.

- (4) *Off-premises package sales by alcoholic beverage establishments.* Off-premises package sales associated with alcoholic beverage establishments other than retail stores shall be permitted between the hours of ~~10:00 a.m.~~ 8:00 a.m. and midnight.

A. Notwithstanding subsection (a)(4), off-premises package sales associated with alcoholic beverage establishments, other than retail stores, that are located in the MXE mixed use entertainment district shall be permitted only between the hours of 10:00 a.m. and 10:00 p.m.

- (5) *Private clubs.* Consideration of a request for a private club conditional use permit, including the hours of operation, shall be pursuant to the conditional use Procedures and Review Guidelines as listed in section 118-191, et seq. A private club, either as a permitted main or accessory use, shall only offer alcoholic beverages for sale or on-premises consumption if the private club, in accordance with section 6-2(a), secures a license for the distribution or sale of any alcoholic beverages from the division of alcoholic beverages and tobacco of the department of business and professional regulation of the state. Private clubs licensed as alcoholic beverage establishments, either as permitted main or accessory uses, shall, only offer alcoholic beverages for sale or on-premises consumption between the hours of 8:00 a.m. and 5:00 a.m., on any day of the week, provided that service is made only to members and guests of members pursuant to Florida Statutes. However, any private club permitted to remain open after 2:00 a.m. shall purchase an extra-hours license and must provide for security in its premises by hiring private security guards or off-duty police officers between the hours of 2:00 a.m. and 5:00 a.m. each day.

Private clubs securing a license from the state division of alcoholic beverages and tobacco by complying with the requirements of F.S. § 561.20 for racquetball, tennis, or golf course facilities may admit members at any time for use of such facilities, but may not serve alcoholic beverages after 2:00 a.m. each day unless such private club is the holder of an extra-hours license and complies with the above requirements.

- (6) Alcoholic beverage establishments set forth in subsections (3) and (5) permitted to remain open to serve alcoholic beverages for on-premises consumption until 5:00 a.m. may continue to serve alcoholic beverages for on-premises consumption and, if the alcoholic beverage establishment is located on Ocean Drive between 5th Street and 15th Street, for consumption at the establishment's sidewalk cafe (i) until 7:00 a.m. on January 1 (New Year's Day) or, if January 1 is on a Sunday, until 7:00 a.m. on Monday if the day that is observed as a national holiday for New Year's Day is on Monday, and

- (ii) until 7:00 a.m. during certain major event days or weekends as may be designated by the city commission or as may be designated by the city manager following approval by the city commission, under the following conditions:
  - (a) The police department and the code compliance department of the city must be notified by a letter, received no later than 15 business days prior to either: (a) January 1, or (b) the day on which alcohol sales are to be extended, stating that the alcoholic beverage establishment intends to serve alcoholic beverages for on-premises consumption and, if the alcoholic beverage establishment is located on Ocean Drive between 5th Street and 15th Street, for consumption at the establishment's sidewalk cafe until 7:00 a.m.;
  - (b) If deemed reasonably necessary by the police chief, or the police chief's designee, off-duty police officers must be provided at the alcoholic beverage establishment until 7:00 a.m.;
  - (c) There are no pending City Code violations against the alcoholic beverage establishment;
  - (d) No delinquent or past due monies are owed to the city;
  - (e) Outdoor entertainment or open-air entertainment is not allowed;
  - (f) No violation of the city's noise ordinance shall be permitted;
  - (g) No violation of the approved fire code occupancy load shall be permitted;
  - (h) All required city permits and licenses are current;
  - (i) The State License is current; and
  - (j) Any other conditions required by the city manager in order to protect the public health, safety, or welfare.
- (7) Alcoholic beverage establishments set forth in subsections (3) and (5) permitted to remain open to serve alcoholic beverages for on-premises consumption until 5:00 a.m. may continue to serve alcoholic beverages until 6:00 a.m. on the first day of daylight savings time in the spring.
- (8) The city manager may suspend the provisions of subsection (6) at any time to protect the public health, safety, or welfare.
- (9) *Penalties and enforcement.*
  - (a) The following penalties shall be imposed for a violation of this section:
    - i. The penalty for the first violation by a person or entity within a 12-month period shall be a civil fine of \$1,000.00;
    - ii. The penalty for the second violation by a person or entity within a 12-month period shall be a civil fine of \$5,000.00;
    - iii. The penalty for the third violation by a person or entity within a 12-month period shall be a civil fine of \$10,000.00;
    - iv. Upon a finding by the special master that four (4) or more violations by a person or entity have occurred within a 12-month period, the city may initiate proceedings to revoke the certificate of use, business tax receipt, or certificate of occupancy of the violator.



- v. A sidewalk cafe permittee that has been issued four (4) or more violations pursuant to this section or section 82-388 within a permit year shall be prohibited from applying for and obtaining a sidewalk cafe permit for a period of two (2) permit years following the permit year in which the sidewalk cafe permittee incurred the violations.
- (b) Enhanced penalty. The following enhanced penalty shall be imposed, in addition to any mandatory fines set forth in subsection (9)(a) above, for violations of this section:
  - i. The sale of alcoholic beverages in violation of this section must be immediately terminated, upon confirmation by the code compliance department that a violation has occurred.
- (c) Enforcement. The code compliance department shall enforce this section. This shall not preclude other law enforcement agencies or regulatory bodies from any action to assure compliance with this section and all applicable laws. If a code compliance officer (which, as defined in section 70-66, includes a police officer) finds a violation of this section, the code compliance officer shall issue a notice of violation in the manner prescribed in chapter 30 of this Code. The notice shall inform the violator of the nature of the violation, amount of fine for which the violator is liable, instructions and due date for paying the fine, that the violation may be appealed by requesting an administrative hearing before a special master within ten (10) days after service of the notice of violation, and that the failure to appeal the violation within ten (10) days of service shall constitute an admission of the violation and a waiver of the right to a hearing.
- (d) Rights of violators; payment of fine; right to appear; failure to pay civil fine or to appeal; appeals from decisions of the special master.
  - i. A violator who has been served with a notice of violation must elect to either:
    - A. Pay the civil fine in the manner indicated on the notice of violation; or
    - B. Request an administrative hearing before a special master to appeal the notice of violation, which must be requested within ten (10) days of the service of the notice of violation.
  - ii. The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections 30-72 and 30-73 of this Code. Applications for hearings must be accompanied by a fee as approved by a resolution of the city commission, which shall be refunded if the named violator prevails in the appeal.
  - iii. If the named violator, after issuance of the notice of violation, fails to pay the civil fine, or fails to timely request an administrative hearing before a special master, the special master may be informed of such failure by report from the officer. The failure of the named violator to appeal the decision of the officer within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing before the special master, and shall be treated as an admission of the violation. for which fines and penalties shall be assessed accordingly.
  - iv. A certified copy of an order imposing a fine may be recorded in the public records, and thereafter shall constitute a lien upon any real or personal property owned by the violator, which may be enforced in the same manner as

a court judgment by the sheriffs of this state, including levy against the violator's real or personal property, but shall not be deemed to be a court judgment except for enforcement purposes. On or after the sixty-first (61st) day following the recording of any such lien that remains unpaid, the City may foreclose or otherwise execute upon the lien.

- v. Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.
- vi. The special master shall be prohibited from hearing the merits of the notice of violation or considering the timeliness of a request for an administrative hearing if the violator has failed to request an administrative hearing within ten (10) days of the service of the notice of violation.
- vii. The special master shall not have discretion to alter the penalties prescribed in subsection (9)(a) or (9)(b).

## **SECTION 2. CODIFICATION.**

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code of the City of Miami Beach, Florida. The sections of this Ordinance may be renumbered or re-lettered to accomplish such intention, and, the word "ordinance" may be changed to "section," "article," or other appropriate word.

## **SECTION 3. REPEALER.**

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

## **SECTION 4. SEVERABILITY.**

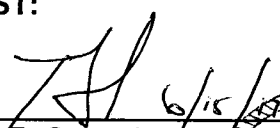
If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

## **SECTION 5. EFFECTIVE DATE.**

This Ordinance shall take effect ten days following adoption.

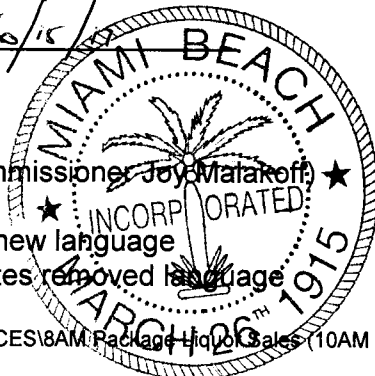
**PASSED and ADOPTED** this 7 day of June, 2017.

**ATTEST:**

  
Rafael E. Granado  
City Clerk

(Sponsored by Commissioner Joy Malakoff)

Underline denotes new language  
Strikethrough denotes removed language



  
Philip Levine  
Mayor

**APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION**

  
City Attorney

5/8/17  
Date



Ordinances - R5 G

# MIAMI BEACH

## COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission  
FROM: Raul J. Aguila, City Attorney  
DATE: June 7, 2017

**10:15 a.m. Second Reading Public Hearing**

**SUBJECT: ALCOHOLIC BEVERAGES:**

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 6 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "ALCOHOLIC BEVERAGES," ARTICLE I, ENTITLED "IN GENERAL," SECTION 6-3 THEREOF, ENTITLED "HOURS OF SALE," TO PROHIBIT PACKAGE LIQUOR SALES BEFORE 8:00 A.M. EACH DAY AT RETAIL STORES (INCLUDING PACKAGE, GROCERY, CONVENIENCE, AND ANY OTHER RETAIL STORES, AS WELL AS GASOLINE STATIONS/SERVICE STATIONS) AND ALCOHOLIC BEVERAGE ESTABLISHMENTS AND, AS APPLICABLE TO THE MXE MIXED USE ENTERTAINMENT DISTRICT, TO AUTHORIZE PACKAGE LIQUOR SALES AT SUCH ESTABLISHMENTS BETWEEN THE HOURS OF 10:00 A.M. AND 10:00 P.M. ONLY; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

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### **ANALYSIS**

The attached Ordinance, sponsored by Commissioner Joy Malakoff and Commissioner Ricky Arriola, is hereby submitted for consideration by the Mayor and City Commission.

On November 9, 2016, the Mayor and City Commission adopted Ordinance No. 2016-4058, which prohibited package liquor sales at retail stores (including package, grocery, convenience, and any other retail stores, as well as gasoline stations/service stations) and alcoholic beverage establishments before 10:00 a.m. (instead of 8:00 a.m.) each day.

On March 1, 2017, the City Commission reviewed a prior version of this Ordinance, which proposed to prohibit package liquor sales before 9:00 a.m. However, following a discussion on the item, the City Commission directed staff to revise the proposed Ordinance to prohibit package liquor sales before 8:00 a.m. This revision required a new first reading.

On April 26, 2017, the Mayor and City Commission reviewed the revised draft, and directed the City Attorney's Office to prepare a revised draft Ordinance that further restricted the hours of package liquor sales in the MXE district.

The attached Ordinance amends City Code Section 6-3 to prohibit package liquor sales Citywide

before 8:00 a.m. (instead of 10:00 a.m.) each day at retail stores (including package, grocery, convenience, and any other retail stores, as well as gasoline stations/service stations) and alcoholic beverage establishments. Notwithstanding the above, the attached Ordinance restricts package liquor sales in the MXE district between the hours of 10:00 a.m. and 10:00 p.m. only.

**Legislative Tracking**

Office of the City Attorney

**Sponsor**

Commissioners Joy Malakoff and Ricky Arriola

**ATTACHMENTS:**

**Description**

- Ordinance

# **EXHIBIT F**

## CHAPTER 6 – ALCOHOLIC BEVERAGES

ORDINANCE NO. 2017-4131

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 6 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "ALCOHOLIC BEVERAGES," ARTICLE I, ENTITLED "IN GENERAL," SECTION 6-3 THEREOF, ENTITLED "HOURS OF SALE," TO CHANGE THE HOURS OF PACKAGE LIQUOR SALES AT RETAIL STORES (INCLUDING PACKAGE, GROCERY, CONVENIENCE, AND ANY OTHER RETAIL STORES, AS WELL AS GASOLINE STATIONS/SERVICE STATIONS) AND ALCOHOLIC BEVERAGE ESTABLISHMENTS WITHIN THE CD-2, COMMERCIAL DISTRICT ON WASHINGTON AVENUE AND PENNSYLVANIA AVENUE, BETWEEN 5<sup>TH</sup> AND 15<sup>TH</sup> STREET; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

**WHEREAS**, the City of Miami Beach ("City") regulates the location, size, hours of operation, and minimum patron age for uses that permit the sale and consumption of alcoholic beverages in Chapter 6 of the City Code, entitled "Alcoholic Beverages"; and

**WHEREAS**, on November 9, 2016, the Mayor and City Commission adopted Ordinance No. 2016-4058, which prohibited package liquor sales at retail stores (including package, grocery, convenience, and any other retail stores, as well as gasoline stations/service stations) and alcoholic beverage establishments before 10:00 a.m. (instead of 8:00 a.m.) each day; and

**WHEREAS**, since the enactment of Ordinance No. 2016-4058, the Mayor and City Commission have determined that it is in the best interest of the City, and it serves the health, safety, and welfare of the City's residents and visitors, to prohibit package liquor sales at retail stores (including package, grocery, convenience, and any other retail stores, as well as gasoline service/filling stations) and alcoholic beverage establishments before 8:00 a.m. (instead of 10:00 a.m.) each day; and

**WHEREAS**, notwithstanding the above, the Mayor and City Commission approved an Ordinance on June 7, 2017, restricting package liquor sales in the MXE district from the hours of 10:00 a.m. until 10:00 p.m., only; and

**WHEREAS**, there is an elementary school, located in the CD-2 district with retail stores that would be able to sell alcohol at 8:00 a.m., which is the time the minor children are arriving to school; and

**WHEREAS**, one of the biggest issues over hour of sales arose in a retail store adjacent to the public elementary school; and

**WHEREAS**, the minor children should be protected from the effects of persons buying and imbibing alcohol at 8:00 a.m.; and

**WHEREAS**, this Ordinance strikes a balance between (i) the public safety concerns associated with the sale of alcoholic beverages, on the one hand, and (ii) the convenience of

the City's residents and visitors who desire to purchase alcoholic beverages, as well as the economic vitality of the City's retail stores, on the other hand; and

**WHEREAS**, State law expressly grants the City the authority to establish its own regulations for the time for sale of alcoholic or intoxicating beverages; and

**WHEREAS**, pursuant to Section 562.14, Florida Statutes, a municipality may, by ordinance, establish hours of sale for alcoholic beverages; and

**WHEREAS**, Florida courts have rejected equal protection and due process challenges to Section 562.14, Florida Statutes (*See Wednesday Night, Inc. v. City of Fort Lauderdale* (Fla. 1973)); and

**WHEREAS**, Florida Courts have determined that it is within the police power and authority for a municipality to change the hours of regulation of alcoholic beverages, because municipalities have the statutory authority under Section 562.14, Florida Statutes, to restrict the sale of alcohol; additionally, a municipal ordinance regulating the hours of sale of alcoholic beverages may be applied to a property incorporated later into the municipality by annexation. *Village of North Palm Beach v. S & H Foster's, Inc.*, 80 So. 3d 433 (Fla. 4th DCA 2012); and

**WHEREAS**, in *State ex rel. Floyd v. Noel* (Fla. 1936), the Florida Supreme Court recognized that "[i]t is so well settled that no citation of authority is required to support the statement that a municipality exercising the powers inherent in municipal corporations may reasonably regulate the sale of intoxicating liquors and in providing such reasonable regulations may prohibit the sale of such liquors within certain hours, and also may prohibit the sale of liquors within certain zones"; and

**WHEREAS**, the Florida Attorney General has opined that a municipality may regulate (1) the hours of sale, (2) zoning of locations in which alcoholic beverages may be sold, and (3) the sanitary conditions under which alcoholic beverages may be dispensed or served to the public. Florida AGO 059-73 (1959); and

**WHEREAS**, in fact, the Florida Attorney General has opined that different hours may be provided for in a municipal ordinance, provided there is reasonable relation to the health, safety, and morals of the community. Op. Att'y Gen. Fla., p. 497 (1950); and

**WHEREAS**, Florida courts have consistently held that alcoholic beverage establishments are not entitled to grandfather status as to hours of sale for alcoholic beverages (*See Village of North Palm Beach v. S & H Foster's, Inc.* (Fla. 4th DCA 2012); *Other Place of Miami, Inc. v. City of Hialeah Gardens* (Fla. 3d DCA 1978)); and

**WHEREAS**, injunctive relief is not available against the enforcement of a municipal ordinance regulating the time at which alcoholic beverages may be sold, because municipalities have the statutory authority to set times for sale of alcoholic beverages. *Id.*; *Playpen S., Inc. v. City of Oakland Park*, 396 So. 2d 830 (Fla. 4th DCA 1981); and

**WHEREAS**, Florida Courts have ruled that hours of operation are not a property right. *S. Daytona Rests., Inc. v. City of S. Daytona*, 186 So. 2d 78 (Fla. 1st DCA 1966); and

**WHEREAS**, the amendments set forth below are necessary to accomplish the objectives identified above.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION  
OF THE CITY OF MIAMI BEACH, FLORIDA:**

**SECTION 1.** That Section 6-3, entitled "Hours of Sale," of Article I, of Chapter 6, of the City Code of the City of Miami Beach is hereby amended as follows:

**CHAPTER 6  
ALCOHOLIC BEVERAGES  
ARTICLE I. In General**

\* \* \*

**Sec. 6-3. Hours of sale/violations.**

- (a) The hours of sale of alcoholic beverages, whether as a permitted main or accessory use, shall require a State License, and shall be according to the following schedule:
- (1) *Retail stores for package sales only—Off-premises consumption.* Vendors may make sales of alcohol only for off-premises consumption between the hours of ~~10:00 a.m.~~ 8:00 a.m. and midnight.
- A. Notwithstanding subsection (a)(1), vendors located in the MXE mixed use entertainment district and the CD-2, commercial medium intensity district, between Washington Avenue and Pennsylvania Avenue, from 5<sup>th</sup> Street to 16<sup>th</sup> Street, may make sales of alcohol only for off-premises consumption between the hours of ~~10:00~~ 9:00 a.m. and 10:00 p.m.
- (2) *Retail stores, including grocery, convenience stores, and gasoline service/filling stations.* Retail stores, including grocery, convenience stores, and gasoline service/filling stations, which primarily offer for sale products other than alcoholic beverages may only make sales of beer and wine only for off-premises consumption between the hours of ~~10:00 a.m.~~ 8:00 a.m. and midnight.
- A. Notwithstanding subsection (a)(2), retail stores, including grocery, convenience stores, and gasoline service/filling stations, that are located in the MXE mixed use entertainment district, and the CD-2, commercial mixed use 2 district, on Washington Avenue and Pennsylvania Avenue, between 5<sup>th</sup> Street and 15<sup>th</sup> Street, and which primarily offer for sale products other than alcoholic beverages may only make sales of beer and wine only between the hours of 10:00 a.m. and 10:00 p.m.
- (3) *Alcoholic beverage establishments.* All alcoholic beverage establishments with state licensure—On-premises consumption only, may make sales of alcohol between the hours of 8:00 a.m. and 5:00 a.m.
- (a) *Restaurants not operating as dance halls or entertainment establishments.* Restaurants with full kitchen facilities, serving full meals, licensed as alcoholic beverage establishments, but not operating as dance halls or entertainment establishments, may remain open 24 hours a day; however, alcoholic beverages may not be offered for sale or on-premises consumption between the hours of 5:00 a.m. and 8:00 a.m.

- (b) *Restaurants also operating as dance halls or entertainment establishments.* Restaurants with full kitchen facilities, serving full meals, licensed as alcoholic beverage establishments, and also operating as dance halls, or entertainment establishments, may remain open 24 hours a day; however, alcoholic beverages may not be offered for sale or on-premises consumption between the hours of 5:00 a.m. and 8:00 a.m., and dancing and entertainment shall not be conducted between the hours of 5:00 a.m. and 10:00 a.m.
- (c) *Other alcoholic beverage establishments.* Other alcoholic beverage establishments, not containing restaurants with full kitchen facilities, shall close at 5:00 a.m. and remain closed. No patron or other persons, other than those employed by the vendor may remain on the premises between the hours of 5:00 a.m. and 8:00 a.m.
- (d) *Sidewalk cafes.* Notwithstanding the provisions of subsections (3)(a) through (c), alcoholic beverages shall not be offered for sale or consumption at sidewalk cafes, as defined in section 82-366 of this Code and as otherwise permitted by the City in accordance with chapter 82, article IV, division 5, subdivision II of this Code (as may be amended from time to time), between the hours of 1:30 a.m. and 8:00 a.m., and shall not be consumed at sidewalk cafes between the hours of 2:00 a.m. and 8:00 a.m. No variances may be granted from the provisions of this section 6-3(3)(d) as to the hours of sale or consumption of alcoholic beverages at sidewalk cafes.

Note: For purposes of this section, full kitchen facilities shall mean having commercial grade burners, ovens, and refrigeration units of sufficient size and quantity to accommodate the occupancy content of the establishment. Full kitchen facilities must contain grease trap interceptors, and meet all applicable city, county, and state codes.

- (4) *Off-premises package sales by alcoholic beverage establishments.* Off-premises package sales associated with alcoholic beverage establishments other than retail stores shall be permitted between the hours of ~~4:00 a.m.~~ 8:00 a.m. and midnight.
  - A. Notwithstanding subsection (a)(4), off-premises package sales associated with alcoholic beverage establishments, other than retail stores, that are located in the MXE mixed use entertainment district and the CD-2, commercial district 2, on Washington Avenue and Pennsylvania Avenue, between 5<sup>th</sup> Street and 15<sup>th</sup> Street, shall be permitted only between the hours of 10:00 a.m. and 10:00 p.m.
- (5) *Private clubs.* Consideration of a request for a private club conditional use permit, including the hours of operation, shall be pursuant to the conditional use Procedures and Review Guidelines as listed in section 118-191, et seq. A private club, either as a permitted main or accessory use, shall only offer alcoholic beverages for sale or on-premises consumption if the private club, in accordance with section 6-2(a), secures a license for the distribution or sale of any alcoholic beverages from the division of alcoholic beverages and tobacco of the department of business and professional regulation of the state. Private clubs licensed as alcoholic beverage establishments, either as permitted main or accessory uses, shall, only offer alcoholic beverages for sale or on-premises consumption between the hours of 8:00 a.m. and 5:00 a.m., on any day of the week, provided that service is made only to members and guests of members pursuant to Florida Statutes. However, any private club permitted to remain open after 2:00 a.m. shall purchase an extra-hours license and must provide for security in its premises by hiring private security guards or off-duty police officers between the hours of 2:00 a.m. and 5:00 a.m. each day.



Private clubs securing a license from the state division of alcoholic beverages and tobacco by complying with the requirements of F.S. § 561.20 for racquetball, tennis, or golf course facilities may admit members at any time for use of such facilities, but may not serve alcoholic beverages after 2:00 a.m. each day unless such private club is the holder of an extra-hours license and complies with the above requirements.

- (6) Alcoholic beverage establishments set forth in subsections (3) and (5) permitted to remain open to serve alcoholic beverages for on-premises consumption until 5:00 a.m. may continue to serve alcoholic beverages for on-premises consumption and, if the alcoholic beverage establishment is located on Ocean Drive between 5th Street and 15th Street, for consumption at the establishment's sidewalk cafe (i) until 7:00 a.m. on January 1 (New Year's Day) or, if January 1 is on a Sunday, until 7:00 a.m. on Monday if the day that is observed as a national holiday for New Year's Day is on Monday, and (ii) until 7:00 a.m. during certain major event days or weekends as may be designated by the city commission or as may be designated by the city manager following approval by the city commission, under the following conditions:
  - (a) The police department and the code compliance department of the city must be notified by a letter, received no later than 15 business days prior to either: (a) January 1, or (b) the day on which alcohol sales are to be extended, stating that the alcoholic beverage establishment intends to serve alcoholic beverages for on-premises consumption and, if the alcoholic beverage establishment is located on Ocean Drive between 5th Street and 15th Street, for consumption at the establishment's sidewalk cafe until 7:00 a.m.;
  - (b) If deemed reasonably necessary by the police chief, or the police chief's designee, off-duty police officers must be provided at the alcoholic beverage establishment until 7:00 a.m.;
  - (c) There are no pending City Code violations against the alcoholic beverage establishment;
  - (d) No delinquent or past due monies are owed to the city;
  - (e) Outdoor entertainment or open-air entertainment is not allowed;
  - (f) No violation of the city's noise ordinance shall be permitted;
  - (g) No violation of the approved fire code occupancy load shall be permitted;
  - (h) All required city permits and licenses are current;
  - (i) The State License is current; and
  - (j) Any other conditions required by the city manager in order to protect the public health, safety, or welfare.
- (7) Alcoholic beverage establishments set forth in subsections (3) and (5) permitted to remain open to serve alcoholic beverages for on-premises consumption until 5:00 a.m. may continue to serve alcoholic beverages until 6:00 a.m. on the first day of daylight savings time in the spring.
- (8) The city manager may suspend the provisions of subsection (6) at any time to protect the public health, safety, or welfare.
- (9) *Penalties and enforcement.*
  - (a) The following penalties shall be imposed for a violation of this section:



- i. The penalty for the first violation by a person or entity within a 12-month period shall be a civil fine of \$1,000.00;
  - ii. The penalty for the second violation by a person or entity within a 12-month period shall be a civil fine of \$5,000.00;
  - iii. The penalty for the third violation by a person or entity within a 12-month period shall be a civil fine of \$10,000.00;
  - iv. Upon a finding by the special master that four (4) or more violations by a person or entity have occurred within a 12-month period, the city may initiate proceedings to revoke the certificate of use, business tax receipt, or certificate of occupancy of the violator.
  - v. A sidewalk cafe permittee that has been issued four (4) or more violations pursuant to this section or section 82-388 within a permit year shall be prohibited from applying for and obtaining a sidewalk cafe permit for a period of two (2) permit years following the permit year in which the sidewalk cafe permittee incurred the violations.
- (b) Enhanced penalty. The following enhanced penalty shall be imposed, in addition to any mandatory fines set forth in subsection (9)(a) above, for violations of this section:
  - i. The sale of alcoholic beverages in violation of this section must be immediately terminated, upon confirmation by the code compliance department that a violation has occurred.
- (c) Enforcement. The code compliance department shall enforce this section. This shall not preclude other law enforcement agencies or regulatory bodies from any action to assure compliance with this section and all applicable laws. If a code compliance officer (which, as defined in section 70-66, includes a police officer) finds a violation of this section, the code compliance officer shall issue a notice of violation in the manner prescribed in chapter 30 of this Code. The notice shall inform the violator of the nature of the violation, amount of fine for which the violator is liable, instructions and due date for paying the fine, that the violation may be appealed by requesting an administrative hearing before a special master within ten (10) days after service of the notice of violation, and that the failure to appeal the violation within ten (10) days of service shall constitute an admission of the violation and a waiver of the right to a hearing.
- (d) Rights of violators; payment of fine; right to appear; failure to pay civil fine or to appeal; appeals from decisions of the special master.
  - i. A violator who has been served with a notice of violation must elect to either:
    - A. Pay the civil fine in the manner indicated on the notice of violation; or
    - B. Request an administrative hearing before a special master to appeal the notice of violation, which must be requested within ten (10) days of the service of the notice of violation.
  - ii. The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections 30-72 and 30-73 of this Code. Applications for hearings must be accompanied by a fee as approved by a resolution of the city commission, which shall be refunded if the named violator prevails in the appeal.

- iii. If the named violator, after issuance of the notice of violation, fails to pay the civil fine, or fails to timely request an administrative hearing before a special master, the special master may be informed of such failure by report from the officer. The failure of the named violator to appeal the decision of the officer within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing before the special master, and shall be treated as an admission of the violation. for which fines and penalties shall be assessed accordingly.
- iv. A certified copy of an order imposing a fine may be recorded in the public records, and thereafter shall constitute a lien upon any real or personal property owned by the violator, which may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the violator's real or personal property, but shall not be deemed to be a court judgment except for enforcement purposes. On or after the sixty-first (61st) day following the recording of any such lien that remains unpaid, the City may foreclose or otherwise execute upon the lien.
- v. Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.
- vi. The special master shall be prohibited from hearing the merits of the notice of violation or considering the timeliness of a request for an administrative hearing if the violator has failed to request an administrative hearing within ten (10) days of the service of the notice of violation.
- vii. The special master shall not have discretion to alter the penalties prescribed in subsection (9)(a) or (9)(b).

## **SECTION 2. CODIFICATION.**

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code of the City of Miami Beach, Florida. The sections of this Ordinance may be renumbered or re-lettered to accomplish such intention, and, the word "ordinance" may be changed to "section," "article," or other appropriate word.

## **SECTION 3. REPEALER.**

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

## **SECTION 4. SEVERABILITY.**

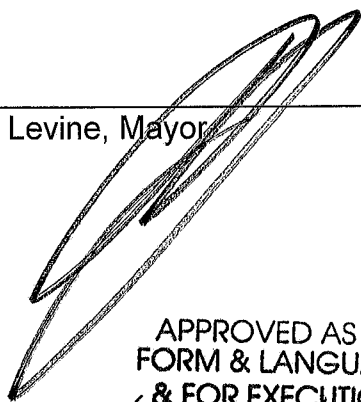
If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

## **SECTION 5. EFFECTIVE DATE.**

This Ordinance shall take effect ten days following adoption.

**PASSED AND ADOPTED** this 25 day of September, 2017.

ATTEST:

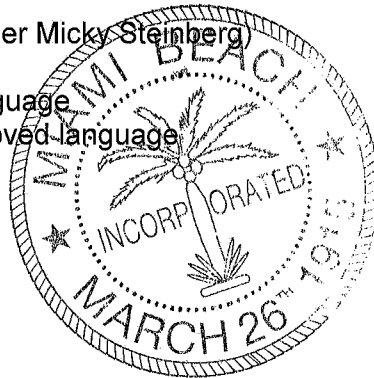
  
Philip Levine, Mayor

  
Rafael E. Granado, City Clerk

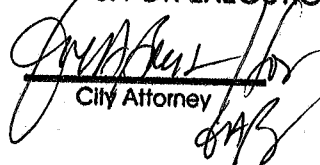
(Sponsored by Commissioner Micky Steinberg)

Underline denotes new language

~~Strikethrough~~ denotes removed language



APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

  
City Attorney

7/18/17  
Date

Ordinances - R5 L

# MIAMI BEACH

## COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission  
FROM: Raul J. Aguila, City Attorney  
DATE: September 13, 2017

**10:55 a.m. Second Reading Public Hearing**

SUBJECT: AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 6 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "ALCOHOLIC BEVERAGES," ARTICLE I, ENTITLED "IN GENERAL," SECTION 6-3 THEREOF, ENTITLED "HOURS OF SALE," TO CHANGE THE HOURS OF PACKAGE LIQUOR SALES AT RETAIL STORES (INCLUDING PACKAGE, GROCERY, CONVENIENCE, AND ANY OTHER RETAIL STORES, AS WELL AS GASOLINE STATIONS/SERVICE STATIONS) AND ALCOHOLIC BEVERAGE ESTABLISHMENTS WITHIN THE CD-2, COMMERCIAL DISTRICT ON WASHINGTON AVENUE AND PENNSYLVANIA AVENUE, BETWEEN 5TH AND 15TH STREET; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

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### RECOMMENDATION

Please see the attached Memorandum and Ordinance.

### ANALYSIS

### Legislative Tracking

Office of the City Attorney

### Sponsor

Commissioner Micky Steinberg

### ATTACHMENTS:

#### Description

- ☐ Memo
- ☐ Ordinance

# MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139,  
www.miamibeachfl.gov

## COMMISSION MEMORANDUM

TO: Mayor Philip Levine and  
Members of the City Commission  
Jimmy L. Morales, City Manager

FROM: Raul Aguila, City Attorney

DATE: September 13, 2017

SUBJECT: **AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 6 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "ALCOHOLIC BEVERAGES," ARTICLE I, ENTITLED "IN GENERAL," SECTION 6-3 THEREOF, ENTITLED "HOURS OF SALE," TO CHANGE THE HOURS OF PACKAGE LIQUOR SALES AT RETAIL STORES (INCLUDING PACKAGE, GROCERY, CONVENIENCE, AND ANY OTHER RETAIL STORES, AS WELL AS GASOLINE STATIONS/SERVICE STATIONS) AND ALCOHOLIC BEVERAGE ESTABLISHMENTS WITHIN THE CD-2, COMMERCIAL DISTRICT ON WASHINGTON AVENUE AND PENNSYLVANIA AVENUE, BETWEEN 5<sup>TH</sup> AND 15<sup>TH</sup> STREET; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

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### **ANALYSIS**

The attached Ordinance, sponsored by Commissioner Micky Steinberg, is hereby submitted for consideration by the Mayor and City Commission.

On November 9, 2016, the Mayor and City Commission adopted Ordinance No.: 2016-4058, which prohibited package liquor sales at retail stores (including package, grocery, convenience, and any other retail stores, as well as gasoline stations/service stations) and alcoholic beverage establishments before 10:00 a.m. (instead of 8:00 a.m.) each day.

On March 1, 2017, the City Commission reviewed a prior version of this Ordinance, which proposed to prohibit package liquor sales before 9:00 a.m. However, following a discussion on this item, the City Commission directed staff to revise the proposed Ordinance to prohibit package liquor sales before 8:00 a.m.

Memorandum on Alcohol Sales 10 a.m. to 10 p.m. in CD-2  
September 13, 2017  
Page 2 of 2

---

On April 26, 2017, the Mayor and City Commission reviewed the revised Ordinance, and directed the City Attorney's Office to prepare a revised drafted Ordinance that further restricted the hours of package liquor sales in the MXE district, citywide between 10:00 a.m. and 10:00 p.m. This ordinance was enacted on June 28, 2017.

The attached ordinance would extend the prohibition of 10:00 a.m. to 10:00 p.m. to the CD-2, Commercial District 2, between Washington Avenue and Pennsylvania Avenue between 5<sup>th</sup> and 15<sup>th</sup> Streets. First Reading was held on July 26, 2017 and was moved without modification.

**RECOMMENDATION**

Enact the attached ordinance at Second Reading, Public Hearing.

# **EXHIBIT G**



City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139,  
www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Mayor Philip Levine and  
Members of the City Commission  
Jimmy L. Morales, City Manager

FROM: Raul Aguila, City Attorney

DATE: October 18, 2107 Second Reading

SUBJECT: **AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 6 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "ALCOHOLIC BEVERAGES," ARTICLE I, ENTITLED "IN GENERAL," SECTION 6-3 THEREOF, ENTITLED "HOURS OF SALE," TO PROHIBIT PACKAGE LIQUOR SALES AT RETAIL STORES (INCLUDING PACKAGE, GROCERY, CONVENIENCE, AND ANY OTHER RETAIL STORES, AS WELL AS GASOLINE STATIONS/SERVICE STATIONS) AND ALCOHOLIC BEVERAGE ESTABLISHMENTS WITHIN THE MXE MIXED USE ENTERTAINMENT DISTRICT TO CHANGE THE HOUR AT WHICH TO CEASE SELLING ALCOHOL; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

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**ANALYSIS**

The attached Ordinance, sponsored by Vice Mayor Ricky Arriola, is hereby submitted for consideration by the Mayor and City Commission.

On November 9, 2016, the Mayor and City Commission adopted Ordinance No.: 2016-4058, which prohibited package liquor sales at retail stores (including package, grocery, convenience, and any other retail stores, as well as gasoline stations/service stations) and alcoholic beverage establishments before 10:00 a.m. (instead of 8:00 a.m.) each day.

On March 1, 2017, the City Commission reviewed a prior version of this Ordinance, which proposed to prohibit package liquor sales before 9:00 a.m. However, following a discussion on this item, the City Commission directed staff to revise the proposed Ordinance to prohibit package liquor sales before 8:00 a.m.



Memorandum on Alcohol Sales 8 p.m. in MXE  
October 18, 2017  
Page 2 of 2

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On April 26, 2017, the Mayor and City Commission reviewed the revised Ordinance, and directed the City Attorney's Office to prepare a revised drafted Ordinance that further restricted the hours of package liquor sales in the MXE district, citywide between 10:00 a.m. and 10:00 p.m. This ordinance was enacted on June 28, 2017.

Since the enactment of Ordinance No. 2016-4058, the Mayor and City Commission have determined that it is in the best interest of the City, and it serves the health, safety, and welfare of the City's residents and visitors, to prohibit package liquor sales at retail stores (including package, grocery, convenience, and any other retail stores, as well as gasoline service/filling stations) and alcoholic beverage establishments before 8:00 a.m. (instead of 10:00 a.m.) each day. Notwithstanding the above, the Mayor and City Commission approved an Ordinance on June 7, 2017, restricting package liquor sales in the MXE district from the hours of 10:00 a.m. until 10:00 p.m., only.

As there remain issues in the MXE district, and as it appears the sale of alcohol from retail establishments in the MXE district, at night, often causes problems on Ocean Drive, Collins Avenue and Washington Avenue, the attached ordinance proposes to cease alcohol sales at 8:00 p.m.

On September 13, 2017, the City Commission approved this ordinance at first reading.

**RECOMMENDATION**

Approve at Second Reading, Public Hearing.

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 6 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "ALCOHOLIC BEVERAGES," ARTICLE I, ENTITLED "IN GENERAL," SECTION 6-3 THEREOF, ENTITLED "HOURS OF SALE/VIOLATIONS," TO AMEND THE HOURS OF PACKAGE SALES OF ALCOHOLIC BEVERAGES (WHICH INCLUDE SALES OF ALCOHOL FOR OFF-PREMISES CONSUMPTION) IN THE MXE MIXED USE ENTERTAINMENT DISTRICT, AND IN THE ADJOINING CD-2 COMMERCIAL, MEDIUM INTENSITY DISTRICT; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

**WHEREAS**, the City of Miami Beach ("City") regulates the location, size, hours of operation, and minimum patron age for uses that permit the sale and consumption of alcoholic beverages in Chapter 6 of the City Code, entitled "Alcoholic Beverages"; and

**WHEREAS**, the Mayor and City Commission have determined that it is in the best interest of the City, and it serves the health, safety, and welfare of the City's residents and visitors, to prohibit package sales of alcoholic beverages (which include sales of alcohol for off-premises consumption) after 8 00 p m. each day, in the MXE district; along Washington Avenue in the CD-2 commercial, medium intensity district adjoining the MXE district; and along the east side of Collins Avenue (between 73rd and 75th Streets) in the CD-2 commercial, medium intensity district adjoining the MXE district; and

**WHEREAS**, this Ordinance strikes a balance between (i) the public safety concerns associated with the sale of alcoholic beverages, on the one hand, and (ii) the convenience of the City's residents and visitors who desire to purchase alcoholic beverages, as well as the economic vitality of the City's retail stores, on the other hand; and

**WHEREAS**, State law expressly grants the City the authority to establish its own regulations for the time for sale of alcoholic or intoxicating beverages; and

**WHEREAS**, pursuant to Section 562.14, Florida Statutes, a municipality may, by ordinance, establish hours of sale for alcoholic beverages; and

**WHEREAS**, Florida courts have rejected equal protection and due process challenges to Section 562.14, Florida Statutes (*See Wednesday Night, Inc. v. City of Fort Lauderdale* (Fla. 1973)); and

**WHEREAS**, Florida Courts have determined that it is within the police power and authority for a municipality to change the hours of regulation of alcoholic beverages, because municipalities have the statutory authority under Section 562 14, Florida Statutes, to restrict the sale of alcohol, additionally, a municipal ordinance regulating the hours of sale of alcoholic beverages may be applied to a property incorporated later into the municipality by annexation. *Village of North Palm Beach v S & H Foster's, Inc* , 80 So. 3d 433 (Fla. 4th DCA 2012), and

**WHEREAS**, in *State ex rel Floyd v Noel* (Fla. 1936), the Florida Supreme Court recognized that “[i]t is so well settled that no citation of authority is required to support the statement that a municipality exercising the powers inherent in municipal corporations may reasonably regulate the sale of intoxicating liquors and in providing such reasonable regulations may prohibit the sale of such liquors within certain hours, and also may prohibit the sale of liquors within certain zones”; and

**WHEREAS**, the Florida Attorney General has opined that a municipality may regulate (1) the hours of sale, (2) zoning of locations in which alcoholic beverages may be sold, and (3) the sanitary conditions under which alcoholic beverages may be dispensed or served to the public Florida AGO 059-73 (1959); and

**WHEREAS**, in fact, the Florida Attorney General has opined that different hours may be provided for in a municipal ordinance, provided there is reasonable relation to the health, safety, and morals of the community. Op Att’y Gen. Fla , p. 497 (1950); and

**WHEREAS**, Florida courts have consistently held that alcoholic beverage establishments are not entitled to grandfather status as to hours of sale for alcoholic beverages. (*See Village of North Palm Beach v. S & H Foster’s, Inc.* (Fla 4th DCA 2012); *Other Place of Miami, Inc. v City of Hialeah Gardens* (Fla 3d DCA 1978)); and

**WHEREAS**, injunctive relief is not available against the enforcement of a municipal ordinance regulating the time at which alcoholic beverages may be sold, because municipalities have the statutory authority to set times for sale of alcoholic beverages. *Id* ; *Playpen S., Inc. v. City of Oakland Park*, 396 So 2d 830 (Fla. 4th DCA 1981); and

**WHEREAS**, Florida Courts have ruled that hours of operation are not a property right. *S. Daytona Rests., Inc. v. City of S. Daytona*, 186 So. 2d 78 (Fla. 1st DCA 1966), and

**WHEREAS**, the amendments set forth below are necessary to accomplish the objectives identified above

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:**

**SECTION 1.** Section 6-3, entitled “Hours of sale/violations,” of Article I, of Chapter 6 of the City Code of the City of Miami Beach is hereby amended as follows

**CHAPTER 6**  
**ALCOHOLIC BEVERAGES**  
**ARTICLE I. In General**

\* \* \*

**Sec. 6-3. Hours of sale/violations.**

- (a) The hours of sale of alcoholic beverages, whether as a permitted main or accessory use, shall require a State License, and shall be according to the following schedule:
  - (1) *Retail stores for package sales only—Off-premises consumption* Vendors may make sales of alcohol only for off-premises consumption between the hours of 8.00 a.m and midnight.

- A. Notwithstanding subsection (a)(1), vendors located in the MXE mixed use entertainment district, and the that portion of the CD-2, commercial, medium intensity district adjoining the MXE district between along Washington Avenue and Pennsylvania Avenue, from between 5th Street to and 16th Street, and that portion of the CD-2 district adjoining the MXE district along the east side of Collins Avenue (between 73rd and 75th Streets) may make sales of alcohol only for off-premises consumption between the hours of 9:00 10.00 a.m and ~~10:00~~ 8:00 p.m
- (2) *Retail stores, including grocery, convenience stores, and gasoline service/filling stations.* Retail stores, including grocery, convenience stores, and gasoline service/filling stations, which primarily offer for sale products other than alcoholic beverages may only make sales of beer and wine only for off-premises consumption between the hours of 8:00 a.m. and midnight
    - A. Notwithstanding subsection (a)(2), retail stores, including grocery, convenience stores, and gasoline service/filling stations, that are located in the MXE mixed use entertainment district, and the that portion of the CD-2 commercial, mixed use-2 medium intensity district adjoining the MXE district, on along Washington Avenue and Pennsylvania Avenue, between 5th Street and 15th 16th Street, and that portion of the CD-2 district adjoining the MXE district along the east side of Collins Avenue (between 73rd and 75th Streets), and which primarily offer for sale products other than alcoholic beverages may only make sales of beer and wine only between the hours of 10:00 a.m. and ~~10:00~~ 8.00 p.m.
  - (3) *Alcoholic beverage establishments.* All alcoholic beverage establishments with state licensure—On-premises consumption only, may make sales of alcohol between the hours of 8:00 a.m. and 5:00 a.m.
    - (a) *Restaurants not operating as dance halls or entertainment establishments.* Restaurants with full kitchen facilities, serving full meals, licensed as alcoholic beverage establishments, but not operating as dance halls or entertainment establishments, may remain open 24 hours a day, however, alcoholic beverages may not be offered for sale or on-premises consumption between the hours of 5:00 a.m. and 8:00 a.m.
    - (b) *Restaurants also operating as dance halls or entertainment establishments.* Restaurants with full kitchen facilities, serving full meals, licensed as alcoholic beverage establishments, and also operating as dance halls, or entertainment establishments, may remain open 24 hours a day; however, alcoholic beverages may not be offered for sale or on-premises consumption between the hours of 5:00 a.m. and 8:00 a.m., and dancing and entertainment shall not be conducted between the hours of 5:00 a.m. and 10:00 a.m.
    - (c) *Other alcoholic beverage establishments.* Other alcoholic beverage establishments, not containing restaurants with full kitchen facilities, shall close at 5:00 a.m. and remain closed. No patron or other persons, other than those employed by the vendor may remain on the premises between the hours of 5:00 a.m. and 8:00 a.m.
    - (d) *Sidewalk cafes.* Notwithstanding the provisions of subsections (3)(a) through (c), alcoholic beverages shall not be offered for sale or consumption at sidewalk cafes, as defined in section 82-366 of this Code and as otherwise permitted by the City in accordance with chapter 82, article IV, division 5, subdivision II of this Code (as

may be amended from time to time), between the hours of 1 30 a.m. and 8 00 a m , and shall not be consumed at sidewalk cafes between the hours of 2:00 a.m and 8:00 a.m. No variances may be granted from the provisions of this section 6-3(3)(d) as to the hours of sale or consumption of alcoholic beverages at sidewalk cafes

Note: For purposes of this section, full kitchen facilities shall mean having commercial grade burners, ovens, and refrigeration units of sufficient size and quantity to accommodate the occupancy content of the establishment. Full kitchen facilities must contain grease trap interceptors, and meet all applicable city, county, and state codes

- (4) *Off-premises package sales by alcoholic beverage establishments* Off-premises package sales associated with alcoholic beverage establishments other than retail stores shall be permitted between the hours of 8 00 a m. and midnight

- A. Notwithstanding subsection (a)(4), off-premises package sales associated with alcoholic beverage establishments, other than retail stores, that are located in the MXE mixed use entertainment district, ~~and the that portion of the CD-2, commercial, medium intensity district 2, on adjoining the MXE district along Washington Avenue and Pennsylvania Avenue, between 5th Street and 15th 16th Street, and that portion of the CD-2 district adjoining the MXE district along the east side of Collins Avenue (between 73rd and 75th Streets)~~ shall be permitted only between the hours of 10 00 a m. and ~~40-00~~ 8:00 p.m.

\* \* \*

## **SECTION 2. CODIFICATION.**

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code of the City of Miami Beach, Florida. The sections of this Ordinance may be renumbered or re-lettered to accomplish such intention, and, the word "ordinance" may be changed to "section," "article," or other appropriate word

## **SECTION 3. REPEALER.**

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

## **SECTION 4. SEVERABILITY.**

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

**SECTION 5. EFFECTIVE DATE.**

This Ordinance shall take effect ten days following adoption.

**PASSED** and **ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2017.

**ATTEST:**

\_\_\_\_\_  
Rafael E. Granado  
City Clerk

\_\_\_\_\_  
Philip Levine  
Mayor

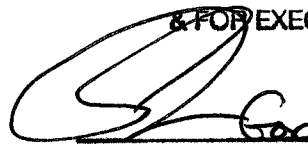
(Sponsored by Vice-Mayor Ricky Arriola and co-sponsored by Mayor Philip Levine)

Underline denotes new language

~~Strikethrough~~ denotes removed language

F:\ATTO\KAL\ORDINANCES\Package liquor sales - 8PM in MXE and CD2.docx

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

  
\_\_\_\_\_  
City Attorney

10/13/17  
\_\_\_\_\_  
Date

NK

# **EXHIBIT H**



USE #CASE #

CITY OF MIAMI BEACH  
CODE COMPLIANCE DEPARTMENT  
555 17<sup>th</sup> Street  
Miami Beach, FL 33139  
PHONE (305) 673-7555 FAX (305) 678-7012

NOTICE OF CITY CODE VIOLATION AND FINE

ITE SITE ADDRESS: 865 Collins ave D  
VIOLATION ISSUE DATE: 12/21/16 TIME: 8:39 AM.  
SSI ISSUED TO: Beach Blitz CO.  
MAIL MAILING ADDRESS: 865 Collins ave D Miami Beach

DAY OF THE WEEK: SU M T W TH F S

INSPECTION OF THE ABOVE PREMISES ON THIS DATE  
REVEALED YOU ARE IN VIOLATION OF SECTION:

6-3(a)(1)

OF THE MIAMI BEACH CITY CODE BY:

|                                      | FINE          |
|--------------------------------------|---------------|
| <u>offering alcoholic beverages</u>  | ( ) \$25.00   |
| <u>in a retail establishment for</u> | ( ) \$50.00   |
| <u>package sales between</u>         | ( ) \$75.00   |
| <u>the hours of midnight</u>         | ( ) \$100.00  |
| <u>and 10:00am on any</u>            | ( ) \$150.00  |
| <u>day of the week.</u>              | ( ) \$200.00  |
| <u>You can comply by ceasing</u>     | ( ) \$250.00  |
| <u>immediately illegal alcoholic</u> | ( ) \$350.00  |
| <u>beverage sales upon receipt</u>   | (X) \$1000.00 |
| <u>of this notice and paying</u>     | ( ) \$        |
| <u>a civil fine of:</u>              |               |

TOTAL FINES 1000

COMMENTS: 1st offense

Tax# RL-10005692

CODE COMPLIANCE OFFICER (SIGN)

Ofc. Negrón #1020

CODE COMPLIANCE OFFICER (PRINT)

@miamibeachfl.gov

RECEIVED BY (Signature): [Signature]

RECEIVED BY (Print Name): NATASHA MUCERIWA

DATE: 12/21/16 TIME: 8:39 AM.

IMPORTANT APPEAL AND ADA INFORMATION ON BACK

NOTICE OF CITY CODE VIOLATION AND FINE

FINE(S) MUST BE PAID WITHIN 72 HOURS:

BY CHECK OR MONEY ORDER  
MAKE CHECKS & MONEY ORDERS PAYABLE TO THE  
CITY OF MIAMI BEACH.

MAILED TO:

CITY OF MIAMI BEACH  
CODE COMPLIANCE DEPARTMENT  
555 17<sup>TH</sup> STREET  
MIAMI BEACH, FL. 33139

CASH PAYMENTS ACCEPTED IN PERSON ONLY:

AT MIAMI BEACH CITY HALL  
1700 CONVENTION CENTER DRIVE, 1<sup>ST</sup> FLOOR  
MIAMI BEACH, FL 33139

APPEAL PROCESS:

FINES MAY BE APPEALED WITHIN TWENTY (20) DAYS  
OF RECEIPT OF THIS NOTICE BY A WRITTEN  
REQUEST TO THE CLERK OF THE SPECIAL MASTER  
AT THE ABOVE ADDRESS. A \$100.00 CHECK TO  
COVER THE COST OF THE HEARING MUST BE  
INCLUDED.

FAILURE TO PAY THE FINE OR APPEAL IN THE  
MANNER INDICATED ABOVE SHALL CONSTITUTE A  
WAIVER OF THE VIOLATOR'S RIGHT TO CONTEST  
THE CITATION AND SHALL BE TREATED AS AN  
ADMISSION OF THE VIOLATION.

THE CITY MAY INSTITUTE PROCEEDINGS IN A COURT  
OF COMPETENT JURISDICTION TO COMPEL  
PAYMENT OF CIVIL FINES.

THE CERTIFIED COPY OF THE ORDER IMPOSING CIVIL  
FINES MAY BE RECORDED IN THE PUBLIC RECORDS  
AND THEREAFTER SHALL CONSTITUTE A LIEN UPON  
ANY REAL OR PERSONAL PROPERTY OWNED BY THE  
VIOLATOR.

ADA INFORMATION

To request this material in accessible format, sign  
language interpreters, information on access for  
persons with disabilities, and/or any  
accommodation to review any document or  
participate in any city-sponsored proceeding,  
please contact 305 604-2489 or 1-800-955-8770  
(voice), 305 673-7524 (fax), 305 673-7218 or 1-  
800-955-8771 (TTY), 1-877-955-5334 (STS), 1-  
877-955-8773 (Spanish) five days in advance to  
initiate your request. TTY users may also call 711  
(Florida Relay Service).



# **EXHIBIT I**

## Notice of Violation

|                               |                                                                                 |                               |                          |
|-------------------------------|---------------------------------------------------------------------------------|-------------------------------|--------------------------|
| <b>Violation Notice Date:</b> | Date 12/21/2016                                                                 | Time 08:39 AM                 | Case Number CC2016-01704 |
| <b>Address of Violation:</b>  | 865 COLLINS AVE                                                                 |                               | Unit D                   |
| <b>Parcel Number:</b>         | 0242032580040                                                                   |                               |                          |
| <b>Legal Description:</b>     | THE SKYLARK CONDO UNIT D UNDIV 3.167% INT IN COMMON ELEMENTS OFF REC 20580-1711 |                               |                          |
| <b>Violator Name:</b>         | BEACH BLITZ CO.                                                                 |                               |                          |
| <b>Mailing Address:</b>       | 13441 NW 5TH CT                                                                 | City and State PLANTATION, FL | Zip Code 33325           |

The City of Miami Beach Code Compliance Department has determined that the above Property has violated the Miami Beach Code of Laws and Ordinances (the "City Code"). This violation is the 1st offense, and this Notice of Violation carries a fine (and other monetary charges) of \$1,000.00. Specifically, Code Compliance Officer Treisa Smith has found there to be a violation(s) of the City Code, which is/are:

Section 6-3(1): Retail stores for package sales only may make sales of alcohol only for off-premises consumption between the hours of 8:00 a.m. and midnight.

You can comply by ceasing immediately illegal alcoholic beverage sales upon receipt of this notice and paying a civil fine of:

- 1st Offense \$1,000.00 within a (12) twelve month period.
- 2nd Offense \$5,000.00 within a (12) twelve month period
- 3rd Offense \$10,000.00 within a (12) twelve month period
- 4th Offense upon a finding by the Special Master that four (4) or more violations by a person or entity have occurred within a twelve month period, the City may initiate proceedings to revoke the Certificate of Use, Business Tax Receipt or the Certificate of Occupancy of the violator.

**Fine(s) must be paid within 72 hours** of receipt of the violation. A copy of the violation must accompany the payment. Please make checks or money orders payable to: City of Miami Beach. Payment can be mailed or taken in person to: The Finance Department (Cashier), 1700 Convention Center Drive, 1st floor, Miami Beach, FL 33139.

Fine(s) and/or violations may be appealed within days of receipt of the notice of violation. To appeal a fine and/or violation, submit a written request for an appeal hearing to the Clerk of the Special Master - 1700 Convention Center Dr., Miami Beach, FL 33139. A check for \$100 (administrative charges) must accompany the request along with the case number.

Failure to pay the fine or request an appeal hearing in the manner indicated above shall constitute a waiver of the violator's right to contest the citation and shall be treated as an admission of the violation.

The City may institute proceedings in a court of competent jurisdiction to compile payment of civil fine(s). The certified copy of the order imposing civil fine(s) may be recorded in the public records and thereafter shall constitute a lien upon any real or personal property owned by the violator.

Section 6-3(1): Retail stores for package sales only may make sales of alcohol only for off-premises consumption between the hours of 8:00 a.m. and midnight.

You can comply by ceasing immediately illegal alcoholic beverage sales upon receipt of this notice and paying a civil fine of:

- 1st Offense \$1,000.00 within a (12) twelve month period.
- 2nd Offense \$5,000.00 within a (12) twelve month period
- 3rd Offense \$10,000.00 within a (12) twelve month period
- 4th Offense upon a finding by the Special Master that four (4) or more violations by a person or entity have occurred within a twelve month period, the City may initiate proceedings to revoke the Certificate of Use, Business Tax Receipt or the Certificate of Occupancy of the violator.

# **EXHIBIT J**

SE #

0107-08102

CITY OF MIAMI BEACH  
CODE COMPLIANCE DIVISION  
555 47<sup>th</sup> Street  
Miami Beach, FL 33139  
(305) 673-7555 FAX (305) 673-7012

**NOTICE OF CITY CODE VIOLATION AND FINE**

SITE ADDRESS: 805 Collins

VIOLATION ISSUE DATE: 6/2/17 TIME: 10:50

ISSUED TO: Beach, FL 112, 11/11/17

Mailing Address: 12441 NW 5th Ave, Suite 100, Plantation, FL 33324

DAY OF THE WEEK: S U M T W T H F S

INSPECTION OF THE ABOVE PREMISES THIS DATE REVEALED YOU ARE IN VIOLATION OF SECTION:

OF THE MIAMI BEACH CITY CODE BY:

|                         | FINE          |
|-------------------------|---------------|
| Not a valid business    | ( ) \$25.00   |
| Violate the code in the | ( ) \$50.00   |
| FIXE                    | ( ) \$75.00   |
| Violate the code in the | ( ) \$100.00  |
| Violate the code in the | ( ) \$150.00  |
| Violate the code in the | ( ) \$200.00  |
| Violate the code in the | ( ) \$250.00  |
| Violate the code in the | ( ) \$350.00  |
| Violate the code in the | ( ) \$500.00  |
| Violate the code in the | (X) \$1000.00 |
|                         | ( )           |

TOTAL FINES \$1000.00

COMMENTS: Violate the code in the

CODE COMPLIANCE OFFICER (SIGN)

CODE COMPLIANCE OFFICER (PRINT)

RECEIVED BY (Signature):

RECEIVED BY (Print Name):

DATE: 6/2/17 TIME: 11:00

IMPORTANT ADVICE AND INFORMATION

# **EXHIBIT K**

## Code Compliance Department

555 - 17th Street

Miami Beach, Florida 33139

Tele: 305.673.7555

Fax: 305.673.7012

## Notice of Violation

|                        |                               |                               |                          |
|------------------------|-------------------------------|-------------------------------|--------------------------|
| Violation Notice Date: | Date 6/25/2017                | Time 11:30PM                  | Case Number CC2017-03103 |
| Address of Violation:  | 865 COLLINS AVE               |                               | Unit D                   |
| Parcel Number:         | 0242032580001                 |                               |                          |
| Legal Description:     |                               |                               |                          |
| Violator Name:         | BEACH BLITZ CO. % DOAR, DORON |                               |                          |
| Mailing Address:       | 13441 NW 5TH CT               | City and State PLANTATION, FL | Zip Code 33325           |

The City of Miami Beach Code Compliance Department has determined that the above Property has violated the Miami Beach Code of Laws and Ordinances (the "City Code"). This violation is the 1st offense, and this Notice of Violation carries a fine (and other monetary charges) of \$1,000.00. Specifically, Code Compliance Officer Enock Valerus has found there to be a violation(s) of the City Code, which is/are:

Article V, Section 102-377. Any person failing to obtain a Business Tax Receipt as required by this article.

Reference: Failure to obtain Business Tax Receipt

Cease immediately until you obtain a Business Tax Receipt from the City of Miami Beach.

A Violation of this Section shall be subject to the following fines:

Any person who shall carry on or conduct any business for which a tax receipt is required by this article without first obtaining such tax receipt shall be issued a violation for the first offense, which shall have a civil fine of \$1000.00. The enhanced enforcement for this violation shall be pursuant to subsection 102-377(d).

In addition to the above a continued violation of subsection 102-377(a) for a period of thirty (30) days or more without first obtaining a tax receipt, shall be punished by imprisonment not to exceed 60 days or by imposition of a fine not to exceed \$500.00 or both.

**Fine(s) must be paid within 72 hours** of receipt of the violation. A copy of the violation must accompany the payment. Please make checks or money orders payable to: City of Miami Beach. Payment can be mailed or taken in person to: The Finance Department (Cashier), 1700 Convention Center Drive, 1st floor, Miami Beach, FL 33139.

Fine(s) and/or violations may be appealed within **Ten (10)** days of receipt of the notice of violation. To appeal a fine and/or violation, submit a written request for an appeal hearing to the Clerk of the Special Master - 1700 Convention Center Dr., Miami Beach, FL 33139. A check for \$100 (administrative charges) must accompany the request along with the case number.

Failure to pay the fine or request an appeal hearing in the manner indicated above shall constitute a waiver of the violator's right to contest the citation and shall be treated as an admission of the violation.

The City may institute proceedings in a court of competent jurisdiction to compile payment of civil fine(s). The certified copy of the order imposing civil fine(s) may be recorded in the public records and thereafter shall constitute a lien upon any real or personal property owned by the violator.

|                                 |                 |                               |               |     |                      |                |
|---------------------------------|-----------------|-------------------------------|---------------|-----|----------------------|----------------|
| Issuing Code Compliance Officer | Name:           | Enock Valerus                 | Badge #       | 740 | Phone and Extension: | (305) 673-7555 |
|                                 | Email:          | EnockValerus@miamibeachfl.gov |               |     |                      |                |
| Received By                     | Compliance Date | Received Date                 | Received Time |     |                      |                |
| Other                           | 06/26/2017      | 06/25/2017                    | 11:30PM       |     |                      |                |

## Code Compliance Department

555 - 17th Street

Miami Beach, Florida 33139

Tele: 305.673.7555

Fax: 305.673.7012

## Notice of Violation

|                        |                               |                               |                          |
|------------------------|-------------------------------|-------------------------------|--------------------------|
| Violation Notice Date: | Date 6/25/2017                | Time 11:30PM                  | Case Number CC2017-03103 |
| Address of Violation:  | 865 COLLINS AVE               |                               | Unit D                   |
| Parcel Number:         | 0242032580001                 |                               |                          |
| Legal Description:     |                               |                               |                          |
| Violator Name:         | BEACH BLITZ CO. % DOAR, DORON |                               |                          |
| Mailing Address:       | 13441 NW 5TH CT               | City and State PLANTATION, FL | Zip Code 33325           |

The City of Miami Beach Code Compliance Department has determined that the above Property has violated the Miami Beach Code of Laws and Ordinances (the "City Code"). This violation is the 1st offense, and this Notice of Violation carries a fine (and other monetary charges) of \$1,000.00. Specifically, Code Compliance Officer Enock Valerus has found there to be a violation(s) of the City Code, which is/are:

Article V, Section 102-377. Any person failing to obtain a Business Tax Receipt as required by this article.

Reference: Failure to obtain Business Tax Receipt

Cease immediately until you obtain a Business Tax Receipt from the City of Miami Beach.

A Violation of this Section shall be subject to the following fines:

Any person who shall carry on or conduct any business for which a tax receipt is required by this article without first obtaining such tax receipt shall be issued a violation for the first offense, which shall have a civil fine of \$1000.00. The enhanced enforcement for this violation shall be pursuant to subsection 102-377(d).

In addition to the above a continued violation of subsection 102-377(a) for a period of thirty (30) days or more without first obtaining a tax receipt, shall be punished by imprisonment not to exceed 60 days or by imposition of a fine not to exceed \$500.00 or both.

**Fine(s) must be paid within 72 hours** of receipt of the violation. A copy of the violation must accompany the payment. Please make checks or money orders payable to: City of Miami Beach. Payment can be mailed or taken in person to: The Finance Department (Cashier), 1700 Convention Center Drive, 1st floor, Miami Beach, FL 33139.

Fine(s) and/or violations may be appealed within **Ten (10)** days of receipt of the notice of violation. To appeal a fine and/or violation, submit a written request for an appeal hearing to the Clerk of the Special Master - 1700 Convention Center Dr., Miami Beach, FL 33139. A check for \$100 (administrative charges) must accompany the request along with the case number.

Failure to pay the fine or request an appeal hearing in the manner indicated above shall constitute a waiver of the violator's right to contest the citation and shall be treated as an admission of the violation.

The City may institute proceedings in a court of competent jurisdiction to compile payment of civil fine(s). The certified copy of the order imposing civil fine(s) may be recorded in the public records and thereafter shall constitute a lien upon any real or personal property owned by the violator.

|                                 |                 |                               |               |     |                      |                |
|---------------------------------|-----------------|-------------------------------|---------------|-----|----------------------|----------------|
| Issuing Code Compliance Officer | Name:           | Enock Valerus                 | Badge #       | 740 | Phone and Extension: | (305) 673-7555 |
|                                 | Email:          | EnockValerus@miamibeachfl.gov |               |     |                      |                |
| Received By                     | Compliance Date | Received Date                 | Received Time |     |                      |                |
| Other                           | 06/26/2017      | 06/25/2017                    | 11:30PM       |     |                      |                |

# **EXHIBIT L**



IN AND BEFORE THE SPECIAL MASTER OF  
THE CITY OF MIAMI BEACH

CODE VIOLATION CASE NOS. CC2016-01704  
CC2017-03102  
CC2017-03103

BEACH BLITZ, CO. c/o  
DOAR, DORON,

Petitioner,

vs.

CITY OF MIAMI BEACH,

Respondent.

---

**AGREED ORDER**

This cause came before the Special Master of the City of Miami Beach, upon stipulation and agreement of Harold Rosen, Esquire, on behalf of Beach Blitz, Co. c/o Doar, Doron, 865 Collins Avenue, #D, Miami Beach (hereinafter referenced as the "Petitioner"), and Deputy City Attorney, Aleksandr Boksner, counsel to Respondent, the City of Miami Beach (hereinafter referenced as the "City"), regarding the above-styled appeal before the Special Master of certain violation(s) against the real property which is located at 865 Collins Avenue, #D, Miami Beach, Florida (the "Property") and the Code Enforcement matter referenced below in this Agreed Order. Respective counsel to City and the Petitioner having agreed to the terms of this Order,

IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. Petitioner, Beach Blitz Co. c/o Doron Doar admit to the legitimacy of the violation charged under Citation/Violation Nos. CC2016-01704, CC2017-03102 and CC2017-03103, and recognize that the violation was properly issued by the City of Miami Beach.


Beach Blitz, Co. and Doron Doar vs. City of Miami Beach  
Citation/Violation Nos. CC2016-01704, CC2017-03102 and CC2017-03103  
Agreed Order  
Page 2 of 2

---

2. Citation/Violation Nos. CC2016-01704, CC2017-03102 and CC2017-03103 are hereby AFFIRMED. The Parties stipulate that a factual basis exists to establish this offense violation by the appropriate legal standard for this proceeding, and the City shall not need to establish the legitimacy.

3. The Petitioner shall be assessed a fine in the amount of One Thousand (\$1,000.00) Dollars, which shall be due within thirty (30) days of the entry of this Agreed Order.

DONE AND ORDERED by the Special Master of the City of Miami Beach, this 28<sup>th</sup> day of September, 2017.

  
\_\_\_\_\_  
SPECIAL MASTER  
As Special Master for the City of Miami Beach

Copies furnished to:

Aleksandr Boksner, First Assistant City Attorney at sandracaba@miamibeachfl.gov  
Harold Rosen, 407 Lincoln Road, Suite 2A, Miami Beach, Florida 33139

8.22.17  
PAID  
CH # 2238  
1000.00

# **EXHIBIT M**



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## Search Results

| Case Number                  | Address         | Type                | Status | District | Opened     | Closed     | Project |
|------------------------------|-----------------|---------------------|--------|----------|------------|------------|---------|
| <a href="#">CC2017-03102</a> | 865 COLLINS AVE | City Code Violation | Closed | MXE      | 06/25/2017 | 10/04/2017 |         |

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## Search Results

| Case Number                  | Address         | Type                | Status | District | Opened     | Closed     | Project |
|------------------------------|-----------------|---------------------|--------|----------|------------|------------|---------|
| <a href="#">CC2017-03103</a> | 865 COLLINS AVE | City Code Violation | Closed | MXE      | 06/25/2017 | 10/04/2017 |         |

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# **EXHIBIT N**



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## Search Results

| Case Number                  | Address         | Type                | Status    | District | Opened     | Closed     | Project |
|------------------------------|-----------------|---------------------|-----------|----------|------------|------------|---------|
| <a href="#">CC2016-01704</a> | 865 COLLINS AVE | City Code Violation | Fine Paid | MXE      | 12/22/2016 | 10/13/2017 |         |

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Displaying items 1 - 1 of 1

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# **EXHIBIT O**



Code Compliance Department  
555 - 17th Street  
Miami Beach, Florida 33139  
Tele: 305.673.7555  
Fax: 305.673.7012

## Notice of Violation

|                               |                                                                                 |                                   |                          |
|-------------------------------|---------------------------------------------------------------------------------|-----------------------------------|--------------------------|
| <b>Violation Notice Date:</b> | Date 10/6/2017                                                                  | Time 5:00 PM                      | Case Number CC2017-03686 |
| <b>Address of Violation:</b>  | 865 COLLINS AVE                                                                 |                                   |                          |
| <b>Parcel Number:</b>         | 0242032560040                                                                   |                                   |                          |
| <b>Legal Description:</b>     | THE SKYLARK CONDO UNIT D UNDIV 3 167% INT IN COMMON ELEMENTS OFF REC 20580-1711 |                                   |                          |
| <b>Violator Name:</b>         | Beach Blitz Co. DBA Ocean 9 Liquor O/O Doron Dour                               |                                   |                          |
| <b>Mailing Address:</b>       | 13441 NW 5th Court                                                              | City and State Ft. Lauderdale, FL | Zip Code 33325           |

The City of Miami Beach Code Compliance Department has determined that the above Property has violated the Miami Beach Code of Laws and Ordinances (the "City Code"). This violation is the 2nd offense, and this Notice of Violation carries a fine (and other monetary charges) of \$500.00. Specifically, Code Compliance Officer Manny Bastos has found there to be a violation(s) of the City Code, which is/are:

Article V, Section 102-377. Any person failing to obtain a Business Tax Receipt as required by this article.

**Reference:** Failing to obtain Business Tax Receipt, 2nd Offense

Cease immediately until you obtain a Business Tax Receipt from the City of Miami Beach.

A Violation of this Section shall be subject to the following fines:

Any person who shall carry on or conduct any business for which a tax receipt is required by this article without first obtaining such tax receipt shall be issued a violation for the first offense which shall have a civil fine of \$1000.00. The enhanced enforcement for this violation shall be pursuant to subsection 102-377(d).

In addition to the above a continued violation of subsection 102-377(a) for a period of thirty (30) days or more without first obtaining a tax receipt shall be punished by imprisonment not to exceed 60 days or by imposition of a fine not to exceed \$500.00 or both.

Failure to comply will result in your prosecution before the City of Miami Beach Special Master. The Special Master may impose fines of up to \$1,000.00 per day for noncompliance and up to \$5,000.00 per day for recurring violations. Failure to pay imposed fines will lead to placement of liens upon the real and personal property of violators which will be foreclosed upon or otherwise collected as provided by this code.

If you are aggrieved by the decision of the Code Inspector in issuing this notice of violation, you may appeal. To appeal the violations submit an application for appeal within **Ten (10)** days of receipt of this notice of violation to the appropriate board or the Office of the Special Master 1700 Convention Center Dr., Miami Beach, FL 33139. A check for \$100 (administrative charges) must accompany the request along with the case number.

|                                        |                                           |                |                                                 |
|----------------------------------------|-------------------------------------------|----------------|-------------------------------------------------|
| <b>Issuing Code Compliance Officer</b> | Name<br>Manny Bastos                      | Badge #<br>704 | Phone and Extension<br>(305) 673-7555 ext. 6803 |
|                                        | E-mail<br>EmmanuelBastos@miamibeachfl.gov |                |                                                 |
| Received By:                           | Compliance Date<br>10/06/2017             | Received Date  | Received Time<br>5:00 PM                        |

### ADA Information

To request this material in accessible format, sign language interpreters, information on access for persons with disabilities, and/or any accommodation to review any document or participate in any City-sponsored proceeding, please contact 305.604.2489 (voice), 305.673.7524 (fax) or 305.673.7218 (TTY) five (5) days in advance to initiate your request. TTY users may also call 711 (Florida Relay Services).

Manny Bastos

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

BEACH BLITZ CO., d/b/a OCEAN 9 LIQUOR and d/b/a as OCEAN 11 MARKET

(b) County of Residence of First Listed Plaintiff Miami-Dade

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Phillip M. Hudson III, Saul Ewing Arnstein & Lehr LLP, 200 S. Biscayne Blvd., Suite 3600, Miami, FL 33131 Tel: 305-428-4500

**DEFENDANTS**

CITY OF MIAMI BEACH, et al.

County of Residence of First Listed Defendant Miami-Dade

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |                                         | PTF                        | DEF                        |                                                               | PTF                        | DEF                        |
|-----------------------------------------|----------------------------|----------------------------|---------------------------------------------------------------|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation                                                | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

| CONTRACT                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | TORTS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | FORFEITURE/PENALTY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | BANKRUPTCY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | OTHER STATUTES                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> 110 Insurance<br><input type="checkbox"/> 120 Marine<br><input type="checkbox"/> 130 Miller Act<br><input type="checkbox"/> 140 Negotiable Instrument<br><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment<br><input type="checkbox"/> 151 Medicare Act<br><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)<br><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits<br><input type="checkbox"/> 160 Stockholders' Suits<br><input type="checkbox"/> 190 Other Contract<br><input type="checkbox"/> 195 Contract Product Liability<br><input type="checkbox"/> 196 Franchise | <b>PERSONAL INJURY</b><br><input type="checkbox"/> 310 Airplane<br><input type="checkbox"/> 315 Airplane Product Liability<br><input type="checkbox"/> 320 Assault, Libel & Slander<br><input type="checkbox"/> 330 Federal Employers' Liability<br><input type="checkbox"/> 340 Marine<br><input type="checkbox"/> 345 Marine Product Liability<br><input type="checkbox"/> 350 Motor Vehicle<br><input type="checkbox"/> 355 Motor Vehicle Product Liability<br><input type="checkbox"/> 360 Other Personal Injury<br><input type="checkbox"/> 362 Personal Injury - Medical Malpractice | <input type="checkbox"/> 365 Personal Injury - Product Liability<br><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability<br><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability<br><b>PERSONAL PROPERTY</b><br><input type="checkbox"/> 370 Other Fraud<br><input type="checkbox"/> 371 Truth in Lending<br><input type="checkbox"/> 380 Other Personal Property Damage<br><input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 422 Appeal 28 USC 158<br><input type="checkbox"/> 423 Withdrawal 28 USC 157<br><b>PROPERTY RIGHTS</b><br><input type="checkbox"/> 820 Copyrights<br><input type="checkbox"/> 830 Patent<br><input type="checkbox"/> 835 Patent - Abbreviated New Drug Application<br><input type="checkbox"/> 840 Trademark<br><b>SOCIAL SECURITY</b><br><input type="checkbox"/> 861 HIA (1395ff)<br><input type="checkbox"/> 862 Black Lung (923)<br><input type="checkbox"/> 863 DIWC/DIWW (405(g))<br><input type="checkbox"/> 864 SSID Title XVI<br><input type="checkbox"/> 865 RSI (405(g))                                 | <input type="checkbox"/> 375 False Claims Act<br><input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))<br><input type="checkbox"/> 400 State Reapportionment<br><input type="checkbox"/> 410 Antitrust<br><input type="checkbox"/> 430 Banks and Banking<br><input type="checkbox"/> 450 Commerce<br><input type="checkbox"/> 460 Deportation<br><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations<br><input type="checkbox"/> 480 Consumer Credit<br><input type="checkbox"/> 490 Cable/Sat TV<br><input type="checkbox"/> 850 Securities/Commodities/Exchange<br><input checked="" type="checkbox"/> 890 Other Statutory Actions<br><input type="checkbox"/> 891 Agricultural Acts<br><input type="checkbox"/> 893 Environmental Matters<br><input type="checkbox"/> 895 Freedom of Information Act<br><input type="checkbox"/> 896 Arbitration<br><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision<br><input checked="" type="checkbox"/> 950 Constitutionality of State Statutes |
| <b>REAL PROPERTY</b><br><input type="checkbox"/> 210 Land Condemnation<br><input type="checkbox"/> 220 Foreclosure<br><input type="checkbox"/> 230 Rent Lease & Ejectment<br><input type="checkbox"/> 240 Torts to Land<br><input type="checkbox"/> 245 Tort Product Liability<br><input type="checkbox"/> 290 All Other Real Property                                                                                                                                                                                                                                                                                                                                                      | <b>CIVIL RIGHTS</b><br><input checked="" type="checkbox"/> 440 Other Civil Rights<br><input type="checkbox"/> 441 Voting<br><input type="checkbox"/> 442 Employment<br><input type="checkbox"/> 443 Housing/Accommodations<br><input type="checkbox"/> 445 Amer. w/Disabilities - Employment<br><input type="checkbox"/> 446 Amer. w/Disabilities - Other<br><input type="checkbox"/> 448 Education                                                                                                                                                                                        | <b>PRISONER PETITIONS</b><br><b>Habeas Corpus:</b><br><input type="checkbox"/> 463 Alien Detainee<br><input type="checkbox"/> 510 Motions to Vacate Sentence<br><input type="checkbox"/> 530 General<br><input type="checkbox"/> 535 Death Penalty<br><b>Other:</b><br><input type="checkbox"/> 540 Mandamus & Other<br><input type="checkbox"/> 550 Civil Rights<br><input type="checkbox"/> 555 Prison Condition<br><input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement      | <b>LABOR</b><br><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881<br><input type="checkbox"/> 690 Other<br><input type="checkbox"/> 710 Fair Labor Standards Act<br><input type="checkbox"/> 720 Labor/Management Relations<br><input type="checkbox"/> 740 Railway Labor Act<br><input type="checkbox"/> 751 Family and Medical Leave Act<br><input type="checkbox"/> 790 Other Labor Litigation<br><input type="checkbox"/> 791 Employee Retirement Income Security Act<br><b>IMMIGRATION</b><br><input type="checkbox"/> 462 Naturalization Application<br><input type="checkbox"/> 465 Other Immigration Actions | <b>FEDERAL TAX SUITS</b><br><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)<br><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 USC 1983; 28 USC 2201 and 2202

Brief description of cause:

Action for declaratory and injunctive relief and damages pursuant to the 14th Amendment of the United States

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

10/30/2017

SIGNATURE OF ATTORNEY OF RECORD

/s/ Phillip M. Hudson III

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

for the

BEACH BLITZ CO., a Florida Corporation d/b/a  
OCEAN 9 LIQUOR and d/b/a as  
OCEAN 11 MARKET

Plaintiff(s)

V.

CITY OF MIAMI BEACH, FLORIDA et al.,

Defendant(s)

Civil Action No.

To: *(Defendant's name and address)* JOHN ELIZABETH ALEMAN  
1700 Convention Center Drive  
4th Floor  
Miami Beach, FL 33139

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff’s attorney, whose name and address are:

PHILLIP M. HUDSON III  
SAUL EWING ARNSTEIN & LEHR LLP  
200 S. BISCAYNE BLVD., SUITE 3600  
MIAMI, FLORIDA 33131

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: \_\_\_\_\_

---

*Signature of Clerk or Deputy Clerk*

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

Signature of Clerk or Deputy Clerk



Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

for the

BEACH BLITZ CO., a Florida Corporation d/b/a  
OCEAN 9 LIQUOR and d/b/a as  
OCEAN 11 MARKET

V.

CITY OF MIAMI BEACH, FLORIDA et al.,

Defendant(s)

Civil Action No.

To: *(Defendant's name and address)* RICKY ARRIOLA  
1700 Convention Center Drive  
4th Floor  
Miami Beach, FL 33139

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff’s attorney, whose name and address are:

PHILLIP M. HUDSON III  
SAUL EWING ARNSTEIN & LEHR LLP  
200 S. BISCAYNE BLVD., SUITE 3600  
MIAMI, FLORIDA 33131

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: \_\_\_\_\_

Signature of Clerk or Deputy Clerk



Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

CLERK OF COURT

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

for the

BEACH BLITZ CO., a Florida Corporation d/b/a  
OCEAN 9 LIQUOR and d/b/a as  
OCEAN 11 MARKET

V.

Defendant(s)

Civil Action No.

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_ .

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I returned the summons unexecuted because \_\_\_\_\_ ; or

☐ Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

for the

BEACH BLITZ CO., a Florida Corporation d/b/a  
OCEAN 9 LIQUOR and d/b/a as  
OCEAN 11 MARKET

V.

CITY OF MIAMI BEACH, FLORIDA et al.,

Defendant(s)

Civil Action No.

To: *(Defendant's name and address)* KRISTEN ROSEN GONZALEZ  
1700 Convention Center Drive  
4th Floor  
Miami Beach, FL 33139

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff’s attorney, whose name and address are:

PHILLIP M. HUDSON III  
SAUL EWING ARNSTEIN & LEHR LLP  
200 S. BISCAYNE BLVD., SUITE 3600  
MIAMI, FLORIDA 33131

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: \_\_\_\_\_

*Signature of Clerk or Deputy Clerk*

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

## Southern District of Florida

BEACH BLITZ CO., a Florida Corporation d/b/a  
OCEAN 9 LIQUOR and d/b/a as  
OCEAN 11 MARKET

Plaintiff(s)

OCEAN 9 LIQUOR and d/b/a as  
OCEAN 11 MARKET

## OCEAN 11 MARKET

Plaintiff(s)

V.

Civil Action No.

CITY OF MIAMI BEACH, FLORIDA et al.,

Defendant(s)

# SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* **MICHAEL GREICO**  
1700 Convention Center Drive  
4th Floor  
Miami Beach, FL 33139

1700 Convention Center Drive

## 4th Floor

Miami Beach, FL 33139

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

PHILLIP M. HUDSON III  
SAUL EWING ARNSTEIN & LEHR LLP  
200 S. BISCAYNE BLVD., SUITE 3600  
MIAMI, FLORIDA 33131

SAUL EWING ARNSTEIN & LEHR LLP

200 S. BISCAYNE BLVD., SUITE 3600

MIAMI, FLORIDA 33131

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: \_\_\_\_\_

Signature of Clerk or Deputy Clerk



Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

## Southern District of Florida

BEACH BLITZ CO., a Florida Corporation d/b/a  
OCEAN 9 LIQUOR and d/b/a as  
OCEAN 11 MARKET

BEACH BLITZ CO., a Florida Corporation d/b/a  
OCEAN 9 LIQUOR and d/b/a as  
OCEAN 11 MARKET

OCEAN 9 LIQUOR and d/b/a as

## OCEAN 11 MARKET

Plaintiff(s)

V.

CITY OF MIAMI BEACH, FLORIDA et al.,

Defendant(s)

Civil Action No.

## SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* CITY OF MIAMI BEACH, FLORIDA  
By serving Eve Boutsis, Chief Deputy City Attorney  
Office of the City Attorney  
1700 Convention Center Drive, 4th Floor  
Miami Beach, FL 33139

By serving Eve Boutsis, Chief Deputy City Attorney

Office of the City Attorney

1700 Convention Center Drive, 4th Floor

Miami Beach, FL 33139

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

PHILLIP M. HUDSON III  
SAUL EWING ARNSTEIN & LEHR LLP  
200 S. BISCAYNE BLVD., SUITE 3600  
MIAMI, FLORIDA 33131

SAUL EWING ARNSTEIN & LEHR LLP

200 S. BISCAYNE BLVD., SUITE 3600

MIAMI, FLORIDA 33131

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: \_\_\_\_\_

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_ .

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I returned the summons unexecuted because \_\_\_\_\_ ; or

☐ Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

CLERK OF COURT

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_ .

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I returned the summons unexecuted because \_\_\_\_\_ ; or

☐ Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

CLERK OF COURT

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_ .

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I returned the summons unexecuted because \_\_\_\_\_ ; or

☐ Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

Signature of Clerk or Deputy Clerk



Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_ .

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I returned the summons unexecuted because \_\_\_\_\_ ; or

☐ Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
Case No. 17-23958-CIV-UNGARO/O'SULLIVAN

BEACH BLITZ CO., a Florida  
corporation d/b/a OCEAN 9 LIQUOR, and  
d/b/a as OCEAN 11 MARKET,

Plaintiff,

v.

CITY OF MIAMI BEACH, FLORIDA,  
a municipal corporation of the State of Florida,  
PHILIP LEVINE, an individual, JIMMY  
MORALES, an individual, MICKEY  
STEINBERG, an individual, RICKY ARRIOLA,  
an individual, MICHAEL GREICO, an individual,  
JOY MALAKOFF, an individual, KRISTEN  
ROSEN GONZALEZ, an individual,  
JOHN ELIZABETH ALEMAN, an individual,  
RAUL J. AGUILA, an individual, and  
ALEKSANDR BOKSNER, an individual,

Defendants.

\_\_\_\_\_ /

**REPORT AND RECOMMENDATION**

THIS MATTER is before the Court on the Plaintiff's Emergency Motion for Preliminary Injunction with Incorporated Memorandum of Law (DE# 4, 11/3/17). This matter was referred to the undersigned by the Honorable Ursula Ungaro for a report and recommendation in accordance with 28 U.S.C. § 636(b). See Order of Reference (DE# 23, 11/14/17). Having carefully considered the applicable filings and the law and having held an evidentiary hearing on November 17, 2017, the undersigned respectfully recommends that the Plaintiff's Emergency Motion for Preliminary Injunction with Incorporated Memorandum of Law (DE# 4, 11/3/17) be **DENIED** for the reasons stated herein.



### **BACKGROUND**

On October 30, 2017, Beach Blitz Co. d/b/a Ocean 9 Liquor and d/b/a as Ocean 11 Market (hereinafter “plaintiff” or “Beach Blitz”) filed the instant action alleging the following causes of action against all defendants: Declaratory Judgment/injunctive Relief (Wrongful Closure) (Count I); violation of 42 U.S.C. §1983 (Count II); violation of the 14th Amendment – substantive due process and takings claim (Count III); violation of 42 U.S.C. §1983 (Retaliation for First Amendment Expression) (Count IV); declaratory judgment/injunctive relief (Section 102-377(e) of the Code) (Count V); declaratory judgment/injunctive relief (The Ordinances) (Count VI) and breach of Fla. Stat. § 562.45 (The Ordinances) (Count VII). See Complaint (DE# 1, 10/30/17).

On November 3, 2017, the plaintiff filed the instant motion. See Plaintiff’s Emergency Motion for Preliminary Injunction with Incorporated Memorandum of Law (DE# 4, 11/3/17) (hereinafter “Motion”). The defendants filed their response on November 13, 2017. See Defendants’ Response to Plaintiff’s Emergency Motion for Preliminary Injunction (DE# 22, 11/13/17) (hereinafter “Response”). The plaintiff filed its reply on November 15, 2017. See Reply in Support of Plaintiff’s Emergency Motion for Preliminary Injunction [ECF NO. 4] (DE# 25, 11/15/17).

On November 17, 2017, the undersigned held an evidentiary hearing on the instant motion. The plaintiff presented the testimony of Doron Doar, the principal of Beach Blitz. The defendants presented the testimony of Manuel Marquez, the Assistant Director of Finance for the City of Miami Beach and Hernan Cardino, the Director of Code Compliance for the City of Miami Beach. The undersigned admitted into evidence

the Plaintiff's Exhibits 1 through 17 and the Defendants' Exhibits 1 through 18. The undersigned permitted the parties to file supplemental briefs. See Supplemental Memorandum in Support of Plaintiff's Emergency Motion for Preliminary Injunction (DE# 36, 11/22/17) (hereinafter "Plaintiff's Supplemental Memorandum"); Defendants' Response to Plaintiff's Supplemental Memorandum in Support of Its Emergency Motion for Preliminary Injunction (DE# 38, 11/26/17) (hereinafter "Defendants' Supplemental Memorandum"). This matter is ripe for adjudication.

### **FACTUAL FINDINGS**

Ocean 9 Liquors (hereinafter "Ocean 9") is a liquor store operating in the City of Miami Beach (hereinafter "City"). On October 6, 2017, Ocean 9 was closed for failing to timely obtain a Business Tax Receipt.

#### **I. Business Tax Receipts ("BTRs")**

All for-profit businesses operating in the City are required to have a Business Tax Receipt (hereinafter "BTR"). A BTR is an occupational license. A business seeking to obtain a BTR must submit an application to the City along with other documentation such as a lease or warranty deed evidencing the location of the business, a state license if needed and articles of incorporation.

The Finance Department receives applications for BTRs involving liquor sales. Upon receipt of an application, the Finance Department electronically routes it to the City's other regulatory departments: the Building Department, the Fire Department, the Planning Department and the Code Compliance Department. These departments weigh in on whether to issue the BTR.

A BTR is valid for one fiscal year, from October 1 through September 30th of the following year. Pursuant to state law, all BTRs expire on September 30th of the fiscal year that they were issued. To renew a BTR, a business needs to pay the annual renewal fee. Every July, the City mails out a reminder notice as a courtesy to businesses. The City's records reflect that a renewal reminder notice was created for Ocean 9 on July 1, 2016. A business may pay the BTR renewal fee at City Hall, at the Customer Service Center, at the City's lockbox, at the City's satellite office in North Miami Beach or online. The online system does not prevent businesses from making an online payment for a BTR even if there are outstanding violations.

It is the City's practice to accept payments for BTRs.<sup>1</sup> In instances where a business has outstanding fines or debts owed to the City, the City will withhold the BTR until the business pays the money owed. Once the debt is paid, the City will release the BTR. If a business has an outstanding code violation and that business presents evidence to the City of a proceeding before the Special Master challenging that code violation, the City will release the BTR. If however, a violation has been issued and the time to appeal that violation has passed, the debt becomes due to the City and the City expects the business to pay the debt owed before releasing the BTR. If a Special Master has adjudicated a business guilty and imposed a fine, that business would need to pay the fine before obtaining a BTR. See Transcript (DE# 39 at 132).

If a fiscal year passes and a BTR is not renewed, that BTR will be placed in

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<sup>1</sup> The plaintiff's principal, Dorian Doar, testified that he attempted multiple times to submit payment for Ocean 9's BTR, but each time, the City refused to accept payment.

“closed status.” A closed BTR cannot be renewed. If a business misses the time period for renewing its BTR, that business will need to file a new application to obtain another BTR. If an application for a BTR is denied, the City provides an appeal process through the City Manager or a designee.

## **II. Ocean 9 Liquors (“Ocean 9”)**

Doran Doar is the owner of plaintiff Beach Blitz. Mr. Doar owns two businesses through Beach Blitz: Ocean 9, a liquor store, and Ocean 11 Market (hereinafter “Ocean 11”), a convenience store that sells beer and wine. Ocean 9 has been in business since 2012 and has been very profitable. Tourists make up approximately 85 percent of the customer base of the two stores.

Ocean 9 and Ocean 11 are located in the MXE District in the City of Miami Beach, Florida. Presently, there are only three liquor stores operating in the MXE District. The City has passed several ordinances reducing the hours of operation for liquor stores in the MXE District. The City has also passed an ordinance precluding the opening of any new liquor stores in the MXE District.

On September 30, 2016, the BTR for Ocean 9 expired when it was not renewed. On December 21, 2016, Ocean 9 was cited for selling alcohol outside the permitted hours. See Defendants’ Exhibit 10. The citation imposed a \$1,000 fine. The back of the citation contained a notice stating that fines could be appealed within twenty (20) days of receipt. Id.

On June 25, 2017, the City of Miami Beach Code Compliance Division issued two citations to Ocean 9. See Plaintiff’s Exhibit 5. One of the citations was for selling alcohol outside the permitted business hours. The other citation was for failing to timely

renew a BTR.<sup>2</sup> Each citation imposed a \$1,000 fine. The back of the citation contained a notice which stated that fines could be appealed within ten (10) days of receipt. At no time did the plaintiff appeal the three violations in the manner proscribed on the back of the citations.

Mr. Doar was overseas when the June 25, 2017 citations were issued. A store clerk advised Mr. Doar of the two citations and Mr. Doar returned to the United States on June 27, 2017. Prior to receiving notice of the citations, Mr. Doar did not realize the BTR for Ocean 9 was expired.

Ordinarily, Mr. Doar would receive courtesy renewal notices in July notifying him that the BTRs would expire on September 30th of that year. Mr. Doar testified that he never received the BTR renewal notice for Ocean 9 on or about July 2016 or anytime thereafter. Mr. Doar did receive a renewal notice for Ocean 11 and he renewed that BTR. Mr. Doar did not recall why he did not renew the Ocean 9 BTR at the same time he renewed the Ocean 11 BTR.

On June 27, 2017, Mr. Doar went to the City's Finance Department and tried to pay for the BTR. Mr. Doar did not recall the exact conversation he had with the employee in the Finance Department. However, he testified that the employee told him that he was not allowed to renew his BTR because he had violations. See Transcript (DE# 36 at 76). Mr. Doar understood, in general, that he needed to resolve the

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<sup>2</sup> The Notice of Violation corresponding to this citation contained the following instruction "Cease immediately until you obtain a Business Tax Receipt from the City of Miami Beach." Defendants' Exhibit 12. Ocean 9 did not cease operating at that time.

violations<sup>3</sup> in order to pay for his BTR. Id. at 77. The Finance Department employee provided Mr. Doar with an invoice totaling \$2,246.46, which included the BTR fee and late fee. See Defendants' Exhibit 15. If Mr. Doar had paid this amount plus the \$1,000 fine for the outstanding December 21, 2016 violation, he would have received the BTR.<sup>4</sup>

Mr. Doar did not believe the December 21, 2016 violation was merited. He wanted his "professional people" to deal with that violation and the other two outstanding violations.

Mr. Doar then went to the office of a woman named Rochelle Malik. Ms. Malik helps small business owners resolve problems with the City of Miami Beach and had worked with Mr. Doar in the past. Mr. Doar gave the June 25, 2017 citations (Plaintiff's Exhibit 5) to Ms. Malik and told her to appeal them. Mr. Doar also gave Ms. Malik the citation from December 2016 and told her to resolve that citation as well. Mr. Doar specifically instructed Ms. Malik to go to the City and try to get a BTR.

At the same time, Mr. Doar also hired an attorney, Guy Shir, to appeal the citations. Mr. Shir sent a check for \$100 to the Special Master's Office to appeal the citations, but that check was not accepted. It was Mr. Doar's understanding that without

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<sup>3</sup> At the evidentiary hearing, Mr. Doar referred to "violations" in the plural form. However, he also testified that he did not think the violations he needed to resolve to obtain his BTR included the June 25, 2017 violations because those violations were new.

<sup>4</sup> The City presented testimony that the June 25, 2017 violations would not have been considered due on June 27, 2017 because the time to appeal those violations had not run. Therefore, the only violation that needed to be paid on June 27, 2017 was the December 21, 2016 violation.



resolving his citations, he could not obtain a BTR.<sup>5</sup>

At the end of July 2017, Mr. Doar hired another attorney, Harold Rosen. Mr. Rosen was successful in obtaining an appeal. However, it was not an ordinary appeal process through the Special Master's office. It was initiated through the City Attorney's office and later, an agreed order was placed before the Special Master for a hearing and ratification.

On August 28, 2017, Mr. Rosen reached an agreement with the City to resolve all three citations for \$1,000. On the same day, Mr. Doar gave Mr. Rosen a check for \$1,000 to pay for the citations. Mr. Rosen told Mr. Doar that he gave the check to Aleksandr Boksner, the Deputy City Attorney, on August 28 or August 29, 2017. The check was deposited by the City on October 18, 2017.

The Special Master did not sign the Agreed Order reflecting the parties agreement to resolve all three citations until September 28, 2017. See Plaintiff's Exhibit 7. The City was shut down for a number of days in September due to Hurricane Irma. Under the terms of the Agreed Order, the plaintiff admitted to the violations being properly issued by the City and the plaintiff was assessed a fine of \$1,000. While the Agreed Order's \$1,000 fine resolved all outstanding debt due to the City, Ocean 9 would still need to pay an additional amount to obtain a BTR.

Mr. Rosen provided Mr. Doar with a copy of the Agreed Order on September 28, 2017. On September 28 or September 29, 2017, Mr. Doar went to the City's offices to

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<sup>5</sup> The City of Miami Beach presented testimony that had Mr. Doar paid for his BTR with the citations still outstanding, the clerk would have accepted payment for the BTR and held onto the BTR until the citations were resolved.

pay the violation and to obtain a BTR. A City employee told Mr. Doar that Mr. Doar would not receive a BTR because there were outstanding violations. Mr. Doar told the employee that the violations had been resolved. The employee responded that Mr. Doar had a violation and he could not renew the BTR. Ms. Malik later explained to Mr. Doar that it probably meant that the City's computer system had not yet been updated.

The following week, on Tuesday, October 3, 2017, Mr. Doar again went to the City's offices to obtain a BTR. He renewed the BTR for Ocean 11. See Plaintiff's Exhibits 9 and 10.<sup>6</sup> He also attempted to obtain a BTR for Ocean 9. The City refused to accept Mr. Doar's payment because Ocean 9 had open violations.

On October 6, 2017, two code enforcement officers and two Miami Beach police officers came to Ocean 9 and gave Mr. Doar a violation for operating without a BTR. They told Mr. Doar he had to shut down his store. Mr. Doar explained to them that he had an agreed order for the violations. They told Mr. Doar that if he did not shut down his business within five minutes, he would be arrested. Ocean 9 has been shut down since that time.

The Notice of Violation corresponding to the October 6, 2017 violation advised the plaintiff of its right to appeal within ten (10) days of receipt of the violation. See Defendants' Exhibit 14. The plaintiff never appealed the October 6, 2017 violation.

On or about Monday, October 9, 2017, someone from the City gave Mr. Doar a computer screenshot for the Ocean 9 account. See Plaintiff's Exhibit 17. The top of the

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<sup>6</sup> Mr. Doar could not renew the BTR for Ocean 11 on September 29, 2017 because Ocean 11 had an open violation. The violation was dismissed and on October 3, 2017, Mr. Doar renewed the BTR for Ocean 11.

document stated “Active Holds Exist On This Record,” signifying that the were outstanding monies owed to the City or outstanding violations. Id.; Transcript (DE# 36 at 123). The screenshot also contained the following note “As per City Attorney Office, close BTR for nonpayment. Entity cannot reapply for liquor sales and/or entertainment at 865 Collins Ave,” the location of Ocean 9. See Plaintiff’s Exhibit 17.

The plaintiff did not file an application for a new BTR. Had the plaintiff filed an application for a new BTR, it most likely would not have been granted because a City ordinance prohibits the new sale of liquor in the MXE District. Had the plaintiff applied for a new BTR and the application was denied, the plaintiff would have had the opportunity to appeal the decision, first through the City and then through the state court.

On October 11, 2017, the plaintiff paid for Ocean 9's BTR online. That payment is “in suspense” until the resolution of the instant action. Transcript (DE# 36 at 136). However, it cannot be applied to the fiscal year ending on September 30, 2017 because that “permit” has expired. Id.

Had the plaintiff made an online payment for a BTR, the BTR for Ocean 9 would have been issued once the plaintiff paid its outstanding violations, even if those violations were not paid until October 2017.

The plaintiff did not file a lawsuit in state court. The plaintiff filed the instant action on October 30, 2017.

### **STANDARD OF REVIEW**

A preliminary injunction may be granted only if the moving party establishes four elements: (1) a substantial likelihood of success on the merits; (2) an immediate and

irreparable injury absent injunctive relief; (3) a threatened harm to the plaintiff that outweighs any injury the injunction would cause to the nonmovant and (4) the injunction will not disserve the public interest. Carillon Imps. v. Frank Pesce Int'l Grp. Ltd., 112 F.3d 1125, 1126 (11th Cir. 1997) (citation omitted); see also N. Am. Med. Corp. v. Axiom Worldwide, 522 F.3d 1211, 1217 (11th Cir. 2008) (citing Johnson & Johnson Vision Care, Inc. v. 1-800 Contacts, Inc., 299 F.3d 1242, 1246-47 (11th Cir. 2002)). A preliminary injunction is “an extraordinary and drastic remedy not to be granted unless the movant clearly establishe[s] the ‘burden of persuasion’ as to the four [elements].” McDonald’s Corp. v. Robertson, 147 F.3d 1301, 1306 (11th Cir. 1998) (citing All Care Nursing Serv., Inc. v. Bethesda Mem’l Hosp., Inc., 887 F.2d 1535, 1537 (11th Cir. 1989)).

### **ANALYSIS**

The plaintiff seeks an Order:

(i) enjoining the enforcement of Ordinance No. 2016-4047 as applied to Plaintiff, (ii) enjoining the enforcement of Section 102-377(e) of the City of Miami Beach Code as applied to Plaintiff; (iii) preventing Defendants from enforcing Citation No. CC2017-03686 and (iv) ordering Defendants to issue Plaintiff a Business Tax Receipt for fiscal year 2017-2018 for its location at 865 Collins Avenue and to re-open said location without Defendants’ interference and (iv) granting such further relief deemed just and proper.

Reply (DE# 25 at 5, 11/15/17). As noted above, in order to obtain a preliminary injunction, the movant must demonstrate: “(1) [that there is] a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered if the relief is not granted; (3) that the threatened injury outweighs the harm the relief would inflict on the non-movant; and (4) that the entry of the relief would serve the public interest.” Schiavo

ex. rel Schindler v. Schiavo, 403 F.3d 1223, 1225-26 (11th Cir. 2005). The undersigned will address each of these elements below.

**I. Substantial Likelihood of Success on the Merits**

The first element, the substantial likelihood of success on the merits, requires an analysis of the plaintiff's ability to make a showing of each of the required elements of the claims asserted. See Seiko Kabushiki Kaisha v. Swiss Watch Int'l, Inc., 188 F. Supp. 2d 1350, 1353-55 (S.D. Fla. 2002).

At the November 16, 2017 status hearing, the plaintiff told the undersigned that the plaintiff is seeking a preliminary injunction pursuant to the following counts: declaratory judgment/injunctive relief (Wrongful Closure) (Count I); violation of 42 U.S.C. §1983 (Count II); violation of the 14th Amendment – substantive due process and takings claim (Count III); violation of 42 U.S.C. §1983 (Retaliation for First Amendment Expression) (Count IV) and declaratory judgment/injunctive relief (Section 102-377(e) of the Code) (Count V). For the reasons stated below, the undersigned finds that the plaintiff has not shown a substantial likelihood of success on the merits of the above claims.

**a. Procedural Due Process Claims (Counts I, II and V)**

“[I]n order to maintain a § 1983 action, a plaintiff must allege conduct depriving him of a right, privilege or immunity secured by the Constitution or laws of the United States . . . .” Marrero v. City of Hialeah, 625 F.2d 499, 512 (5th Cir. 1980).<sup>7</sup> The Due

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<sup>7</sup> The Eleventh Circuit in Bonner v. City of Prichard, 661 F. 2d 1206, 1207 (11th Cir. 1981) (en banc), adopted as precedent decisions of the former Fifth Circuit rendered prior to October 1, 1981.

Process Clause of the Fourteenth Amendment provides that no state shall “deprive any person of life, liberty, or property, without due process of law.” U.S. Const. Amend. XIV, § 1. “The Supreme Court’s interpretation of this clause explicates that the amendment provides two different kinds of constitutional protection: procedural due process and substantive due process.” McKinney v. Pate, 20 F.3d 1550, 1555 (11th Cir. 1994). “A violation of either of these kinds of protection may form the basis for a suit under section 1983.” Id.

Procedural due process claims are analyzed in two steps: “the first asks whether there exists a liberty or property interest which has been interfered with by the State. . . . ; the second examines whether the procedures attendant upon that deprivation were constitutionally sufficient.” Kentucky Dep’t of Corr. v. Thompson, 490 U.S. 454, 460 (1989) (citations omitted).

“Protected property interests derive from ‘existing rules or understandings that stem from an independent source such as state law—rules or understandings that . . . support claims of entitlement to those benefits.’” Casas v. Swacina, No. 12-21083-CIV, 2012 WL 12894275, at \*7 (S.D. Fla. Sept. 4, 2012), *aff’d sub nom. Casas v. USCIS Dist. Dir. Miami*, 518 F. App’x 669 (11th Cir. 2013) (quoting Bd. of Regents v. Roth, 408 U.S. 564, 577 (1972)). “[T]he range of interests protected by procedural due process is not infinite.” Roth, 408 U.S. at 570. For instance, the Supreme Court has rejected a “generalized right to be secure in one’s business interests” as a property right protected by the Due Process Clause. Coll. Sav. Bank v. Florida Prepaid Postsecondary Educ. Expense Bd., 527 U.S. 666, 672 (1999). The Supreme Court has explained that:

The assets of a business (including its good will) unquestionably are

property, and any state taking of those assets is unquestionably a “deprivation” under the Fourteenth Amendment. But business in the sense of the activity of doing business, or the activity of making a profit is not property in the ordinary sense . . . .

Id. at 675.

Here, the parties dispute whether the plaintiff has asserted a protected property interest. The defendants argue that “there is no property right to the renewal of an expired business license or permit.” Defendants’ Supplemental Memorandum (DE# 38 at 7). The plaintiff maintains that “[t]he loss of Plaintiff’s business (including, inter alia, all associated goodwill, customers and reputation) is the loss of a protected property interest.” See Plaintiff’s Supplemental Memorandum (DE# 36 at 4).

The plaintiff cites to Marrero v. City of Hialeah, 625 F.2d 499, 514 (5th Cir. 1980) for the proposition that “Florida law recognizes business reputation/good will as an interest protectable under the strictures of 42 U.S.C. §1983.” See Plaintiff’s Supplemental Memorandum (DE# 36 at 4). The court in Marrero noted that:

Although Florida law may not recognize personal reputation as a liberty or property interest, **it does recognize business reputation, at least to the extent it approximates goodwill, as a property interest. Florida has long extended its protection to the intangible interests of a business. Under Florida law, “[o]ne’s business, aside from the investment of money and tangible property therein, is in every sense of the word property, and, as such, if lawful, entitled to protection from all unlawful interference.”** NAACP v. Webb’s City, Inc., 152 So.2d 179, 182 (Fla. Dist. Ct. App.1963), vacated as moot, 376 U.S. 190, 84 S. Ct. 635, 11 L. Ed. 2d 602 (1964). **Hence, since one’s business is property under Florida law, it cannot be injured or destroyed by the state without due process of law.** See Paramount Enterprises, Inc. v. Mitchell, 104 Fla. 407, 140 So. 328 (1932). Thus, for example, in eminent domain proceedings, the loss of goodwill is compensable. See, e. g., Matthews v. Division of Administration, State of Florida, Department of Transportation, 324 So.2d 664 (Fla. Dist. Ct. App. 1975). In addition, the State of Florida provides means of redress for private interference with goodwill. For

instance, the purchaser of the goodwill of a business may recover compensatory damages from a seller who destroys the value of the goodwill. See, e.g., West Shore Restaurant Corp. v. Turk, 101 So.2d 123 (Fla. 1958); Yoo Hoo of Florida v. Catroneo, 175 So.2d 220 (Fla. Dist. Ct. App.), cert. denied, 179 So.2d 212 (Fla. 1965). Also a plaintiff may recover actual damages caused by a defendant's disparaging comments about the plaintiff's business which are of a kind calculated to prevent others from dealing with the plaintiff. See, e.g., Continental Development Corp. of Florida v. Duval Title & Abstract Co., 356 So.2d 925 (Fla. Dist. Ct. App. 1978); Kilgore Ace Hardware, Inc. v. Newsome, 352 So. 2d 918 (Fla. Dist. Ct. App. 1977).

**It thus appears that Florida does extend to appellants a “legal guarantee of present enjoyment” of goodwill, i.e., the value inhering in the favorable consideration of customers arising from a business’ reputation as being well established and well conducted. Since that interest is a protected property interest under Florida law, Florida may not deprive appellants of that interest without due process of law. Just as a state may not physically destroy a person's tangible property without complying with the requirements of the fourteenth amendment, so it may not destroy through the medium of speech a person's intangible property without the same compliance. Hence, to the extent the defamatory statements injured appellants’ goodwill without due process of law, appellants have stated a claim upon which relief can be granted.**

Marrero, 625 F.2d at 514-15 (footnotes omitted; emphasis added).

Assuming, without deciding, that the plaintiff’s business is a protected property interest under Florida law, the plaintiff has not shown a substantial likelihood of success on the merits of its procedural due process claims because the plaintiff has a post-deprivation remedy. “In order to state a claim under the fourteenth amendment, the complainant must allege facts showing not only that the State has deprived him of a liberty or property interest but also that the State has done so without due process of law.” Marrero, 625 F.2d at 519. “The United States Supreme Court has held that as long as some adequate post-deprivation remedy is available to a plaintiff, no procedural



due process violation has occurred.” Peterson v. Scott, No. 2:14-CV-420-FTM-38CM, 2015 WL 3935376, at \*3 (M.D. Fla. June 26, 2015); see also Cotton v. Jackson, 216 F.3d 1328, 1330-31 (11th Cir. 2000) (stating that “[o]nly when the state refuses to provide a process sufficient to remedy the procedural deprivation does a constitutional violation actionable under section 1983 arise.”). Here, the October 6, 2017 Notice of Violation which resulted in the plaintiff shutting down its store contained instructions on how to appeal the violation. The plaintiff could have pursued those appellate remedies.

As the Eleventh Circuit has noted, “the state may cure a procedural deprivation by providing a later procedural remedy; only when the state refuses to provide a process sufficient to remedy the procedural deprivation does a constitutional violation actionable under section 1983 arise.” McKinney, 20 F.3d at 1557; id. at 1560 (noting that “[w]hen a state procedure is inadequate, no procedural due process right has been violated unless and until the state fails to remedy that inadequacy.”). Assuming, arguendo, that had the plaintiff applied for a new BTR, the City would have denied the application, the plaintiff is not likely to succeed on the merits of a procedural due process claim because the plaintiff would still have an opportunity to appeal the City’s denial to the state court. See McKinney, 20 F.3d at 1563 (noting that “even if [the plaintiff] suffered a procedural deprivation at the hands of a biased Board at his termination hearing, he has not suffered a violation of his procedural due process rights unless and until the State of Florida refuses to make available a means to remedy the deprivation. As any bias on the part of the Board was not sanctioned by the state and was the product of the intentional acts of the commissioners . . . only the state’s refusal to provide a means to correct any error resulting from the bias would engender a

procedural due process violation.”).

The plaintiff has not shown that the process, which includes review by the state court, is inadequate. The plaintiff may appeal any decision by the City to the state court. The state court has the power to review and redress any deficiencies in the City’s decisions with respect to the issuance of a BTR. The plaintiff’s failure to avail itself of the protections afforded through the appeal process and through the state court system does not mean that the procedures available to the plaintiff were constitutionally inadequate. See Cotton, 216 F. 3d at 1331 (stating that “[i]f adequate state remedies were available but the plaintiff failed to take advantage of them, the plaintiff cannot rely on that failure to claim that the state deprived him of procedural due process.”).

The plaintiff’s argument that it is not required to exhaust administrative remedies, see Plaintiff’s Supplemental Memorandum (DE# 36 at 4-5), is inapposite. As the Eleventh Circuit explained in McKinney:

[the plaintiff] cannot state a valid constitutional claim . . . because Florida provides an adequate process to remedy [the plaintiff]’s alleged injury.  
**[The plaintiff]’s case fails, therefore, not for want of exhaustion;**  
indeed, exhaustion is irrelevant to our decision and finds no mention in the opinion. Rather, **[the plaintiff]’s case fails because he fails to state a procedural due process claim . . .** that would give rise to a section 1983 suit.

20 F.3d at 1564 n. 20 (emphasis added). Similarly here, whether the plaintiff must first exhaust administrative remedies or not, does not change the fact that a state procedure was available to the plaintiff to remedy the asserted loss of its business. “All that due process requires . . . is a post-deprivation ‘means of redress for property deprivations satisfy[ing] the requirements of procedural due process.’” McKinney, 20 F.3d at 1563 (quoting Parratt v. Taylor, 451 U.S. 527, 537 (1981) (alteration in original)).

For the foregoing reasons, the plaintiff has not shown a substantial likelihood of success on the merits of its procedural due process claims.

**b. Substantive Due Process Claim (Count III)**

The defendants maintain that the plaintiff cannot show a substantial likelihood of success on the merits of its substantive due process claim because the plaintiff cannot show the violation of a fundamental right. “A ‘fundamental’ right is one that is ‘explicitly or implicitly guaranteed by the Constitution.’” Morrissey v. United States, 871 F.3d 1260, 1268 (11th Cir. 2017) (quoting San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973)). Supreme Court jurisprudence provides that:

The substantive component of the Due Process Clause protects those rights that are “fundamental,” that is, rights that are “implicit in the concept of ordered liberty,” Palko v. Connecticut, 302 U.S. 319, 325, 58 S.Ct. 149, 152, 82 L.Ed. 288 (1937). The Supreme Court has deemed that most—but not all—of the rights enumerated in the Bill of Rights are fundamental; certain unenumerated rights (for instance, the penumbral right of privacy . . . also merit protection. It is in this framework that fundamental rights are incorporated against the states. A finding that a right merits substantive due process protection means that the right is protected “against ‘certain government actions regardless of the fairness of the procedures used to implement them.’” Collins v. City of Harker Heights, 503 U.S. 115, – , 112 S.Ct. 1061, 1068, 117 L.Ed.2d 261 (1992) (quoting Daniels v. Williams, 474 U.S. 327, 331, 106 S.Ct. 662, 665, 88 L.Ed.2d 662 (1986)).

McKinney, 20 F.3d at 1556 (footnotes omitted). “[S]ubstantive due process rights are created only by the Constitution.” Id. (quoting Regents of Univ. of Mich. v. Ewing, 474 U.S. 214, 229 (1985) (Powell, J., concurring)).

“The substantive due process doctrine prevents the government from engaging in conduct that is ‘arbitrary or conscience shocking.’” Koeppel v. Romano, 252 F. Supp. 3d 1310, 1321 (M.D. Fla. 2017) (quoting Doe v. Braddy, 673 F.3d 1313, 1318 (11th Cir.

2012) (per curiam)). The facts presented at the evidentiary hearing and the allegations contained in the Complaint do not rise to this standard. Accordingly, the undersigned finds that the plaintiff has not shown a substantial likelihood of success on the merits of its substantive due process claim.

**c. Retaliation/First Amendment Claim (Count IV)**

Finally, the plaintiff has not shown a substantial likelihood of success on the merits of its retaliation/First Amendment claim. The Complaint alleges that “on or about October 5, 2017, Plaintiff, through his counsel met with Deputy City Attorney Boksner to discuss Plaintiff[s] concerns regarding the ongoing changes to the hours in which a package store could sell alcohol.” Complaint (DE# 1 at ¶ 137). The plaintiff’s counsel communicated to Mr. Boksner that “Defendant[s] ongoing changes to the hours were severely impacting Plaintiff’s business income and that as a result Plaintiff would oppose any further reductions to the hours of operation.” Id. at ¶ 138.<sup>8</sup> The following day, Code Enforcement officers and City of Miami Beach police officers effectively shut down the plaintiff’s store. Id. at ¶ 140. These conclusory allegations are insufficient to support a section 1983 claim based on the alleged violation of the plaintiff’s First Amendment rights.

In sum, the plaintiff has not met its burden of showing a substantial likelihood of success on the merits. “If the movant is unable to establish a likelihood of success on the merits, a court need not consider the remaining conditions prerequisite to injunctive

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<sup>8</sup> The Complaint also asserts that “Deputy City Attorney Boksner essentially suggested that the City’s actions were intentional[ly] targeted toward Plaintiff.” Complaint (DE# 1 at ¶ 141). However, this conclusory allegation is not supported by any facts.

relief.” Johnson & Johnson Vision Care, Inc. v. 1-800 Contacts, Inc., 299 F.3d 1242, 1247 (11th Cir. 2002) (citing Pittman v. Cole, 267 F.3d 1269, 1292 (11th Cir. 2001)).

Nonetheless, for the sake of completeness, the undersigned will address the remaining elements for obtaining a preliminary injunction.

## **II. Immediate and Irreparable Injury Absent Injunctive Relief**

The plaintiff must also show an immediate and irreparable injury if injunctive relief is not granted. To establish irreparable injury, the plaintiff must show that it will suffer an injury that cannot be adequately compensated if, at some later point in time, it prevails on the merits. United States v. Jefferson Cnty., 720 F.2d 1511, 1520 (11th Cir. 1983). The plaintiff is the owner of a liquor store that has been effectively shut down since October 6, 2017 and has been unable to generate revenue since that date. The injury complained of by the plaintiff is an economic injury. “An injury is ‘irreparable’ only if it cannot be undone through monetary remedies.” Ne. Florida Chapter of Ass’n of Gen. Contractors of Am. v. City of Jacksonville, Fla., 896 F.2d 1283, 1285 (11th Cir. 1990). Because the plaintiff can recover monetary damages, the undersigned concludes that the plaintiff has not shown it will suffer irreparable harm if an injunction is not issued.

## **III. Balancing of Harms**

The plaintiff has shown that it will suffer economic injury should an injunction not issue. On the other hand, the issuance of an injunction would result in, at most, minimal harm to the defendants. The City has an interest in collecting taxes from businesses and ensuring that all businesses operating within the City are licensed businesses.

However, the plaintiff has been operating a licensed business since 2012. The City has also collected payment from the plaintiff for the BTR for Ocean 9 for the October 1, 2016 through September 30, 2017 fiscal year. That payment remains “in suspense” until this litigation is resolved. If an injunction is issued, the City would still be able to regulate the plaintiff’s business. The harm to the plaintiff therefore outweighs any harm to the defendants.

#### **IV. Public Interest**

The Court should also consider whether an injunction, if issued, will disserve the public interest. The plaintiff argues that “[a]n injunction which prevents the enforcement of patently unconstitutional Ordinances does not disserve the public interest. To the contrary, the public’s interest lies in the vindication of rights guaranteed under the Fourteenth Amendment.” Motion (DE# 4 at 15). The defendants maintain that “the public interest is not served by permitting unlicensed business owners to operate in the City.” Response (DE# 22 at 5). However, the issuance of the injunction sought by the plaintiff would only permit the operation of a single store, Ocean 9. The undisputed evidence is that had the plaintiff resolved its violations and paid the appropriate fee, the City would have renewed the BTR for Ocean 9. Therefore, the undersigned finds no basis to support the defendants’ assertion that “[i]t would create chaos in the City if unlicensed businesses could operate with impunity.” Id.

In the instant case, the undersigned finds that this factor is, at best, neutral.

#### **RECOMMENDATION**

Based on the foregoing, the undersigned respectfully **RECOMMENDS** that the Plaintiff’s Emergency Motion for Preliminary Injunction with Incorporated Memorandum

of Law (DE# 4, 11/3/17) be **DENIED**.

The parties shall have until **Friday, December 8, 2017**<sup>9</sup> to file written objections, if any, with the Honorable Ursula Ungaro, United States District Judge. Failure to file objections timely shall bar the parties from a de novo determination by the District Judge of an issue covered in the Report and shall bar the parties from attacking on appeal unobjected-to factual and legal conclusions contained in this Report except upon grounds of plain error if necessary in the interest of justice. See 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140, 149 (1985); Henley v. Johnson, 885 F.2d 790, 794 (1989); 11th Cir. R. 3-1 (2016).

RESPECTFULLY SUBMITTED in Chambers at Miami, Florida this **1<sup>st</sup>** day of December, 2017.

  
\_\_\_\_\_  
JOHN J. O'SULLIVAN  
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:  
United States District Judge Ungaro  
All Counsel of Record

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<sup>9</sup> The plaintiff has requested that the time period for filing objections be shortened because it has asserted a continuing injury.

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

Case No. 1:17-cv-23958-UU

BEACH BLITZ CO., a Florida corporation  
d/b/a OCEAN 9 LIQUOR, and  
d/b/a as OCEAN 11 MARKET,

Plaintiff,

v.

CITY OF MIAMI BEACH, FLORIDA, *et al.*,

Defendants.

---

**ORDER AFFIRMING MAGISTRATE JUDGE'S REPORT**

THIS CAUSE is before the Court upon Plaintiff's Emergency Motion for Preliminary Injunction (the "Emergency Motion"). D.E. 4. On December 1, 2017, the Honorable John O'Sullivan, United States Magistrate Judge, issued a Report and Recommendation (the "Report") (D.E. 43) recommending that Plaintiff's Emergency Motion be DENIED. Both parties filed objections to the Report (the "Objections"). D.E. 51 and 52.

THE COURT has reviewed the Emergency Motion, the Objections, the record herein, and is otherwise fully advised in the premises.

Upon *de novo* review, the Court agrees with Magistrate Judge O'Sullivan's Report and concurs in all of his findings. Plaintiff's objections (D.E. 51) to the Report are without merit, are identical to the arguments that were previously raised in the Emergency Motion, and are specifically and properly addressed in Magistrate O'Sullivan's analysis of the claims. Defendant, however, raises specific objections to a number of the Report's findings of fact. D.E. 52. The Court addresses each objection in turn.





First, Defendant objects to the Report's finding that Plaintiff's store, Ocean 9 Liquors ("Ocean 9"), was closed on October 6, 2007 for failing to timely obtain a Business Tax Receipt ("BTR"). D.E. 43 at \*3. Defendants assert that the evidence shows that Ocean 9 was closed because it continued to operate without a BTR for more than a year. D.E. 52 at \*2. According to Defendants, "[t]he distinction is important because, given the amount of time Beach Blitz was without a BTR license, under the City's procedures, Beach Blitz would be required to file a new application for a new BTR license". *Id.* at \*2-3. However, the testimony Defendants cite in support of their argument only confirms the Report's finding of fact. When asked to describe the violation Ocean 9 received on October 6, 2017, Defendants' witness Hernan Cardeno testified as follows: "This is a notice of violation, issued on October 6, 2017, for failing to obtain a business tax receipt as required by ordinance." D.E. 51-1, p. 35, L. 22-25. Moreover, the October 6, 2017 "Notice of Violation" issued to Plaintiff states that the violation was issued for "Failing to obtain Business Tax Receipt. 2<sup>nd</sup> Offense". D.E. 39-14. Accordingly, Defendants' first objection is overruled.

Defendants' second objection is to the Report's description and consideration of the testimony of Dorian Doar, Plaintiff Beach Blitz Co.'s principal. According to Defendants, Mr. Doar's testimony was self-serving and contrary to the record. Therefore, Defendants "object[] to them being considered findings of fact." D.E. 52 at \*3. A review of the hearing transcript shows that Mr. Doar's testimony was not controverted by the record. Mr. Doar testified regarding his experience dealing with an employee of the City of Miami Beach's Finance Department. Defendants did not call that employee to testify at the hearing to controvert Mr. Doar's testimony nor did they present sufficient evidence to show that Mr. Doar's account of his interaction with such employee was inaccurate. Defendants' argument that Mr. Doar's account is false is solely

based on what they would expect an employee of the Finance Department to say, not what such employee actually did say to Mr. Doar. As such, Defendants' claim that Mr. Doar's testimony is "contrary to the undisputed record" is a gross overstatement and unsupported by the record. Defendants' second objection is, therefore, overruled.

Defendants also object to the Report's finding that the earlier violation issued to Ocean 9 was for failing to timely renew a BTR. D.E. 43 at \*5-6. Defendants point out that the violation was for "operating a business without the requisite BTR license, not for 'failing to timely renew.'" D.E. 52 at \*4. A review of the actual citation shows that the violation was for "Failure to obtain a Business Tax Receipt." D.E. 39-12. Accordingly, the Court sustains Defendants' third objection in that the violation was for failure to obtain a BTR, rather than for failure to "renew" the BTR.

Defendants' fourth "objection" does not amount to an objection. Defendants again take issue with Mr. Doar's testimony, this time arguing that if Mr. Doar had given the Finance Department employee "correct" information, the employee would have responded to his BTR inquiry differently. Accordingly, there is no objection, just speculation. As such, Defendants' fourth objection is overruled.

Defendants' last objection to the Report's finding of fact is a simple clarification. The Report states that "[h]ad the plaintiff made an online payment for a BTR, the BTR for [Beach Blitz] would have been issued once the plaintiff paid its outstanding violations, even if those violations were not paid until October 2017." D.E. 43 at \*10. Defendants would like the record to reflect that had Plaintiff "paid for its 2016 fiscal year BTR at any point before September 30, 2017, Plaintiff's account would have remained open and the BTR would have been issued once Plaintiff paid its outstanding violations, even if those violations were paid October 1, 2017 or

thereafter”, in accordance with Manuel Marquez’s testimony. D.E. 51-1 at \*129, 99-100, 103-04. The Court sustains this objection for the purposes of clarity.

Finally, Defendants object to the Magistrate’s conclusions that: (i) the harm that plaintiff would suffer if an injunction is not issued outweighs any harm Defendants may suffer; and (ii) that denying the injunction would neither serve nor disserve the public interest. Defendants’ objections to these two conclusions are based on the same arguments that were previously raised in their Response to the Emergency Motion (D.E. 22), and are specifically and properly addressed in the Report. Consequently, Defendants’ objections to the Magistrate’s conclusions of law are overruled. Accordingly, it is hereby

ORDERED AND ADJUDGED that the Report of the Magistrate Judge, D.E. 43, is RATIFIED, ADOPTED, and AFFIRMED. It is further

ORDERED AND ADJUDGED that Plaintiff’s Objections, D.E. 51, are OVERRULED. It is further


ORDERED AND ADJUGDED that Defendant’s Objections, D.E. 52, are GRANTED IN PART and OVERRULED IN PART as follows:

- I. Defendants’ Third and Fifth objections to the Report’s findings of fact are SUSTAINED;
- II. Defendants’ First, Second, and Fourth objections to the Report’s findings of fact are OVERRULED; and
- III. Defendants’ objections to the Report’s conclusions of law are OVERRULED.

It is further

ORDERED AND ADJUGDED that Plaintiff’s Emergency Motion, D.E. 4, is DENIED.

DONE AND ORDERED in Chambers at Miami, Florida, this 22d day December, 2017.

  
\_\_\_\_\_  
URSULA UNGARO  
UNITED STATES DISTRICT JUDGE

cc:  
counsel of record via cm/ecf

## MIAMI BEACH

PLANNING DEPARTMENT, 1700 CONVENTION CENTER DRIVE, 2<sup>ND</sup> FLOOR  
MIAMI BEACH, FLORIDA 33139, WWW.MIAMIBEACHFL.GOV  
305-673-7550

### LAND USE BOARD HEARING APPLICATION

THE FOLLOWING APPLICATION IS SUBMITTED FOR REVIEW AND CONSIDERATION OF THE PROJECT DESCRIBED HEREIN BY THE LAND USE BOARD SELECTED BELOW. A SEPARATE APPLICATION MUST BE COMPLETED FOR EACH BOARD REVIEWING THE PROPOSED PROJECT.

- ☐ BOARD OF ADJUSTMENT
  - ☐ VARIANCE FROM A PROVISION OF THE LAND DEVELOPMENT REGULATIONS
  - ☒ APPEAL OF AN ADMINISTRATIVE DECISION
- ☐ DESIGN REVIEW BOARD
  - ☐ DESIGN REVIEW APPROVAL
  - ☐ VARIANCE RELATED TO PROJECT BEING CONSIDERED OR APPROVED BY DRB
- ☐ HISTORIC PRESERVATION BOARD
  - ☐ CERTIFICATE OF APPROPRIATENESS FOR DESIGN
  - ☐ CERTIFICATE OF APPROPRIATENESS TO DEMOLISH A STRUCTURE
  - ☐ HISTORIC DISTRICT / SITE DESIGNATION
  - ☐ VARIANCE RELATED TO PROJECT BEING CONSIDERED OR APPROVED BY HPB
- ☐ PLANNING BOARD
  - ☐ CONDITIONAL USE PERMIT
  - ☐ LOT SPLIT APPROVAL
  - ☒ AMENDMENT TO THE LAND DEVELOPMENT REGULATIONS OR ZONING MAP
  - ☐ AMENDMENT TO THE COMPREHENSIVE PLAN OR FUTURE LAND USE MAP
- ☐ FLOOD PLAIN MANAGEMENT BOARD
  - ☐ FLOOD PLAIN WAIVER
- ☐ OTHER \_\_\_\_\_

SUBJECT PROPERTY ADDRESS: 865 Collins Avenue, Unit D

LEGAL DESCRIPTION: PLEASE ATTACH LEGAL DESCRIPTION AS "EXHIBIT A"

FOLIO NUMBER (S) \_\_\_\_\_

2BA18-0062



Planning Department, 1700 Convention Center Drive 2<sup>nd</sup> Floor  
 Miami Beach, Florida 33139, www.miamibeachfl.gov  
 305.673.7550

### ADMINISTRATIVE APPEAL APPLICATION CHECK LIST

Property address: 865 Collins Avenue, Unit D

Date: 2-1-2018

File #: ZBA18-0062

**Incomplete, or submittals found to be insufficient will not be placed on a Board of Adjustment agenda.**

All fees shall be paid before an item can be scheduled for an agenda. It is the applicant's responsibility to make this payment, if an invoice is not generated by the CAP system, the applicant should contact staff prior to the submittal deadline to be invoiced and make payment.

| ITEM # | ONLINE SUBMITTAL (VIA CAP)<br>To be uploaded online (CAP) by the applicant before 5:00 pm on the submittal deadline.                                       |
|--------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1      | Application with all signed and notarized applicable affidavits and disclosures.                                                                           |
| 2      | Signed and dated Letter of Intent. <b>Letter must indicate the decision that is being appealed</b> and other information as required by Section 118-9 (b). |
| 3      | Full legal description of the property if not Included in survey (for lengthy legal descriptions, attach as a separate document - label clearly).          |

| ITEM # | PHYSICAL SUBMITTAL<br>To be hand delivered to the Planning Department before 5:00 pm on the submittal deadline.                                      |
|--------|------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1      | Original application with all signed and notarized applicable affidavits and disclosures.                                                            |
| 2      | Originals of all items provided in the online submittal.                                                                                             |
| 3      | One (1) signed, stapled and collated set of all provided documents.                                                                                  |
| 4      | 14 collated copies of all provided documents                                                                                                         |
| 5      | One (1) CD/DVD with electronic copy of entire package (plans, application, Letter of Intent, etc.) see CD/DVD formatting attached, for instructions. |

It is the responsibility of the applicant to confirm that documents submitted via CAP, Paper Submittal sets (14 copies), and electronic version on CD are consistent with each other and legible.

All documents required for Board applications must be submitted in an electronic format (PDF) via CD in the manner prescribed herein. The CD is considered the "Formal Submission", and must include the electronic version of all hard copy documents associated with the application. A new Updated CD will be required if any modifications are made before or after hearing. Failure to comply with the aforementioned may result in a rehearing before the applicable board at the applicant's expense.

Applicant's or designee's signature

2-15-2018

Date

1. APPLICANT: ☐ OWNER OF THE SUBJECT PROPERTY ☒ TENANT ☐ ARCHITECT ☐ LANDSCAPE ARCHITECT  
☐ ENGINEER ☐ CONTRACTOR ☐ OTHER \_\_\_\_\_

NAME Doron Dcar  
 ADDRESS 13441 N.W. 3 CT, Plantation, FL 33325  
 BUSINESS PHONE \_\_\_\_\_ CELL PHONE 954.709.2555  
 E-MAIL ADDRESS ddcar@bellsouth.net

OWNER IF DIFFERENT THAN APPLICANT:

NAME PMJ Holding Company, LLC  
 ADDRESS 2025 Tyler Street  
 BUSINESS PHONE \_\_\_\_\_ CELL PHONE 954-658-2151  
 E-MAIL ADDRESS philtsaada@gmail.com

2. AUTHORIZED REPRESENTATIVE(S):

☒ ATTORNEY:

NAME Phillip M. Hudson, Esq.  
 ADDRESS 200 S. Biscayne Blvd #3600, Miami, FL 33131  
 BUSINESS PHONE 305-428-4500 CELL PHONE \_\_\_\_\_  
 E-MAIL ADDRESS phil.hudson@saul.com

☐ AGENT: ATTORNEY

NAME Miguel Diaz de la Portilla, Esq.  
 ADDRESS 200 S. Biscayne Blvd #3600, Miami, FL 33131  
 BUSINESS PHONE 305-428-4500 CELL PHONE \_\_\_\_\_  
 E-MAIL ADDRESS md.portilla@saul.com

☐ CONTACT:

NAME \_\_\_\_\_  
 ADDRESS \_\_\_\_\_  
 BUSINESS PHONE \_\_\_\_\_ CELL PHONE \_\_\_\_\_  
 E-MAIL ADDRESS \_\_\_\_\_

3. PARTY RESPONSIBLE FOR PROJECT DESIGN: N/A

☐ ARCHITECT ☐ LANDSCAPE ARCHITECT ☐ ENGINEER ☐ CONTRACTOR ☐ OTHER: \_\_\_\_\_

NAME \_\_\_\_\_  
 ADDRESS \_\_\_\_\_  
 BUSINESS PHONE \_\_\_\_\_ CELL PHONE \_\_\_\_\_  
 E-MAIL ADDRESS \_\_\_\_\_

FILE NO. ZBA18-00602

## 4. SUMMARY OF APPLICATION – PROVIDE BRIEF SCOPE OF PROJECT:

The applicant is appealing the City's denial of a BTR for its package liquor store at 865 Collins Avenue, Miami Beach, Florida Unit D

- 4A. IS THERE AN EXISTING BUILDING(S) ON THE SITE ☒ YES ☐ NO
- 4B. DOES THE PROJECT INCLUDE INTERIOR OR EXTERIOR DEMOLITION ☐ YES ☒ NO
- 4C. PROVIDE THE TOTAL FLOOR AREA OF THE NEW BUILDING (IF APPLICABLE) 1760 SQ. FT.
- 4D. PROVIDE THE TOTAL GROSS FLOOR AREA OF THE NEW BUILDING (INCLUDING REQUIRED PARKING AND ALL USEABLE FLOOR SPACE). 19,000 sq ft SQ. FT.

## 5. APPLICATION FEE (TO BE COMPLETED BY PLANNING STAFF) \$

- A SEPARATE DISCLOSURE OF INTEREST FORM MUST BE SUBMITTED WITH THIS APPLICATION IF THE APPLICANT OR OWNER IS A CORPORATION, PARTNERSHIP, LIMITED PARTNERSHIP OR TRUSTEE.
- ALL APPLICABLE AFFIDAVITS MUST BE COMPLETED AND THE PROPERTY OWNER MUST COMPLETE AND SIGN THE "POWER OF ATTORNEY" PORTION OF THE AFFIDAVIT IF THEY WILL NOT BE PRESENT AT THE HEARING, OR IF OTHER PERSONS ARE SPEAKING ON THEIR BEHALF.
- TO REQUEST THIS MATERIAL IN ALTERNATE FORMAT, SIGN LANGUAGE INTERPRETER (FIVE-DAY NOTICE IS REQUIRED), INFORMATION ON ACCESS FOR PERSONS WITH DISABILITIES, AND ACCOMMODATION TO REVIEW ANY DOCUMENT OR PARTICIPATE IN ANY CITY-SPONSORED PROCEEDINGS, CALL 305.604.2489 AND SELECT (1) FOR ENGLISH OR (2) FOR SPANISH, THEN OPTION 6; TTY USERS MAY CALL VIA 711 (FLORIDA RELAY SERVICE).

## PLEASE READ THE FOLLOWING AND ACKNOWLEDGE BELOW:

- APPLICATIONS FOR ANY BOARD HEARING(S) WILL NOT BE ACCEPTED WITHOUT PAYMENT OF THE REQUIRED FEE. ALL CHECKS ARE TO BE MADE PAYABLE TO THE "CITY OF MIAMI BEACH".
- PUBLIC RECORDS NOTICE – ALL DOCUMENTATION, SUBMITTED FOR THIS APPLICATION IS CONSIDERED A PUBLIC RECORD SUBJECT TO CHAPTER 119 OF THE FLORIDA STATUTES AND SHALL BE DISCLOSED UPON REQUEST.
- IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 2-482 OF THE CODE OF THE CITY OF MIAMI BEACH, ANY INDIVIDUAL OR GROUP THAT WILL BE COMPENSATED TO SPEAK OR REFRAIN FROM SPEAKING IN FAVOR OR AGAINST A PROJECT BEING PRESENTED BEFORE ANY OF THE CITY'S LAND USE BOARDS, SHALL FULLY DISCLOSE, PRIOR TO THE PUBLIC HEARING, THAT THEY HAVE BEEN, OR WILL BE COMPENSATED. SUCH PARTIES INCLUDE: ARCHITECTS, LANDSCAPE ARCHITECTS, ENGINEERS, CONTRACTORS, OR OTHER PERSONS RESPONSIBLE FOR PROJECT DESIGN, AS WELL AS AUTHORIZED REPRESENTATIVES ATTORNEYS OR AGENTS AND CONTACT PERSONS WHO ARE REPRESENTING OR APPEARING ON BEHALF OF A THIRD PARTY; SUCH INDIVIDUALS MUST REGISTER WITH THE CITY CLERK PRIOR TO THE HEARING.

FILE NO. 2BA18-0062



- IN ACCORDANCE WITH SEC.118-31. - DISCLOSURE REQUIREMENT. EACH PERSON OR ENTITY REQUESTING APPROVAL, RELIEF OR OTHER ACTION FROM THE PLANNING BOARD, DESIGN REVIEW BOARD, HISTORIC PRESERVATION BOARD (INCLUDING THE JOINT DESIGN REVIEW BOARD/HISTORIC PRESERVATION BOARD), OR THE BOARD OF ADJUSTMENT SHALL DISCLOSE, AT THE COMMENCEMENT (OR CONTINUANCE) OF THE PUBLIC HEARING(S), ANY CONSIDERATION PROVIDED OR COMMITTED, DIRECTLY OR ON ITS BEHALF, FOR AN AGREEMENT TO SUPPORT OR WITHHOLD OBJECTION TO THE REQUESTED APPROVAL, RELIEF OR ACTION, EXCLUDING FROM THIS REQUIREMENT CONSIDERATION FOR LEGAL OR DESIGN PROFESSIONAL SERVICES RENDERED OR TO BE RENDERED. THE DISCLOSURE SHALL: (i) BE IN WRITING, (ii) INDICATE TO WHOM THE CONSIDERATION HAS BEEN PROVIDED OR COMMITTED, (iii) GENERALLY DESCRIBE THE NATURE OF THE CONSIDERATION, AND (iv) BE READ INTO THE RECORD BY THE REQUESTING PERSON OR ENTITY PRIOR TO SUBMISSION TO THE SECRETARY/CLERK OF THE RESPECTIVE BOARD. UPON DETERMINATION BY THE APPLICABLE BOARD THAT THE FOREGOING DISCLOSURE REQUIREMENT WAS NOT TIMELY SATISFIED BY THE PERSON OR ENTITY REQUESTING APPROVAL, RELIEF OR OTHER ACTION AS PROVIDED ABOVE, THEN (i) THE APPLICATION OR ORDER, AS APPLICABLE, SHALL IMMEDIATELY BE DEEMED NULL AND VOID WITHOUT FURTHER FORCE OR EFFECT, AND (ii) NO APPLICATION FROM SAID PERSON OR ENTITY FOR THE SUBJECT PROPERTY SHALL BE REVIEWED OR CONSIDERED BY THE APPLICABLE BOARD(S) UNTIL EXPIRATION OF A PERIOD OF ONE YEAR AFTER THE NULLIFICATION OF THE APPLICATION OR ORDER. IT SHALL BE UNLAWFUL TO EMPLOY ANY DEVICE, SCHEME OR ARTIFICE TO CIRCUMVENT THE DISCLOSURE REQUIREMENTS OF THIS SECTION AND SUCH CIRCUMVENTION SHALL BE DEEMED A VIOLATION OF THE DISCLOSURE REQUIREMENTS OF THIS SECTION.
- WHEN THE APPLICABLE BOARD REACHES A DECISION A FINAL ORDER WILL BE ISSUED STATING THE BOARD'S DECISION AND ANY CONDITIONS IMPOSED THEREIN. THE FINAL ORDER WILL BE RECORDED WITH THE MIAMI-DADE CLERK OF COURTS. THE ORIGINAL BOARD ORDER SHALL REMAIN ON FILE WITH THE CITY OF MIAMI BEACH PLANNING DEPARTMENT. UNDER NO CIRCUMSTANCES WILL A BUILDING PERMIT BE ISSUED BY THE CITY OF MIAMI BEACH WITHOUT A COPY OF THE RECORDED FINAL ORDER BEING INCLUDED AND MADE A PART OF THE PLANS SUBMITTED FOR A BUILDING PERMIT.

THE AFOREMENTIONED IS ACKNOWLEDGED BY: ☒ OWNER OF THE SUBJECT PROPERTY  
☐ AUTHORIZED REPRESENTATIVE

SIGNATURE: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

FILE NO. ZBA18-0062

OWNER AFFIDAVIT FOR INDIVIDUAL OWNERSTATE OF  
COUNTY OF

I, Philip Saada, being first duly sworn, depose and certify as follows: (1) I am the owner of the property that is the subject of this application. (2) This application and all information submitted in support of this application, including sketches, data, and other supplementary materials, are true and correct to the best of my knowledge and belief. (3) I acknowledge and agree that, before this application may be publicly noticed and heard by a land development board, the application must be complete and all information submitted in support thereof must be accurate. (4) I also hereby authorize the City of Miami Beach to enter my property for the sole purpose of posting a Notice of Public Hearing on my property, as required by law. (5) I am responsible for removing this notice after the date of the hearing.

SIGNATURE

Sworn to and subscribed before me this 19<sup>th</sup> day of February, 2018. The foregoing instrument was acknowledged before me by \_\_\_\_\_, who has produced \_\_\_\_\_ as identification and/or is personally known to me and who did/did not take an oath.

NOTARY SEAL OR STAMP



My Commission Expires:

NOTARY PUBLIC

PRINT NAME

ALTERNATE OWNER AFFIDAVIT FOR  
CORPORATION, PARTNERSHIP, OR LIMITED LIABILITY COMPANY  
(Circle one)

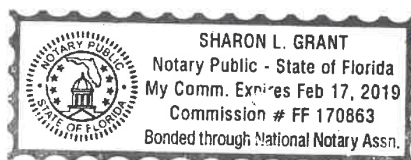
STATE OF  
COUNTY OF

I, Phillip SAADA, being duly sworn, depose and certify as follows: (1) I am the MGRM (print title) of PMJ Holding Company LLC (print name of corporate entity). (2) I am authorized to file this application on behalf of such entity. (3) This application and all information submitted in support of this application, including sketches, data, and other supplementary materials, are true and correct to the best of my knowledge and belief. (4) The corporate entity named herein is the owner or tenant of the property that is the subject of this application. (5) I acknowledge and agree that, before this application may be publicly noticed and heard by a land development board, the application must be complete and all information submitted in support thereof must be accurate. (6) I also hereby authorize the City of Miami Beach to enter the subject property for the sole purpose of posting a Notice of Public Hearing on the property, as required by law. (7) I am responsible for removing this notice after the date of the hearing.

SIGNATURE

Sworn to and subscribed before me this 19<sup>th</sup> day of February, 2018. The foregoing instrument was acknowledged before me by \_\_\_\_\_, on behalf of such entity, who has produced \_\_\_\_\_ as identification and/or is personally known to me and who did/did not take an oath.

NOTARY SEAL OR STAMP:



My Commission Expires:

NOTARY PUBLIC

PRINT NAME

FILE NO. ZBA18-0062

## POWER OF ATTORNEY AFFIDAVIT

STATE OF  
COUNTY OF

I, Phillip SAADA, being duly sworn and deposed, certify as follows: (1) I am the owner or representative of the owner of the real property that is the subject of this application. (2) I hereby authorize Philip M. Hudson II to be my representative before the Adjunct Board. (3) I also hereby authorize the City of Miami Beach to enter the subject property for the sole purpose of posting a Notice of Public Hearing on the property, as required by law. (4) I am responsible for removing this notice after the date of the hearing.

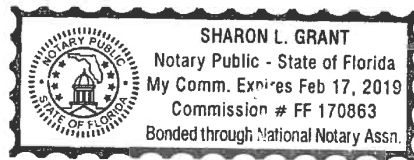
Phil SAADA  
PRINT NAME (and Title, if applicable)

[Signature]  
SIGNATURE

Sworn to and subscribed before me this 19<sup>th</sup> day of February, 2018. The foregoing instrument was acknowledged before me by \_\_\_\_\_ of \_\_\_\_\_ who has produced as identification and/or is personally known to me and who did/did not take an oath.

## NOTARY SEAL OR STAMP

My Commission Expires



[Signature]

NOTARY PUBLIC

SHARON L. GRANT

PRINT NAME

N/A  
CONTRACT FOR PURCHASE

If the applicant is not the owner of the property, but the applicant is a party to a contract to purchase the property, whether or not such contract is contingent on this application, the applicant shall list the names of the contract purchasers below, including any and all principal officers, stockholders, beneficiaries, or partners. If any of the contract purchasers are corporations, partnerships, limited liability companies, trusts, or other corporate entities, the applicant shall further disclose the identity of the individual(s) (natural persons) having the ultimate ownership interest in the entity. If any contingency clause or contract terms involve additional individuals, corporations, partnerships, limited liability companies, trusts, or other corporate entities, list all individuals and/or corporate entities.

[Signature]  
NAME

2-29-18  
DATE OF CONTRACT

NAME, ADDRESS, AND OFFICE

% OF STOCK

In the event of any changes of ownership or changes in contracts for purchase, subsequent to the date that this application is filed, but prior to the date of a final public hearing, the applicant shall file a supplemental disclosure of interest.

FILE NO. ZBA18-0062

CITY OF MIAMI BEACH  
DEVELOPMENT REVIEW BOARD APPLICATION

DISCLOSURE OF INTEREST

**1. CORPORATION, PARTNERSHIP, OR LIMITED LIABILITY COMPANY**

If the property that is the subject of the application is owned or leased by a corporation, partnership, or limited liability company, list ALL of the owners, shareholders, partners, managers, and/or members, and the percentage of ownership held by each. If the owners consist of one or more corporations, partnerships, trusts, partnerships, or other corporate entities, the applicant shall further disclose the identity of the individual(s) (natural persons) having the ultimate ownership interest in the entity.\*

PMT Holding Company, LLC

NAME OF CORPORATE ENTITY

NAME AND ADDRESS

% OF OWNERSHIP

|                                                     |               |
|-----------------------------------------------------|---------------|
| Philip SAADA 2025 TYLER STREET; Hollywood, FL 33020 | 33.33333333 % |
| JAMES SAADA 2025 TYLER ST; Hollywood, FL 33020      | 33.33333333 % |
| MARK SAADA 2025 TYLER ST; Hollywood, FL 33020       | 33.33333333 % |
| _____                                               | _____         |
| _____                                               | _____         |
| _____                                               | _____         |
| _____                                               | _____         |

NAME OF CORPORATE ENTITY

NAME AND ADDRESS

% OF OWNERSHIP

|       |       |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

IF THERE ARE ADDITIONAL CORPORATE OWNERS, LIST ALL SUCH OWNERS, INCLUDING CORPORATE NAMES AND THE NAME, ADDRESS, AND PERCENTAGE OF OWNERSHIP OF EACH ADDITIONAL OWNER, ON A SEPARATE PAGE.

NOTE: Notarized signature required on page 9

FILE NO. ZBA18-0062

CITY OF MIAMI BEACH  
DEVELOPMENT REVIEW BOARD APPLICATION  
DISCLOSURE OF INTEREST

**2. TRUSTEE**

If the property that is the subject of this application is owned or leased by a trust, list any and all trustees and beneficiaries of the trust, and the percentage of interest held by each. If the owners consist of one or more corporations, partnerships, trusts, partnerships, or other corporate entities, the applicant shall further disclose the identity of the individual(s) (natural persons) having the ultimate ownership interest in the entity.\*

TRUST NAME

NAME AND ADDRESS

% INTEREST

*NOTE: Notarized signature required on page 9*

FILE NO. 2BA18-0062



**3. COMPENSATED LOBBYIST:**

Pursuant to Section 2-482 of the Miami Beach City Code, all lobbyists shall, before engaging in any lobbying activities, register with the City Clerk. Please list below any and all persons or entities retained by the applicant to lobby City staff or any of the City's land development boards in support of this application.

|    | NAME                      | ADDRESS              | PHONE #      |
|----|---------------------------|----------------------|--------------|
| a. | Miguel Diaz de la Parilla | 200 S. Biscayne Blvd | 305-428-4543 |
| b. |                           | Suite 3400           |              |
| c. |                           |                      |              |

Additional names can be placed on a separate page attached to this form.

\*Disclosure shall not be required of any entity, the equity interests in which are regularly traded on an established securities market in the United States or other country, or of any entity, the ownership interests of which are held in a limited partnership or other entity, consisting of more than 5,000 separate interests, where no one person or entity holds more than a total of 5% of the ownership interests in the entity.

APPLICANT HEREBY ACKNOWLEDGES AND AGREES THAT (1) ANY APPROVAL GRANTED BY A LAND DEVELOPMENT BOARD OF THE CITY SHALL BE SUBJECT TO ANY AND ALL CONDITIONS IMPOSED BY SUCH BOARD AND BY ANY OTHER BOARD HAVING JURISDICTION, AND (2) APPLICANT'S PROJECT SHALL COMPLY WITH THE CODE OF THE CITY OF MIAMI BEACH AND ALL OTHER APPLICABLE CITY, STATE, AND FEDERAL LAWS.

**APPLICANT AFFIDAVIT**

STATE OF  
COUNTY OF

I, Philip SAADA, being first duly sworn, depose and certify as follows: (1) I am the applicant, or the representative of the applicant. (2) This application and all information submitted in support of this application, including disclosures, sketches, data, and other supplementary materials, are true and correct to the best of my knowledge and belief.

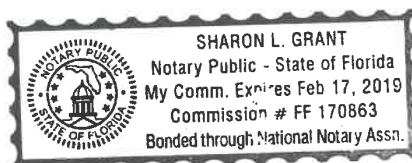
  
SIGNATURE

Sworn to and subscribed before me this 19th day of February, 2018. The foregoing instrument was acknowledged before me by, who has produced as identification and/or is personally known to me and who did/did not take an oath.

NOTARY SEAL OR STAMP

  
NOTARY PUBLIC

My Commission Expires:



Sharon L. Grant  
PRINT NAME

FILE NO. 2BA18-0062



# OFFICE OF THE PROPERTY APPRAISER

Generated On : 2/20/2018

**Property Information**

Folio: 02-4203-258-0040

Property Address: 865 COLLINS AVE D

**Full Legal Description**

THE SKYLARK CONDO

UNIT D

UNDIV 3.167%

INT IN COMMON ELEMENTS

OFF REC 20580-1711

**Sales Information**

| Previous Sale | Price | OR Book-Page | Qualification Description                                           |
|---------------|-------|--------------|---------------------------------------------------------------------|
| 12/01/2006    | \$100 | 25257-2411   | Sales which are disqualified as a result of examination of the deed |

The Office of the Property Appraiser is continually editing and updating the tax roll. This website may not reflect the most current information on record. The Property Appraiser and Miami-Dade County assumes no liability, see full disclaimer and User Agreement at <http://www.miamidade.gov/info/disclaimer.asp>

Version:



ZBA18-0062

**CITY OF MIAMI BEACH  
BOARD OF ADJUSTMENT**

IN RE: Appeal of Administrative Decision to Board of Adjustment  
APPLICANT: Beach Blitz Co., a Florida corporation d/b/a Ocean 9 Liquor  
PROPERTY: 865 Collins Avenue, Unit D, Miami Beach, Florida 33139  
FILE NO. ZBA18-0062  
HEARING DATE: May 4, 2018 Board of Adjustment Meeting

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**APPENDIX TO  
THE CITY'S RESPONSE IN OPPOSITION TO BEACH BLITZ'S  
APPEAL FROM DENIAL OF BTR FOR 865 COLLINS AVENUE, UNIT D**

Richard J. Ovelmen  
Enrique D. Arana  
Todd M. Fuller  
Scott E. Byers  
CARLTON FIELDS JORDEN BURT, P.A.  
Miami Tower, Suite 4200  
100 S.E. Second Street  
Miami, Florida 33131  
Telephone: (305) 530-0050  
Facsimile: (305) 530-0055

*Attorneys for City of Miami Beach and  
City of Miami Beach Planning Department*

March 21, 2018



**Appendix to  
The City's Response in Opposition to Beach Blitz's  
Appeal from Denial of BTR for 865 Collins Avenue, Unit D**

| <b>Exhibit</b> | <b>Document</b>                                                                                          |
|----------------|----------------------------------------------------------------------------------------------------------|
| A              | January 19, 2018 Planning Review and BTR screenshots; email from Carlos Markovich dated January 23, 2018 |
| B              | Miami Beach Code Sections                                                                                |
| C              | Affidavit of Manuel Marquez                                                                              |
| D              | Testimony of Manuel Marquez                                                                              |
| E              | Magistrate's Report and Recommendation                                                                   |
| F              | Commission Memorandum and Ordinance dated October 19, 2016                                               |
| G              | Testimony of Hernan Cardeno                                                                              |
| H              | Affidavit of Hernan Cardeno                                                                              |
| I              | Ordinance No. 2016-4058                                                                                  |
| J              | Invoice dated June 27, 2017                                                                              |
| K              | Testimony of Doron Doar                                                                                  |
| L              | Email to Special Master dated September 1, 2017                                                          |
| M              | BTR Application dated December 27, 2017                                                                  |
| N              | Letter of Intent dated February 16, 2018                                                                 |

# **EXHIBIT A**

## Planning Review

**Workflow Details**

Name: BTR/Planning Queue Description: BTR/Planning Queue

Status: Fail Action Priority Order: 0 Sort Order: 0

Received Date: 01/19/2018 Due Date: 01/19/2018 Complete Date: 01/19/2018

☒ Needs Resubmit ☒ Completed ☒ Auto Receive

Item Review Note

Drag a column header and drop it here to group by that column

| Assigned User    | Status | Assigned Date | Due Date   | Completed Date | Priority | Not Required             | Comments                      |
|------------------|--------|---------------|------------|----------------|----------|--------------------------|-------------------------------|
| Williams, Stever | Fail   | 01/19/2018    | 02/09/2018 | 01/19/2018     | 0        | <input type="checkbox"/> | After further review Sect ... |

**EnerGov**

After further review Section 142-544 of the City's Land development Regulations applies to the proposed use.

Sec. 142-544. - Prohibited uses.

The prohibited uses in the MXE mixed use entertainment district are package stores and package sales of alcoholic beverages by any retail store or alcoholic beverage establishment. Additionally, entertainment uses shall be prohibited in package stores.

OK Cancel

Last changed by Service, EnerGov on Friday, January 19, 2018 5:17 PM

## Business Tax Receipt

BTR003568-12-2017

Business Name: BEACH BLITZ CO. D/B/A OCEAN 9 LIQUOR DBA: OCEAN 9 LIQUOR

License Type: Business License District: CCC Applied Date: 12/27/2017

Classification: BTR Issued By: Issued Date: Enter date

Status: Denied Account Number: Expiration Date: Enter date

Description: Retail Alcoholic Beverage License

License Year: 2018

Parcels (30)

Drag a column header and drop it here to group by that column

| Text     |
|----------|
| custom   |
| Planning |
| After fu |

**EnerGov**

After further review Section 142-544 of the City's Land development Regulations applies to the proposed use.

Sec. 142-544. - Prohibited uses.

The prohibited uses in the MXE mixed use entertainment district are package stores and package sales of alcoholic beverages by any retail store or alcoholic beverage establishment. Additionally, entertainment uses shall be prohibited in package stores.

OK Cancel

12:30 PM  
01:23 PM  
17:33 PM

Last changed by Castor, Jeannie on Friday, January 19, 2018 5:18 PM

## Markovich, Carlos

---

**From:** Markovich, Carlos  
**Sent:** Tuesday, January 23, 2018 9:49 AM  
**To:** 'Doron'  
**Subject:** RE: Urgent!Reference #BTR003568-12-2017

Hi Mr. Doar,

Thank you for reaching out to our office. Per Section 142-544 (link below) the use that you have applied for is prohibited within your zoning district.

[https://library.municode.com/fl/miami\\_beach/codes/code\\_of\\_ordinances?nodeId=SPBLADERE\\_CH142ZODIRE\\_ARTIIDIR\\_E\\_DIV13MXMIUSENDI\\_S142-544PRUS](https://library.municode.com/fl/miami_beach/codes/code_of_ordinances?nodeId=SPBLADERE_CH142ZODIRE_ARTIIDIR_E_DIV13MXMIUSENDI_S142-544PRUS)

I hope that helps clarify any confusion you may have.

Best,

MIAMIBEACH

**Carlos A. Markovich**

Senior Planner - Planning Department  
1700 Convention Center Drive, Miami Beach, FL 33139  
Tel: 305-673-7000 ext. 6539 / Fax: 305-673-7559 / [www.miamibeachfl.gov](http://www.miamibeachfl.gov)

*We are committed to providing excellent public service and safety to all who live, work and play in our vibrant, tropical, historic community.*

**It's easy being Green! Please consider our environment before printing this email.**

---

**From:** Doron [<mailto:ddoar@bellsouth.net>]  
**Sent:** Monday, January 22, 2018 1:29 PM  
**To:** Markovich, Carlos  
**Subject:** Re: Urgent!Reference #BTR003568-12-2017

**Mr markovich**

**On December 27 2017 I applied for BTR for a Liquor sale store for my company beach blitz co dba Ocean 9 Liquor. Your department- planning and zoning reviewed and investigated my request for 3 weeks and on 1/14/2018 approved my application and**

# **EXHIBIT B**

Sec. 102-356. - Construction of article; definitions.

All of the provisions of this article shall be construed liberally on behalf of the city. Words and terms not defined in this section shall be interpreted in accordance with their normal dictionary meaning and customary usage. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Advertise, advertising, advertisement* and *publish* means all means of conveying to the public, whether by word of mouth, newspaper, magazine, periodical, handbill, written notice, printed display, poster, billboard, radio or television announcement or by any other means, notice of a sale or intention to conduct a sale.

*Amusement attraction* means any building or structure around, over, or through which persons may move or walk, without the aid of any moving device integral to the building or structure, which building or structure provides amusement, pleasure, thrills or excitement. This term does not include enterprises principally devoted to the exhibition of products of agriculture, industry, education, science, religion or the arts.

*Amusement ride* means any mechanical device that carries or conveys passengers around, over, or along a fixed or restricted route or course or within a defined area for the purpose of giving its passengers amusement, pleasure, thrills or excitement.

*Antique* means an object 50 years of age or older that has a special value due to age or reproduction of the same.

*Apartment house* means a building with or without resident supervision occupied or intended to be occupied by more than two families living separately with separate cooking facilities in each unit.

*Arcade* means any place of business that has coin-operated game machines and/or pool tables that, when counted together, exceed five in number.

*Auction business* means a sole proprietorship, partnership or corporation that maintains a permanent office or branch office in the city and that, in the regular course of business, conducts, arranges, advertises, or promotes auctions or uses or allows the use of its facilities for auctions.

*Automobile rental agency* means any person who rents, leases or offers to rent or lease five or more motor vehicles within the city within any given year.

*Automobile shipper* means any person engaged in the business or occupation, as principal, agent, broker, intermediary or otherwise, or holding himself out by advertisement, solicitation or otherwise as being engaged in the business or occupation of receiving and accepting the custody or possession of the automobile of another, under any contract, agreement, understanding or arrangement, which provides for the furnishing, procuring or arranging for the transportation or shipment of such automobile to an agreed point or destination, by driving the same thereto, under its own power or propulsion, in lieu of the transportation or shipment thereof as freight by any auto transportation company or common carrier.

*Bed and breakfast inn* means an historic structure originally built as a single-family residence, which is owner occupied and operated to provide guest rooms with breakfast and/or dinner included as part of the room rate.

*Bottle club* means a commercial establishment, operated for a profit, whether or not a profit is actually made, wherein patrons consume alcoholic beverages brought onto the premises and not sold or supplied to the patrons by the establishment, whether the patrons bring in and maintain custody of their own alcoholic beverages or surrender custody to the establishment for dispensing on the premises.

*Business* means every trade, occupation, profession or other manner of revenue-producing activity regardless of whether a profit is actually made. Business, profession and occupation do not include the customary religious, charitable or educational activities of nonprofit religious, nonprofit charitable and nonprofit educational institutions in this state, which institutions are more particularly defined and limited as follows:

- (1) *Religious institutions* means churches and ecclesiastical or denominational organizations or established physical places for worship in this state at which nonprofit religious services and activities are regularly conducted and carried on, and also means church cemeteries.
- (2) *Educational institutions* means state tax-supported or parochial, church and nonprofit private schools, colleges or universities conducting regular classes and courses of study required for accreditation by or membership in the Southern Association of Colleges and Schools, the Department of Education, or the Florida Council of Independent Schools. Nonprofit libraries, art galleries and museums open to the public are defined as educational institutions and eligible for exemption.

- (3) *Charitable institutions* means only nonprofit corporations operating physical facilities in the state at which are provided charitable services, a reasonable percentage of which are without cost to those unable to pay.

*Business tax* means the fees charged and the method by which the city grants the privilege of engaging in or managing any business, profession, or occupation within the city's jurisdiction.

*City manager or his designee* means the city manager or one of his assistants or another employee of the city designated by the city manager to perform a function required by this article; however, that review required by section 102-385 shall not be conducted by the same person who performs functions pursuant to any other section of this article. Alternatively, "designee" for purposes of section 102-385 may also mean an independent hearing officer appointed pursuant to resolution of the city commission to perform the review functions set forth in this resolution or to adjudicate violations of the city's codes.

*Closing-out sale* means the sale or offer to sell by any person, to the public, of goods in stock, on order or in transit, with a declared advertised purpose that such sale:

- (1) Is anticipatory to the termination, closing, liquidation, discontinuance, conclusion, or abandonment, of the business, or any part thereof, or any line of goods, or any one store of a group of stores in connection with such sale; and it shall include all sales advertised in such manner as to reasonably convey to the public the impression that upon the disposal of the goods advertised or on hand, the business will permanently cease and be discontinued;
- (2) Is anticipatory to the temporary closing or discontinuance of the business due to alterations or remodeling of the premises or relocation;
- (3) Will consist of goods damaged or altered by fire, smoke, water, hurricane, flood, explosion or other means; or
- (4) Will consist of goods derived from a business that has failed, been closed, discontinued or liquidated, or where such advertising indicates a business failure or emergency affecting the seller or any previous holder of the goods to be sold.

*Compensation* means any money, reward or consideration, tangible or intangible, personal property or real property, or the use of real or personal property, received directly or indirectly or in trust or by other means.



*Driver* means an individual operating a motor vehicle whether as the vehicle owner or as agent, employee or lessee of the owner.

*Electrologist* means any person who removes hair from or destroys hair on the human body by the use of an electric needle.

*Electrolysis* means the practice of removing surplus hair from any part of the human body by the application of electric current to the hair papilla by means of a needle to cause decomposition of hair papilla.

*Employment agent* or *employment agency* means any person in this city engaged for hire or compensation in the business of furnishing persons seeking employment or changing employment with information or other service, intended to enable such persons to procure employment, or furnishing any person who may be seeking to employ, for compensation, help of any kind, with information intended to enable such person to procure such help.

*Escort service* means any person in this city engaged for hire or compensation in the business of providing companions.

*Ferrous metals* means any metals containing significant quantities of iron or steel.

*Firearm* means any revolver, pistol, rifle, shotgun, machine gun, destructive device or other weapon that expels a projectile by the action of an explosive or air pressure or gas.

*Florist* means any person regularly engaged in the business of selling at retail flowers, funeral sprays, wreaths, designs or corsages.

*Flower stand* means any person engaged in the business of selling cut flowers exclusive of any, all and every other type and kind of flowers or plants.

*For cause* means the failure of a licensee to comply with those conditions, standards or requirements required for the issuance of his business tax receipt, or the violation of any other provision of this article or chapters of this Code incorporated in this article.

*Gallery* means a business which displays art for viewing and/or for sale regardless of whether a fee is charged for admission.

*Guard, watchman, patrol* includes any person, who, for consideration, advertises as providing or is engaged in the business of furnishing watchman, guard, patrol, or armored car services or who, for consideration, transports prisoners. This includes any person, who utilizes dogs to perform security services unless otherwise excluded.

*Hotel* means a building occupied or intended to be occupied generally for transient occupancy.

*Janitorial service* means any person in this city engaged for hire or compensation to provide cleaning services or persons who will perform these services for others.

*Medical clinic* means an outpatient facility in which the name of a fictitious entity is prominently featured, which provides for surgical and nonsurgical medical treatment and is not directly associated with a hospital.

*Motor scooter* means a two-wheeled vehicle with small wheels and a low powered engine.

*Motor vehicle* or *vehicle* means any motor-propelled vehicle, with the exception of motor scooters, including but not limited to motorbuses, vans and automobiles operating on the streets of the city for compensation.

*News depot* means a location where newspaper carriers pick up and prepare newspapers for delivery.

*Nonferrous metals* means metals not containing significant quantities of iron or steel, including but not limited to copper, brass, aluminum, bronze, lead, nickel, zinc, and alloys thereof.

*Not-for-profit organization* means an organization registered as a corporation not for profit pursuant to F.S. ch. 617, no part of the income or profit of which is distributable to its members, directors or officers.

*Parking lot* means any business engaged in whole or in part in the parking of motor vehicles for the payment of a fee.

*Pawn* means either of the following transactions:

- (1) *Loan of money* means a written or oral bailment of personal property as security for an engagement or debt, redeemable on certain terms and with the implied power of sale on default.
- (2)

*Buy-sell agreement* means any agreement whereby a purchaser agrees to hold property for a specified period of time to allow the seller the exclusive right to repurchase the property. A buy-sell agreement is not a loan of money.

*Pawnbroker* means any person who is not solely a secondary metals recycler subject to F.S. ch. 538, pt. II, which is regularly engaged in the business of making pawns. The term does not include a financial institution as defined in F.S. § 655.005 or any person who regularly loans money or any other thing of value on stocks, bonds or other securities.

*Person* means any individual, firm, partnership, joint adventure, syndicate, or other group or combination acting as a unit, association, corporation, estate, trust, business trust, trustee, executor, administrator, receiver, or other fiduciary, and includes the plural as well as the singular.

*Precious metals* is as defined in F.S. § 538.03: Any item containing any gold, silver, or platinum, or any combination thereof, excluding any chemical or any automotive, photographic, electrical, medical, or dental materials or electronic parts.

*Precious metals dealer* is as defined in F.S. § 538.03: A secondhand dealer who normally or regularly engages in the business of buying used precious metals for resale. The term does not include those persons involved in the bulk sale of precious metals from one secondhand or precious metals dealer to another.

*Prearranged travel or tourist-related services* means any service, including but not limited to car rentals, lodging, transfers, and sightseeing tours, for which a traveler receives a premium or for which he contracts or pays prior to departure.

*Preowned merchandise* means personal property previously owned or used, including secondhand goods.

*Private investigative agency* includes any person who, for consideration, advertises as providing or is engaged in the business of furnishing private investigations as defined in F.S. § 493.6101(17).

*Professional corporation* means a corporation organized for the sole and specific purpose of rendering professional service and has as its shareholders only individuals who themselves are duly licensed or otherwise legally authorized within this state to render the same professional service as the corporation.

*Professional service* means any type of personal service to the public that requires as a condition precedent to the rendering of such service the obtaining of a business tax receipt or other authorization from the state. By way of example and without limiting the generality thereof, the personal services which come within the provisions of this article are the personal services rendered by certified public accountants, public accountants, chiropractors, dentists, osteopaths, physicians and surgeons, doctors of medicine, doctors of dentistry, podiatrists, chiropodists, architects, veterinarians, attorneys at law, and life insurance agents.

*Promoter* means any person who promotes a dance or entertainment event on the premises of a business that is licensed to serve alcoholic beverages. To promote a dance or entertainment event is to be involved in one or more of the following activities: (a) hiring any of the persons staffing the event (e.g., deejay, host, cashier, doorman, etc.); (b) hiring any of the persons distributing or mailing invitations, flyers, posters, or other marketing materials in connection with such event; or (c) making the ultimate decision concerning the cost of entrance to the event. A promoter does not include (a) a business, or any full-time employee of the business, that promotes a dance or entertainment event on premises for which the business holds a valid city business tax receipt; (b) a 501(c) corporation, unless it is permitting the use of its temporary alcoholic beverage license by another business on the premises of such other business; (c) a person who holds or promotes a private reception not open to the general public; (d) a person who is hired by a Promoter to host, plan or market a dance or entertainment event; or (e) a person who sponsors, or allows his name to be used in connection with, a dance or entertainment event, provided such Person does not also Promote the event.

*Public food service establishment* means any building, vehicle, place or structure, or any room or division in a building, vehicle, place or structure, that is maintained and operated as a place where food is regularly prepared, served or sold.

*Purchase transaction* means a transaction in which a recycler gives consideration having a value in excess of \$10.00 in exchange for regulated metals property.

*Receipt* means the document that is issued by the city which bears the words "Local Business Tax Receipt" and evidences that the person in whose name the document is issued has complied with the provisions of this article relating to business tax.

*Receptive tour operator* means any person who prearranges tourist-related or tour guide services for individuals or groups visiting the city whose point of origin or departure is a foreign country. This does not include any person who provides services limited solely to any single one of the following: transportation, lodging, food or entertainment.

*Recyclers* means all persons engaged in the business or gathering or obtaining of ferrous or nonferrous metals, paper, glass or plastic products that have served their original economic purpose, or is in the business of performing the manufacturing process by which these products are converted into raw products consisting of prepared grades and having an existing or potential economic value; by methods including without limitation, processing, sorting, cutting, classifying, clearing, bailing, wrapping, shredding, shearing or changing the physical form or chemical content thereof.

*Regulated metals property* means any item composed primarily of any nonferrous metals, but shall not include aluminum beverage containers, used beverage containers, or similar beverage containers.

*Restaurant* means the same as "public food establishment."

*Retail establishment* means any store, merchant or organization selling merchandise to the general public.

*Sale* includes all transfers, assignments, pledges, leases, loans, barter or gifts.

*Secondhand dealer* is as defined in F.S. § 538.03: Any person, corporation, or other business organization or entity which is not a secondary metals recycler subject to part II and which is engaged in the business of purchasing, consigning, or trading secondhand goods.

*Secondhand goods* is as defined in F.S. § 538.03: Personal property previously owned or used, which is not regulated metals property regulated under part II and which is purchased, consigned, or traded as used property. Such secondhand goods do not include office furniture, pianos, books, clothing, organs, coins, motor vehicles, costume jewelry, cardio and strength training or

conditioning equipment designed primarily for indoor use, and secondhand sports equipment that is not permanently labeled with a serial number. For purposes of this paragraph, "secondhand sports equipment" does not include golf clubs.

*Seller of travel, travel bureau* means any person maintaining a business location or branch office within the city who offers for sale, directly or indirectly, at wholesale or retail, prearranged travel or tourist-related services for individuals or groups through vacation or tour packages or through lodging or travel certificates in exchange for a fee, commission or other valuable consideration. This includes offering membership in a travel club or travel services for an advance fee or payment, even if no travel contracts or certificates or vacation or tour packages are sold.

*Talent agency* means any person engaged in the occupation of operating an agency, bureau, office or other place for the purpose of procuring or attempting to procure engagements, or for the purpose of giving information as to where such engagements may be provided, for an artist who seeks employment by a buyer in, but not limited to, the following: a live or motion picture production, whether made on or by film, electronic tape, or other electronic device used to produce theatrical motion pictures, television entertainment motion pictures, industrial motion pictures, or television commercials; modeling services; conventions; print media; the legitimate stage; radio; circus; vaudeville; musical arts; or a musical organization.

*Taxee* means any person operating under a business tax receipt granted pursuant to this article.

*Window cleaning service* means any person engaged for hire or compensation to provide window cleaning services or persons who will perform these services for others.

(Ord. No. 95-2995, § 2(20), 6-7-95; Ord. No. 99-3173, § 1, 3-3-99; Ord. No. 99-3191, § 1, 7-3-99; Ord. No. 2007-3553, § 1, 4-11-07; Ord. No. 2013-3791, § 3, 2-6-13; Ord. No. 2017-4105, § 2, 6-7-17)

**Cross reference—** Definitions generally, § 1-2.

Sec. 102-360. - Business tax receipt duration and expiration date.

Each business tax receipt shall be valid for one year. Tax receipts shall be issued beginning October 1 of each year and shall expire on September 30 of the following year. Notwithstanding the foregoing, or any other section in this chapter to the contrary, tax receipts for promoters may be issued for a single dance or entertainment event.

(Ord. No. 95-2995, § 2(20-3 A.), 6-7-95; Ord. No. 99-3173, § 2, 3-3-99; Ord. No. 2007-3553, § 1, 4-11-07)

Sec. 118-390. - Purpose/applicability.

- (a) Nothing contained in this article shall be deemed or construed to prohibit the continuation of a legally established nonconforming use, structure, or occupancy, as those terms are defined in section 114-1. The intent of this section is to encourage nonconformities to ultimately be brought into compliance with current regulations. This section shall govern in the event of conflicts with other regulations of this Code pertaining to legally established nonconforming uses, structures, and occupancies.
- (b) The term "nonconformity" shall refer to a use, building, or lot that does not comply with the regulations of this article. Only legally established nonconformities shall have rights under this section.
- (c) For purposes of this section, the term "expansion" shall mean an, addition, enlargement, extension, or modification to a structure that results in an increase in the square footage of the structure, an increase in the occupant content or an increase in the number of seats.
- (d) For the purpose of this section, "legally established" shall apply to the following circumstances:
  - (1) A lot that does not meet the lot frontage, lot width, lot depth, and/or lot area requirements of the current zoning district, provided that such lot met the regulations in effect at the time of platting.
  - (2) A site or improvement that is rendered nonconforming through the lawful use of eminent domain, an order of a court of competent jurisdiction, or the voluntary dedication of property.
  - (3) An existing use which conformed to the code at the time it was established.
  - (4) A building, use and/or site improvement that had received final approval through a public hearing pursuant to this chapter; or through administrative site plan review and had a valid building permit.
  - (5) There shall be no variance of the nonconforming use(s) section of this article IX.

(Ord. No. 2017-4076, § 1, 3-1-17)

Sec. 118-394. - Discontinuance of nonconforming uses.

- (a)



A nonconforming use may not be enlarged, extended, intensified, or changed, except for a change to a use permitted in the district in which the property is located.

- (b) If there is an intentional and voluntary abandonment of a nonconforming use for a period of more than 183 consecutive days, or if a nonconforming use is changed to a conforming use, said use shall lose its nonconforming status. Thereafter, subsequent occupancy and use of the land, building, and/or structure shall conform to the regulations of the districts in which the property is located and any structural alterations necessary to make the structure or building conform to the regulations of the district in which the property is located shall be required. An intentional and voluntary abandonment of use includes, but is not limited to, vacancy of the building or structure in which the nonconforming use was conducted, or discontinuance of the activities consistent with or required for the operation of such nonconforming use.
- (c) The planning director or designee shall evaluate the evidence of an intentional and voluntary abandonment of a nonconforming use and determine the status of the nonconforming use. In order for a nonconforming use to retain a nonconforming status, the evidence, collectively, shall at a minimum demonstrate at least one of the following:
  - (1) Continual operation of the use;
  - (2) Continual possession of any necessary and valid state and local permits, building permits, licenses, or active/pending application(s) for approval related to prolonging the existence of the use.
- (d) Evidence of an intentional and voluntary abandonment of a nonconforming use may include, but shall not be limited to:
  - (1) Public records, including those available through applicable City of Miami Beach, Miami-Dade County, and State of Florida agencies;
  - (2) Utility records, including water/sewer accounts, solid waste accounts, and electrical service accounts;
  - (3) Property records, including executed lease or sales contracts.

(Ord. No. 89-2665, § 13-4, eff. 10-1-89; Ord. No. 2017-4076, § 1, 3-1-17)

Sec. 118-397. - Existence of a nonconforming building or use.

- (a) The planning and zoning director shall make a determination as to the existence of a nonconforming use or building and in so doing may make use of affidavits and investigation in addition to the data presented on the city's building card, occupational license or any other official record of the city.
- (b) The question as to whether a nonconforming use or building exists shall be a question of fact and in case of doubt or challenge raised to the determination made by the planning and zoning director, the question shall be decided by appeal to the board of adjustment pursuant to the requirements of section 118-9. In making the determination the board may require certain improvements that are necessary to insure that the nonconforming use or building will not have a negative impact on the neighborhood.

(Ord. No. 89-2665, § 13-7, eff. 10-1-89; Ord. No. 2005-3493, § 1, 9-8-05; Ord. No. 2015-3977, § 16, eff. 12-19-15)

Sec. 142-544. - Prohibited uses.

The prohibited uses in the MXE mixed use entertainment district are accessory outdoor bar counters, except as provided in this chapter; package stores; and package sales of alcoholic beverages by any retail store or alcoholic beverage establishment. Additionally, entertainment uses shall be prohibited in package stores.

(Ord. No. 89-2665, § 6-16(A)(5), eff. 10-1-89; Ord. No. 2016-4047, § 2, 10-19-16)

# **EXHIBIT C**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

**CASE NO. 1:17-cv-23958-UU**

BEACH BLITZ CO., a Florida  
corporation d/b/a OCEAN 9 LIQUOR,  
and d/b/a as OCEAN 11 MARKET,

Plaintiff,

v.

CITY OF MIAMI BEACH, FLORIDA,  
a municipal corporation of the State of Florida,  
PHILIP LEVINE, an individual,  
JIMMY MORALES, an individual,  
MICKEY STEINBERG, an individual,  
RICKY ARRIOLA, an individual,  
MICHAEL GREICO, an individual,  
JOY MALAKOFF, an individual,  
KRISTEN ROSEN GONZALEZ, an individual,  
JOHN ELIZABETH ALEMAN, an individual,  
RAUL J. AGUILA, an individual, and  
ALEKSANDR BOKSNER, an individual,

Defendants.

\_\_\_\_\_ /

**AFFIDAVIT OF MANUEL MARQUEZ**

STATE OF FLORIDA                     )  
                                                           ) ss.  
COUNTY OF MIAMI-DADE         )

BEFORE ME, the undersigned authority, personally appeared Manuel Marquez, who  
after being duly sworn, states:

1.     My name is Manuel Marquez and I am over the age of 21 and am competent to  
testify to the matters set forth in this Affidavit, which are based upon my personal knowledge,

including my knowledge of the business records of the City of Miami Beach, Florida (the “City”).

2. I currently serve as the Assistant Director of Finance of the City of Miami Beach, and have held that position since 2011.

3. A Business Tax Receipt (“BTR license”) is akin to an occupational license, and is required for any business engaging in the privilege of operating a business in the City of Miami Beach. An application for a BTR license is reviewed by numerous City Departments to protect the public interest, including Planning and Zoning, Concurrency, Building, Fire, Police, Risk Management, Public Works, Finance, and Code.

4. Beach Blitz Co. ( “Beach Blitz”) has owned and operated a package liquor store in the City’s Mixed Use Environment District (“MXE”) at 865 Collins Avenue, Miami Beach, Florida since approximately 2012.

5. Beach Blitz first applied for and obtained a BTR license for a liquor store for the 2011-2012 fiscal year. *See* Exhibit 1 hereto. Beach Blitz renewed its BTR license for the 2012-2013, 2013-2014, and 2014-2015 fiscal years. *See, e.g.*, Exhibit 2 hereto.

6. Effective October 1, 2015, Beach Blitz applied for and renewed its BTR license for the 2015-2016 fiscal year. *See* Exhibit 3 hereto.

7. On or about July 1, 2016, in the ordinary course of business, the City mailed Beach Blitz a renewal notice, reminding the company to renew the BTR license for the 2016-2017 fiscal year. *See* Exhibit 4 hereto. Beach Blitz did not pay its renewal fee by September 30, 2016.

8. The BTR license expired on September 30, 2016. Thus, Beach Blitz was operating its liquor store illegally as of October 1, 2016. *See* Exhibit 3 hereto.<sup>1</sup>

9. At no time during the 2016-2017 fiscal year, from October 1, 2016 through September 30, 2017, did Beach Blitz submit payment to the City to renew its BTR license. At no time during the 2016-2017 fiscal year did the City refuse payment from Beach Blitz to renew its BTR license.

10. On or about October 1, 2017, one year after the expiration of Beach Blitz's BTR license, the status of the BTR license changed from "expired" to "closed." *See* Exhibit 5 hereto. Once a business entity's license status is "closed," the business must submit a new BTR license application pursuant to Section 102-371 of the City Code in order for the City to act on a request for a BTR license.

11. To date, Beach Blitz has not submitted any application for a new BTR license, nor has any application for a BTR license been denied by the City. If any application for a new BTR license had been submitted and denied, the person who submitted the application could have appealed the denial pursuant to Section 102-372 of the City Code.

12. On or about October 4, 2017, Beach Blitz paid a \$1,000 fine pursuant to a consent agreement with the City to resolve three outstanding notices of violation. There is no record that the City ever refused payment of the \$1,000 settlement payment prior to October 4, 2017. There is no record that Beach Blitz submitted any payment for a new BTR license along with its \$1,000 settlement payment.

13. On October 11, 2017, over one year after Beach Blitz's 2016-2017 BTR license expired, Beach Blitz submitted payment to the City for a BTR license. *See* Exhibit 6 hereto.

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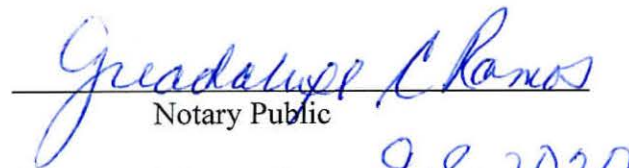
<sup>1</sup> Beach Blitz owns and operates a second package liquor store at 1100 Collins Avenue for which it maintains an active BTR license.

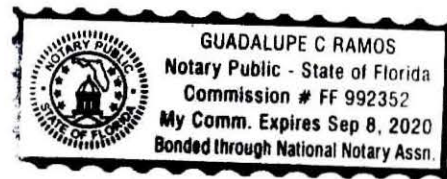
Because Beach Blitz's license status was "closed" at the time the payment was made, a new BTR license application would need to be submitted pursuant to Section 102-371 of the City Code in order for the City to act on a request for a BTR license.

FURTHER AFFIANT SAYETH NAUGHT.

  
MANUEL MARQUEZ

Sworn to and subscribed before me this 13<sup>th</sup>  
day of November, 2017.

  
Notary Public  
My commission expires: 9.8.2020





# **EXHIBIT 1**

**CITY OF MIAMI BEACH**  
**CERTIFICATE OF USE, ANNUAL FIRE FEE, AND BUSINESS TAX RECEIPT**

1700 Convention Center Drive  
 Miami Beach, Florida 33139-1819

TRADE NAME: BEACH BLITZ CO.  
 IN CARE OF: DORAN DOAR  
 ADDRESS: 13441 NW 5 CT  
 PLANTATION, FL 33325

RECEIPT NUMBER: RL-10005692  
 Beginning: 10/01/2011  
 Expires: 09/30/2012  
 Parcel No: 0242032580040

A penalty is imposed for failure to keep this Business Tax Receipt exhibited conspicuously at your place of business.

A certificate of Use / Business Tax Receipt issued under this article does not waive or supersede other City laws, does not constitute City approval of a particular business activity and does not excuse the licensee from all other laws applicable to the licensee's business.

This Receipt may be transferred:

A. Within 30 days of a bonafide sale, otherwise a complete annual payment is due.

B. To another location within the City if proper approvals and the Receipt are obtained prior to the opening of the new location.

Additional Information

Storage Locations

TRADE ADDRESS: 865 COLLINS AVE, D

|                          |                                                                                       |
|--------------------------|---------------------------------------------------------------------------------------|
| Code<br>007701<br>btrapp | Certificate of Use/Occupation<br>LIQUOR SALES<br>BUSINESS TAX RECEIPT APPLICATION FEE |
|--------------------------|---------------------------------------------------------------------------------------|

|                    |          |
|--------------------|----------|
| CERTIFICATE OF USE | 300      |
| SQUARE FOOTAGE     | 1800     |
| PRORATION          | quart    |
| C_U # OF UNITS     | 1800     |
| LIQUOR INVENTORY   | \$ 15000 |

FROM: CITY OF MIAMI BEACH  
 1700 CONVENTION CENTER DRIVE  
 MIAMI BEACH, FL 33139-1819

PRESORTED  
 FIRST CLASS  
 U.S. POSTAGE  
 PAID  
 MIAMI BEACH, FL  
 PERMIT No 1525

BEACH BLITZ CO.  
 865 COLLINS AVE, D  
 MIAMI BEACH, FL 33139-5807



|                                                         |                                            |                 |
|---------------------------------------------------------|--------------------------------------------|-----------------|
| New Business Tax Account # <u>Activity # 64053</u>      | Amount of Fee Due: <u>\$45.00</u>          | Application Fee |
| Last City License # for This Address <u>PL-05000956</u> | Make Check Payable to: CITY OF MIAMI BEACH |                 |

**City of Miami Beach**  
**Certificate of Use (CU), Annual Fire Inspection Fee & Business Tax Application**

*This application is NOT your business tax receipt. Do not operate the business until the Certificate of Use and the Business Tax Receipt are issued.*  
*The place of business must be available to all inspectors.*

Type of Application:  
☐ New Business      ☐ Change of Owner      ☐ Adding Seats      ☐ Additional Occupation  
☐ Change of Location

Application Checklist  
☐ Federal ID No.      ☐ Fictitious Name Registration      ☐ Lease/Deed/Closing Statement  
☐ Articles of Inc. (if applicable)      ☐ State License (if applicable)      ☐ CU and Annual Fire Fee (non refundable)  
☐ Bill of Sale      ☐ Insurance

Does the Application involve: ☐ Change of Use      ☐ Renovation (Provide Certificate of Occupancy Process Number \_\_\_\_\_)

*A Change of Use may generate additional building and fire code requirements as applied to new construction.*

*A valid Certificate of Occupancy is required before an occupational license can be issued.*

Is the Business one or more of the following types:

|                                                 |                                              |                                         |                                                           |                                        |
|-------------------------------------------------|----------------------------------------------|-----------------------------------------|-----------------------------------------------------------|----------------------------------------|
| <input type="checkbox"/> Apartment Building     | <input type="checkbox"/> Condominium         | <input type="checkbox"/> Hotel          | <input type="checkbox"/> Restaurant                       | <input type="checkbox"/> Bakery        |
| <input type="checkbox"/> Ice Cream Parlor       | <input type="checkbox"/> Delicatessen        | <input type="checkbox"/> Nightclub      | <input type="checkbox"/> Dancing/Entertainment            | <input type="checkbox"/> Real Estate   |
| <input type="checkbox"/> Hair Salon             | <input type="checkbox"/> Home Based Business | <input type="checkbox"/> Health club    | <input type="checkbox"/> Promoter                         | <input type="checkbox"/> Valet         |
| <input type="checkbox"/> Escort Service         | <input type="checkbox"/> Janitorial Service  | <input type="checkbox"/> Mail Order     | <input type="checkbox"/> Pre-Package Food                 | <input type="checkbox"/> Motor Scooter |
| <input type="checkbox"/> Retail Alcohol Sales   | <input type="checkbox"/> Travel (sales)      | <input type="checkbox"/> Mobile Caterer | <input type="checkbox"/> Alcoholic Beverage Establishment |                                        |
| <input type="checkbox"/> Beach Front Concession | <input type="checkbox"/> Machine Distributor |                                         |                                                           |                                        |

Is the Business one of the following types:

|                                                   |                                                |                                                 |                                                           |                                    |
|---------------------------------------------------|------------------------------------------------|-------------------------------------------------|-----------------------------------------------------------|------------------------------------|
| <input type="checkbox"/> Adult Congr Liv Facility | <input type="checkbox"/> Day Care              | <input type="checkbox"/> Nursing Home           | <input type="checkbox"/> Religious Institution            | <input type="checkbox"/> School    |
| <input type="checkbox"/> Parking Lot / Garage     | <input type="checkbox"/> Outdoor Entertainment | <input type="checkbox"/> Open Air Entertainment | <input type="checkbox"/> Pawnshop                         | <input type="checkbox"/> Warehouse |
| <input type="checkbox"/> Video Game Arcade        | <input type="checkbox"/> Gasoline Sales        | <input type="checkbox"/> Restaurant             | <input type="checkbox"/> Alcoholic Beverage Establishment |                                    |

Business Name Beach Blitz      Application Date: 6/14/12  
Location 865 Collins Avenue #D      Lease ☒ Own ☐  
Type of Business (be very specific) Liquor Package Sales only      Hours of Operation \_\_\_\_\_  
Hours Serving Alcohol N/A

Name of Owner / President DORON DOAR      Date of Birth \_\_\_\_\_      DL# B600-160-61-461-0  
Federal ID # \_\_\_\_\_      SSN 590-58-5883  
Home Address 13441 NW 5CT      City Plantati      State FL      Zip 33325  
Home Phone 954-709-2555      Business Phone \_\_\_\_\_      Cell Phone \_\_\_\_\_  
Email Address DDOAR@bellsouth.net      Fax No. \_\_\_\_\_

Send Business Mail to Attention of: DORON DOAR      Business Phone 305-672-8030  
Address 865 Collins #D      City MB      State FL      Zip 33139  
Name of Emergency Contact Steve Poljanec      Phone 305-788-7179

## Is the Business a:

Hotel or Apartment? If yes, how many units? \_\_\_\_\_ # of washers/dryers (If owned) \_\_\_\_\_

Restaurant? How many seats inside? \_\_\_\_\_ How many seats outside? (private property only) \_\_\_\_\_  
 If there will be seats outside on public property (sidewalk), then a Sidewalk Café Permit is required.  
 Hours of Alcohol Sales \_\_\_\_\_ (Zoning Review for # of chairs)

Office or Retail Establishment? If yes, approximate sq. ft. 1800  
 If Retail, what is the inventory value? General \$ \_\_\_\_\_ Food \$ \_\_\_\_\_ Liquor \$ 15000

Hair or Nail Salon? If yes, number of seats \_\_\_\_\_

Motor Scooter Rentals? If yes, number of scooters \_\_\_\_\_

A Miami-Dade County Business Tax Receipt is also required. See "Miami Dade County Business Tax for more information."

Contact the Planning Department for a Sign Permit which is required for all signage.

Any person who, in applying for a business license in the City of Miami Beach, who shall make a false statement and/or fail to disclose and/or misrepresent the information requested shall be subject to penalties authorized by City Code Section 102-375.

I UNDERSTAND THAT IT IS MY RESPONSIBILITY TO FOLLOW-UP ON THE APPROVAL PROCESS FOR THIS APPLICATION.

To follow-up on the status of approval, please contact Ricardo Arnau (305) 673-7000 x6951.

I HAVE READ THIS APPLICATION AND I DO FREELY AND VOLUNTARILY CONFIRM THAT THE STATEMENTS AND INFORMATION CONTAINED THEREIN ARE TRUE AND CORRECT.

Doran Doar  
 Print Name

[Signature]  
 Signature DORAN DOAR

6-15-12  
 Date

## Official Use Only: Review by the following Departments may be required:

|                   |                                                                    |          |            |                |
|-------------------|--------------------------------------------------------------------|----------|------------|----------------|
| Planning & Zoning | Required? <input type="checkbox"/> yes <input type="checkbox"/> no | By _____ | Date _____ | Comments _____ |
| Concurrency       | Required? <input type="checkbox"/> yes <input type="checkbox"/> no | By _____ | Date _____ | Comments _____ |
| Building          | Required? <input type="checkbox"/> yes <input type="checkbox"/> no | By _____ | Date _____ | Comments _____ |
| Fire              | Required? <input type="checkbox"/> yes <input type="checkbox"/> no | By _____ | Date _____ | Comments _____ |
| Parking           | Required? <input type="checkbox"/> yes <input type="checkbox"/> no | By _____ | Date _____ | Comments _____ |
| Risk Management   | Required? <input type="checkbox"/> yes <input type="checkbox"/> no | By _____ | Date _____ | Comments _____ |
| Public Works      | Required? <input type="checkbox"/> yes <input type="checkbox"/> no | By _____ | Date _____ | Comments _____ |
| Finance           | Required? <input type="checkbox"/> yes <input type="checkbox"/> no | By _____ | Date _____ | Comments _____ |
| Code              | Required? <input type="checkbox"/> yes <input type="checkbox"/> no | By _____ | Date _____ | Comments _____ |

Notes/Comments \_\_\_\_\_

## **EXHIBIT 2**



**CITY OF MIAMI BEACH**  
**CERTIFICATE OF USE, ANNUAL FIRE FEE, AND BUSINESS TAX RECEIPT**

1700 Convention Center Drive  
 Miami Beach, Florida 33139-1819

TRADE NAME: BEACH BLITZ CO. D/B/A OCEAN 9 LIQUOR  
 IN CARE OF:  
 ADDRESS:

RECEIPT NUMBER: RL-10005692  
 Beginning: 10/01/2014  
 Expires: 09/30/2015  
 Parcel No: 0242032580040

A penalty is imposed for failure to keep this Business Tax Receipt exhibited conspicuously at your place of business.

A certificate of Use / Business Tax Receipt issued under this article does not waive or supersede other City laws, does not constitute City approval of a particular business activity and does not excuse the licensee from all other laws applicable to the licensee's business.

This Receipt may be transferred:

A. Within 30 days of a bonafide sale, otherwise a complete annual payment is due.

B. To another location within the City if proper approvals and the Receipt are obtained prior to the opening of the new location.

Additional Information

Storage Locations

TRADE ADDRESS: 865 COLLINS AVE, D

| Code   | Certificate of Use/Occupation           |
|--------|-----------------------------------------|
| 007701 | LIQUOR SALES                            |
| 240029 | ENTERTAINMENT ESTABLISHMENT W/O DANCING |

|                     |          |
|---------------------|----------|
| CERTIFICATE OF USE  | 300      |
| SQUARE FOOTAGE      | 1800     |
| C_U # OF UNITS      | 1800     |
| LIQUOR INVENTORY    | \$ 15000 |
| DANCE_ENT W_O ALCOH | Y        |

FROM: CITY OF MIAMI BEACH  
 1700 CONVENTION CENTER DRIVE  
 MIAMI BEACH, FL 33139-1819

PRESORTED  
 FIRST CLASS  
 U.S. POSTAGE  
 PAID  
 MIAMI BEACH, FL  
 PERMIT No 1525

BEACH BLITZ CO.  
 865 COLLINS AVE, D  
 MIAMI BEACH, FL 33139-5807



## **EXHIBIT 3**

**CITY OF MIAMI BEACH**  
**CERTIFICATE OF USE, ANNUAL FIRE FEE, AND BUSINESS TAX RECEIPT**

1700 Convention Center Drive  
 Miami Beach, Florida 33139-1819

TRADE NAME: BEACH BLITZ CO. D/B/A OCEAN 9 LIQUOR  
 IN CARE OF: DORAN DOAR  
 ADDRESS: 13441 NW 5 CT  
 PLANTATION, FL 33325

RECEIPT NUMBER: RL-10005692  
 Beginning: 10/01/2015  
 Expires: 09/30/2016  
 Parcel No: 0242032580040

A penalty is imposed for failure to keep this Business Tax Receipt exhibited conspicuously at your place of business.

A certificate of Use / Business Tax Receipt issued under this article does not waive or supersede other City laws, does not constitute City approval of a particular business activity and does not excuse the licensee from all other laws applicable to the licensee's business.

This Receipt may be transferred:

A. Within 30 days of a bonafide sale, otherwise a complete annual payment is due.

B. To another location within the City if proper approvals and the Receipt are obtained prior to the opening of the new location.

Additional Information

Storage Locations

**TRADE ADDRESS: 865 COLLINS AVE, D**

| Code   | Certificate of Use/Occupation           |
|--------|-----------------------------------------|
| 003602 | AUTO TELLER MACHINES                    |
| 007700 | FOOD SALES                              |
| 007701 | LIQUOR SALES                            |
| 012065 | MERCHANTS SALES                         |
| 240029 | ENTERTAINMENT ESTABLISHMENT W/O DANCING |

|                      |          |
|----------------------|----------|
| CERTIFICATE OF USE   | 300      |
| SQUARE FOOTAGE       | 1800     |
| RETAIL INVENTORY     | \$ 15000 |
| C_U # OF UNITS       | 1800     |
| FOOD INVENTORY       | \$ 500   |
| LIQUOR INVENTORY     | \$ 1000  |
| # OF AUTOTELLER MACH | 1        |
| DANCE_ENT W_O ALCOH  | Y        |

FROM: CITY OF MIAMI BEACH  
 1700 CONVENTION CENTER DRIVE  
 MIAMI BEACH, FL 33139-1819

PRESORTED  
 FIRST CLASS  
 U.S. POSTAGE  
 PAID  
 MIAMI BEACH, FL  
 PERMIT No 1525

BEACH BLITZ CO.  
 865 COLLINS AVE, D  
 MIAMI BEACH, FL 33139-5807





|                                                                   |                                                      |
|-------------------------------------------------------------------|------------------------------------------------------|
| New Business Tax Account # <u>00091184</u>                        | Amount of Fee Due: \$ <u>\$45.00 Application Fee</u> |
| Last City License # for This Address <u>linked to RL-10005693</u> | Make Check Payable to: CITY OF MIAMI BEACH           |

**City of Miami Beach**  
**Certificate of Use (CU), Annual Fire Inspection Fee & Business Tax Application**

This application is NOT your business tax receipt. Do not operate the business until the Certificate of Use and the Business Tax Receipt are issued.  
 The place of business must be available to all inspectors.

Type of Application:  
☐ New Business      ☐ Change of Owner      ☐ Adding Seats      ☒ Additional Occupation  
☐ Change of Location

Application Checklist  
☒ Federal ID No.      ☐ Fictitious Name Registration      ☐ Lease/Deed/Closing Statement  
☒ Articles of Inc. (if applicable)      ☐ State License (if applicable)      ☐ CU and Annual Fire Fee (non refundable)  
☐ Bill of Sale      ☐ Insurance

Does the Application involve: ☐ Change of Use      ☐ Renovation (Provide Certificate of Occupancy Process Number \_\_\_\_\_)

A Change of Use may generate additional building and fire code requirements as applied to new construction.

A valid Certificate of Occupancy is required before an occupational license can be issued.

Is the Business one or more of the following types:

|                                                 |                                              |                                         |                                                           |                                                  |
|-------------------------------------------------|----------------------------------------------|-----------------------------------------|-----------------------------------------------------------|--------------------------------------------------|
| <input type="checkbox"/> Apartment Building     | <input type="checkbox"/> Condominium         | <input type="checkbox"/> Hotel          | <input type="checkbox"/> Restaurant                       | <input type="checkbox"/> Bakery                  |
| <input type="checkbox"/> Ice Cream Parlor       | <input type="checkbox"/> Delicatessen        | <input type="checkbox"/> Nightclub      | <input type="checkbox"/> Dancing/Entertainment            | <input type="checkbox"/> Real Estate             |
| <input type="checkbox"/> Hair Salon             | <input type="checkbox"/> Home Based Business | <input type="checkbox"/> Health club    | <input type="checkbox"/> Promoter                         | <input type="checkbox"/> Valet                   |
| <input type="checkbox"/> Escort Service         | <input type="checkbox"/> Janitorial Service  | <input type="checkbox"/> Mail Order     | <input checked="" type="checkbox"/> Pre-Package Food      | <input type="checkbox"/> Motor Scooter           |
| <input type="checkbox"/> Retail Alcohol Sales   | <input type="checkbox"/> Travel (sales)      | <input type="checkbox"/> Mobile Caterer | <input type="checkbox"/> Alcoholic Beverage Establishment | <input checked="" type="checkbox"/> ATM          |
| <input type="checkbox"/> Beach Front Concession | <input type="checkbox"/> Machine Distributor |                                         | <input checked="" type="checkbox"/> Adding                | <input checked="" type="checkbox"/> Retail sales |

Is the Business one of the following types:

|                                                   |                                                |                                                 |                                                           |                                    |
|---------------------------------------------------|------------------------------------------------|-------------------------------------------------|-----------------------------------------------------------|------------------------------------|
| <input type="checkbox"/> Adult Congr Liv Facility | <input type="checkbox"/> Day Care              | <input type="checkbox"/> Nursing Home           | <input type="checkbox"/> Religious Institution            | <input type="checkbox"/> School    |
| <input type="checkbox"/> Parking Lot / Garage     | <input type="checkbox"/> Outdoor Entertainment | <input type="checkbox"/> Open Air Entertainment | <input type="checkbox"/> Pawnshop                         | <input type="checkbox"/> Warehouse |
| <input type="checkbox"/> Video Game Arcade        | <input type="checkbox"/> Gasoline Sales        | <input type="checkbox"/> Restaurant             | <input type="checkbox"/> Alcoholic Beverage Establishment |                                    |

Additional Service - Adding Categories

Business Name Beach Blitz Co d/b/a Ocean 9 Liquor      Application Date: \_\_\_\_\_  
 Location 865 Collins Avenue, D Miami Beach, FL      Lease \_\_\_\_\_ Own \_\_\_\_\_  
 Type of Business (be very specific) Adding: retail sales ①      33329      Hours of Operation \_\_\_\_\_  
food sales ②  
Atm ③  
 Hours Serving Alcohol \_\_\_\_\_

Name of Owner / President Doron Doar      Date of Birth 12/61      DOB # 060016061461-0      St. FL  
 Federal ID # 020639801      SSN \_\_\_\_\_  
 Home Address 13441 NW 5 court      City Plantation      State FL      Zip 33325  
 Home Phone N/A      Business Phone 305-397-8600      Cell Phone 954-709-2555  
 Email Address \_\_\_\_\_

Send Business Mail to Attention of: Doron Doar      Business Phone 305-397-8600  
 Address 13441 N.W. 5th Court      City Plantation      State FLA.      Zip 33325  
 Name of Emergency Contact Rochelle Malek      Phone 305-823-8855

## Is the Business a:

Hotel or Apartment? If yes, how many units? \_\_\_\_\_ # of washers/dryers (if owned) \_\_\_\_\_

Restaurant? How many seats inside? \_\_\_\_\_ How many seats outside? (private property only) \_\_\_\_\_  
 If there will be seats outside on public property (sidewalk), then a Sidewalk Café Permit is required.  
 Hours of Alcohol Sales \_\_\_\_\_ (Zoning Review for # of chairs)

Office or Retail Establishment? If yes, approximate sq. ft. \_\_\_\_\_  
 If Retail, what is the inventory value? General \$ 75,000.00 Food \$ 20,000.00 Liquor \$ \_\_\_\_\_

Hair or Nail Salon? If yes, number of seats \_\_\_\_\_

Motor Scooter Rentals? If yes, number of scooters \_\_\_\_\_

A Miami-Dade County Business Tax Receipt is also required. See "Miami Dade County Business Tax for more information."

Contact the Planning Department for a Sign Permit which is required for all signage.

Any person who, in applying for a business license in the City of Miami Beach, who shall make a false statement and/or fail to disclose and/or misrepresent the information requested shall be subject to penalties authorized by City Code Section 102-375.

I UNDERSTAND THAT IT IS MY RESPONSIBILITY TO FOLLOW-UP ON THE APPROVAL PROCESS FOR THIS APPLICATION TO FOLLOW-UP PLEASE CONTACT, HOWARD RAMIREZ (305) 673-7000 (ext. 6117) or E-mail: HowardRamirez@miamibeachfl.gov

I HAVE READ THIS APPLICATION AND I DO FREELY AND VOLUNTARILY CONFIRM THAT THE STATEMENTS AND INFORMATION CONTAINED THEREIN ARE TRUE AND CORRECT.

Doron Doan  
 Print Name

[Signature]  
 Signature

April 28, 2015  
 Date

## Official Use Only: Review by the following Departments may be required:

|                   |                                                                    |          |            |                |
|-------------------|--------------------------------------------------------------------|----------|------------|----------------|
| Planning & Zoning | Required? <input type="checkbox"/> yes <input type="checkbox"/> no | By _____ | Date _____ | Comments _____ |
| Concurrency       | Required? <input type="checkbox"/> yes <input type="checkbox"/> no | By _____ | Date _____ | Comments _____ |
| Building          | Required? <input type="checkbox"/> yes <input type="checkbox"/> no | By _____ | Date _____ | Comments _____ |
| Fire              | Required? <input type="checkbox"/> yes <input type="checkbox"/> no | By _____ | Date _____ | Comments _____ |
| Parking           | Required? <input type="checkbox"/> yes <input type="checkbox"/> no | By _____ | Date _____ | Comments _____ |
| Risk Management   | Required? <input type="checkbox"/> yes <input type="checkbox"/> no | By _____ | Date _____ | Comments _____ |
| Public Works      | Required? <input type="checkbox"/> yes <input type="checkbox"/> no | By _____ | Date _____ | Comments _____ |
| Finance           | Required? <input type="checkbox"/> yes <input type="checkbox"/> no | By _____ | Date _____ | Comments _____ |
| Code              | Required? <input type="checkbox"/> yes <input type="checkbox"/> no | By _____ | Date _____ | Comments _____ |

Notes/Comments \_\_\_\_\_

## **EXHIBIT 4**

**INVOICE (00011214)****BILLING CONTACT**

OCEAN 9 LIQUOR  
 BEACH BLITZ CO. D/B/A OCEAN 9 LIQUOR  
 865 Collins Ave, D  
 Miami Beach, FL 33139-5807

1700 Convention Center Drive  
 Miami Beach, Florida 33139  
 305.673.7000

| INVOICE NUMBER | INVOICE DATE | INVOICE DUE DATE | INVOICE STATUS | INVOICE DESCRIPTION |
|----------------|--------------|------------------|----------------|---------------------|
| 00011214       | 07/01/2016   | 07/01/2016       | Void           | Renewal Invoice     |

| REFERENCE NUMBER                             | FEE NAME | TOTAL            |
|----------------------------------------------|----------|------------------|
| RL-10005692                                  | annfir   | \$57.50          |
|                                              | occllc   | \$274.00         |
|                                              | occllc   | \$274.00         |
|                                              | occllc   | \$233.00         |
|                                              | occllc   | \$233.00         |
|                                              | occllc   | \$604.00         |
| 865 Collins Ave D Miami Beach, FL 33139-5807 |          | <b>SUB TOTAL</b> |
|                                              |          | \$1,675.50       |

**TOTAL** **\$1,675.50**

Any refund associated with this invoice will only be issued to the billing contact listed herein.

## **EXHIBIT 5**



## Business License Search

Search Export

Search Criteria

☐ Shared

Note: name is only required if criteria needs to be saved.

Map Results

+ Viewing 5 of 5 results.


Drag a column header and drop it here to group by that column

| <input type="checkbox"/> |                          | Company Name                         | DBA            | Business Address        | License Status | License Number | License Year |
|--------------------------|--------------------------|--------------------------------------|----------------|-------------------------|----------------|----------------|--------------|
| >                        | <input type="checkbox"/> | BEACH BLITZ CO                       | BEACH BLITZ CO | 1100 COLLINS AVE #APT 7 | Active         | RL-10001136    | 2018         |
|                          | <input type="checkbox"/> | BEACH BLITZ CO                       | BEACH BLITZ CO | 1100 COLLINS AVE #APT 7 | Expired        | RL-10001136    | 2016         |
|                          | <input type="checkbox"/> | BEACH BLITZ CO                       | BEACH BLITZ CO | 1100 COLLINS AVE #APT 7 | Expired        | RL-10001136    | 2017         |
|                          | <input type="checkbox"/> | BEACH BLITZ CO. D/B/A OCEAN 9 LIQUOR | OCEAN 9 LIQUOR | 865 COLLINS AVE #D      | Expired        | RL-10005692    | 2016         |
|                          | <input type="checkbox"/> | BEACH BLITZ CO. D/B/A OCEAN 9 LIQUOR | OCEAN 9 LIQUOR | 865 COLLINS AVE #D      | Closed         | RL-10005692    | 2017         |


## **EXHIBIT 6**

865 Collins Ave

TRC-601368-11-10-2017

Billing Contact:  BEACH BLITZ CO. D/B/A OCEAN 9 LIQUOR

Payment Method: Credit Card

 Payment Amount: \$2,246.46

Payment Note: WEB-CC Payment(s) #65793.



Transaction Note:



Payment Date: 10/11/2017

Transaction Type: Fee Payment



Transaction Date: 10/11/2017

Office:




Transaction Status: Complete

Batch Number: 20171011


























Deposit Reference:

Fee Payments  Notes

Total Due: \$0.00

Primary Fees

Total: \$2,246.46

|   | Amount To Ap  | Fee Name  | Fee Total  | Amount Due  | Amount Paid  | Invoice #   | Entity              | Reference Ent  | FeePriority  |
|---|------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|
| > | \$233.00      | Occ. Code 95240                                                                            | \$233.00                                                                                    | \$0.00                                                                                       | \$233.00     | 00065793    | Business License    | RL-10005692                                                                                       | 0                                                                                               |
|   | \$274.00      | Occ. Code 95007                                                                            | \$274.00                                                                                    | \$0.00                                                                                       | \$274.00     | 00065793    | Business License    | RL-10005692                                                                                       | 0                                                                                               |
|   | \$604.00    | Occ. Code 95012                                                                            | \$604.00                                                                                    | \$0.00                                                                                       | \$604.00   | 00065793  | Business License  | RL-10005692                                                                                       | 0                                                                                               |
|   | \$274.00    | Occ. Code 04007                                                                            | \$274.00                                                                                    | \$0.00                                                                                       | \$274.00   | 00065793  | Business License  | RL-10005692                                                                                       | 0                                                                                               |
|   | \$570.96    | BTR Upcharge - L                                                                           | \$570.96                                                                                    | \$0.00                                                                                       | \$570.96   | 00065793  | Business License  | RL-10005692                                                                                       | 0                                                                                               |
|   | \$233.00    | Occ. Code 95003                                                                            | \$233.00                                                                                    | \$0.00                                                                                       | \$233.00   | 00065793  | Business License  | RL-10005692                                                                                       | 0                                                                                               |
|   | \$57.50     | Mercantile Occup                                                                           | \$57.50                                                                                     | \$0.00                                                                                       | \$57.50    | 00065793  | Business License  | RL-10005692                                                                                       | 0                                                                                               |



# **EXHIBIT D**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 17-CV-23958

BEACH BLITZ CO.,

Miami, Florida

Plaintiff(s),

November 17, 2017

vs.

CITY OF MIAMI BEACH, FLORIDA,

Volume 01

Defendant(s).

Pages 1- 173

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PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION  
BEFORE THE HONORABLE JOHN J. O'SULLIVAN  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

FOR THE PLAINTIFF(S): PHILLIP M. HUDSON, III, ESQ.  
Arnstein & Lehr, LLP  
200 South Biscayne Boulevard, Suite 3600  
Miami, Florida 33131  
(305) 374-3330  
pmhudson@arnstein.com

FOR THE DEFENDANT(S): ENRIQUE DANIEL ARANA, ESQ.  
Carlton Fields Jorden Burt, P.A.  
Miami Tower  
100 S.E. Second Street  
Suite 4200  
Miami, Florida 33131  
(305) 530-0050  
earana@cfjblaw.com

- and -

SCOTT EVERETT BYERS, ESQ.  
GARY PAPPAS, ESQ.

REPORTED BY: Jill M. Felicetti, RPR, CRR, CSR  
Official Court Reporter  
400 N. Miami Avenue, Suite 08S27  
Miami, Florida 33128  
jill\_felicetti@flsd.uscourts.gov

1           MR. ARANA: Assistant director of finance, and then  
2 probably Hernan Cardeno.

3           THE COURT: How long are they going to take?

4           MR. ARANA: I don't think they are going to take long.  
5 A half hour each.

6           THE COURT: For your direct?

7           MR. ARANA: For direct maximum.

8           THE COURT: How long are you going to take?

9           MR. HUDSON: Cross about the same, probably.

10          THE COURT: We will start up again at 2.

11          So far the estimate was this witness was going to be  
12 an hour. He took two hours. Let's get a little more focused  
13 on the next two witnesses. In fact, let's come back at a  
14 quarter to 2. That should give you enough time to grab a  
15 sandwich if you want to.

16          (Recess taken in proceedings.)

17          THE COURT: Does the plaintiff have any further  
18 evidence or witnesses?

19          MR. HUDSON: No, your Honor.

20          THE COURT: Defendant call their first witness,  
21 please.

22                               MANUEL MARQUEZ,  
23 having been first duly sworn on oath, was examined and  
24 testified as follows:

25          THE WITNESS: Manuel Marquez. Last name

1 M-A-R-Q-U-E-Z.

2 DIRECT EXAMINATION

3 BY MR. ARANA:

4 Q. Good afternoon, Mr. Marquez.

5 A. Good afternoon.

6 Q. Do you work for the City of Miami Beach?

7 A. I do.

8 Q. What is your position with the city?

9 A. I am assistant director of the finance department.

10 Q. How long have you served in that capacity?

11 A. Since 2006.

12 Q. I think you submitted an affidavit in this case, which  
13 suggests it was from 2011. Is that a typo?

14 A. That is a scrivener error.

15 Q. What is your general duties and responsibilities as  
16 assistant director of finance?

17 A. I manage the day-to-day functions of our city's customer  
18 service center, which handles business tax receipts, utility  
19 billing, lien statements, and other revenue-generating  
20 functions of the city.

21 Q. Thank you.

22 And what is a business tax receipt?

23 A. A business tax receipt is what lay people would call an  
24 occupational license. It's a tax. For any business engaged in  
25 a for profit business, the City of Miami Beach is required to

1 obtain a business tax receipt.

2 Q. Any business in the City of Miami Beach has to have a  
3 business tax receipt to operate; is that correct?

4 A. That is correct.

5 Q. Can you briefly describe the process that a business  
6 applicant must follow to apply for a new BTR?

7 A. Business tax receipts are governed by Florida statutes 205  
8 and our city code section 102. A business that wants to obtain  
9 a business tax receipt in the City of Miami Beach has to apply.  
10 They can apply online or in person. They are required to fill  
11 out an application. That application, you also have to submit  
12 a lease or a warranty deed that tells us where you are going to  
13 be operating. If the business that you are operating requires  
14 a state license, you would also need to submit a state license  
15 and you would also need to submit articles of incorporation.

16 Q. Are you familiar with Beach Blitz's BTR license history?

17 A. Yes.

18 Q. I am going to direct you to a few exhibits which are in the  
19 black binder in front of you. If you could please look at  
20 Exhibit 4, which is in evidence.

21 A. I have Exhibit 4.

22 Q. What is Exhibit 4?

23 A. Exhibit 4 is a business tax receipt for Beach Blitz company  
24 located at 865 Collins Avenue for the fiscal year beginning  
25 October 1, 2011 through September 30, 2012. It's a BTR,

1 business tax receipt, for liquor sales.

2 Q. And what was the city's procedure for processing this BTR  
3 application?

4 A. This BTR application would have been received and it would  
5 have been routed to all of our regulatory departments. For  
6 this type of business the finance department does the  
7 application intake and then we route it electronically to the  
8 building department, the fire department, planning department,  
9 and the code compliance department.

10 Q. And those departments weigh in on whether to approve the  
11 BTR?

12 A. They do.

13 Q. Did Beach Blitz renew its BTR license for fiscal years  
14 2012/13, 2013/14, 2014/2015 and 2015/2016?

15 A. They did.

16 Q. Okay. What was Beach Blitz required to do in order to  
17 renew its BTR for those years?

18 A. To simply pay the BTR renewal, which is mailed out in July  
19 of every year. We mail out the renewal for the upcoming fiscal  
20 year.

21 Q. If the company wanted to add a new use, what would happen  
22 then?

23 A. A company wanting to add a new use would fill out an  
24 application similar to the first application that was filled  
25 out for this entity, Beach Blitz. They would fill out an

1 application describing the type of business activity you wanted  
2 to partake in and then we would take that application and route  
3 it to all of the regulatory departments.

4 Q. So could you take a look at Exhibit 6. What is Exhibit 6?

5 A. Exhibit 6 is a BTR, business tax receipt, for Beach Blitz  
6 at 865 Collins Avenue. It is for the time period October 1,  
7 2015 through September 30, 2016. It's for all the categories  
8 that are listed there in exhibit. They have an ATM machine  
9 located at the facility, they are engaged in food sales, liquor  
10 sales, merchant sales, and they also have a category for  
11 entertainment establishment without dancing.

12 Q. So if we look at pages 2 and 3 of Exhibit 6, is this an  
13 application for BTR?

14 A. Yes, it is.

15 Q. And this is Beach Blitz's application for a BTR for the  
16 2015 and '16 fiscal year, correct?

17 A. Correct. This is an application where they added these  
18 additional categories to their existing BTR.

19 Q. So that was my question. Why did Beach Blitz have to  
20 submit a new application for this year?

21 A. Any time you add a category to your BTR, you are required  
22 to fill out an application.

23 Q. So Beach Blitz submitted a new application adding the  
24 categories and then this application, who routed this  
25 application to the various departments. Is that right?

1 A. Correct. We would route it to building, planning, fire and  
2 code compliance.

3 Q. And the BTR for 2015, fiscal year 2015 to '16 was issued,  
4 correct?

5 A. It was, yes.

6 Q. And when did this BTR expire?

7 A. All BTRs expires September 30th of the year that they were  
8 issued. This is by state statute chapter 205.

9 The period for BTR is from October 1th through  
10 September 30th of the fiscal year.

11 Q. So did this BTR expire on September 30, 2016?

12 A. It did.

13 Q. And did Beach Blitz submit payment to renew its BTR prior  
14 to that date?

15 A. It did. That's why it had this BTR.

16 Q. I am talking about prior to the expiration of this BTR.

17 A. Yes.

18 Q. Did Beach Blitz pay for a license, a BTR license for  
19 2016/17?

20 A. They did not.

21 Q. And that's because the license -- because they did not pay  
22 for that renewal, correct?

23 A. Correct.

24 Q. So just to clarify, Exhibit 6, which is the 2015/16 BTR,  
25 expired on September 30, 2016, correct?



1 A. Correct.

2 Q. Without Beach Blitz having made a payment for the following  
3 year, correct?

4 A. Correct.

5 Q. Now if you could take a look at Exhibit 7, please. What is  
6 Exhibit 7?

7 A. Exhibit 7 is a printout from our system depicting the date  
8 that the renewal for the fiscal year 2016/17, when it was  
9 created. This renewal notice was created on July 1, 2016.

10 Q. And this was the renewal notice for Beach Blitz, correct?

11 A. Correct, for Beach Blitz.

12 Q. For the 865 Collins Avenue location, correct?

13 A. Yes, sir.

14 Q. And does the city send its BTR license holder an invoice to  
15 renew their BTRs every year?

16 A. We do.

17 Q. And in July of the year in which the license expires, is  
18 that the time when --

19 A. That's the time.

20 Q. -- when they are sent?

21 A. Yes. We send it out every July via U.S. Postal Service, we  
22 send out renewal notices.

23 Q. But Beach Blitz did not pay its renewal invoice prior to  
24 the expiration of the BTR on September 30, 2016, correct?

25 A. They did not. They did not pay for this location.

1 Q. Let's talk about, then, the 2016-17 fiscal year. Would  
2 that be from October 1 until September -- I am sorry.  
3 October 1 of 2016 to September 30 of 2017?

4 A. That is correct.

5 Q. Is there any process or procedure in your department which  
6 would have prevented Beach Blitz from paying this invoice  
7 during that fiscal year?

8 A. None whatsoever. They could have paid the invoice at City  
9 Hall, 1700 Vintage Center Drive, at our customer service  
10 center, 1755 Meridian Avenue, our lockbox. Our lockbox is on  
11 our renewal notice. Our renewal notice has a link to our  
12 website and you can click on the link and pay online.

13 Additionally, we have a satellite office in North  
14 Beach Miami Beach where customers can pay it at our satellite  
15 office.

16 Q. Can you explain to the court -- so just to be clear, the  
17 city will always accept payment for a BTR, correct?

18 A. Correct. That's why we send out the renewal notices, so we  
19 can get paid.

20 Q. Can you explain to the court the city's procedure for  
21 actually issuing the BTR in the event that there are  
22 outstanding fines or debts owing to the city?

23 A. Sure. In our city code on chapter 102, the city permits us  
24 from withholding someone's BTR if it has been paid if a  
25 business entity owes the city outstanding monies. So we mail

1 out a renewal notices in July. If a customer does not pay --  
2 their period to pay ends September 30th of that fiscal year.  
3 That BTR is good for one year, from October 1 through  
4 September 30th.

5 THE COURT: If someone pays but they have a violation  
6 that's outstanding, what happens then?

7 THE WITNESS: If someone comes to our office and pays  
8 for a BTR and they have an outstanding violation, we would  
9 notify them, thank you for your payment for the BTR but you  
10 have these outstanding violations or you have these outstanding  
11 moneys that are owed to the city. You need to remedy these  
12 first before we can issue your BTR.

13 Now, if the outstanding violation is a code violation  
14 and the customer wishes to challenge the violation, they say  
15 this isn't right, I am going to challenge it at the special  
16 master level, once they schedule something before a special  
17 master and they show us evidence that it's going before the  
18 special master, we will release the BTR. That's our standard  
19 practice, because they haven't had their day in court, they  
20 haven't been adjudicated guilty.

21 BY MR. ARANA:

22 Q. So if a notice of violation is issued and the time for  
23 appeal runs, then that violation, that debt becomes due to the  
24 city, correct?

25 A. Correct. Yes, sir.

1 Q. You would expect a business owner to pay that before the  
2 city, before the city will issue the BTR, correct?

3 A. That is correct. Yes.

4 Q. But the city will accept payment for the BTR, correct?

5 A. Yes, we do. That's part of our practice every single day.

6 Q. And then when the violations are paid, it will go ahead and  
7 issue the BTR; is that right?

8 A. Yes.

9 Q. As far as you know, did Beach Blitz during the 2016/17  
10 fiscal year ever submit payment to the city for its BTR?

11 A. They did not.

12 Q. And if Beach Blitz had ever submitted payment to the city  
13 for its BTR for the 2016/17 fiscal year, would the city have  
14 accepted that check?

15 A. We would have accepted the payment.

16 Q. Let me ask you to take a look at Exhibit 15. What is  
17 Exhibit 15?

18 A. Exhibit 15 is a reprint of an invoice for fiscal year  
19 2016/17. The customer or customer's representative came to our  
20 office on June 27 -- that's the invoice date that's on this  
21 document -- and asked for a printout of what was owed for the  
22 BTR for Beach Blitz at 865 Collins Avenue. One of my staff  
23 members printed this and hand delivered it to the person  
24 representing Beach Blitz.

25 Q. And if on June 27th Beach Blitz or its representatives had

1 handed the clerk a check for \$2,246.46, would the clerk have  
2 accepted that payment?

3 A. The clerk would have accepted that payment. And if there  
4 was no outstanding monies owed, we would have issued a BTR  
5 there and then.

6 Q. Now, are you aware that Beach Blitz at this time on  
7 June 27th had an outstanding violation from December 21 of  
8 2016?

9 A. I am now aware that they had an outstanding violation.

10 Q. And you are aware that they were cited on December 21, 2016  
11 and never appealed that violation? Correct?

12 A. Correct.

13 Q. So on June 27 when they came in, in addition to owing the  
14 money for the BTR, Beach Blitz also owed \$1,000 for the  
15 citation, correct?

16 A. Correct. If they would have paid the BTR, the \$2,246.46  
17 and the thousand dollars for the violation, we would have  
18 issued their BTR on the spot at that moment.

19 Q. Now, are you aware that on June 25th, two days before this  
20 invoice was issued, Beach Blitz received two notices of  
21 violation?

22 A. I am aware.

23 Q. Would those notices of violation have been due on  
24 June 27th?

25 A. They would not have been due on June 27th.

1 Q. Okay. Is that because they are not due until the time for  
2 appealing them runs?

3 A. Correct.

4 Q. So those invoices would not have impacted Beach Blitz's  
5 ability to pay for and obtain its BTR at that moment, right?

6 A. No.

7 Q. All it had to do was pay \$2,246 plus a six-month-old \$1,000  
8 fine?

9 A. Correct.

10 Q. If Beach Blitz had timely appealed those two June 25th  
11 violations to a special master, would Beach Blitz have been  
12 able to simply pay the BTR and obtain its license --

13 A. Yes.

14 Q. -- at that point?

15 A. Yes. If Beach Blitz timely appealed the two violations and  
16 paid for the BTR, we would not withhold the BTR. We would have  
17 issued a BTR as soon as we had confirmation of the payment for  
18 the BTR.

19 Q. Because if Beach Blitz had timely appealed that, those two  
20 citations, they wouldn't be due, correct?

21 A. They are not due until the special master makes a ruling on  
22 that case.

23 Q. Okay. Now, we just talked about the June 25th, 2017  
24 violation for operating without a BTR.

25 You are aware of that one, right?

1 A. Yes.

2 Q. Does the resolution of the appeal to the special master  
3 regarding the fine resolve the issue of payment for the BTR?

4 A. No. They are two independent items. The BTR is a tax for  
5 conducting business in Miami Beach that needs to be paid.

6 Q. So does the city expect business owners who are cited for  
7 operating without a BTR to come in and pay for the BTR?

8 A. Yes.

9 Q. Independent of whether they choose to appeal that citation?

10 A. Correct. The BTR amount due are still due to the city.

11 Q. Let me ask you to take a look at Exhibit 8. If you could  
12 explain to the court what is Exhibit 8.

13 A. Exhibit 8 is a screenshot from our database where we manage  
14 our BTRs. This shows the Beach Blitz businesses. They have a  
15 business at 1100 Collins Avenue and an additional business at  
16 865 Collins Avenue. It shows that they have an active BTR for  
17 Beach Blitz at 1100 Collins and a closed BTR at 865 Collins  
18 Avenue.

19 Q. What does it mean that the 865, the location of the license  
20 status is closed?

21 A. This means that in our database this business has been  
22 closed. Their time frame to renew and pay for the renewal has  
23 expired. In order for them to get a BTR for that location they  
24 would have to reapply. They missed the renewal period.

25 They had approximately nearly 400 days to pay for

1 their BTR renewal since the mailings were sent out in July, and  
2 they were due in July of 2016, and they had until  
3 September 30th of 2017 to pay for the renewal. So this  
4 business in our records has been closed. They didn't renew  
5 their license.

6 Q. In any one of those 400 days Beach Blitz could have come in  
7 and submitted their payment?

8 A. At any time in any of the payment methods I mentioned  
9 before.

10 Q. And the city would have accepted that payment, correct?

11 A. Yes.

12 Q. If there was an outstanding violation that they were not  
13 paying, then you would have held that BTR until they paid the  
14 fine?

15 A. Correct. We would have advised them of the outstanding  
16 violation and instructed them that this needs to be resolved  
17 before we can issue your paid BTR.

18 Q. Once an account is closed over a year after the license  
19 expires, correct, what does an applicant need to do, a business  
20 owner need to do to obtain a BTR?

21 A. It's simple. It's one of our earlier exhibits. You submit  
22 an application and the application is routed to all of our  
23 regulatory department, building, planning, fire and code, and  
24 they would review the application. The application intake  
25 would happen in my department, the finance department, and we



1 would route it electronically to all of our regulatory  
2 departments.

3 Q. And if you were to submit an application today for a new  
4 BTR, is that the process you would follow?

5 A. Yes.

6 Q. And if the result of that application were a denial, does  
7 the applicant have an opportunity to appeal that through the  
8 city's processes?

9 A. Yes. Chapter 102 of our city code has an appeal process  
10 for businesses that are denied BTR. The city manager or  
11 designee would process the appeal.

12 Q. And if an application for a new BTR were submitted by Beach  
13 Blitz, would you or your department make the decision about  
14 whether to grant it in the first place?

15 A. No. My department, just the paper we receive, the  
16 application. We are the intake department. We route it to the  
17 regulatory departments. Once the regulatory departments have  
18 reviewed, they give us the okay. Then we are the ones that  
19 collect the money and issue the BTR.

20 THE COURT: They give you the okay or the denial?

21 THE WITNESS: Correct, they give us the okay or the  
22 denial electronically in our system.

23 MR. ARANA: Mr. Marquez, I have no further questions.  
24 Thank you.

25 THE COURT: Any cross?

1 MR. HUDSON: Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. HUDSON:

4 Q. Let me understand the process first and then we will get  
5 into some specifics. I kept hearing counsel say to you that  
6 they would have accepted the money had money been tendered; is  
7 that correct?

8 A. That is correct.

9 Q. But you wouldn't have -- you will help me with the words --  
10 but you wouldn't have issued or released the license if there  
11 were a special master proceeding pending or something pending,  
12 correct?

13 A. If there were outstanding monies owed to the city, we would  
14 withhold the BTR until the outstanding monies are either paid  
15 or, if it's a special master case, it's been appealed at the  
16 special master level. If it has been appealed at the special  
17 master level, we would release the BTR.

18 Q. So payment alone doesn't solve the BTR problem; it's a step  
19 in the right direction, correct?

20 A. Normally, typically payment alone solves the BTR problem.  
21 Most businesses don't have outstanding violations or monies  
22 owed to the city. So the typical practice is you receive a  
23 renewal notice, you pay for your renewal notice, and then we  
24 issue the BTR.

25 Q. In this case, on June 27th there was an outstanding

1 violation that had dated back to the prior year, 12/16. Are  
2 you familiar with that?

3 A. The \$1,000 violation?

4 Q. Correct.

5 A. Okay.

6 Q. There's been testimony by my client that he walked in and  
7 tried to get his BTR and he was told he couldn't because there  
8 were outstanding violations. Is that inconsistent with how the  
9 process works?

10 A. That would be an accurate statement. My staff would have  
11 told them you can pay for your BTR or we will not release your  
12 BTR until you pay this other outstanding monies owed to the  
13 city. But we will accept payment for the BTR.

14 Q. Let's assume nothing changed and the fiscal year clicked  
15 over. In other words, they had paid the BTR money on that  
16 June 27th day. For whatever reason that violation had not been  
17 resolved. The BTR would have expired or closed, as you call  
18 it, correct?

19 A. It would have expired September 30. They are good for one  
20 fiscal year.

21 Q. And he would have had to apply for a new BTR, correct?

22 A. If he had paid for his BTR and is handling something that's  
23 going before the special master, we wouldn't close the BTR at  
24 that point because it's an ongoing thing with the special  
25 master.

1 Q. So it's your testimony it would have been simply a renewal?

2 A. Our system doesn't renew BTRs unless a payment has been  
3 made. If no payment has been made for the BTR, our system  
4 won't automatically renew a BTR.

5 Q. I think you testified that a renewal is simply just paying  
6 the amount on the renewal notice or any late fee, correct?

7 A. A renewal is a courtesy notice the city sends to customers  
8 so they can pay their BTR.

9 Q. Once the payment is made if there are no violations,  
10 there's an automatic renewal, correct?

11 A. Correct.

12 Q. That didn't happen here, right?

13 A. That didn't happen here because the customer didn't pay  
14 their BTR during the fiscal year.

15 Q. Let's talk about that. I have seen your affidavit. I  
16 don't think we need to talk about your affidavit because you  
17 testified to this today. You testified as to a process. I  
18 understand process. Everybody tries to have process. But  
19 process doesn't always work.

20 In this case we have alleged there is an additional  
21 motive of the commission, the mayor, the city manager and  
22 others to put liquor stores out of business. So we have  
23 alleged that the city essentially violated its process by not  
24 doing what it would normally do.

25 So in this case when you say in your affidavit and you

1 say under oath today, and I don't mean to put words in your  
2 mouth so you tell me if I stated this incorrectly.

3 "I'm sure that they never tried to pay the BTR because  
4 we would have accepted the money."

5 Did you interview every one of your -- I don't know  
6 what they are called, the people at the desk. Did you  
7 interview every one of them and ask them if they had any  
8 recollection about this?

9 A. I did not interview every one of my staff members.

10 Q. So when you say I know he didn't pay, what you are really  
11 saying is I can tell you what the process is and I could tell  
12 you what they should have said, but I wasn't there and I can't  
13 tell you what really happened?

14 A. Well, I was there during June 27. If there was a problem,  
15 if a customer or any business for that matter came to our  
16 office and attempted to pay and couldn't pay, they could have  
17 easily called for one of my many supervisors or called for me  
18 and I would have immediately gone out and solved whatever the  
19 issue is or given some guidance. That did not happen in this  
20 case.

21 Q. So since that didn't happen, I don't know, you don't know,  
22 the judge doesn't know actually happened on June 27 at that  
23 counter?

24 A. What I know is that the customer came in and a reprint of  
25 his BTR was provided. It is our practice to tell customers,

1 this is your BTR, it's due, it's late. The penalty charges  
2 were already calculated on that June 27th invoice. And we  
3 would have instructed the customer as part of our standard  
4 operations that here is your invoice, you could pay for it at  
5 our window.

6 Q. Now in the context of what actually happened in this case,  
7 let's play it out. There was a \$1,000 fine outstanding on a  
8 matter from December the prior year, right? So if he had paid  
9 that day, you would have accepted the money, but his license  
10 would have been -- I am not even sure what the right word is --  
11 in suspense?

12 A. If he would have paid the BTR that day and he would have  
13 paid the \$1,000 violation and there's nothing else in our  
14 system that he owes us any late monies for any other invoices,  
15 he would have walked out with a BTR in his hands.

16 Q. But just paying the BTR money that day wouldn't have solved  
17 the problem?

18 A. No, not just paying the BTR money. There was a thousand  
19 dollar outstanding matter.

20 THE COURT: I thought you had to check with other  
21 departments before you issued the BTR.

22 THE WITNESS: No. I check with our departments in a  
23 brand new application.

24 THE COURT: Only on new applications.

25 THE WITNESS: This is a renewal notice. So for a

1 renewal notice, it's simply make a payment. If you don't owe  
2 the city any money, we release the BTR.

3 BY MR. HUDSON:

4 Q. Turn to Exhibit 7 in the white binder.

5 THE COURT: Tell me the number again.

6 MR. HUDSON: Seven, your Honor. It's the agreed  
7 special master order.

8 BY MR. HUDSON:

9 Q. Have you seen this document before?

10 A. I don't recall.

11 Q. On June 27 you testified that there was one outstanding  
12 violation that was old. Were you aware that there were two  
13 brand new violations that were issued on June 25th?

14 A. I am aware now. I wasn't aware in June 27th because the  
15 customer did not speak with me. But I am aware now and since  
16 sometime in October.

17 Q. Take a quick look at Exhibit 5, which are those two  
18 June 25th violations. I want you to pay attention to the  
19 violation numbers because then I want you to go to the special  
20 master agreed order, which is Exhibit 7, again.

21 A. I see these violations were issued on June 25th. So I  
22 imagine this is what triggered the customer, the business to  
23 come to our office on June 27th.

24 Q. And that's what you want to happen, right?

25 A. Yes.

1 Q. You didn't pay your bill, come pay it, correct?

2 A. Yes.

3 Q. Now, by the way, you said notices. Sometimes you would  
4 send courtesy notices out. In addition to the original invoice  
5 you would send courtesy notices out. Did any courtesy notices  
6 go to my client?

7 A. Yes. The renewal notice is a courtesy notice. We call the  
8 renewal notice a courtesy notice because there's no requirement  
9 by state statute or city code that a renewal notice be sent  
10 out.

11 Q. Did my client Beach Blitz Ocean 9, the 865 address, did it  
12 receive any other notices relative to the BTR violation?

13 A. It received its notice in July. I am not aware of Beach  
14 Blitz receiving any other notices.

15 Q. The July 16 notice, that would have been for '16, '17?

16 A. Correct. This is very similar to like your driver's  
17 license. Your driver's license expires on a certain date.  
18 Whether you get a renewal notice or not, the expiration date is  
19 the expiration date. Similar to tax day, April 15. April 15  
20 is the day your IRS taxes are due. Whether you receive a  
21 notice or not, that's the due date.

22 It's very similar in our business tax. The business  
23 tax BTR is good for one fiscal year, October 1 through  
24 September 30th, and most businesses are aware of this because  
25 they renew every year. So it's a common thing.



1 Q. Look at the agreed order, which is Exhibit 7.

2 Wouldn't you agree that all three of the violations  
3 that were outstanding were dealt with by the special master by  
4 the order dated September 28?

5 A. I have to read the order.

6 Q. Sure. I am sorry. Take your time.

7 MR. ARANA: I'm going to object for lack of personal  
8 knowledge. The witness is not familiar with this exhibit.

9 THE COURT: Objection is overruled.

10 You can answer.

11 A. This is something that would be done either at a special  
12 master or a city attorney's office. It's not a form that I am  
13 familiar with. I am not an attorney.

14 Q. I don't mean to cut you off, but I want you to tell me if  
15 you can tell if the three outstanding violations for 865, which  
16 is the Beach Blitz Ocean 9 business, are the three that were  
17 outstanding on June 27th?

18 A. I am reading the citation number, cc 21601704 and cc  
19 2170312 and cc 2170313 are hereby affirmed. I have no idea  
20 what that means, but that's what I am reading.

21 Q. But by the citation numbers can you tell, as you looked at  
22 something earlier either on your direct or speaking to me, that  
23 there were three citations? In fact, we showed you Exhibit 5.

24 A. Correct. There was a citation for \$1,000.

25 Q. Look at the citation numbers in Exhibit 5. Those two are

1 the same as in the agreed order.

2 MR. ARANA: I will object. Again, lack of personal  
3 knowledge.

4 THE COURT: Overruled. He is testifying to what his  
5 company does or his office does. I can just take judicial  
6 notice of 02.

7 Is there any objection that these are the three  
8 citations we have been talking about?

9 MR. ARANA: No, your Honor.

10 THE COURT: The other two are from June 2017.

11 BY MR. HUDSON:

12 Q. When your office gets an order resolving all outstanding  
13 violations, based on what I believe you have said today, now a  
14 person can tender the money for the BTR, get the BTR  
15 immediately, correct?

16 A. If I receive something from our city manager's office or  
17 our city attorney's office saying these violations have been  
18 settled, whatever terminology is used, if I receive something  
19 from the city attorney's office or city manager's office and  
20 the BTR payment has been made, the BTR would have been  
21 released.

22 Is that your question?

23 Q. So this order wouldn't have been enough for you. You  
24 needed direction either from the city attorney or from the city  
25 manager, correct?

1 A. If I didn't understand this order presented to me and I  
2 don't understand what I was reading, I would reach out to  
3 whoever wrote the order to find out what this deals with.

4 Q. Can you tell from that order who wrote it?

5 A. What was the number of the exhibit again? I am sorry.

6 Q. Seven.

7 A. I see a special master. I can't make out the signature on  
8 this special master.

9 Q. How often do you deal with special master orders and in the  
10 context of BTRs and violations?

11 A. It's not a regular daily matter. It's not part of my daily  
12 job. My job, I am the tax man. I send out bills and collect  
13 money for the city.

14 Q. I don't know if I'd admit that in open court.

15 THE COURT: They made a song about that.

16 BY MR. HUDSON:

17 Q. Is it fair to say the people that work in your department  
18 that are subordinate to you that are at the counter are  
19 probably even less familiar with the special master process and  
20 special master agreed orders?

21 A. I wouldn't say that. I have some people that are detached  
22 and worked with the special master in prosecuting certain  
23 cases.

24 Q. So the simple existence of this September 8th order may not  
25 have been sufficient to allow the city to release the BTR?

1 A. If the customer came on this date that you just mentioned  
2 with this order and paid for their BTR, we would have processed  
3 the payment for the BTR and we would have investigated what is  
4 this order all about, does this settle the three outstanding  
5 violations. We would have done that if this came to our desk.

6 Q. That's what you would have done, you as the supervisor?

7 A. Correct. That's what our staff would do. They are trained  
8 to solve issues, help customers.

9 We want the customer to get the BTR. We don't want  
10 the customer not to get the BTR, and we want the customer to  
11 pay the BTR.

12 Q. Our allegations in this case are that the city didn't want  
13 the customer to get the BTR.

14 MR. ARANA: Objection.

15 BY MR. HUDSON:

16 Q. Let me ask to you look under -- I don't know where it is  
17 there. It's a separate piece of paper. It may be in that  
18 white binder.

19 THE COURT: Go up there and find it for him. He won't  
20 know where it is.

21 Counsel is giving me an extra one.

22 BY MR. HUDSON:

23 Q. Take a look at that.

24 Do you recognize that? Can you tell us what it is?

25 A. It appears --

1 THE COURT: For the record, it's Plaintiff's 17 you  
2 are showing him, right?

3 MR. HUDSON: Yes, your Honor.

4 THE COURT: Go ahead.

5 A. This appears to be a screenshot from our system. I can't  
6 verify for sure because I didn't produce this document, but it  
7 appears to be a screenshot from our system.

8 Q. Let's start with this. What system is this?

9 A. This is our database where we run BTR renewals.

10 Q. So this is under your division finance?

11 A. Correct. We would be the users of this system.

12 Q. Can you tell the date of this document?

13 A. I cannot tell the date of this document.

14 Q. Look at the top. There is a red line. Can you read what's  
15 in the red line?

16 A. I read on the red line "active holds exist on this record."

17 Q. What does that mean?

18 A. That means that this record has outstanding -- this means  
19 that this partial serial number, the address, has outstanding  
20 monies or violations with the city, outstanding monies owed to  
21 the city or outstanding violations with the city.

22 Q. Let's go into the white box in the middle. Read that for  
23 the record.

24 A. Want me to read out loud?

25 Q. Yes.

1 A. The white box in the middle says, "As per city attorney  
2 office, close BTR for nonpayment. Entity cannot reply for  
3 liquor sales and/or entertainment at 865 Collins Avenue."

4 Q. Let's start with the first sentence. That's really  
5 unnecessary, isn't it, because if the fiscal year had come and  
6 gone, that 16/17 BTR is finished, correct?

7 A. That is correct. If the fiscal year came and went and the  
8 BTR was not paid, the BTR would be moved to a closed status by  
9 my staff.

10 Q. There was no reason for that first sentence, correct? The  
11 city attorney didn't need to do that. It would happen as a  
12 matter of law, as you testified?

13 A. No. It could have happened. I don't know who typed this  
14 or if it even came from our system, but the city attorney could  
15 reach out to us and say, hey, by the way, this BTR is in an  
16 expired state, remember to close it. That's not within the  
17 realm of possibility.

18 Q. Is that the ordinary course?

19 A. No. This case is not the ordinary course, though.

20 Q. I would agree with you.

21 Let's look at the next sentence. "Entity cannot  
22 reapply for liquor sales and/or entertainment at 865 Collins  
23 Avenue."

24 Any idea why that's there?

25 A. The entity can reapply and my department would accept an

1 application for this entity. Now, this might mean that this  
2 type of use is no longer permitted in this area. So it may be  
3 it's just giving a heads-up.

4 Now, this note here, if it's from our system, I have  
5 no way of knowing who typed this note in. Many departments use  
6 this system -- finance, building, planning, fire, code. So I  
7 don't know who typed this note in the system. But the entity  
8 can reapply. My department would accept the application and we  
9 would route it to the regulatory departments. They are the  
10 ones that would ultimately say entity cannot reapply for liquor  
11 or sales or entertainment at 865 Collins Avenue.

12 Q. So --

13 A. It might be there is a heads-up, this use is no longer  
14 permitted at this area because this BTR has expired.

15 Q. If my client was provided this document by somebody at your  
16 counter, are you saying it was a mistake to give him this?

17 MR. ARANA: Objection.

18 A. No, I am not. If they came, if the customer came to our  
19 office and there is something in our system that pertains to  
20 his account, my staff would give them that information. The  
21 same way he came on June 27 and we gave him the invoice that  
22 was due, we would give him the information pertaining to his  
23 account, if indeed this came from my office.

24 BY MR. HUDSON:

25 Q. Okay. One of our frustrations is we can't see the rest of

1 this document, but let's go to the left of the white box about  
2 three quarters down. There is a word "violations" in all caps.

3 Do you see that?

4 A. I see that.

5 Q. Is there any way, based on your knowledge of the system and  
6 this case, you can help figure out what might be behind that?

7 A. I need to go into our system and see what's there. And  
8 this could be a simple box. It could have been moved from  
9 somewhere else, it could have been moved and placed on top of  
10 that. The system works in Windows so you can minimize and  
11 maximize the windows.

12 Q. It looks like it's a regular window someone pulled up?

13 THE COURT: If you look at the next line, it starts  
14 out the same, right?

15 THE WITNESS: It could be. If that's a note, you  
16 click on that line underneath the violations. When you click  
17 on that, this other box pops up. But I can't know for sure  
18 unless I'm in the system.

19 BY MR. HUDSON:

20 Q. Sure. But the Judge accurately points out the next line is  
21 interesting as well. If you look at it, it also says, "As per  
22 the city attorney office, close BTR for nonpayment," and all we  
23 can see on the rest of that line is a date on the other side,  
24 which was the day they shut our business down, but it was five  
25 and a half hours earlier in the day.



1           Is that a fair reading of that document?

2           THE COURT: Which side had that? Were they closed in  
3 the morning?

4           MR. HUDSON: Closed at 5:00 p.m. on 10/6, your Honor.  
5 It appears, we believe this says 10/6, 11:33 a.m.

6 BY MR. HUDSON:

7 Q. Is that a fair reading of that document of what little we  
8 could see?

9 A. Could you repeat that?

10 Q. The second line under the "violations" also indicates the  
11 city attorney's office gave a direction in this case to close  
12 the BTR.

13 A. You could make that assumption from reading this, but the  
14 BTR would have been closed anyway by my staff because it has  
15 expired.

16 Q. Exactly. There was no need for that direction. Why would  
17 the city attorney then give you the direction?

18 A. I don't know. You should ask the attorney.

19           MR. ARANA: Objection.

20           THE COURT: That's fair. Don't need to know.

21           MR. HUDSON: I'll take it step by step, Judge.

22 BY MR. HUDSON:

23 Q. Have you spoken -- who would the city attorney in this case  
24 have been? Would there have been a particular city attorney?

25 A. The city attorney I dealt with --

1 MR. ARANA: I am going to instruct the witness not to  
2 disclose attorney-client confidences or object on the grounds  
3 that --

4 THE COURT: He can tell us the name of the city  
5 attorney. That's not a confidence.

6 MR. HUDSON: I am taking it step by step to be  
7 careful.

8 THE COURT: Tell us who the city attorney is.

9 THE WITNESS: Mr. Alex Boxner.

10 BY MR. HUDSON:

11 Q. Is he generally the deputy city attorney responsible for  
12 these things?

13 A. I don't know his official title.

14 Q. Okay. Prior to the institution of this lawsuit have you  
15 ever had a conversation with attorney Boxner about this case?

16 A. No.

17 MR. ARANA: Objection. Attorney-client privilege.

18 THE COURT: Sustained.

19 MR. HUDSON: I'm sorry, your Honor?

20 THE COURT: Sustained.

21 BY MR. HUDSON:

22 Q. Have you had a conversation with anyone in the city not  
23 involving the city attorney about this case prior to the  
24 lawsuit?

25 A. With my staff while we were preparing for this lawsuit and

1 preparing exhibits. I have spoken with my staff in providing  
2 exhibits and locating exhibits in our database.

3 Q. I'm sorry. Maybe I misspoke.

4 Prior to filing the lawsuit, was this on your radar  
5 for any reason?

6 A. No. Usually when something gets to my level it is because  
7 there's some sort of issue. So that's how my involvement -- I  
8 got involved with this sometime in October.

9 Q. Turn to Exhibit 3 in the white binder. Any idea what these  
10 few pages are?

11 A. I can read what it says here, but it's not a document that  
12 I am familiar with.

13 Q. I pulled these off the City of Miami Beach website. Does  
14 that help refresh your recollection at all?

15 A. No, because I work for the finance department. I don't  
16 work for the special master's office, so I wouldn't go into  
17 this website.

18 Q. Let's take a look at something anyway and see if you have a  
19 comment on it.

20 MR. ARANA: Object on foundation and relevance  
21 grounds.

22 THE COURT: Let's see what it is first.

23 BY MR. HUDSON:

24 Q. Turn to the second page. The fourth bold item, "I just  
25 received," do you see that?

1 A. Yes.

2 THE COURT: What page? I'm sorry.

3 MR. HUDSON: It is the second page of the exhibit,  
4 your Honor. You are looking at Exhibit 3 in the white book.

5 THE COURT: Okay. Go ahead.

6 MR. HUDSON: Exhibit 3, fourth item down. "I just  
7 received."

8 THE COURT: Got it.

9 BY MR. HUDSON:

10 Q. I will read it into the record.

11 "I just received a letter from the finance department  
12 that my occupational license, certificate of use cannot be  
13 renewed because of a special master case. What do I do?"

14 Seems to be an answer. "Call the special master  
15 office. We will advise you accordingly."

16 So you are in the finance department, right?

17 A. I am.

18 Q. That's your specialty.

19 It seems that this document suggests that if you have  
20 a special master case there may be a hold on your BTR. Is that  
21 unfair?

22 A. Yes. This would be a hold on a BTR, how I am reading it.

23 Again, I am not -- this is not a document that was  
24 prepared by my office. I received a letter from the finance  
25 department that my occupational license, certificate of use

1 cannot be renewed because of a special master case. What do I  
2 do. This can very well be there is a violation, the judge has  
3 adjudicated guilty, the violation has been set \$1,000 or  
4 there's a daily running fine, you need to -- if someone were to  
5 come to my office and they have this, we would refer them to  
6 the special master office.

7 So this is an accurate statement.

8 Q. Is it accurate or inaccurate?

9 A. It would be an accurate statement. If someone comes to our  
10 office and there is a special master -- a special master has  
11 adjudicated someone guilty, they owe the city monies. We would  
12 refer them to the special master office so the special master  
13 can provide them an invoice for the monies that are owed.

14 Q. I'm sorry. Maybe it's the echo in here. I will ask you to  
15 spell it. Inaccurate with an I-N or accurate with an A-C-C --

16 A. I believe this --

17 Q. -- statement?

18 A. I believe this statement is accurate.

19 Q. You believe it's accurate?

20 A. Yes.

21 Q. In other words, during a special master proceeding your  
22 occupational license cannot be renewed?

23 MR. ARANA: Objection. Mischaracterizing the  
24 testimony.

25 THE COURT: Overruled.

1 Answer if you can.

2 A. If a special master has indicated a business guilty, they  
3 have gone before the special master, they have been adjudicated  
4 guilty, there is a fine. Sometimes there's a daily running  
5 fine. You need to get that number. So my finance staff would  
6 send someone to the special master office. You need to get an  
7 invoice. Let's say they went to pay that special master  
8 violation. My finance staff would direct the business to the  
9 special master office so the special master office could print  
10 an invoice for them so they could go pay at the cashier.

11 Q. Let's talk about this. The agreed order, which is Exhibit  
12 7, was entered on Thursday, September 28. The Judge corrected  
13 me this morning. The following Monday was October 2nd. So all  
14 BTRs in the state, I think you told us earlier, right, expire  
15 on September --

16 A. They are good for fiscal year October 1 through  
17 September 30.

18 Q. So they expire September 30, 11:59 p.m., which would have  
19 been on this date, would have been a Saturday, I believe.

20 A. September 30 was a Saturday, yes.

21 Q. So if the special master order wasn't entered until  
22 September 28th, is there any procedure by which that person  
23 could have cleared those violations soon enough to preserve a  
24 16-17 BTR?

25 A. They could have paid their BTR. They could have paid the

1 fiscal year 2016/17 BTR before the 30th of September.

2 Q. If their testimony was they tried and they were rejected?

3 A. I wouldn't believe that they tried and they were rejected  
4 because there's so many mechanisms to pay. They pay it in  
5 person with cash, cashier's check or credit card, money order,  
6 they could pay online, they could pay at our satellite office,  
7 they could mail a payment, mail a payment to the lockbox. So I  
8 would say that's a false statement.

9 We would not refuse. If someone came in to pay a BTR  
10 we would not refuse payment. It doesn't make sense. It is not  
11 our business process.

12 Q. The distinction that I think needs to be made was you would  
13 have accepted payment, but that doesn't release the BTR?

14 A. We would not release the BTR. If there's outstanding  
15 monies owed to the city, you need to take care of that first.

16 Q. As of September 28, if this agreed order had not been put  
17 in the system, would that gentleman have been able to pay the  
18 BTR? Would you have accepted the money?

19 A. Correct, we would have accepted the money.

20 Q. But if he hadn't by Friday 5:00 p.m. close of business,  
21 either done -- he had to do something else.

22 A. If he had come to my office and said I want my BTR, I need  
23 to get my BTR today, here is the money, let me first pay you  
24 the BTR, I want to get my BTR, we would look at this document.  
25 We would have reached out to special master, the city

1 attorney's office to see what needed to be done to get the BTR.

2 If that did not happen, if he did not come to my  
3 office -- I don't recall him ever asking for me or asking for a  
4 supervisor. None of my supervisors in preparing for this case  
5 ever recall him requesting to speak to a supervisor. Because  
6 if there is a problem, I'm here. I want to pay for something,  
7 I need to get it and you don't get what you want, I think  
8 common sense would dictate to call for a supervisor, and the  
9 next person would come in. That did not happen.

10 Q. Common sense would dictate that someone that had a very  
11 valuable business wouldn't lose it for \$1,000 either.

12 A. It's not common sense.

13 Q. I think I heard what you said, but let's be clear. You  
14 couldn't do it on your own. You had to either go to the  
15 special master, try to find him on Thursday afternoon or  
16 Friday. They only work on Thursdays, right?

17 A. The special master staff, the clerks of the special masters  
18 work at City Hall Monday through Friday during regular business  
19 hours.

20 Q. You would have had to go to the special master, and I don't  
21 know if it's this one or not but let's use the special master  
22 in general for the moment, or the city attorney to get them to  
23 clear it?

24 A. Or the city manager.

25 Q. Correct. If they were predisposed not to do so because



1 they wanted to close this liquor store down, you may not have  
2 been able to find them within a day. Strike that.

3 THE COURT: Let me ask a question. As I understand  
4 it, at least the testimony until now, none of these violation  
5 notices were appealed within the 20-day time period that's  
6 called for under, I don't know if it's under your code or on  
7 the back of the ticket. So taken that for a granted, if -- but  
8 the matter was before a special master. Somehow they were able  
9 to get it in front of a special master on August --

10 MR. HUDSON: Twenty-eight it appears when the deal was  
11 made.

12 THE COURT: If that's in front of a special master but  
13 not pursuant to an appeal, but just in front of a special  
14 master under some other circumstances, would the BTR be issued  
15 if you were aware it was in front of a special master?

16 THE WITNESS: If we are aware it was in front of a  
17 special master being appealed or being negotiated, we would  
18 release the BTR if the BTR had been paid.

19 THE COURT: And assuming that the special master had  
20 ruled and imposed a fine, once the special master rules and  
21 imposes a fine, then the fine needs to be paid before you  
22 release the BTR.

23 THE WITNESS: Yes, sir.

24 MR. HUDSON: Judge, just give me a moment. I am  
25 almost there.

1 BY MR. HUDSON:

2 Q. Beach Blitz ultimately did pay online for the BTR, correct?

3 A. They paid online sometime in mid-October or first week of  
4 October, approximately.

5 Q. October 11.

6 Would it surprise you if they testified that they  
7 tried to pay online before and that was the first time at which  
8 the system would accept the payment?

9 A. Yes, that would surprise me.

10 Q. If they had paid on October 11 of '17, was that a payment  
11 for the old BTR that's now gone?

12 A. That's a payment that's in suspense right now. We are  
13 waiting for the outcome of this either to refund the money or  
14 see what the judge determines. But that payment is in  
15 suspense. It can't be applied to 2017 because that permit has  
16 expired.

17 Q. Cannot, correct?

18 A. Cannot, correct.

19 Q. So --

20 A. We were wondering, perhaps, if he intends to reapply, it  
21 could be applied, reapplied to his new application.

22 Q. Well, if the city's internal system already said don't  
23 reapply per the city attorney, what's point in reapplying?

24 A. That's not -- the case, if he comes in and reapplies, we  
25 accept his application, then we route it to the regulatory

1 department. The regulatory department, we are the ones that  
2 make that determination -- planning and zoning, building, fire,  
3 or code compliance.

4 That's not my finance department to say whether or not  
5 that business gets approved or rejected.

6 Q. One last question. I know I have asked it, but I want to  
7 ask it one more time because it's important.

8 THE COURT: It's like asking for an objection.

9 MR. ARANA: Asked and answered.

10 MR. HUDSON: I am explaining in advance. I am trying  
11 to get covered.

12 THE COURT: Go ahead.

13 BY MR. HUDSON:

14 Q. You testified as to the policies and procedures, and I get  
15 that. This case, as you said, is not the normal case. We  
16 agree with you. You do not have personal knowledge that  
17 anybody at a counter told Mr. Doar, the owner of Beach Blitz,  
18 that he was not able to get a BTR on the several times that he  
19 and his hired professionals went down there to try to get one,  
20 correct?

21 A. Please repeat the question.

22 Q. You have no personal knowledge of what the people at the  
23 counter told Mr. Doar; is that correct?

24 A. I don't have any personal knowledge. I know what our staff  
25 are trained to do and what they are trained to say to all of

1       our customers.

2       Q.   Thank you.

3               MR. HUDSON:  No further questions.

4               MR. ARANA:  Could I have two questions?

5               THE COURT:  Yes.

6                               REDIRECT EXAMINATION

7       BY MR. ARANA:

8       Q.   Counsel asked you whether you know whether staff may have  
9       disregarded your procedures and refused payment of the BTR,  
10      correct?

11      A.   Yes.

12      Q.   Can you testify for certain that the online system does not  
13      shut anyone out from making a payment because there is an  
14      outstanding violation?

15      A.   The online system does not shut anybody out from making a  
16      payment because there is a violation.  On the contrary, we  
17      accept payments.  If there's an invoice, the online system will  
18      accept payments for that invoice number at any time.

19      Q.   And the online system can't disregard your instructions,  
20      correct?

21      A.   Correct.  It's an automated system.

22               Many businesses when they are issued violations, they  
23      go online and they immediately pay.  Just because there's a  
24      violation doesn't prevent them from making an online payment  
25      for a BTR.

1 Q. At any time from July of 2016 until September 30 of 2017,  
2 Beach Blitz could have made an online payment for its BTR,  
3 correct?

4 A. Correct. Yes, sir.

5 Q. If it had done that, then, when it's outstanding, its  
6 outstanding violations were paid, the BTR would have issued?

7 A. We would have issued it, yes.

8 Q. That's the case even if the outstanding violations were  
9 paid in October of 2017, correct?

10 A. Come again.

11 Q. The BTR would issue even if the outstanding violations were  
12 not paid until early October?

13 A. Correct, yes.

14 Q. Because the payment was made during the fiscal year?

15 A. During the fiscal year, correct.

16 MR. ARANA: Thank you.

17 THE COURT: Sir, thank you. You may step down. You  
18 are excused.

19 (Witness excused)

20 THE COURT: The defendants can call their next  
21 witness, please.

22 HERNAN CARDENO,  
23 having been first duly sworn on oath, was examined and  
24 testified as follows:

25 THE WITNESS: Cardeno, C-A-R-D-E-N-O, Hernan,

1 MR. ARANA: No, your Honor.

2 THE COURT: I don't want 80 pages on this thing.

3 MR. HUDSON: No, I won't have time to do 80. We will  
4 do ten good pages.

5 THE COURT: Thanks, everybody, for your hard work  
6 today. I will try to get something out quickly.

7 Court is in recess.

8 Thank you, all. Have a good Thanksgiving.

9 MR. HUDSON: Thank you for giving us a quick hearing.  
10 We appreciate it.

11 C E R T I F I C A T E  
12

13 I hereby certify that the foregoing is an accurate  
14 transcription of the proceedings in the above-entitled matter.  
15  
16

17 November 22, 2017 /s/ Jill M. Felicetti  
18 Jill M. Felicetti, RPR, CRR, CSR  
19 Official Court Reporter  
20 400 N. Miami Avenue, Suite 08S27  
21 Miami, Florida 33128  
22 jill\_felicetti@flsd.uscourts.gov  
23  
24  
25

# **EXHIBIT E**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
Case No. 17-23958-CIV-UNGARO/O'SULLIVAN

BEACH BLITZ CO., a Florida  
corporation d/b/a OCEAN 9 LIQUOR, and  
d/b/a as OCEAN 11 MARKET,

Plaintiff,

v.

CITY OF MIAMI BEACH, FLORIDA,  
a municipal corporation of the State of Florida,  
PHILIP LEVINE, an individual, JIMMY  
MORALES, an individual, MICKEY  
STEINBERG, an individual, RICKY ARRIOLA,  
an individual, MICHAEL GREICO, an individual,  
JOY MALAKOFF, an individual, KRISTEN  
ROSEN GONZALEZ, an individual,  
JOHN ELIZABETH ALEMAN, an individual,  
RAUL J. AGUILA, an individual, and  
ALEKSANDR BOKSNER, an individual,

Defendants.

\_\_\_\_\_ /

**REPORT AND RECOMMENDATION**

THIS MATTER is before the Court on the Plaintiff's Emergency Motion for Preliminary Injunction with Incorporated Memorandum of Law (DE# 4, 11/3/17). This matter was referred to the undersigned by the Honorable Ursula Ungaro for a report and recommendation in accordance with 28 U.S.C. § 636(b). See Order of Reference (DE# 23, 11/14/17). Having carefully considered the applicable filings and the law and having held an evidentiary hearing on November 17, 2017, the undersigned respectfully recommends that the Plaintiff's Emergency Motion for Preliminary Injunction with Incorporated Memorandum of Law (DE# 4, 11/3/17) be **DENIED** for the reasons stated herein.



### **BACKGROUND**

On October 30, 2017, Beach Blitz Co. d/b/a Ocean 9 Liquor and d/b/a as Ocean 11 Market (hereinafter “plaintiff” or “Beach Blitz”) filed the instant action alleging the following causes of action against all defendants: Declaratory Judgment/injunctive Relief (Wrongful Closure) (Count I); violation of 42 U.S.C. §1983 (Count II); violation of the 14th Amendment – substantive due process and takings claim (Count III); violation of 42 U.S.C. §1983 (Retaliation for First Amendment Expression) (Count IV); declaratory judgment/injunctive relief (Section 102-377(e) of the Code) (Count V); declaratory judgment/injunctive relief (The Ordinances) (Count VI) and breach of Fla. Stat. § 562.45 (The Ordinances) (Count VII). See Complaint (DE# 1, 10/30/17).

On November 3, 2017, the plaintiff filed the instant motion. See Plaintiff’s Emergency Motion for Preliminary Injunction with Incorporated Memorandum of Law (DE# 4, 11/3/17) (hereinafter “Motion”). The defendants filed their response on November 13, 2017. See Defendants’ Response to Plaintiff’s Emergency Motion for Preliminary Injunction (DE# 22, 11/13/17) (hereinafter “Response”). The plaintiff filed its reply on November 15, 2017. See Reply in Support of Plaintiff’s Emergency Motion for Preliminary Injunction [ECF NO. 4] (DE# 25, 11/15/17).

On November 17, 2017, the undersigned held an evidentiary hearing on the instant motion. The plaintiff presented the testimony of Doron Doar, the principal of Beach Blitz. The defendants presented the testimony of Manuel Marquez, the Assistant Director of Finance for the City of Miami Beach and Hernan Cardino, the Director of Code Compliance for the City of Miami Beach. The undersigned admitted into evidence

the Plaintiff's Exhibits 1 through 17 and the Defendants' Exhibits 1 through 18. The undersigned permitted the parties to file supplemental briefs. See Supplemental Memorandum in Support of Plaintiff's Emergency Motion for Preliminary Injunction (DE# 36, 11/22/17) (hereinafter "Plaintiff's Supplemental Memorandum"); Defendants' Response to Plaintiff's Supplemental Memorandum in Support of Its Emergency Motion for Preliminary Injunction (DE# 38, 11/26/17) (hereinafter "Defendants' Supplemental Memorandum"). This matter is ripe for adjudication.

### **FACTUAL FINDINGS**

Ocean 9 Liquors (hereinafter "Ocean 9") is a liquor store operating in the City of Miami Beach (hereinafter "City"). On October 6, 2017, Ocean 9 was closed for failing to timely obtain a Business Tax Receipt.

#### **I. Business Tax Receipts ("BTRs")**

All for-profit businesses operating in the City are required to have a Business Tax Receipt (hereinafter "BTR"). A BTR is an occupational license. A business seeking to obtain a BTR must submit an application to the City along with other documentation such as a lease or warranty deed evidencing the location of the business, a state license if needed and articles of incorporation.

The Finance Department receives applications for BTRs involving liquor sales. Upon receipt of an application, the Finance Department electronically routes it to the City's other regulatory departments: the Building Department, the Fire Department, the Planning Department and the Code Compliance Department. These departments weigh in on whether to issue the BTR.

A BTR is valid for one fiscal year, from October 1 through September 30th of the following year. Pursuant to state law, all BTRs expire on September 30th of the fiscal year that they were issued. To renew a BTR, a business needs to pay the annual renewal fee. Every July, the City mails out a reminder notice as a courtesy to businesses. The City's records reflect that a renewal reminder notice was created for Ocean 9 on July 1, 2016. A business may pay the BTR renewal fee at City Hall, at the Customer Service Center, at the City's lockbox, at the City's satellite office in North Miami Beach or online. The online system does not prevent businesses from making an online payment for a BTR even if there are outstanding violations.

It is the City's practice to accept payments for BTRs.<sup>1</sup> In instances where a business has outstanding fines or debts owed to the City, the City will withhold the BTR until the business pays the money owed. Once the debt is paid, the City will release the BTR. If a business has an outstanding code violation and that business presents evidence to the City of a proceeding before the Special Master challenging that code violation, the City will release the BTR. If however, a violation has been issued and the time to appeal that violation has passed, the debt becomes due to the City and the City expects the business to pay the debt owed before releasing the BTR. If a Special Master has adjudicated a business guilty and imposed a fine, that business would need to pay the fine before obtaining a BTR. See Transcript (DE# 39 at 132).

If a fiscal year passes and a BTR is not renewed, that BTR will be placed in

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<sup>1</sup> The plaintiff's principal, Dorian Doar, testified that he attempted multiple times to submit payment for Ocean 9's BTR, but each time, the City refused to accept payment.

“closed status.” A closed BTR cannot be renewed. If a business misses the time period for renewing its BTR, that business will need to file a new application to obtain another BTR. If an application for a BTR is denied, the City provides an appeal process through the City Manager or a designee.

## **II. Ocean 9 Liquors (“Ocean 9”)**

Doran Doar is the owner of plaintiff Beach Blitz. Mr. Doar owns two businesses through Beach Blitz: Ocean 9, a liquor store, and Ocean 11 Market (hereinafter “Ocean 11”), a convenience store that sells beer and wine. Ocean 9 has been in business since 2012 and has been very profitable. Tourists make up approximately 85 percent of the customer base of the two stores.

Ocean 9 and Ocean 11 are located in the MXE District in the City of Miami Beach, Florida. Presently, there are only three liquor stores operating in the MXE District. The City has passed several ordinances reducing the hours of operation for liquor stores in the MXE District. The City has also passed an ordinance precluding the opening of any new liquor stores in the MXE District.

On September 30, 2016, the BTR for Ocean 9 expired when it was not renewed. On December 21, 2016, Ocean 9 was cited for selling alcohol outside the permitted hours. See Defendants’ Exhibit 10. The citation imposed a \$1,000 fine. The back of the citation contained a notice stating that fines could be appealed within twenty (20) days of receipt. Id.

On June 25, 2017, the City of Miami Beach Code Compliance Division issued two citations to Ocean 9. See Plaintiff’s Exhibit 5. One of the citations was for selling alcohol outside the permitted business hours. The other citation was for failing to timely

renew a BTR.<sup>2</sup> Each citation imposed a \$1,000 fine. The back of the citation contained a notice which stated that fines could be appealed within ten (10) days of receipt. At no time did the plaintiff appeal the three violations in the manner proscribed on the back of the citations.

Mr. Doar was overseas when the June 25, 2017 citations were issued. A store clerk advised Mr. Doar of the two citations and Mr. Doar returned to the United States on June 27, 2017. Prior to receiving notice of the citations, Mr. Doar did not realize the BTR for Ocean 9 was expired.

Ordinarily, Mr. Doar would receive courtesy renewal notices in July notifying him that the BTRs would expire on September 30th of that year. Mr. Doar testified that he never received the BTR renewal notice for Ocean 9 on or about July 2016 or anytime thereafter. Mr. Doar did receive a renewal notice for Ocean 11 and he renewed that BTR. Mr. Doar did not recall why he did not renew the Ocean 9 BTR at the same time he renewed the Ocean 11 BTR.

On June 27, 2017, Mr. Doar went to the City's Finance Department and tried to pay for the BTR. Mr. Doar did not recall the exact conversation he had with the employee in the Finance Department. However, he testified that the employee told him that he was not allowed to renew his BTR because he had violations. See Transcript (DE# 36 at 76). Mr. Doar understood, in general, that he needed to resolve the

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<sup>2</sup> The Notice of Violation corresponding to this citation contained the following instruction "Cease immediately until you obtain a Business Tax Receipt from the City of Miami Beach." Defendants' Exhibit 12. Ocean 9 did not cease operating at that time.

violations<sup>3</sup> in order to pay for his BTR. Id. at 77. The Finance Department employee provided Mr. Doar with an invoice totaling \$2,246.46, which included the BTR fee and late fee. See Defendants' Exhibit 15. If Mr. Doar had paid this amount plus the \$1,000 fine for the outstanding December 21, 2016 violation, he would have received the BTR.<sup>4</sup>

Mr. Doar did not believe the December 21, 2016 violation was merited. He wanted his "professional people" to deal with that violation and the other two outstanding violations.

Mr. Doar then went to the office of a woman named Rochelle Malik. Ms. Malik helps small business owners resolve problems with the City of Miami Beach and had worked with Mr. Doar in the past. Mr. Doar gave the June 25, 2017 citations (Plaintiff's Exhibit 5) to Ms. Malik and told her to appeal them. Mr. Doar also gave Ms. Malik the citation from December 2016 and told her to resolve that citation as well. Mr. Doar specifically instructed Ms. Malik to go to the City and try to get a BTR.

At the same time, Mr. Doar also hired an attorney, Guy Shir, to appeal the citations. Mr. Shir sent a check for \$100 to the Special Master's Office to appeal the citations, but that check was not accepted. It was Mr. Doar's understanding that without

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<sup>3</sup> At the evidentiary hearing, Mr. Doar referred to "violations" in the plural form. However, he also testified that he did not think the violations he needed to resolve to obtain his BTR included the June 25, 2017 violations because those violations were new.

<sup>4</sup> The City presented testimony that the June 25, 2017 violations would not have been considered due on June 27, 2017 because the time to appeal those violations had not run. Therefore, the only violation that needed to be paid on June 27, 2017 was the December 21, 2016 violation.

resolving his citations, he could not obtain a BTR.<sup>5</sup>

At the end of July 2017, Mr. Doar hired another attorney, Harold Rosen. Mr. Rosen was successful in obtaining an appeal. However, it was not an ordinary appeal process through the Special Master's office. It was initiated through the City Attorney's office and later, an agreed order was placed before the Special Master for a hearing and ratification.

On August 28, 2017, Mr. Rosen reached an agreement with the City to resolve all three citations for \$1,000. On the same day, Mr. Doar gave Mr. Rosen a check for \$1,000 to pay for the citations. Mr. Rosen told Mr. Doar that he gave the check to Aleksandr Boksner, the Deputy City Attorney, on August 28 or August 29, 2017. The check was deposited by the City on October 18, 2017.

The Special Master did not sign the Agreed Order reflecting the parties agreement to resolve all three citations until September 28, 2017. See Plaintiff's Exhibit 7. The City was shut down for a number of days in September due to Hurricane Irma. Under the terms of the Agreed Order, the plaintiff admitted to the violations being properly issued by the City and the plaintiff was assessed a fine of \$1,000. While the Agreed Order's \$1,000 fine resolved all outstanding debt due to the City, Ocean 9 would still need to pay an additional amount to obtain a BTR.

Mr. Rosen provided Mr. Doar with a copy of the Agreed Order on September 28, 2017. On September 28 or September 29, 2017, Mr. Doar went to the City's offices to

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<sup>5</sup> The City of Miami Beach presented testimony that had Mr. Doar paid for his BTR with the citations still outstanding, the clerk would have accepted payment for the BTR and held onto the BTR until the citations were resolved.

pay the violation and to obtain a BTR. A City employee told Mr. Doar that Mr. Doar would not receive a BTR because there were outstanding violations. Mr. Doar told the employee that the violations had been resolved. The employee responded that Mr. Doar had a violation and he could not renew the BTR. Ms. Malik later explained to Mr. Doar that it probably meant that the City's computer system had not yet been updated.

The following week, on Tuesday, October 3, 2017, Mr. Doar again went to the City's offices to obtain a BTR. He renewed the BTR for Ocean 11. See Plaintiff's Exhibits 9 and 10.<sup>6</sup> He also attempted to obtain a BTR for Ocean 9. The City refused to accept Mr. Doar's payment because Ocean 9 had open violations.

On October 6, 2017, two code enforcement officers and two Miami Beach police officers came to Ocean 9 and gave Mr. Doar a violation for operating without a BTR. They told Mr. Doar he had to shut down his store. Mr. Doar explained to them that he had an agreed order for the violations. They told Mr. Doar that if he did not shut down his business within five minutes, he would be arrested. Ocean 9 has been shut down since that time.

The Notice of Violation corresponding to the October 6, 2017 violation advised the plaintiff of its right to appeal within ten (10) days of receipt of the violation. See Defendants' Exhibit 14. The plaintiff never appealed the October 6, 2017 violation.

On or about Monday, October 9, 2017, someone from the City gave Mr. Doar a computer screenshot for the Ocean 9 account. See Plaintiff's Exhibit 17. The top of the

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<sup>6</sup> Mr. Doar could not renew the BTR for Ocean 11 on September 29, 2017 because Ocean 11 had an open violation. The violation was dismissed and on October 3, 2017, Mr. Doar renewed the BTR for Ocean 11.



document stated “Active Holds Exist On This Record,” signifying that the were outstanding monies owed to the City or outstanding violations. Id.; Transcript (DE# 36 at 123). The screenshot also contained the following note “As per City Attorney Office, close BTR for nonpayment. Entity cannot reapply for liquor sales and/or entertainment at 865 Collins Ave,” the location of Ocean 9. See Plaintiff’s Exhibit 17.

The plaintiff did not file an application for a new BTR. Had the plaintiff filed an application for a new BTR, it most likely would not have been granted because a City ordinance prohibits the new sale of liquor in the MXE District. Had the plaintiff applied for a new BTR and the application was denied, the plaintiff would have had the opportunity to appeal the decision, first through the City and then through the state court.

On October 11, 2017, the plaintiff paid for Ocean 9's BTR online. That payment is “in suspense” until the resolution of the instant action. Transcript (DE# 36 at 136). However, it cannot be applied to the fiscal year ending on September 30, 2017 because that “permit” has expired. Id.

Had the plaintiff made an online payment for a BTR, the BTR for Ocean 9 would have been issued once the plaintiff paid its outstanding violations, even if those violations were not paid until October 2017.

The plaintiff did not file a lawsuit in state court. The plaintiff filed the instant action on October 30, 2017.

#### **STANDARD OF REVIEW**

A preliminary injunction may be granted only if the moving party establishes four elements: (1) a substantial likelihood of success on the merits; (2) an immediate and

irreparable injury absent injunctive relief; (3) a threatened harm to the plaintiff that outweighs any injury the injunction would cause to the nonmovant and (4) the injunction will not disserve the public interest. Carillon Imps. v. Frank Pesce Int'l Grp. Ltd., 112 F.3d 1125, 1126 (11th Cir. 1997) (citation omitted); see also N. Am. Med. Corp. v. Axiom Worldwide, 522 F.3d 1211, 1217 (11th Cir. 2008) (citing Johnson & Johnson Vision Care, Inc. v. 1-800 Contacts, Inc., 299 F.3d 1242, 1246-47 (11th Cir. 2002)). A preliminary injunction is “an extraordinary and drastic remedy not to be granted unless the movant clearly establishe[s] the ‘burden of persuasion’ as to the four [elements].” McDonald’s Corp. v. Robertson, 147 F.3d 1301, 1306 (11th Cir. 1998) (citing All Care Nursing Serv., Inc. v. Bethesda Mem’l Hosp., Inc., 887 F.2d 1535, 1537 (11th Cir. 1989)).

### **ANALYSIS**

The plaintiff seeks an Order:

(i) enjoining the enforcement of Ordinance No. 2016-4047 as applied to Plaintiff, (ii) enjoining the enforcement of Section 102-377(e) of the City of Miami Beach Code as applied to Plaintiff; (iii) preventing Defendants from enforcing Citation No. CC2017-03686 and (iv) ordering Defendants to issue Plaintiff a Business Tax Receipt for fiscal year 2017-2018 for its location at 865 Collins Avenue and to re-open said location without Defendants’ interference and (iv) granting such further relief deemed just and proper.

Reply (DE# 25 at 5, 11/15/17). As noted above, in order to obtain a preliminary injunction, the movant must demonstrate: “(1) [that there is] a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered if the relief is not granted; (3) that the threatened injury outweighs the harm the relief would inflict on the non-movant; and (4) that the entry of the relief would serve the public interest.” Schiavo

ex. rel Schindler v. Schiavo, 403 F.3d 1223, 1225-26 (11th Cir. 2005). The undersigned will address each of these elements below.

**I. Substantial Likelihood of Success on the Merits**

The first element, the substantial likelihood of success on the merits, requires an analysis of the plaintiff's ability to make a showing of each of the required elements of the claims asserted. See Seiko Kabushiki Kaisha v. Swiss Watch Int'l, Inc., 188 F. Supp. 2d 1350, 1353-55 (S.D. Fla. 2002).

At the November 16, 2017 status hearing, the plaintiff told the undersigned that the plaintiff is seeking a preliminary injunction pursuant to the following counts: declaratory judgment/injunctive relief (Wrongful Closure) (Count I); violation of 42 U.S.C. §1983 (Count II); violation of the 14th Amendment – substantive due process and takings claim (Count III); violation of 42 U.S.C. §1983 (Retaliation for First Amendment Expression) (Count IV) and declaratory judgment/injunctive relief (Section 102-377(e) of the Code) (Count V). For the reasons stated below, the undersigned finds that the plaintiff has not shown a substantial likelihood of success on the merits of the above claims.

**a. Procedural Due Process Claims (Counts I, II and V)**

"[I]n order to maintain a § 1983 action, a plaintiff must allege conduct depriving him of a right, privilege or immunity secured by the Constitution or laws of the United States . . . ." Marrero v. City of Hialeah, 625 F.2d 499, 512 (5th Cir. 1980).<sup>7</sup> The Due

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<sup>7</sup> The Eleventh Circuit in Bonner v. City of Prichard, 661 F. 2d 1206, 1207 (11th Cir. 1981) (en banc), adopted as precedent decisions of the former Fifth Circuit rendered prior to October 1, 1981.

Process Clause of the Fourteenth Amendment provides that no state shall “deprive any person of life, liberty, or property, without due process of law.” U.S. Const. Amend. XIV, § 1. “The Supreme Court’s interpretation of this clause explicates that the amendment provides two different kinds of constitutional protection: procedural due process and substantive due process.” McKinney v. Pate, 20 F.3d 1550, 1555 (11th Cir. 1994). “A violation of either of these kinds of protection may form the basis for a suit under section 1983.” Id.

Procedural due process claims are analyzed in two steps: “the first asks whether there exists a liberty or property interest which has been interfered with by the State. . . . ; the second examines whether the procedures attendant upon that deprivation were constitutionally sufficient.” Kentucky Dep’t of Corr. v. Thompson, 490 U.S. 454, 460 (1989) (citations omitted).

“Protected property interests derive from ‘existing rules or understandings that stem from an independent source such as state law—rules or understandings that . . . support claims of entitlement to those benefits.’” Casas v. Swacina, No. 12-21083-CIV, 2012 WL 12894275, at \*7 (S.D. Fla. Sept. 4, 2012), *aff’d sub nom.* Casas v. USCIS Dist. Dir. Miami, 518 F. App’x 669 (11th Cir. 2013) (quoting Bd. of Regents v. Roth, 408 U.S. 564, 577 (1972)). “[T]he range of interests protected by procedural due process is not infinite.” Roth, 408 U.S. at 570. For instance, the Supreme Court has rejected a “generalized right to be secure in one’s business interests” as a property right protected by the Due Process Clause. Coll. Sav. Bank v. Florida Prepaid Postsecondary Educ. Expense Bd., 527 U.S. 666, 672 (1999). The Supreme Court has explained that:

The assets of a business (including its good will) unquestionably are

property, and any state taking of those assets is unquestionably a “deprivation” under the Fourteenth Amendment. But business in the sense of the activity of doing business, or the activity of making a profit is not property in the ordinary sense . . . .

Id. at 675.

Here, the parties dispute whether the plaintiff has asserted a protected property interest. The defendants argue that “there is no property right to the renewal of an expired business license or permit.” Defendants’ Supplemental Memorandum (DE# 38 at 7). The plaintiff maintains that “[t]he loss of Plaintiff’s business (including, inter alia, all associated goodwill, customers and reputation) is the loss of a protected property interest.” See Plaintiff’s Supplemental Memorandum (DE# 36 at 4).

The plaintiff cites to Marrero v. City of Hialeah, 625 F.2d 499, 514 (5th Cir. 1980) for the proposition that “Florida law recognizes business reputation/good will as an interest protectable under the strictures of 42 U.S.C. §1983.” See Plaintiff’s Supplemental Memorandum (DE# 36 at 4). The court in Marrero noted that:

Although Florida law may not recognize personal reputation as a liberty or property interest, **it does recognize business reputation, at least to the extent it approximates goodwill, as a property interest. Florida has long extended its protection to the intangible interests of a business. Under Florida law, “[o]ne’s business, aside from the investment of money and tangible property therein, is in every sense of the word property, and, as such, if lawful, entitled to protection from all unlawful interference.”** NAACP v. Webb’s City, Inc., 152 So.2d 179, 182 (Fla. Dist. Ct. App.1963), vacated as moot, 376 U.S. 190, 84 S. Ct. 635, 11 L. Ed. 2d 602 (1964). **Hence, since one’s business is property under Florida law, it cannot be injured or destroyed by the state without due process of law.** See Paramount Enterprises, Inc. v. Mitchell, 104 Fla. 407, 140 So. 328 (1932). Thus, for example, in eminent domain proceedings, the loss of goodwill is compensable. See, e. g., Matthews v. Division of Administration, State of Florida, Department of Transportation, 324 So.2d 664 (Fla. Dist. Ct. App. 1975). In addition, the State of Florida provides means of redress for private interference with goodwill. For

instance, the purchaser of the goodwill of a business may recover compensatory damages from a seller who destroys the value of the goodwill. See, e.g., West Shore Restaurant Corp. v. Turk, 101 So.2d 123 (Fla. 1958); Yoo Hoo of Florida v. Catroneo, 175 So.2d 220 (Fla. Dist. Ct. App.), cert. denied, 179 So.2d 212 (Fla. 1965). Also a plaintiff may recover actual damages caused by a defendant's disparaging comments about the plaintiff's business which are of a kind calculated to prevent others from dealing with the plaintiff. See, e.g., Continental Development Corp. of Florida v. Duval Title & Abstract Co., 356 So.2d 925 (Fla. Dist. Ct. App. 1978); Kilgore Ace Hardware, Inc. v. Newsome, 352 So. 2d 918 (Fla. Dist. Ct. App. 1977).

**It thus appears that Florida does extend to appellants a “legal guarantee of present enjoyment” of goodwill, i.e., the value inhering in the favorable consideration of customers arising from a business’ reputation as being well established and well conducted. Since that interest is a protected property interest under Florida law, Florida may not deprive appellants of that interest without due process of law.** Just as a state may not physically destroy a person's tangible property without complying with the requirements of the fourteenth amendment, so it may not destroy through the medium of speech a person's intangible property without the same compliance. **Hence, to the extent the defamatory statements injured appellants’ goodwill without due process of law, appellants have stated a claim upon which relief can be granted.**

Marrero, 625 F.2d at 514-15 (footnotes omitted; emphasis added).

Assuming, without deciding, that the plaintiff’s business is a protected property interest under Florida law, the plaintiff has not shown a substantial likelihood of success on the merits of its procedural due process claims because the plaintiff has a post-deprivation remedy. “In order to state a claim under the fourteenth amendment, the complainant must allege facts showing not only that the State has deprived him of a liberty or property interest but also that the State has done so without due process of law.” Marrero, 625 F.2d at 519. “The United States Supreme Court has held that as long as some adequate post-deprivation remedy is available to a plaintiff, no procedural

due process violation has occurred.” Peterson v. Scott, No. 2:14-CV-420-FTM-38CM, 2015 WL 3935376, at \*3 (M.D. Fla. June 26, 2015); see also Cotton v. Jackson, 216 F.3d 1328, 1330-31 (11th Cir. 2000) (stating that “[o]nly when the state refuses to provide a process sufficient to remedy the procedural deprivation does a constitutional violation actionable under section 1983 arise.”). Here, the October 6, 2017 Notice of Violation which resulted in the plaintiff shutting down its store contained instructions on how to appeal the violation. The plaintiff could have pursued those appellate remedies.

As the Eleventh Circuit has noted, “the state may cure a procedural deprivation by providing a later procedural remedy; only when the state refuses to provide a process sufficient to remedy the procedural deprivation does a constitutional violation actionable under section 1983 arise.” McKinney, 20 F.3d at 1557; id. at 1560 (noting that “[w]hen a state procedure is inadequate, no procedural due process right has been violated unless and until the state fails to remedy that inadequacy.”). Assuming, arguendo, that had the plaintiff applied for a new BTR, the City would have denied the application, the plaintiff is not likely to succeed on the merits of a procedural due process claim because the plaintiff would still have an opportunity to appeal the City’s denial to the state court. See McKinney, 20 F.3d at 1563 (noting that “even if [the plaintiff] suffered a procedural deprivation at the hands of a biased Board at his termination hearing, he has not suffered a violation of his procedural due process rights unless and until the State of Florida refuses to make available a means to remedy the deprivation. As any bias on the part of the Board was not sanctioned by the state and was the product of the intentional acts of the commissioners . . . only the state’s refusal to provide a means to correct any error resulting from the bias would engender a

procedural due process violation.”).

The plaintiff has not shown that the process, which includes review by the state court, is inadequate. The plaintiff may appeal any decision by the City to the state court. The state court has the power to review and redress any deficiencies in the City’s decisions with respect to the issuance of a BTR. The plaintiff’s failure to avail itself of the protections afforded through the appeal process and through the state court system does not mean that the procedures available to the plaintiff were constitutionally inadequate. See Cotton, 216 F. 3d at 1331 (stating that “[i]f adequate state remedies were available but the plaintiff failed to take advantage of them, the plaintiff cannot rely on that failure to claim that the state deprived him of procedural due process.”).

The plaintiff’s argument that it is not required to exhaust administrative remedies, see Plaintiff’s Supplemental Memorandum (DE# 36 at 4-5), is inapposite. As the Eleventh Circuit explained in McKinney:

[the plaintiff] cannot state a valid constitutional claim . . . because Florida provides an adequate process to remedy [the plaintiff]’s alleged injury.  
**[The plaintiff]’s case fails, therefore, not for want of exhaustion;**  
indeed, exhaustion is irrelevant to our decision and finds no mention in the opinion. Rather, **[the plaintiff]’s case fails because he fails to state a procedural due process claim . . .** that would give rise to a section 1983 suit.

20 F.3d at 1564 n. 20 (emphasis added). Similarly here, whether the plaintiff must first exhaust administrative remedies or not, does not change the fact that a state procedure was available to the plaintiff to remedy the asserted loss of its business. “All that due process requires . . . is a post-deprivation ‘means of redress for property deprivations satisfy[ing] the requirements of procedural due process.’” McKinney, 20 F.3d at 1563 (quoting Parratt v. Taylor, 451 U.S. 527, 537 (1981) (alteration in original)).



For the foregoing reasons, the plaintiff has not shown a substantial likelihood of success on the merits of its procedural due process claims.

**b. Substantive Due Process Claim (Count III)**

The defendants maintain that the plaintiff cannot show a substantial likelihood of success on the merits of its substantive due process claim because the plaintiff cannot show the violation of a fundamental right. “A ‘fundamental’ right is one that is ‘explicitly or implicitly guaranteed by the Constitution.’” Morrissey v. United States, 871 F.3d 1260, 1268 (11th Cir. 2017) (quoting San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973)). Supreme Court jurisprudence provides that:

The substantive component of the Due Process Clause protects those rights that are “fundamental,” that is, rights that are “implicit in the concept of ordered liberty,” Palko v. Connecticut, 302 U.S. 319, 325, 58 S.Ct. 149, 152, 82 L.Ed. 288 (1937). The Supreme Court has deemed that most—but not all—of the rights enumerated in the Bill of Rights are fundamental; certain unenumerated rights (for instance, the penumbral right of privacy . . . also merit protection. It is in this framework that fundamental rights are incorporated against the states. A finding that a right merits substantive due process protection means that the right is protected “against ‘certain government actions regardless of the fairness of the procedures used to implement them.’” Collins v. City of Harker Heights, 503 U.S. 115, – , 112 S.Ct. 1061, 1068, 117 L.Ed.2d 261 (1992) (quoting Daniels v. Williams, 474 U.S. 327, 331, 106 S.Ct. 662, 665, 88 L.Ed.2d 662 (1986)).

McKinney, 20 F.3d at 1556 (footnotes omitted). “[S]ubstantive due process rights are created only by the Constitution.” Id. (quoting Regents of Univ. of Mich. v. Ewing, 474 U.S. 214, 229 (1985) (Powell, J., concurring)).

“The substantive due process doctrine prevents the government from engaging in conduct that is ‘arbitrary or conscience shocking.’” Koeppel v. Romano, 252 F. Supp. 3d 1310, 1321 (M.D. Fla. 2017) (quoting Doe v. Braddy, 673 F.3d 1313, 1318 (11th Cir.

2012) (per curiam)). The facts presented at the evidentiary hearing and the allegations contained in the Complaint do not rise to this standard. Accordingly, the undersigned finds that the plaintiff has not shown a substantial likelihood of success on the merits of its substantive due process claim.

**c. Retaliation/First Amendment Claim (Count IV)**

Finally, the plaintiff has not shown a substantial likelihood of success on the merits of its retaliation/First Amendment claim. The Complaint alleges that “on or about October 5, 2017, Plaintiff, through his counsel met with Deputy City Attorney Boksner to discuss Plaintiff[s] concerns regarding the ongoing changes to the hours in which a package store could sell alcohol.” Complaint (DE# 1 at ¶ 137). The plaintiff’s counsel communicated to Mr. Boksner that “Defendant[s] ongoing changes to the hours were severely impacting Plaintiff’s business income and that as a result Plaintiff would oppose any further reductions to the hours of operation.” *Id.* at ¶ 138.<sup>8</sup> The following day, Code Enforcement officers and City of Miami Beach police officers effectively shut down the plaintiff’s store. *Id.* at ¶ 140. These conclusory allegations are insufficient to support a section 1983 claim based on the alleged violation of the plaintiff’s First Amendment rights.

In sum, the plaintiff has not met its burden of showing a substantial likelihood of success on the merits. “If the movant is unable to establish a likelihood of success on the merits, a court need not consider the remaining conditions prerequisite to injunctive

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<sup>8</sup> The Complaint also asserts that “Deputy City Attorney Boksner essentially suggested that the City’s actions were intentional[ly] targeted toward Plaintiff.” Complaint (DE# 1 at ¶ 141). However, this conclusory allegation is not supported by any facts.

relief.” Johnson & Johnson Vision Care, Inc. v. 1-800 Contacts, Inc., 299 F.3d 1242, 1247 (11th Cir. 2002) (citing Pittman v. Cole, 267 F.3d 1269, 1292 (11th Cir. 2001)).

Nonetheless, for the sake of completeness, the undersigned will address the remaining elements for obtaining a preliminary injunction.

## **II. Immediate and Irreparable Injury Absent Injunctive Relief**

The plaintiff must also show an immediate and irreparable injury if injunctive relief is not granted. To establish irreparable injury, the plaintiff must show that it will suffer an injury that cannot be adequately compensated if, at some later point in time, it prevails on the merits. United States v. Jefferson Cnty., 720 F.2d 1511, 1520 (11th Cir. 1983). The plaintiff is the owner of a liquor store that has been effectively shut down since October 6, 2017 and has been unable to generate revenue since that date. The injury complained of by the plaintiff is an economic injury. “An injury is ‘irreparable’ only if it cannot be undone through monetary remedies.” Ne. Florida Chapter of Ass’n of Gen. Contractors of Am. v. City of Jacksonville, Fla., 896 F.2d 1283, 1285 (11th Cir. 1990). Because the plaintiff can recover monetary damages, the undersigned concludes that the plaintiff has not shown it will suffer irreparable harm if an injunction is not issued.

## **III. Balancing of Harms**

The plaintiff has shown that it will suffer economic injury should an injunction not issue. On the other hand, the issuance of an injunction would result in, at most, minimal harm to the defendants. The City has an interest in collecting taxes from businesses and ensuring that all businesses operating within the City are licensed businesses.

However, the plaintiff has been operating a licensed business since 2012. The City has also collected payment from the plaintiff for the BTR for Ocean 9 for the October 1, 2016 through September 30, 2017 fiscal year. That payment remains “in suspense” until this litigation is resolved. If an injunction is issued, the City would still be able to regulate the plaintiff’s business. The harm to the plaintiff therefore outweighs any harm to the defendants.

#### **IV. Public Interest**

The Court should also consider whether an injunction, if issued, will disserve the public interest. The plaintiff argues that “[a]n injunction which prevents the enforcement of patently unconstitutional Ordinances does not disserve the public interest. To the contrary, the public’s interest lies in the vindication of rights guaranteed under the Fourteenth Amendment.” Motion (DE# 4 at 15). The defendants maintain that “the public interest is not served by permitting unlicensed business owners to operate in the City.” Response (DE# 22 at 5). However, the issuance of the injunction sought by the plaintiff would only permit the operation of a single store, Ocean 9. The undisputed evidence is that had the plaintiff resolved its violations and paid the appropriate fee, the City would have renewed the BTR for Ocean 9. Therefore, the undersigned finds no basis to support the defendants’ assertion that “[i]t would create chaos in the City if unlicensed businesses could operate with impunity.” Id.

In the instant case, the undersigned finds that this factor is, at best, neutral.

#### **RECOMMENDATION**

Based on the foregoing, the undersigned respectfully **RECOMMENDS** that the Plaintiff’s Emergency Motion for Preliminary Injunction with Incorporated Memorandum

of Law (DE# 4, 11/3/17) be **DENIED**.

The parties shall have until **Friday, December 8, 2017**<sup>9</sup> to file written objections, if any, with the Honorable Ursula Ungaro, United States District Judge. Failure to file objections timely shall bar the parties from a de novo determination by the District Judge of an issue covered in the Report and shall bar the parties from attacking on appeal unobjected-to factual and legal conclusions contained in this Report except upon grounds of plain error if necessary in the interest of justice. See 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140, 149 (1985); Henley v. Johnson, 885 F.2d 790, 794 (1989); 11th Cir. R. 3-1 (2016).

RESPECTFULLY SUBMITTED in Chambers at Miami, Florida this **1<sup>st</sup>** day of December, 2017.

  
\_\_\_\_\_  
JOHN J. O'SULLIVAN  
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:  
United States District Judge Ungaro  
All Counsel of Record

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<sup>9</sup> The plaintiff has requested that the time period for filing objections be shortened because it has asserted a continuing injury.

# **EXHIBIT F**

**MXE PACKAGE STORE PROHIBITION**

**ORDINANCE NO. 2016-4047**

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 114 OF THE CITY CODE, ENTITLED "GENERAL PROVISIONS," SECTION 114-1, "DEFINITIONS," TO DEFINE PACKAGE STORES; AND AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS," DIVISION 13, "MXE - MIXED USE ENTERTAINMENT DISTRICT," BY AMENDING SECTION 142-544 THEREOF, ENTITLED "PROHIBITED USES," TO PROHIBIT PACKAGE STORES, PACKAGE SALES OF ALCOHOLIC BEVERAGES, AND ENTERTAINMENT USES IN PACKAGE STORES IN THE MXE DISTRICT; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

**WHEREAS**, the City of Miami Beach (the "City") regulates the location, size, hours of operation, and minimum patron age for alcoholic beverage establishments; and

**WHEREAS**, Chapter 6 of the City Code establishes minimum regulations for the sale and consumption of alcoholic beverages throughout the City, and district-specific alcoholic beverage regulations are set forth in Chapter 142; and

**WHEREAS**, the Mixed Use Entertainment ("MXE") district, which is the City's entertainment district, is characterized by a variety of uses, ranging in intensity from apartment buildings and retail stores to restaurants and entertainment establishments, which attract a large volume of pedestrians and vehicular traffic; and

**WHEREAS**, package sales of alcoholic beverages in the MXE district encourage individuals to consume alcoholic beverages in the City's parks, and on the City's streets and sidewalks; and

**WHEREAS**, the consumption of open containers of alcoholic beverages in public places disturbs the quiet enjoyment of the community, causes undesirable noise, and contributes to litter, noxious odors, and the general degradation of the City; and

**WHEREAS**, additionally, the consumption of open containers of alcoholic beverages in public places is a violation of Section 70-87 of the City Code; and

**WHEREAS**, it is therefore in the best interest of the City, and it serves the health, safety, and welfare of the City's residents and visitors, to prohibit package stores and package sales of alcoholic beverages in the MXE district; and

**WHEREAS**, in *State ex rel. Floyd v. Noel* (Fla. 1936), the Florida Supreme Court recognized that "[i]t is so well settled that no citation of authority is required to support the statement that a municipality exercising the powers inherent in municipal corporations may reasonably regulate the sale of intoxicating liquors and in providing such reasonable regulations

may prohibit the sale of such liquors within certain hours, and also may prohibit the sale of liquors within certain zones"; and

**WHEREAS**, the Florida Attorney General has opined that a municipality may regulate (1) the hours of sale, (2) zoning of locations in which alcoholic beverages may be sold, and (3) the sanitary conditions under which alcoholic beverages may be dispensed or served to the public. Florida AGO 059-73 (1959); and

**WHEREAS**, the amendments set forth below are necessary to accomplish all of the above objectives.

**NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:**

**SECTION 1.** Section 114-1 of Chapter 114 of the City Code is hereby amended as follows:

**CHAPTER 114  
GENERAL PROVISIONS**

**Sec. 114-1. – Definitions**

The following words, terms and phrases when used in this subpart B, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

\* \* \*

*Overlay district* means ~~constitutes~~ a set of regulations which are superimposed upon and supplement, but do not replace, the underlying zoning district and regulations otherwise applicable to the designated areas.

*Package store* means any store primarily engaged in the business of selling alcoholic beverages for off-premises consumption and that has a license for package sales from the State Division of Beverages and Tobacco in the classification of 1-APS, 2-APS, or PS.

\* \* \*

**SECTION 2.** Section 142-554 of Chapter 142 of the City Code is hereby amended as follows:

**CHAPTER 142  
ZONING DISTRICTS AND REGULATIONS**

\* \* \*

**ARTICLE II. – DISTRICT REGULATIONS**

\* \* \*

**DIVISION 13. – MXE MIXED USE ENTERTAINMENT DISTRICT**

\* \* \*



**Sec. 142-544. – Prohibited uses.**

The prohibited uses in the MXE mixed use entertainment district are accessory outdoor bar counters, except as provided in this chapter; package stores; and package sales of alcoholic beverages by any retail store or alcoholic beverage establishment. Additionally, entertainment uses shall be prohibited in package stores.

**SECTION 3. CODIFICATION.**

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code of the City of Miami Beach, Florida. The sections of this Ordinance may be renumbered or re-lettered to accomplish such intention, and, the word "ordinance" may be changed to "section," "article," or other appropriate word.

**SECTION 4. REPEALER.**

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**SECTION 5. SEVERABILITY.**

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

**SECTION 6. EFFECTIVE DATE.**

This Ordinance shall take effect ten days following adoption.

**PASSED and ADOPTED** this 19 day of October, 2016.

**ATTEST:**

  
\_\_\_\_\_  
Rafael E. Granado, City Clerk

  
\_\_\_\_\_  
Philip Levine, Mayor

Verified By: 

\_\_\_\_\_  
Thomas R. Mooney  
Planning Director

(Sponsored by Commissioner Ricky Arriola)

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

  
\_\_\_\_\_  
City Attorney

10/5/16  
Date

Underline denotes new language

~~Strikethrough~~ denotes removed language

Double underline denotes language added after First Reading

~~Double strikethrough~~ denotes language removed after First Reading

Ordinances - R5 O

# MIAMI BEACH

## COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission  
FROM: Jimmy L. Morales, City Manager  
DATE: October 19, 2016

11:10 a.m. Second Reading Public Hearing

SUBJECT: MXE PACKAGE STORE PROHIBITION:

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 114 OF THE CITY CODE, ENTITLED "GENERAL PROVISIONS," SECTION 114-1, "DEFINITIONS," TO DEFINE PACKAGE STORES; AND AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS," DIVISION 13, "MXE - MIXED USE ENTERTAINMENT DISTRICT," BY AMENDING SECTION 142-544 THEREOF, ENTITLED "PROHIBITED USES," TO PROHIBIT PACKAGE STORES, PACKAGE SALES OF ALCOHOLIC BEVERAGES, AND ENTERTAINMENT USES IN PACKAGE STORES IN THE MXE DISTRICT; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

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### RECOMMENDATION

The Administration recommends that the City Commission adopt the Ordinance.

### ANALYSIS

#### BACKGROUND

On July 13, 2016, the Mayor and City Commission approved a dual referral pertaining to an LDR Amendment prohibiting package liquor stores in the MXE district to the Planning Board and the Land Use & Development Committee (LUDC). The referral was sponsored by Commissioner Ricky Arriola (item C4I).

On July 20, 2016, the LUDC discussed the item and continued it to September 21, 2016 meeting. On September 21, 2016, the Land Use Committee recommended that the proposed ordinance be adopted at Second Reading.

#### ANALYSIS

Package stores are retail uses that primarily sell alcoholic beverages and package sales are alcoholic beverages for take-out and off premises consumption. In general, the City Code allows for package stores and package sales in any area that allows retail sales. The hours and locations (distance separation) are regulated in Chapter 6 of the City Code.

The Mixed Use Entertainment ("MXE") district is characterized by a variety of uses, including hotel, bars, restaurants, entertainment establishments, apartment buildings, and retail stores which attract a large volume of pedestrians and vehicular traffic. The consumption of alcohol and the high volume of people together are sometimes problematic and were identified as issues by the Mayor's Blue Ribbon Panel on Ocean Drive and the City Commission.

Package sales of alcoholic beverages may encourage patrons to walk around with alcoholic beverages and consume alcoholic beverages in the City's parks, and on the City's streets and sidewalks. The consumption of open containers of alcoholic beverages in public places may cause undesirable noise, as well as contribute to litter and noxious odors. Also, the consumption of open containers of alcoholic beverages in public places is a violation of Section 70-87 of the City Code.

The attached ordinance creates a definition for package store in Section 114.1, the definition section of the Land Use Development Regulations (LDR's). Additionally, both package stores and package sales of alcoholic beverages are listed as a prohibited use in Section 142-544, under the MXE district regulations. Additionally, because entertainment is allowed in retail stores city wide, the following ordinance clarifies that, in the MXE district, package stores are prohibited from having entertainment.

#### **PLANNING BOARD REVIEW**

On August 23, 2016, the Planning Board (by a 6-0 vote) transmitted the proposed ordinance amendment to the City Commission with a favorable recommendation.

#### **UPDATE/SUMMARY**

As indicated previously, the Administration believes that the proposed ordinance amendment is a step in the right direction in terms of addressing tangible quality of life issues for residents and visitors alike. The subject Ordinance was approved at First Reading on September 14, 2016 and subsequently endorsed by the Land Use and Development Committee on September 21, 2016.

At the request of the item sponsor, the ordinance has been updated to include a prohibition on the package sales of alcoholic beverages by any retail store, in addition to the previous prohibition of package sales in alcoholic beverage establishment. This will prohibit the package sale of alcoholic beverages (beer, wine, liquor) in retail establishments in the MXE district.

#### **CONCLUSION**

The Administration recommends that the City Commission adopt the Ordinance.

#### **FINANCIAL INFORMATION**

In accordance with Charter Section 5.02, which requires that the "City of Miami Beach shall consider the long term economic impact (at least 5 years) of proposed legislative actions," this shall confirm that the City Administration City Administration evaluated the long term economic impact (at least 5 years) of this proposed legislative action. The proposed Ordinance is not expected to have a negative fiscal impact upon the City.

**Legislative Tracking**

Planning

**Sponsor**

Commissioner Ricky Arriola and Co-sponsored by Commissioner Joy Malakoff

**ATTACHMENTS:**

**Description**

▯ Ordinance

# **EXHIBIT G**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 17-CV-23958

BEACH BLITZ CO.,

Miami, Florida

Plaintiff(s),

November 17, 2017

vs.

CITY OF MIAMI BEACH, FLORIDA,

Volume 01

Defendant(s).

Pages 1- 173

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PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION  
BEFORE THE HONORABLE JOHN J. O'SULLIVAN  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

FOR THE PLAINTIFF(S): PHILLIP M. HUDSON, III, ESQ.  
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(305) 374-3330  
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FOR THE DEFENDANT(S): ENRIQUE DANIEL ARANA, ESQ.  
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Suite 4200  
Miami, Florida 33131  
(305) 530-0050  
earana@cfjblaw.com

- and -

SCOTT EVERETT BYERS, ESQ.  
GARY PAPPAS, ESQ.

REPORTED BY: Jill M. Felicetti, RPR, CRR, CSR  
Official Court Reporter  
400 N. Miami Avenue, Suite 08S27  
Miami, Florida 33128  
jill\_felicetti@flsd.uscourts.gov

1 Q. At any time from July of 2016 until September 30 of 2017,  
2 Beach Blitz could have made an online payment for its BTR,  
3 correct?

4 A. Correct. Yes, sir.

5 Q. If it had done that, then, when it's outstanding, its  
6 outstanding violations were paid, the BTR would have issued?

7 A. We would have issued it, yes.

8 Q. That's the case even if the outstanding violations were  
9 paid in October of 2017, correct?

10 A. Come again.

11 Q. The BTR would issue even if the outstanding violations were  
12 not paid until early October?

13 A. Correct, yes.

14 Q. Because the payment was made during the fiscal year?

15 A. During the fiscal year, correct.

16 MR. ARANA: Thank you.

17 THE COURT: Sir, thank you. You may step down. You  
18 are excused.

19 (Witness excused)

20 THE COURT: The defendants can call their next  
21 witness, please.

22 HERNAN CARDENO,  
23 having been first duly sworn on oath, was examined and  
24 testified as follows:

25 THE WITNESS: Cardeno, C-A-R-D-E-N-O, Hernan,

1 H-E-R-N-A-N.

2 DIRECT EXAMINATION

3 BY MR. BYERS:

4 Q. Good afternoon. Could you please tell us what your  
5 occupation is.

6 A. Director of the code compliance department for the City of  
7 Miami Beach.

8 Q. And how long have you been at that position?

9 A. Since 2014.

10 Q. Does code enforcement issue BTRs?

11 A. No, they do not.

12 Q. Does code enforcement decide whether to issue a BTR?

13 A. No, they do not.

14 Q. And if you could go to the black book there. Those are  
15 defendants' exhibits which already have been admitted by the  
16 court.

17 Look to tab 2, which is Defendants' Exhibit 2.

18 Are you there?

19 A. Yes.

20 Q. Did you prepare an affidavit in this case?

21 A. Yes, I did.

22 Q. And is Exhibit 2 that affidavit?

23 A. Yes, it is.

24 Q. Is there anything you need to clarify or correct in that  
25 affidavit?



1 A. Yes, there is. On page 2, paragraph 6.

2 Q. Can you explain what that clarification or correction is?

3 A. It says here: "Beach Blitz did not cease operations or  
4 apply for or pay for a BTR license. Instead, Beach Blitz  
5 appealed all three citations to the special master. On  
6 September 28, 2017, the special master entered an agreed order  
7 in which Beach Blitz admitted to the violations and agreed to  
8 pay \$1,000 to resolve all three citations."

9 It's really just a matter of clarification. It still  
10 is in appeal, but it wasn't a normal appeal through the regular  
11 protocol or procedures. Meaning it didn't go through the  
12 special master, clerk of the court. Rather, it was directly  
13 with the city attorney's office, and then agreed order was  
14 placed on the docket calendar for the special master to hear  
15 and ratify.

16 Q. Is there anything else you need to correct or clarify in  
17 that affidavit?

18 A. I don't believe so.

19 Q. If you could turn to Exhibit 10, which is also tab 10.

20 A. Yes.

21 Q. Do you recognize this document?

22 A. Yes, I do. This is a civil infraction code violation form.

23 Q. What is the violation for?

24 A. So this violation is dated December 21, 2016. The  
25 violation is for selling alcoholic beverages outside of the

1 approved hours by ordinance.

2 Q. And was that a violation in the city code on December 21,  
3 2016 to sell liquor before 10:00 a.m.?

4 A. Yes, it was.

5 Q. If we go to page 2 of that document. Is there a procedure  
6 there for an appeal?

7 A. Yes. It says, "fines may be appealed within 20 days of  
8 receipt of this notice."

9 Q. To your knowledge, did Beach Blitz appeal within 20 days of  
10 that notice?

11 A. No.

12 Q. I want to move next to Exhibit 11.

13 A. Yes.

14 Q. Do you recognize this document?

15 A. Yes, I do.

16 Q. What is it?

17 A. This is another civil citation form issued by the code  
18 compliance department for sales of alcohol outside of the  
19 prescribed hours.

20 Q. Was that a violation of the city code on June 25, 2017?

21 A. Yes.

22 Q. And there's an appeal process listed on that citation as  
23 well?

24 A. Yes, there is. Within ten days of receipt of the notice.

25 Q. Did Beach Blitz appeal, to your knowledge, within ten days

1 of the notice?

2 A. No.

3 Q. We now move to Exhibit 12.

4 Do you recognize this document?

5 A. Yes.

6 Q. What is it?

7 A. This is a notice of violation for failing to obtain a  
8 business tax receipt.

9 Q. And to your knowledge, did Beach Blitz possess a business  
10 tax receipt on June 25, 2017?

11 A. No, they did not.

12 Q. And the violation states that fines may be appealed within  
13 ten days; is that correct?

14 A. Yes.

15 Q. And did Beach Blitz appeal within the ten days?

16 A. No, they did not.

17 Q. Now, I want to look at the notice of violation. Does this  
18 notice of violation state "cease immediately until you obtain a  
19 business tax receipt from the City of Miami Beach?"

20 A. Yes.

21 THE COURT: Where is that?

22 MR. BYERS: First line right underneath "reference,"  
23 your Honor. Center of the page.

24 THE COURT: I see it. Okay.

25

1 BY MR. BYERS:

2 Q. When issuing these violations, does code enforcement expect  
3 that the business will cease operations immediately and attempt  
4 to obtain a BTR?

5 THE COURT: For the record, it says "cease." I  
6 thought you said seize, as in take.

7 BY MR. BYERS:

8 Q. Cease operations immediately.

9 A. Yes, sir.

10 Q. I will ask that again.

11 When code enforcement issues these citations, does it  
12 expect that the business will cease operations until it obtains  
13 a BTR?

14 A. Yes.

15 Q. To your knowledge, did Beach Blitz cease operations?

16 A. No.

17 Q. To your knowledge, did Beach Blitz obtain a BTR for the  
18 fiscal year of 2016/2017 at any time thereafter?

19 A. They did not.

20 Q. We now move to Exhibit 14, sir.

21 A. Yes.

22 Q. Do you recognize this document?

23 A. Yes. This is a notice of violation, issued on October 6,  
24 2017, for failing to obtain a business tax receipt as required  
25 by ordinance.

1 Q. And to your knowledge, on October 6, 2017 did Beach Blitz  
2 have a BTR license?

3 A. No, they did not.

4 Q. Does this state they have an ability to appeal within ten  
5 days of violation?

6 A. Yes.

7 Q. To your knowledge, did any appeal take place?

8 A. No, they did not.

9 Q. The notice again says, "cease immediately until you obtain  
10 a business tax receipt from the City of Miami."

11 A. Yes.

12 Q. Did code enforcement close Beach Blitz's operations down on  
13 October 6, 2017?

14 A. Yes.

15 Q. Why was it closed?

16 A. Well, because they still did not have a business tax  
17 receipt to operate the business, and so they were closed until  
18 they could obtain the business tax receipt.

19 Q. Did the City of Miami Beach code require that a business  
20 have a BTR in order to operate in the City of Miami Beach?

21 A. Yes, they do.

22 MR. BYERS: No further questions.

23 THE COURT: Any cross?

24 Actually, I have a question for you. Maybe counsel  
25 can help me out. Number 12. It says, "amendment, notice of

1 violation." Was there an initial violation that was  
2 handwritten?

3 THE WITNESS: Usually, your Honor, there is a  
4 handwritten violation that's written out in the field, and then  
5 this is the computer-generated letter that is sent out.

6 THE COURT: This is mailed to the offender?

7 THE WITNESS: Sometimes it's mailed, sometimes it's  
8 hand delivered.

9 THE COURT: Do you know what was the case with this  
10 one?

11 THE WITNESS: I believe this one was hand delivered.

12 THE COURT: Why do you believe that?

13 THE WITNESS: Because it's signed by a manager at the  
14 bottom.

15 THE COURT: That's a manager of the business; is that  
16 what it is?

17 THE WITNESS: Yes.

18 THE COURT: I see. Okay. Good enough. Thanks.

19 CROSS-EXAMINATION

20 BY MR. HUDSON:

21 Q. Was it hand delivered by the two police officers, by the  
22 code enforcement gentleman around 5:00 p.m. on October 6?

23 THE COURT: The one I was referring to was the one  
24 issued on June 25. I think you are referring to Exhibit  
25 14.

1 BY MR. HUDSON:

2 Q. Let me turn to Exhibit 14, please.

3 A. Yes, this one was also hand delivered.

4 Q. Okay. Was it hand delivered in this format or was there a  
5 typical citation, handwritten citation?

6 A. It was this form itself, which is also signed in this  
7 particular case by the business owner.

8 Q. This was prepared in advance by someone at the city?

9 A. Yes.

10 Q. Why did it happen this way as opposed to the standard  
11 handwritten version?

12 A. They are both notices of violation. So if we don't have  
13 anyone at the business that we contact, we send out the letter  
14 certified return receipt requested. In this particular case  
15 they went ahead and printed the notice of violation and hand  
16 delivered it.

17 Q. Can you tell me from this document or any other knowledge  
18 you have when this document was prepared?

19 A. I would say it was probably prepared on the same day,  
20 October 6, 2017.

21 Q. But you don't know that for sure. Sir, do you know that  
22 for sure?

23 A. I do not.

24 THE COURT: Do you mind if I ask some questions.

25 On this notice of violation and the other one it says

1 ten days, but on the handwritten one it says 20 days to appeal.  
2 Is there a reason why there is a difference, or is there a  
3 statute that allows for ten if it's a --

4 THE WITNESS: You know what, your Honor, it may be  
5 because of the amendment to the ordinance for the appeal time.  
6 So that may be why there is a difference.

7 THE COURT: What do you mean? An amendment to what  
8 ordinance?

9 THE WITNESS: When the ordinance was amended where  
10 business tax receipts could be appealed, the ten days' language  
11 was included there.

12 THE COURT: Well, if we look at 12, the June 25 one,  
13 that one says ten days. This is the amendment notice of  
14 violation dated June 25th.

15 MR. BYERS: Your Honor, I can state that there was an  
16 amendment in that time period between December and the next  
17 citation in July -- I'm sorry, June 25, where it was moved from  
18 20 days to ten days.

19 THE COURT: Where is the June 25 citation in here?

20 MR. BYERS: Exhibit 11.

21 THE COURT: Of which one?

22 MR. BYERS: Defendants' black book. And you will see  
23 both citations on --

24 THE COURT: I see.

25 MR. BYERS: -- June 25. Both are ten days.



1 THE COURT: I got it. I was thinking 20 days. I  
2 guess we had only discussed the old one. Okay. I got it. No  
3 problem.

4 Go ahead, counsel. I'm sorry.

5 BY MR. HUDSON:

6 Q. Let's look at 14 again in the black book.

7 A. Yes.

8 Q. The business was open and operating at the time, correct?

9 A. Yes.

10 Q. So is there anywhere on this document where the person  
11 receiving the violation was warned that their business could be  
12 closed down immediately without further notice?

13 A. Well, it does say under the reference section "cease  
14 immediately until you obtain a business tax receipt."

15 Q. But there's nothing that says if you don't cease  
16 immediately we will come shut you down without further notice,  
17 correct?

18 A. No.

19 Q. What was the authority of code enforcement and two Miami  
20 Beach police officers that code enforcement relied on to shut  
21 that gentleman's business down that afternoon at 5:00 p.m.?

22 A. That authority would be the City of Miami Beach Code of  
23 Laws and Ordinances. I believe it's Section 102-377(e).

24 Q. I am going to read to you --

25 MR. HUDSON: May I read that statute, as I understand

1 it, into the record at the moment so that the witness can hear  
2 it.

3 THE COURT: Yes. I know somebody filed a copy of the  
4 code, I think.

5 MR. BYERS: It's Exhibit 16 of defendants' exhibits in  
6 the black book. Go to page 35.

7 THE COURT: Page 35 of the document?

8 MR. BYERS: Of the document itself.

9 THE COURT: Page 35 of 69 you are talking about?

10 MR. BYERS: I am 36 of 69, your Honor.

11 BY MR. HUDSON:

12 Q. Sir, while we are all trying to find this, would your  
13 department or you -- you are the head of the department, right?

14 A. Yes.

15 Q. Would you rely on your own interpretation of how to read  
16 these statutes or would you have to go to the city attorney's  
17 office on how to read these statutes if there was an issue?

18 A. The answer is it depends.

19 Q. Depends on what?

20 A. Well, there is several codes of laws and ordinances. Some  
21 that we handle more frequently than others. So in those, in  
22 those particular cases, we would confer with the city  
23 attorney's office. On the more complex investigations, then of  
24 course, yes, we would seek guidance from the city attorney's  
25 office.

1 Q. So let me read this for the record. It's Section 102-377  
2 of the Miami Beach Code of Ordinances, subsection (e), as in  
3 Edward: "As an additional means of enforcement and  
4 supplemental to the above, if any person carries on or conducts  
5 any business for which a tax receipt is required by this  
6 article without first obtaining such tax receipt, then the city  
7 may prevent the business from operating until the required tax  
8 receipt is obtained."

9 Do you see that?

10 A. Yes.

11 Q. So if you go back up to (b), as in boy, in the same  
12 section, there are enforcement mechanisms for failure to pay a  
13 BTR. But those mechanisms require notices and potential  
14 hearings and so forth, correct?

15 A. Yes.

16 Q. In your view, can you just jump to (e) and rely on (e) or  
17 do you have to go through the notices in (b) first?

18 MR. BYERS: Objection. First, this is a legal  
19 argument.

20 THE COURT: Overruled.

21 A. So the way I am reading subsection (b), that applies to  
22 violations of any other provision of this article, and so  
23 because it's subsection (b), the only other section before it  
24 of course is (a), which is a business who carries on operations  
25 without first obtaining a business tax receipt.

1 Q. So let's go to (a). What are the procedural protections in  
2 (a)?

3 MR. BYERS: Same objection. Legal conclusion.

4 THE COURT: Overruled.

5 A. Did you say procedural protections?

6 Q. Yes.

7 You have dealt with (a) before. I am sure you  
8 probably deal with it on a daily basis, right?

9 A. Yes.

10 Q. So under (a), is it your understanding, or any of the  
11 ordinances that are referenced in (a), aren't there notice  
12 requirements before folks can be fined or bad things can happen  
13 to them under the code?

14 A. Usually there is a notice of violation that will trigger  
15 some type of process, whether that is a fine or some action  
16 that the violator has to take to cure.

17 Q. Right. Typically the first step would be a notice. The  
18 second step would be, sometimes alternative, that you can  
19 either pay or you can elect a hearing or you can do that,  
20 right? That's the way it normally works, correct?

21 A. Generally, yes.

22 Q. In this case what actions under either (a) or (b) did the  
23 city take before it went to (e)?

24 A. In this particular case I believe the business had already  
25 received at least one notice of violation for operating without

1 a business tax receipt.

2 Q. Turn to Exhibit 7 in the white binder. Do you see that?  
3 Obviously you have seen that because the first thing your  
4 counsel asked to you do was to clarify a statement in your  
5 affidavit filed in this case under oath, right? So you have  
6 seen this order?

7 A. Yes.

8 Q. And what was that clarification again?

9 A. The clarification was that under paragraph 6 of my  
10 affidavit, that the way the word appeal is used is that it  
11 wasn't the normal protocols, that it was appealed to the  
12 special master, clerk of the court but, rather, they went to  
13 the state, city attorney's office and then arrived at this  
14 agreed order which was placed before the special master.

15 Q. So the City of Miami Beach, based on your testimony, agreed  
16 to some sort of different process from the standard process,  
17 right? Fair statement?

18 A. I wouldn't say it's standard because there is a lot of  
19 stipulated agreements and agreed orders that are entered into  
20 on violations. So --

21 Q. But it didn't go the normal way it would go, correct?

22 A. It didn't go the way through the special master, clerk's  
23 office.

24 Q. But it did end up in a special master proceeding, didn't  
25 it?

1 A. Yes.

2 Q. And the City of Miami Beach participated in that, didn't  
3 it?

4 A. Yes.

5 Q. So the City of Miami Beach waived all of its other  
6 procedural protections by doing the special process and  
7 procedure, didn't it?

8 MR. BYERS: Objection, your Honor. Legal conclusion.

9 THE COURT: Sustained.

10 BY MR. HUDSON:

11 Q. Do know why the city attorney has a different path than the  
12 normal path in this case?

13 MR. BYERS: I would suggest not to discuss any  
14 attorney-client communications you may or may not have had with  
15 the city attorney.

16 MR. HUDSON: I will amend the question to exclude any  
17 conversations he's had with the city attorney or his defense  
18 attorneys, your Honor.

19 THE COURT: All right.

20 A. So, your Honor, in my experience when we have stipulated  
21 agreements or agreed orders, it's through a variety of  
22 different forms that it comes to us. Sometimes, for example,  
23 the special master will ask the violator to meet with the city  
24 attorney's office and see if they can come to an agreement and  
25 then later schedule it for another date with a stipulated or

1     agreed order.  So there is different formats of how it could  
2     have arrived at this agreed order.

3     BY MR. HUDSON:

4     Q.  Have you had any conversations with Deputy City Attorney  
5     Boxner prior to filing this lawsuit?

6             MR. BYERS:  Objection.

7             THE COURT:  I will allow you to answer whether or not  
8     or require you to answer if you had conversations without  
9     revealing the content of the conversation.

10    A.  Regarding this lawsuit?

11    BY MR. HUDSON:

12    Q.  No, about Beach Blitz 865(d) prior to the filing of this  
13    lawsuit?

14             MR. BYERS:  Same objection.

15             THE COURT:  Overruled.

16    A.  Yes.

17    BY MR. HUDSON:

18    Q.  What were those conversations about?

19             MR. BYERS:  Objection.

20             THE COURT:  Sustained.

21    BY MR. HUDSON:

22    Q.  When were those conversations?

23             MR. BYERS:  Objection.

24    A.  Probably --

25             THE COURT:  That objection is overruled.

1 A. Probably around October 6th.

2 Q. That's the day that Beach Blitz was shut down, right?

3 A. Yes.

4 Q. Did the city attorney's office direct code enforcement to  
5 shut Beach Blitz down?

6 MR. BYERS: Objection.

7 THE COURT: Sustained.

8 Your objection, by the way, is attorney-client  
9 privilege, am I correct?

10 MR. BYERS: Yes, your Honor.

11 THE COURT: Okay. Sustained.

12 BY MR. HUDSON:

13 Q. See the blue piece of paper in front of you, blue and  
14 white?

15 A. Yes.

16 Q. That's been marked as Plaintiff's 17. Take a look at that  
17 and tell me, tell the court, if you can tell us what this is.

18 A. It looks to be some type of notes entered on our city  
19 enterprise system.

20 Q. Read the first sentence that's contained in the white  
21 rectangle in the center of the page.

22 MR. BYERS: Objection for lack of personal knowledge  
23 of this document.

24 THE COURT: Overruled.

25 A. "As per city attorney's office, close BTR for nonpayment.



1 Entity cannot reapply for liquor sales and/or entertainment at  
2 865 Collins Avenue."

3 Q. What system are we looking at, do you know? What's the  
4 program that we are looking at here?

5 A. I believe this is the city's enterprise system, which is  
6 known as EnerGov.

7 Q. Do you have access to this system?

8 A. I do have access to this system.

9 Q. Any idea what that note means?

10 A. No.

11 Q. Have you ever seen that note before?

12 A. No.

13 Q. Any idea why the city attorney would suggest that the BTR  
14 be closed for nonpayment when it happened automatically?

15 MR. BYERS: Objection. Speculation.

16 THE COURT: Overruled.

17 BY MR. HUDSON:

18 Q. You can answer it, sir.

19 A. No.

20 Q. Had Beach Blitz applied for a new BTR for fiscal 17/18,  
21 given this note in the system would it have been denied?

22 MR. BYERS: Objection. He testified that they don't  
23 issue BTRs or deny them. We put on our other witness who was  
24 from finance.

25 THE COURT: Overruled.

1 Answer, if you can.

2 A. Your Honor, just as a separation of checks and balances,  
3 code compliance is really just the enforcement arm for several  
4 departments. We don't do any permitting. That's different  
5 entities.

6 Q. I understand. I asked if you know. If you don't, that's  
7 fine.

8 Do you know?

9 A. No.

10 Q. How many other times do you recall the City of Miami Beach  
11 sending police officers and code enforcement to a business for  
12 shutting down for not having a BTR?

13 A. Several.

14 Q. How many a year?

15 A. It varies. I am not certain. More than four, more than  
16 five.

17 Q. In a year. How many businesses are in Miami Beach?

18 A. Well --

19 Q. If you know.

20 A. I don't.

21 Q. That's fair.

22 THE COURT: And how many don't pay their BTR.

23 THE WITNESS: Well, licensed or unlicensed businesses,  
24 I don't know. With the advent of the short-term rental  
25 enforcements, you know, those are businesses that have no BTR

1 and those are shut down and vacated with police officers also.  
2 So I couldn't be certain.

3 MR. HUDSON: Nothing further, your Honor.

4 THE COURT: Any redirect?

5 MR. BYERS: A couple.

6 REDIRECT EXAMINATION

7 BY MR. BYERS:

8 Q. To your knowledge, Beach Blitz was operating without a  
9 license for more than 370 days; is that correct?

10 A. Yes.

11 Q. Opposing counsel talked to you about Section 102.377(e).  
12 If you could turn to that again. That's Exhibit 16 and, again,  
13 it's page 35 at the bottom and page 36 of 69 at the top.

14 A. Yes.

15 Q. It says that "As additional means of enforcement and  
16 supplemental to the above, if a person carries on or conducts  
17 any business for which a tax receipt is required by this  
18 article without first obtaining such tax receipt, then the city  
19 may prevent the business from operating until the required tax  
20 receipt is obtained."

21 Did I read that correctly?

22 A. Yes.

23 Q. If a business is shut down for failure to have a BTR, does  
24 code compliance tell them they need to go get a BTR?

25 A. Yes. That's the procedure. They usually tell the operator

1 or the violator how they can cure.

2 Q. And is that also stated in the notice of violations for  
3 failure to have a BTR?

4 A. Yes.

5 Q. And if the said business were to obtain a BTR, they then  
6 can open up and operate, correct?

7 A. Yes.

8 MR. BYERS: No further questions.

9 THE COURT: Thank you, sir. You can step down.

10 THE WITNESS: Thank you, your Honor.

11 THE COURT: This witness is excused, I take it. You  
12 can go back to Miami Beach.

13 (Witness excused)

14 THE COURT: Defendants have any other witnesses?

15 MR. ARANA: No further witnesses.

16 THE COURT: Any further evidence?

17 MR. ARANA: No, your Honor.

18 MR. HUDSON: No.

19 THE COURT: Okay.

20 MR. ARANA: I'm sorry, your Honor. We have one  
21 exhibit that we wanted to just introduce for the record.

22 THE COURT: What is that?

23 MR. ARANA: It is an ordinance.

24 THE COURT: Have you shown it to opposing counsel?

25 MR. ARANA: Yes.

1 MR. ARANA: No, your Honor.

2 THE COURT: I don't want 80 pages on this thing.

3 MR. HUDSON: No, I won't have time to do 80. We will  
4 do ten good pages.

5 THE COURT: Thanks, everybody, for your hard work  
6 today. I will try to get something out quickly.

7 Court is in recess.

8 Thank you, all. Have a good Thanksgiving.

9 MR. HUDSON: Thank you for giving us a quick hearing.  
10 We appreciate it.

11 C E R T I F I C A T E  
12

13 I hereby certify that the foregoing is an accurate  
14 transcription of the proceedings in the above-entitled matter.  
15  
16

17 November 22, 2017 /s/ Jill M. Felicetti  
18 Jill M. Felicetti, RPR, CRR, CSR  
19 Official Court Reporter  
20 400 N. Miami Avenue, Suite 08S27  
21 Miami, Florida 33128  
22 jill\_felicetti@flsd.uscourts.gov  
23  
24  
25

# **EXHIBIT H**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

**CASE NO. 1:17-cv-23958-UU**

BEACH BLITZ CO., a Florida  
corporation d/b/a OCEAN 9 LIQUOR,  
and d/b/a as OCEAN 11 MARKET,

Plaintiff,

v.

CITY OF MIAMI BEACH, FLORIDA,  
a municipal corporation of the State of Florida,  
PHILIP LEVINE, an individual,  
JIMMY MORALES, an individual,  
MICKEY STEINBERG, an individual,  
RICKY ARRIOLA, an individual,  
MICHAEL GREICO, an individual,  
JOY MALAKOFF, an individual,  
KRISTEN ROSEN GONZALEZ, an individual,  
JOHN ELIZABETH ALEMAN, an individual,  
RAUL J. AGUILA, an individual, and  
ALEKSANDR BOKSNER, an individual,

Defendants.

\_\_\_\_\_ /

**AFFIDAVIT OF HERNAN CARDENO**

STATE OF FLORIDA            )  
                                          ) ss.  
COUNTY OF MIAMI-DADE    )

BEFORE ME, the undersigned authority, personally appeared Hernan Cardeno, who after  
being duly sworn, states:

1.     My name is Hernan Cardeno and I am over the age of 21 and am competent to  
testify to the matters set forth in this Affidavit, which are based upon my personal knowledge,

including my knowledge of the business records of the City of Miami Beach, Florida (the “City”).

2. I currently serve as the Director of Code Compliance of the City of Miami Beach, and have held that position since 2014.

3. On December 21, 2016, a City police officer issued a citation to Beach Blitz Co. (“Beach Blitz”) for selling liquor before 10:00 a.m., which imposed a \$1,000 civil fine. *See* Exhibit 1 hereto.

4. On June 25, 2017, a City Code Enforcement officer issued a citation to Beach Blitz for selling liquor after 10:00 p.m., which imposed a \$1,000 civil fine. *See* Exhibit 2 hereto. At the time of issuance, the City Code Compliance officer discovered that Beach Blitz was operating without a Business Tax Receipt (“BTR license”).

5. Accordingly, the City Code Enforcement officer also issued to Beach Blitz a Notice of Violation of Section 102-377 for “failing to obtain a Business Tax Receipt,” which imposed a \$1,000 civil fine. *See* Exhibit 3 hereto. The Notice expressly directed Beach Blitz to “Cease immediately until you obtain a Business Tax Receipt from the City of Miami Beach.”

6. Beach Blitz did not cease operations or apply for or pay for a BTR license. Instead, Beach Blitz appealed all three citations to the Special Master. On September 28, 2017, the Special Master entered an agreed order in which Beach Blitz admitted to the violations and agreed to pay \$1,000 to resolve all three citations. *See* Exhibit 4 hereto.

7. In early October 2017, Code Enforcement discovered that Beach Blitz had been operating without a BTR license for over a year. Code Enforcement conferred with the City Manager who determined that closing was the appropriate course of enforcement action.



8. On October 6, 2017, Code Enforcement again cited Beach Blitz for operating without a BTR license. *See* Exhibit 5 hereto. The Notice of Violation indicated it was Beach Blitz's second offense and again directed Beach Blitz to "Cease immediately until you obtain a business tax receipt." On the same date, Code Enforcement officials and two City police officers ordered Beach Blitz to cease operations for operating without a BTR license.

FURTHER AFFIANT SAYETH NAUGHT.

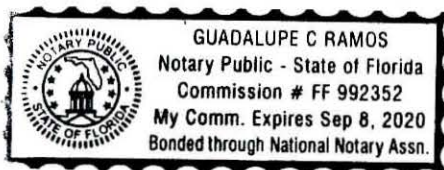


HERNAN CARDENO

Sworn to and subscribed before me this 13<sup>th</sup>  
day of November, 2017.

  
Notary Public

My commission expires: 9-8-2020



# **EXHIBIT 1**

CITY OF MIAMI BEACH  
CODE COMPLIANCE DEPARTMENT  
555 17<sup>th</sup> Street  
Miami Beach, FL 33139  
PHONE (305) 673-7555 FAX (305) 673-7012

NOTICE OF CITY CODE VIOLATION AND FINE

SITE ADDRESS: 865 Collins Ave D  
VIOLATION ISSUE DATE: 12/21/16 TIME: 8:39 AM.  
ISSUED TO: Beach Blitz CO.  
MAILING ADDRESS: 865 Collins Ave, D Miami Beach

DAY OF THE WEEK: SU M T W TH F S

INSPECTION OF THE ABOVE PREMISES ON THIS DATE  
REVEALED YOU ARE IN VIOLATION OF SECTION:

6-3(a)(1)  
OF THE MIAMI BEACH CITY CODE BY: CITY BILL FINE  
offering alcoholic beverages \$25.00  
in a retail establishment for \$50.00  
package sales between ( ) \$75.00  
the hours of midnight ( ) \$100.00  
and 10:00am on any ( ) \$150.00  
day of the week. ( ) \$200.00  
( ) \$250.00  
You can comply by ceasing ( ) \$350.00  
immediately illegal alcoholic ( ) \$500.00  
beverage sales upon receipt ( ) \$1000.00  
of this notice and paying ( ) \$  
a civil fine of:

TOTAL FINES 1,000  
COMMENTS: 1st offense  
Tax# RL-10005692

[Signature]  
CODE COMPLIANCE OFFICER (SIGN)

Ofc. Negrón #1020  
CODE COMPLIANCE OFFICER (PRINT)

@miamibeachfl.gov

RECEIVED BY (Signature): [Signature]

RECEIVED BY (Print Name): NATASHA MURERIWA

DATE: 12/21/16 TIME: 8:39 AM.

IMPORTANT APPEAL AND ADA INFORMATION ON BACK

**FINE(S) MUST BE PAID WITHIN 72 HOURS:**

**BY CHECK OR MONEY ORDER  
MAKE CHECKS & MONEY ORDERS PAYABLE TO THE  
CITY OF MIAMI BEACH.**

**MAILED TO:**

**CITY OF MIAMI BEACH  
CODE COMPLIANCE DEPARTMENT  
555 17<sup>TH</sup> STREET  
MIAMI BEACH, FL. 33139**

**CASH PAYMENTS ACCEPTED IN PERSON ONLY:**

**AT MIAMI BEACH CITY HALL  
1700 CONVENTION CENTER DRIVE, 1<sup>ST</sup> FLOOR  
MIAMI BEACH, FL 33139**

**APPEAL PROCESS:**

**FINES MAY BE APPEALED WITHIN TWENTY (20) DAYS  
OF RECEIPT OF THIS NOTICE BY A WRITTEN  
REQUEST TO THE CLERK OF THE SPECIAL MASTER  
AT THE ABOVE ADDRESS. A \$100.00 CHECK TO  
COVER THE COST OF THE HEARING MUST BE  
INCLUDED.**

\*\*\*\*\*  
**FAILURE TO PAY THE FINE OR APPEAL IN THE  
MANNER INDICATED ABOVE SHALL CONSTITUTE A  
WAIVER OF THE VIOLATOR'S RIGHT TO CONTEST  
THE CITATION AND SHALL BE TREATED AS AN  
ADMISSION OF THE VIOLATION.**

**THE CITY MAY INSTITUTE PROCEEDINGS IN A COURT  
OF COMPETENT JURISDICTION TO COMPEL  
PAYMENT OF CIVIL FINES.**

**THE CERTIFIED COPY OF THE ORDER IMPOSING CIVIL  
FINES MAY BE RECORDED IN THE PUBLIC RECORDS  
AND THEREAFTER SHALL CONSTITUTE A LIEN UPON  
ANY REAL OR PERSONAL PROPERTY OWNED BY THE  
VIOLATOR.**

#### **ADA INFORMATION**

To request this material in accessible format, sign language interpreters, information on access for persons with disabilities, and/or any accommodation to review any document or participate in any city-sponsored proceeding, please contact 305 604-2489 or 1-800-955-8770 (voice), 305 673-7524 (fax), 305 673-7218 or 1-800-955-8771 (TTY), 1-877-955-5334 (STS), 1-877-955-8773 (Spanish) five days in advance to initiate your request. TTY users may also call 711 (Florida Relay Service).

## **EXHIBIT 2**



CASE #.

CC2017-3102

CITY OF MIAMI BEACH  
CODE COMPLIANCE DIVISION555 17<sup>th</sup> Street  
Miami Beach, FL 33139  
(305) 673-7555 FAX (305) 673-7012

## NOTICE OF CITY CODE VIOLATION AND FINE

SITE ADDRESS: 865 Collins

VIOLATION ISSUE DATE: 6/25/17 TIME: 10:50

ISSUED TO: BEACH BLTZ D/B/A Ocean 9

Mailing Address: 13441 NW 5th Ct  
Plantation, FL 33325

DAY OF THE WEEK: (S) M T W TH F S

INSPECTION OF THE ABOVE PREMISES THIS DATE  
REVEALED YOU ARE IN VIOLATION OF SECTION:

Sec 6-3(A)

OF THE MIAMI BEACH CITY CODE BY:

|                             | FINE          |
|-----------------------------|---------------|
| Not withstanding Subsection | \$25.00       |
| Vendors located in the      | ( ) \$50.00   |
| MIXE mixed use              | ( ) \$75.00   |
| entertainment district      | ( ) \$100.00  |
| may make sale of            | ( ) \$150.00  |
| alcohol only for on         | ( ) \$200.00  |
| Premises Consumption        | ( ) \$250.00  |
| between the hours of        | ( ) \$350.00  |
| 10:00 am and 10:00 pm       | ( ) \$500.00  |
|                             | (X) \$1000.00 |
|                             | ( )           |

TOTAL FINES \$1,000

COMMENTS: You could comply by Cease  
And desist of Alcohol Sales

CODE COMPLIANCE OFFICER (SIGN)

Enock VALERUS

CODE COMPLIANCE OFFICER (PRINT)

RECEIVED BY (Signature):

RECEIVED BY (Print Name): Terin Blum

DATE: 6/25/17 TIME: 11:32am

IMPORTANT APPEAL AND ADA INFORMATION ON BACK

## IMPORTANT

APPEAL PROCESS &amp; ADA ACCESS:

FINE(S) MUST BE PAID WITHIN 72 HOURS:

BY CHECK OR MONEY ORDER  
IN PERSON, OR MAILED TO:CITY OF MIAMI BEACH  
DIVISION OF CODE COMPLIANCE  
505 17<sup>TH</sup> STREET  
MIAMI BEACH, FL. 33139MAKE CHECKS & MONEY ORDERS PAYABLE TO THE  
CITY OF MIAMI BEACH.

CASH PAYMENTS ACCEPTED IN PERSON ONLY:

AT MIAMI BEACH CITY HALL  
1700 CONVENTION CENTER DRIVE, 1<sup>ST</sup> FLOOR  
MIAMI BEACH, FL 33139FINES MAY BE APPEALED WITHIN TEN (10) DAYS OF  
RECEIPT OF THIS NOTICE BY A WRITTEN REQUEST  
TO THE CLERK OF THE SPECIAL MASTER AT THE  
ABOVE ADDRESS. A \$100 CHECK TO COVER THE  
COST OF THE HEARING MUST BE INCLUDED.FAILURE TO PAY THE FINE OR APPEAL IN THE  
MANNER INDICATED ABOVE SHALL CONSTITUTE A  
WAIVER OF THE VIOLATOR'S RIGHT TO CONTEST  
THE CITATION AND SHALL BE TREATED AS AN  
ADMISSION OF THE VIOLATION.THE CITY MAY INSTITUTE PROCEEDINGS IN A COURT  
OR COMPETENT JURISDICTION TO COMPEL  
PAYMENT OF CIVIL FINES.THE CERTIFIED COPY OF THE ORDER IMPOSING CIVIL  
FINES MAY BE RECORDED IN THE PUBLIC RECORDS  
AND THEREAFTER SHALL CONSTITUTE A LIEN UPON  
ANY REAL OR PERSONAL PROPERTY OWNED BY THE  
VIOLATOR.

## ADA INFORMATION

TO REQUEST THIS MATERIAL IN ACCESSIBLE  
FORMAT, SIGN LANGUAGE INTERPRETERS,  
INFORMATION ON ACCESS FOR PERSONS WITH  
DISABILITIES, AND/OR ANY ACCOMMODATION TO  
REVIEW ANY DOCUMENT OR PARTICIPATE IN ANY  
CITY-SPONSORED PROCEEDING, PLEASE CONTACT  
305-604-2489 (VOICE), 305-673-7524 (FAX) OR 305-673-  
7218 (TTY) FIVE DAYS IN ADVANCE TO INITIATE YOUR  
REQUEST. TTY USERS MAY ALSO CALL 711 (FLORIDA  
RELAY SERVICE).F:\CODES\ALL\FORMS\TICKETS AND VIOL Form 1520-027 - City Code -  
OPEN TICKET - FINES. - Rev. 03-11.doc

## **EXHIBIT 3**

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Code Compliance Department  
 555 - 17th Street  
 Miami Beach, Florida 33139  
 Tele: 305.673.7555  
 Fax: 305.673.7012

Amendment

## Notice of Violation

Amendment

|                        |                               |                |                |          |             |              |
|------------------------|-------------------------------|----------------|----------------|----------|-------------|--------------|
| Violation Notice Date: | Date                          | 6/25/2017      | Time           | 11:30PM  | Case Number | CC2017-03103 |
| Address of Violation:  | 865 COLLINS AVE               |                |                |          | Unit        | D            |
| Parcel Number:         | 0242032580001                 |                |                |          |             |              |
| Legal Description:     |                               |                |                |          |             |              |
| Violator Name:         | BEACH BLITZ CO. % DOAR, DORON |                |                |          |             |              |
| Mailing Address:       | 13441 NW 5TH CT               | City and State | PLANTATION, FL | Zip Code | 33325       |              |

The City of Miami Beach Code Compliance Department has determined that the above Property has violated the Miami Beach Code of Laws and Ordinances (the "City Code"). This violation is the 1st offense, and this Notice of Violation carries a fine (and other monetary charges) of \$1,000.00. Specifically, Code Compliance Officer Enock Valerus has found there to be a violation(s) of the City Code, which is/are:

Article V, Section 102-377. Any person failing to obtain a Business Tax Receipt as required by this article.

**Reference:** Failure to obtain Business Tax Receipt

Cease immediately until you obtain a Business Tax Receipt from the City of Miami Beach.

A Violation of this Section shall be subject to the following fines:

Any person who shall carry on or conduct any business for which a tax receipt is required by this article without first obtaining such tax receipt shall be issued a violation for the first offense, which shall have a civil fine of \$1000.00. The enhanced enforcement for this violation shall be pursuant to subsection 102-377(d).

In addition to the above a continued violation of subsection 102-377(a) for a period of thirty (30) days or more without first obtaining a tax receipt, shall be punished by imprisonment not to exceed 60 days or by imposition of a fine not to exceed \$500.00 or both.

Fine(s) must be paid within 72 hours of receipt of the violation. A copy of the violation must accompany the payment. Please make checks or money orders payable to: City of Miami Beach. Payment can be mailed or taken in person to: The Finance Department (Cashier), 1700 Convention Center Drive, 1st floor, Miami Beach, FL 33139.

Fine(s) and/or violations may be appealed within Ten (10) days of receipt of the notice of violation. To appeal a fine and/or violation, submit a written request for an appeal hearing to the Clerk of the Special Master - 1700 Convention Center Dr., Miami Beach, FL 33139. A check for \$100 (administrative charges) must accompany the request along with the case number.

Failure to pay the fine or request an appeal hearing in the manner indicated above shall constitute a waiver of the violator's right to contest the citation and shall be treated as an admission of the violation.

The City may institute proceedings in a court of competent jurisdiction to compile payment of civil fine(s). The certified copy of the order imposing civil fine(s) may be recorded in the public records and thereafter shall constitute a lien upon any real or personal property owned by the violator.

|                                 |                 |                               |               |     |                      |                |
|---------------------------------|-----------------|-------------------------------|---------------|-----|----------------------|----------------|
| Issuing Code Compliance Officer | Name:           | Enock Valerus                 | Badge #       | 740 | Phone and Extension: | (305) 673-7555 |
|                                 | Email:          | EnockValerus@miamibeachfl.gov |               |     |                      |                |
| Received By                     | Compliance Date | Received Date                 | Received Time |     |                      |                |
| Other                           | 06/26/2017      | 06/25/2017                    | 11:30PM       |     |                      |                |

*Enock Valerus*  
*Manager*  
 6/26/17



**ADA Information**

To request this material in accessible format, sign language interpreters, information on access for persons with disabilities, and/or any accommodation to review any document or participate in any City-sponsored proceeding, please contact 305.604.2489 (voice), 305.673.7524 (fax) or 305.673.7218 (TTY) five (5) days in advance to initiate your request. TTY users may also call 711 (Florida Relay Service).

---

Enock Valerus

## **EXHIBIT 4**

IN AND BEFORE THE SPECIAL MASTER OF  
THE CITY OF MIAMI BEACH

CODE VIOLATION CASE NOS. CC2016-01704  
CC2017-03102  
CC2017-03103

BEACH BLITZ, CO. c/o  
DOAR, DORON,

Petitioner,

vs.

CITY OF MIAMI BEACH,

Respondent.

AGREED ORDER

This cause came before the Special Master of the City of Miami Beach, upon stipulation and agreement of Harold Rosen, Esquire, on behalf of Beach Blitz, Co. c/o Doar, Doron, 865 Collins Avenue, #D, Miami Beach (hereinafter referenced as the "Petitioner"), and Deputy City Attorney, Aleksandr Boksner, counsel to Respondent, the City of Miami Beach (hereinafter referenced as the "City"), regarding the above-styled appeal before the Special Master of certain violation(s) against the real property which is located at 865 Collins Avenue, #D, Miami Beach, Florida (the "Property") and the Code Enforcement matter referenced below in this Agreed Order. Respective counsel to City and the Petitioner having agreed to the terms of this Order,

IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. Petitioner, Beach Blitz Co. c/o Doron Doar admit to the legitimacy of the violation charged under Citation/Violation Nos. CC2016-01704, CC2017-03102 and CC2017-03103, and recognize that the violation was properly issued by the City of Miami Beach.

CC2017-03102  
865 Collins  
6-36X(1) Alcohol

*Beach Blitz, Co. and Doron Doar vs. City of Miami Beach*  
Citation/Violation Nos. CC2016-01704, CC2017-03102 and CC2017-03103  
Agreed Order  
Page 2 of 2

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2. Citation/Violation Nos. CC2016-01704, CC2017-03102 and CC2017-03103 are hereby AFFIRMED. The Parties stipulate that a factual basis exists to establish this offense violation by the appropriate legal standard for this proceeding, and the City shall not need to establish the legitimacy.

3. The Petitioner shall be assessed a fine in the amount of One Thousand (\$1,000.00) Dollars, which shall be due within thirty (30) days of the entry of this Agreed Order.

DONE AND ORDERED by the Special Master of the City of Miami Beach, this 28th day of September, 2017.

CC  
SPECIAL MASTER  
As Special Master for the City of Miami Beach

Copies furnished to:

Aleksandr Boksner, First Assistant City Attorney at sandracaba@miamibeachfl.gov  
Harold Rosen, 407 Lincoln Road, Suite 2A, Miami Beach, Florida 33139

## **EXHIBIT 5**

## Code Compliance Department

555 - 17th Street

Miami Beach, Florida 33139

Tele: 305.673.7555

Fax: 305.673.7012

## Notice of Violation

|                               |                                                                                 |                                   |                          |
|-------------------------------|---------------------------------------------------------------------------------|-----------------------------------|--------------------------|
| <b>Violation Notice Date:</b> | Date 10/6/2017                                                                  | Time 5:00 PM                      | Case Number CC2017-03686 |
| <b>Address of Violation:</b>  | 865 COLLINS AVE                                                                 |                                   | Unit D                   |
| <b>Parcel Number:</b>         | 0242032580040                                                                   |                                   |                          |
| <b>Legal Description:</b>     | THE SKYLARK CONDO UNIT D UNDIV 3.167% INT IN COMMON ELEMENTS OFF REC 20580-1711 |                                   |                          |
| <b>Violator Name:</b>         | Beach Blitz Co, DBA Ocean 9 Liquor C/O Doron Doar                               |                                   |                          |
| <b>Mailing Address:</b>       | 13441 NW 5th Court                                                              | City and State Ft. Lauderdale, FL | Zip Code 33325           |

The City of Miami Beach Code Compliance Department has determined that the above Property has violated the Miami Beach Code of Laws and Ordinances (the "City Code"). This violation is the 2nd offense, and this Notice of Violation carries a fine (and other monetary charges) of \$500.00. Specifically, Code Compliance Officer Manny Bastos has found there to be a violation(s) of the City Code, which is/are:

Article V, Section 102-377. Any person failing to obtain a Business Tax Receipt as required by this article.

**Reference:** Failing to obtain Business Tax Receipt. 2nd Offense.

Cease immediately until you obtain a Business Tax Receipt from the City of Miami Beach.

A Violation of this Section shall be subject to the following fines:

Any person who shall carry on or conduct any business for which a tax receipt is required by this article without first obtaining such tax receipt shall be issued a violation for the first offense, which shall have a civil fine of \$1000.00. The enhanced enforcement for this violation shall be pursuant to subsection 102-377(d).

In addition to the above a continued violation of subsection 102-377(a) for a period of thirty (30) days or more without first obtaining a tax receipt, shall be punished by imprisonment not to exceed 60 days or by imposition of a fine not to exceed \$500.00 or both.

Failure to comply will result in your prosecution before the City of Miami Beach Special Master. The Special Master may impose fines of up to \$1,000.00 per day for noncompliance and up to \$5,000.00 per day for recurring violations. Failure to pay imposed fines will lead to placement of liens upon the real and personal property of violators, which will be foreclosed upon or otherwise collected as provided by this code.

If you are aggrieved by the decision of the Code Inspector in issuing this notice of violation, you may appeal. To appeal the violations submit an application for appeal within Ten (10) days of receipt of this notice of violation to the appropriate board or the Office of the Special Master 1700 Convention Center Dr., Miami Beach, FL 33139. A check for \$100 (administrative charges) must accompany the request along with the case number

|                                        |                                        |               |                                              |
|----------------------------------------|----------------------------------------|---------------|----------------------------------------------|
| <b>Issuing Code Compliance Officer</b> | Name: Manny Bastos                     | Badge # 704   | Phone and Extension: (305) 673-7555 ext 6803 |
|                                        | Email: EmmanuelBastos@miamibeachfl.gov |               |                                              |
| Received By                            | Compliance Date 10/06/2017             | Received Date | Received Time 5:00 PM                        |

## ADA Information

To request this material in accessible format, sign language interpreters, information on access for persons with disabilities, and/or any accommodation to review any document or participate in any City-sponsored proceeding, please contact 305.604.2489 (voice), 305.673.7524 (fax) or 305.673.7218 (TTY) five (5) days in advance to initiate your request. TTY users may also call 711 (Florida Relay Service).

Doron Doar (Business owner)

x *[Signature]*

10/6/17 5:34pm

*[Signature]* BA

Manny Bastos

CC2017-03686  
865 Collins  
102-377 BTR

# **EXHIBIT I**



## CHAPTER 6 – ALCOHOLIC BEVERAGES

ORDINANCE NO. 2016-4058

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 6 OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, ENTITLED "ALCOHOLIC BEVERAGES," ARTICLE I, ENTITLED "IN GENERAL," SECTION 6-3 THEREOF, ENTITLED "HOURS OF SALE," TO PROHIBIT PACKAGE LIQUOR SALES AT RETAIL STORES (INCLUDING PACKAGE, GROCERY, CONVENIENCE, AND ANY OTHER RETAIL STORES, AS WELL AS GASOLINE STATIONS/SERVICE STATIONS) AND ALCOHOLIC BEVERAGE ESTABLISHMENTS BEFORE 10:00 A.M. EACH DAY; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

**WHEREAS**, in Chapter 6 of the City Code, entitled "Alcoholic Beverages," the City of Miami Beach ("City") regulates the location, size, hours of operation, and minimum patron age for uses that permit the sale and consumption of alcoholic beverages; and

**WHEREAS**, the City's Committee on the Homeless ("Committee") has recommended that package liquor sales be restricted by two additional hours each morning; and

**WHEREAS**, pursuant to the Committee's recommendation, package liquor sales should begin at 10:00 a.m. instead of 8:00 a.m. as currently authorized by the City Code; and

**WHEREAS**, it is in the best interest of the City, and it serves the health, safety, and welfare of the City's residents and visitors, to prohibit package liquor sales at retail stores (including package, grocery, convenience, and any other retail stores, as well as gasoline service/filling stations) and alcoholic beverage establishments before 10:00 a.m. each day, because the availability of alcoholic beverages for sale and consumption early in the morning discourages the acceptance of services to end homelessness; and

**WHEREAS**, State law expressly grants the City the authority to establish its own regulations for the time for sale of alcoholic or intoxicating beverages; and

**WHEREAS**, pursuant to Section 562.14, Florida Statutes, a municipality may, by ordinance, establish hours of sale for alcoholic beverages; and

**WHEREAS**, Florida courts have rejected equal protection and due process challenges to Section 562.14, Florida Statutes (*See Wednesday Night, Inc. v. City of Fort Lauderdale* (Fla. 1973)); and

**WHEREAS**, Florida Courts have determined that it is within the police power and authority for a municipality to change the hours of regulation of alcoholic beverages, because municipalities have the statutory authority under Section 562.14, Florida Statutes, to restrict the sale of alcohol; additionally, a municipal ordinance regulating the hours of sale of alcoholic beverages may be applied to a property incorporated later into the municipality by annexation. *Village of North Palm Beach v. S & H Foster's, Inc.*, 80 So. 3d 433 (Fla. 4th DCA 2012); and



**WHEREAS**, in *State ex rel. Floyd v. Noel* (Fla. 1936), the Florida Supreme Court recognized that “[i]t is so well settled that no citation of authority is required to support the statement that a municipality exercising the powers inherent in municipal corporations may reasonably regulate the sale of intoxicating liquors and in providing such reasonable regulations may prohibit the sale of such liquors within certain hours, and also may prohibit the sale of liquors within certain zones”; and

**WHEREAS**, the Florida Attorney General has opined that a municipality may regulate (1) the hours of sale, (2) zoning of locations in which alcoholic beverages may be sold, and (3) the sanitary conditions under which alcoholic beverages may be dispensed or served to the public. Florida AGO 059-73 (1959); and

**WHEREAS**, in fact, the Florida Attorney General has opined that different hours may be provided for in a municipal ordinance, provided there is reasonable relation to the health, safety, and morals of the community. Op. Att’y Gen. Fla., p. 497 (1950); and

**WHEREAS**, Florida courts have consistently held that alcoholic beverage establishments are not entitled to grandfather status as to hours of sale for alcoholic beverages (See *Village of North Palm Beach v. S & H Foster’s, Inc.* (Fla. 4th DCA 2012); *Other Place of Miami, Inc. v. City of Hialeah Gardens* (Fla. 3d DCA 1978)); and

**WHEREAS**, injunctive relief is not available against the enforcement of a municipal ordinance regulating the time at which alcoholic beverages may be sold, because municipalities have the statutory authority to set times for sale of alcoholic beverages. *Id.*; *Playpen S., Inc. v. City of Oakland Park*, 396 So. 2d 830 (Fla. 4th DCA 1981); and

**WHEREAS**, Florida Courts have ruled that hours of operation are not a property right. *S. Daytona Rests., Inc. v. City of S. Daytona*, 186 So. 2d 78 (Fla. 1st DCA 1966); and

**WHEREAS**, the amendments set forth below are necessary to accomplish the objectives identified above.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:**

**SECTION 1.** That Section 6-3, entitled “Hours of Sale,” of Article I, of Chapter 6, of the City Code of the City of Miami Beach is hereby amended as follows:

**CHAPTER 6**  
**ALCOHOLIC BEVERAGES**

**ARTICLE I. In General**

\* \* \*

### Sec. 6-3. Hours of sale/violations.

- (a) The hours of sale of alcoholic beverages, whether as a permitted main or accessory use, shall require a State License, and shall be according to the following schedule, ~~except as may be otherwise provided pursuant to subsection (6):~~
- (1) *Retail stores for package sales only—Off-premises consumption.* Vendors may make sales of alcohol only for off-premises consumption between the hours of ~~8:00 a.m.~~ 10:00 a.m. and midnight.
  - (2) *Retail stores, including grocery, convenience stores, and gasoline service/filling stations.* Retail stores, including grocery, convenience stores, and gasoline service/filling stations, which primarily offer for sale products other than alcoholic beverages may only make sales of beer and wine only for off-premises consumption between the hours of ~~8:00 a.m.~~ 10:00 a.m. and midnight.
  - (3) *Alcoholic beverage establishments.* All alcoholic beverage establishments with state licensure—On-premises consumption only, may make sales of alcohol between the hours of 8:00 a.m. and 5:00 a.m.
    - (a) *Restaurants not operating as dance halls or entertainment establishments.* Restaurants with full kitchen facilities, serving full meals, licensed as alcoholic beverage establishments, but not operating as dance halls or entertainment establishments, may remain open 24 hours a day; however, alcoholic beverages may not be offered for sale or on-premises consumption between the hours of 5:00 a.m. and 8:00 a.m.
    - (b) *Restaurants also operating as dance halls or entertainment establishments.* Restaurants with full kitchen facilities, serving full meals, licensed as alcoholic beverage establishments, and also operating as dance halls, or entertainment establishments, may remain open 24 hours a day; however, alcoholic beverages may not be offered for sale or on-premises consumption between the hours of 5:00 a.m. and 8:00 a.m., and dancing and entertainment shall not be conducted between the hours of 5:00 a.m. and 10:00 a.m.
    - (c) *Other alcoholic beverage establishments.* Other alcoholic beverage establishments, not containing restaurants with full kitchen facilities, shall close at 5:00 a.m. and remain closed. No patron or other persons, other than those employed by the vendor may remain on the premises between the hours of 5:00 a.m. and 8:00 a.m.
    - (d) *Sidewalk cafes.* Notwithstanding the provisions of subsections (3)(a) through (c), alcoholic beverages shall not be offered for sale or consumption at sidewalk cafes, as defined in section 82-366 of this Code and as otherwise permitted by the City in accordance with chapter 82, article IV, division 5, subdivision II of this Code (as may be amended from time to time), between the hours of 1:30 a.m. and 8:00 a.m., and shall not be consumed at sidewalk cafes between the hours of 2:00 a.m. and 8:00 a.m. No variances may be granted from the provisions of this section 6-3(3)(d) as to the hours of sale or consumption of alcoholic beverages at sidewalk cafes.

Note: For purposes of this section, full kitchen facilities shall mean having commercial grade burners, ovens, and refrigeration units of sufficient size and quantity to accommodate the occupancy content of the establishment. Full kitchen facilities must contain grease trap interceptors, and meet all applicable city, county, and state codes.

- (4) *Off-premises package sales by alcoholic beverage establishments.* Off-premises package sales associated with alcoholic beverage establishments other than retail stores shall be permitted between the hours of 8:00 a.m. 10:00 a.m. and midnight.
- (5) *Private clubs.* Consideration of a request for a private club conditional use permit, including the hours of operation, shall be pursuant to the conditional use Procedures and Review Guidelines as listed in section 118-191, et seq. A private club, either as a permitted main or accessory use, shall only offer alcoholic beverages for sale or on-premises consumption if the private club, in accordance with section 6-2(a), secures a license for the distribution or sale of any alcoholic beverages from the division of alcoholic beverages and tobacco of the department of business and professional regulation of the state. Private clubs licensed as alcoholic beverage establishments, either as permitted main or accessory uses, shall, only offer alcoholic beverages for sale or on-premises consumption between the hours of 8:00 a.m. and 5:00 a.m., on any day of the week, provided that service is made only to members and guests of members pursuant to Florida Statutes. However, any private club permitted to remain open after 2:00 a.m. shall purchase an extra-hours license and must provide for security in its premises by hiring private security guards or off-duty police officers between the hours of 2:00 a.m. and 5:00 a.m. each day.

Private clubs securing a license from the state division of alcoholic beverages and tobacco by complying with the requirements of F.S. § 561.20 for racquetball, tennis, or golf course facilities may admit members at any time for use of such facilities, but may not serve alcoholic beverages after 2:00 a.m. each day unless such private club is the holder of an extra-hours license and complies with the above requirements.

- (6) Alcoholic beverage establishments set forth in subsections (3) and (5) permitted to remain open to serve alcoholic beverages for on-premises consumption until 5:00 a.m. may continue to serve alcoholic beverages for on-premises consumption and, if the alcoholic beverage establishment is located on Ocean Drive between 5th Street and 15th Street, for consumption at the establishment's sidewalk cafe (i) until 7:00 a.m. on January 1 (New Year's Day) or, if January 1 is on a Sunday, until 7:00 a.m. on Monday if the day that is observed as a national holiday for New Year's Day is on Monday, and (ii) until 7:00 a.m. during certain major event days or weekends as may be designated by the city commission or as may be designated by the city manager following approval by the city commission, under the following conditions:
- (a) The police department and the code compliance department of the city must be notified by a letter, received no later than 15 business days prior to either: (a) January 1, or (b) the day on which alcohol sales are to be extended, stating that the alcoholic beverage establishment intends to serve alcoholic beverages for on-premises consumption and, if the alcoholic beverage establishment is located on Ocean Drive between 5th Street and 15th Street, for consumption at the establishment's sidewalk cafe until 7:00 a.m.;
  - (b) If deemed reasonably necessary by the police chief, or the police chief's designee, off-duty police officers must be provided at the alcoholic beverage establishment until 7:00 a.m.;
  - (c) There are no pending City Code violations against the alcoholic beverage establishment;
  - (d) No delinquent or past due monies are owed to the city;
  - (e) Outdoor entertainment or open-air entertainment is not allowed;

- (f) No violation of the city's noise ordinance shall be permitted;
  - (g) No violation of the approved fire code occupancy load shall be permitted;
  - (h) All required city permits and licenses are current;
  - (i) The State License is current; and
  - (j) Any other conditions required by the city manager in order to protect the public health, safety, or welfare.
- (7) Alcoholic beverage establishments set forth in subsections (3) and (5) permitted to remain open to serve alcoholic beverages for on-premises consumption until 5:00 a.m. may continue to serve alcoholic beverages until 6:00 a.m. on the first day of daylight savings time in the spring.
- (8) The city manager may suspend the provisions of subsection (6) at any time to protect the public health, safety, or welfare.
- (9) *Penalties and enforcement.*
- (a) The following penalties shall be imposed for a violation of this section:
    - i. The penalty for the first violation by a person or entity within a 12-month period shall be a civil fine of \$1,000.00;
    - ii. The penalty for the second violation by a person or entity within a 12-month period shall be a civil fine of \$5,000.00;
    - iii. The penalty for the third violation by a person or entity within a 12-month period shall be a civil fine of \$10,000.00;
    - iv. Upon a finding by the special master that four (4) or more violations by a person or entity have occurred within a 12-month period, the city may initiate proceedings to revoke the certificate of use, business tax receipt, or certificate of occupancy of the violator.
    - v. A sidewalk cafe permittee that has been issued four (4) or more violations pursuant to this section or section 82-388 within a permit year shall be prohibited from applying for and obtaining a sidewalk cafe permit for a period of two (2) permit years following the permit year in which the sidewalk cafe permittee incurred the violations.
  - (b) Enhanced penalty. The following enhanced penalty shall be imposed, in addition to any mandatory fines set forth in subsection ~~(8)(a)~~ (9)(a) above, for violations of this section:
    - i. The sale of alcoholic beverages in violation of this section must be immediately terminated, upon confirmation by the code compliance department that a violation has occurred.
  - (c) Enforcement. The code compliance department shall enforce this section. This shall not preclude other law enforcement agencies or regulatory bodies from any action to assure compliance with this section and all applicable laws. If a code compliance officer (which, as defined in section 70-66, includes a police officer) finds a violation of this section, the code compliance officer shall issue a notice of violation in the manner prescribed in chapter 30 of this Code. The notice shall inform the violator of the nature of the violation, amount of fine for which the violator is liable, instructions and due date for paying the fine, that the violation

may be appealed by requesting an administrative hearing before a special master within ten (10) days after service of the notice of violation, and that the failure to appeal the violation within ten (10) days of service shall constitute an admission of the violation and a waiver of the right to a hearing.

- (d) Rights of violators; payment of fine; right to appear; failure to pay civil fine or to appeal; appeals from decisions of the special master.
  - i. A violator who has been served with a notice of violation must elect to either:
    - A. Pay the civil fine in the manner indicated on the notice of violation; or
    - B. Request an administrative hearing before a special master to appeal the notice of violation, which must be requested within ten (10) days of the service of the notice of violation.
  - ii. The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections 30-72 and 30-73 of this Code. Applications for hearings must be accompanied by a fee as approved by a resolution of the city commission, which shall be refunded if the named violator prevails in the appeal.
  - iii. If the named violator, after issuance of the notice of violation, fails to pay the civil fine, or fails to timely request an administrative hearing before a special master, the special master may be informed of such failure by report from the officer. The failure of the named violator to appeal the decision of the officer within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing before the special master, and shall be treated as an admission of the violation. for which fines and penalties shall be assessed accordingly.
  - iv. A certified copy of an order imposing a fine may be recorded in the public records, and thereafter shall constitute a lien upon any real or personal property owned by the violator, which may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the violator's real or personal property, but shall not be deemed to be a court judgment except for enforcement purposes. On or after the sixty-first (61st) day following the recording of any such lien that remains unpaid, the City may foreclose or otherwise execute upon the lien.
  - v. Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.
  - vi. The special master shall be prohibited from hearing the merits of the notice of violation or considering the timeliness of a request for an administrative hearing if the violator has failed to request an administrative hearing within ten (10) days of the service of the notice of violation.
  - vii. The special master shall not have discretion to alter the penalties prescribed in subsection ~~(8)(a) or (8)(b)~~ (9)(a) or (9)(b).

## **SECTION 2. CODIFICATION.**

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code of the City of Miami Beach, Florida. The sections of this Ordinance may be renumbered or

re-lettered to accomplish such intention, and, the word "ordinance" may be changed to "section," "article," or other appropriate word.

**SECTION 3. REPEALER.**

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**SECTION 4. SEVERABILITY.**

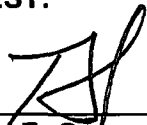
If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

**SECTION 5. EFFECTIVE DATE.**

This Ordinance shall take effect ten days following adoption.

**PASSED** and **ADOPTED** this 9 day of November, 2016.

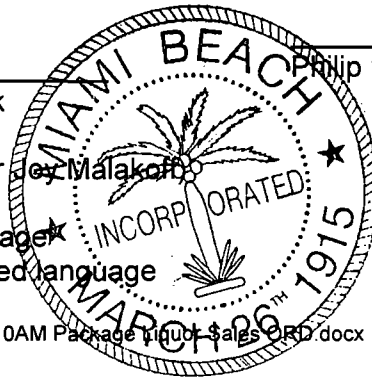
**ATTEST:**

 11/28/16  
Rafael E. Granado, City Clerk

(Sponsored by Commissioner ~~Joe~~ Malakoff)

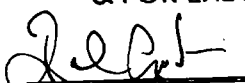
Underline denotes new language  
~~Strikethrough~~ denotes removed language

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Philip Levine, Mayor

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

  
City Attorney

10/11/16  
Date

NK

# MIAMI BEACH

## COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission  
FROM: Jimmy L. Morales, City Manager  
DATE: November 9, 2016

**10:40 a.m. Second Reading Public Hearing**

SUBJECT: CHAPTER 6 - ALCOHOLIC BEVERAGES:

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 6 OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, ENTITLED "ALCOHOLIC BEVERAGES," ARTICLE I, ENTITLED "IN GENERAL," SECTION 6-3 THEREOF, ENTITLED "HOURS OF SALE," TO PROHIBIT PACKAGE LIQUOR SALES AT RETAIL STORES (INCLUDING PACKAGE, GROCERY, CONVENIENCE, AND ANY OTHER RETAIL STORES, AS WELL AS GASOLINE STATIONS/SERVICE STATIONS) AND ALCOHOLIC BEVERAGE ESTABLISHMENTS BEFORE 10:00 A.M. EACH DAY; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

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### RECOMMENDATION

Approve the ordinance.

### ANALYSIS

At its April 20, 2016 meeting, the Committee on the Homeless passed a resolution urging the Mayor and Commission to push back package liquor sales by two hours, from the current 8:00 a.m. to 10:00 a.m. This recommendation was specifically limited to package sales and not restaurant/bar sales. The Committee reasoned that alcohol abuse was an influencing factor in homelessness in our community and served as an impediment to engaging the homeless to accept services.

On June 8, 2016, the City Commission, at the request of Commissioner Joy Malakoff, referred the proposed ordinance to the Land Use and Development Committee at the recommendation of the Committee on the Homeless. On June 15, 2016, the Land Use Committee initially discussed the item and directed the Administration to prepare an ordinance that would be applicable to all retail stores. Pursuant to direction from the Committee, the attached ordinance was drafted. The specific revisions to Chapter 6 include the following:

- For retail package sales only (off-premises consumption), sales would only be permitted between the hours of 10:00 a.m. and midnight.
- For retail stores, including grocery, convenience stores, and gasoline service/filling stations, which primarily offer for sale products other than alcoholic beverages, the sale of beer and wine (off-premises consumption) would only be permitted between the hours of 10:00 a.m. and midnight.

The Land Use Committee approved the revised ordinance at its September 21, 2016 meeting and subsequently referred it to Commission for consideration. The Commission held the first reading for the ordinance on October 19, 2016.

In unanimously passing the ordinance at first reading, the Commission requested that the Administration return in six months with a report on the ordinance's impact. In addition, the Commission requested that a letter be sent to the Chief Executive Officers of the major retail chains in the City that permit single-serve alcohol sales asking that they follow the lead of Walgreens and voluntarily agree to prohibit these sales.

### **CONCLUSION**

The Administration recommends that the City Commission approve the ordinance as proposed as a means of discouraging alcohol use among the homeless during morning early hours in hopes that they can be successfully engaged to accept services and end their personal homelessness.

### **KEY INTENDED OUTCOMES SUPPORTED**

Enhance Beauty And Vibrancy Of Urban And Residential Neighborhoods; Focusing On Cleanliness, Historic Assets, In Select Neighborhoods And Redevelopment Areas

### **Legislative Tracking**

Housing and Community Services

### **Sponsor**

Vice-Mayor Joy Malakoff

### **ATTACHMENTS:**

#### **Description**

- ▯ Ordinance



# **EXHIBIT J**

**INVOICE (00065793)****BILLING CONTACT**

OCEAN 9 LIQUOR  
BEACH BLITZ CO. D/B/A OCEAN 9 LIQUOR  
865 Collins Ave. D  
Miami Beach, FL 33139-5807

**MIAMI BEACH**

1700 Convention Center Drive  
Miami Beach, Florida 33139  
305.673.7000

| INVOICE NUMBER | INVOICE DATE | INVOICE DUE DATE | INVOICE STATUS | INVOICE DESCRIPTION |
|----------------|--------------|------------------|----------------|---------------------|
| 00065793       | 06/27/2017   | 06/27/2017       | Due            | NONE                |

| REFERENCE NUMBER                             | FEE NAME                                   | TOTAL      |
|----------------------------------------------|--------------------------------------------|------------|
| RL-10005692                                  | BTR Upcharge - Late Fee                    | \$570.96   |
|                                              | Mercantile Occupancies Classes A, B, and C | \$57.50    |
|                                              | Occ. Code 04007701 Fee                     | \$274.00   |
|                                              | Occ. Code 95003602 Fee                     | \$233.00   |
|                                              | Occ. Code 95007700 Fee                     | \$274.00   |
|                                              | Occ. Code 95012065 Fee                     | \$604.00   |
|                                              | Occ. Code 95240029 Fee                     | \$233.00   |
| 865 Collins Ave D Miami Beach, FL 33139-5807 |                                            |            |
| SUB TOTAL                                    |                                            | \$2,246.46 |

TOTAL **\$2,246.46**

Any refund associated with this invoice will only be issued to the billing contact listed herein.



# **EXHIBIT K**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 17-CV-23958

BEACH BLITZ CO.,

Miami, Florida

Plaintiff(s),

November 17, 2017

vs.

CITY OF MIAMI BEACH, FLORIDA,

Volume 01

Defendant(s).

Pages 1- 173

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PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION  
BEFORE THE HONORABLE JOHN J. O'SULLIVAN  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

FOR THE PLAINTIFF(S): PHILLIP M. HUDSON, III, ESQ.  
Arnstein & Lehr, LLP  
200 South Biscayne Boulevard, Suite 3600  
Miami, Florida 33131  
(305) 374-3330  
pmhudson@arnstein.com

FOR THE DEFENDANT(S): ENRIQUE DANIEL ARANA, ESQ.  
Carlton Fields Jorden Burt, P.A.  
Miami Tower  
100 S.E. Second Street  
Suite 4200  
Miami, Florida 33131  
(305) 530-0050  
earana@cfjblaw.com

- and -

SCOTT EVERETT BYERS, ESQ.  
GARY PAPPAS, ESQ.

REPORTED BY: Jill M. Felicetti, RPR, CRR, CSR  
Official Court Reporter  
400 N. Miami Avenue, Suite 08S27  
Miami, Florida 33128  
jill\_felicetti@flsd.uscourts.gov

1 THE COURT: What he says is he has no administrative  
2 process to go to because the BTR was wrongfully withheld from  
3 him.

4 MR. ARANA: If he thinks that was the case, he  
5 could -- yes, if he thinks it's been withheld from him already,  
6 he can appeal that, whatever decision he -- you know, he's got  
7 to identify at a point in time where the city said you can't  
8 have one. But if at any point the city says we will not give  
9 you a BTR, he can appeal that decision.

10 Section 102.372 of the city code says: Any person  
11 whose application for business tax receipt has been denied may  
12 seek a hearing under Sections 102.384 and 102.385.

13 If he in fact tried during the course of the year to  
14 get a BTR license and the city said I am sorry, we are not  
15 going to give it to you, he could appeal that.

16 THE COURT: All right. Very good.

17 Call your first witness, please.

18 MR. HUDSON: Doran Doar.

19 THE COURT: Come on up, Mr. Doar.

20 DORAN DOAR,  
21 having been first duly sworn on oath, was examined and  
22 testified as follows:

23 THE WITNESS: Doran Doar. Last name D-O-A-R.  
24  
25

## DIRECT EXAMINATION

BY MR. HUDSON:

Q. Good morning.

Are you familiar with an entity by the name of Beach Blitz, which is the plaintiff in this case?

A. Yes.

Q. And what is your involvement with Beach Blitz?

A. I am the owner of the Beach Blitz, Florida corporation.

Q. Are you familiar with an entity or something called Ocean 9 Liquor?

A. Yes. It is the liquor store, the d/b/a Beach Blitz. Beach Blitz d/b/a Ocean 9 Liquor.

Q. So you own Ocean 9 Liquor store through Beach Blitz?

A. Yes.

Q. Please wait for me to finish my question, sir.

A. Yes.

Q. Thank you.

Are you familiar with something called Ocean 11 Liquor or Ocean 11 Market?

A. Yes.

Q. What is Ocean 11 Market?

A. It's a regular convenience store that I own.

Q. You own that as well?

A. Yes.

Q. Now, Ocean 9 Liquors is a full liquor store, correct?

1 A. Yes.

2 Q. Does Ocean 11 Market sell liquor?

3 A. Yes. Beer and wine.

4 Q. Only beer and wine?

5 A. Yes.

6 Q. Does Ocean 9 hold a Florida state license to sell all types  
7 of liquor?

8 A. Yes.

9 Q. How long has Ocean 9 been in business?

10 A. From 2012.

11 Q. Is it a profitable company?

12 A. Very profitable.

13 Q. Briefly tell the court the location of Ocean 9 Liquor and  
14 what type of business it is.

15 A. Ocean 9 Liquor, it's located in a very unique place in the  
16 center of South Beach, half a block from Ocean Drive, next door  
17 to Mangos Tropical Bar, and many turn to the beach. It's a  
18 very unique, special location.

19 Q. Do you know what the MXE district is?

20 A. Yes.

21 Q. Tell the court what you understand the MXE district to be.

22 A. What I understand from right now that MXE, it's from Fifth  
23 Street to 15th or 16th Street southwest and from Collins Avenue  
24 to Ocean Drive east and west.

25 Q. And the City of Miami Beach recognizes the MXE district as

1 a separate zoning district; is that correct?

2 A. Yes.

3 Q. How many liquor stores that sell full liquor are presently  
4 in the MXE district?

5 A. Three or four. Four liquor store.

6 Q. And does that include Ocean 9, which is closed?

7 A. Yes.

8 Q. So there are presently three liquor stores that are  
9 operating?

10 A. Yes.

11 Q. Are you generally familiar with a series of ordinances over  
12 the past 12 months or so where the City of Miami Beach has  
13 substantially reduced the hours of operation of the liquor  
14 stores in the MXE district?

15 A. Yes, I am familiar.

16 Q. Have you objected to those ordinances?

17 A. Yes.

18 Q. Have you hired professionals to help you deal with the City  
19 of Miami Beach to try to change those ordinances?

20 A. Yes.

21 Q. What are the current hours of sale in the MXE district, do  
22 you know?

23 A. Yes.

24 Q. What are they?

25 A. Until a few changes, but I think right now the hours is



1 between 10:00 a.m. to 8:00 p.m. in the evening. It used to be  
2 8:00 a.m. in the morning to 12:00 a.m. in the night.

3 Q. So in the last 12 months there had been a series of  
4 ordinances that have reduced the number of hours by six hours;  
5 is that fair?

6 A. Yes. From 6 to 10.

7 Q. Do you believe Ocean 9 Liquors would be able to survive  
8 with the substantially reduced hours? It's possible, but do  
9 you believe --

10 A. Hard to believe, but it's possible.

11 Q. Do you believe the other stores -- strike that.

12 Is Ocean 11 Market also in the MXE district?

13 A. Yes.

14 Q. Could someone come into the MXE district today and open a  
15 new full service liquor store?

16 A. I don't think it's even possible because of the new  
17 ordinance that they did a few month ago, last year.

18 Q. So tell us what your understanding is of the ordinance that  
19 would prevent any new liquor stores from opening in that  
20 district.

21 A. What I understand from the ordinance, that notify that  
22 nobody can open liquor store, any liquor store, any kind of  
23 liquor store, not beer and wine, not any kind of liquor store  
24 in the MXE district.

25 Q. Do you believe that fact makes your liquor store special or

1 unique?

2 A. For the moment it's going to be much more unique, much more  
3 profitable because less competition possible.

4 Q. Do you know what a BTR is?

5 A. I learn about the BTR only in the last three or four month.

6 Q. What is your understanding of a BTR?

7 A. Business tax receipt.

8 Q. And is that like an occupational license?

9 A. Yes. It change the name from occupation license to  
10 business tax receipt in -- I don't recall when.

11 Q. And that's a license -- do you understand that you need a  
12 BTR to operate a business in Miami Beach?

13 A. Yes.

14 Q. Do you have BTRs for Ocean 11 Market?

15 A. Yes.

16 Q. You always had BTRs for Ocean 11 Market?

17 A. Always.

18 Q. Have you always had, except for fiscal years 2016 and '17,  
19 have you always had BTRs for Ocean 9 Liquor?

20 A. Always.

21 Q. Did there come a time in 2017 when you realized that you  
22 did not have or that your BTR was not current because you  
23 didn't renew it at some point?

24 A. I didn't understand the question. I am sorry.

25 Q. At some point did you realize in 2017 that there was a

1 problem with your BTR?

2 A. I realize in June after I receive a BTR violation, which I  
3 don't have the BTR. It's never happened to me before in the  
4 surviving of my business. I realize for some reason that's  
5 what happened.

6 THE COURT: Who usually went and got your BTR? You or  
7 somebody else at your work?

8 THE WITNESS: Usually it's either me or another woman.  
9 The name is Rochelle Malik. She is professional dealing with  
10 the city with violation and with the license and all this. She  
11 know the people and she lead me usually what to do.

12 MR. HUDSON: Your Honor, I'd like to point the witness  
13 to what's been marked as Plaintiff Exhibit 5. I don't know if  
14 he has a binder or not yet.

15 THE COURT: Did you give him one? Where is the  
16 binder?

17 For the record, all these exhibits are in evidence.  
18 You don't need to set the predicate or anything.

19 MR. HUDSON: Correct, your Honor. I am going to  
20 proceed.

21 BY MR. HUDSON:

22 Q. Sir, turn to tab 5 in that white binder that I just sent to  
23 you. Take a look at that document the first page. When you  
24 have had an opportunity to look at it, tell the court, please,  
25 what is there.

1 A. I see two violations. Usually the last three number 102  
2 and 103.

3 102, it's selling alcohol after hour of ordinance  
4 separation.

5 103 is not having business tax receipt license.

6 Q. When did you first see these two citations?

7 A. I saw this -- when I got it, I was overseas. I was in a  
8 different country, in Israel, and I saw this when I came back  
9 on June 27.

10 Q. So someone in the U.S. sent these to you while were you in  
11 Israel?

12 A. Yes.

13 Q. You saw them. You returned to the United States a couple  
14 of days later, correct?

15 A. Yes.

16 Q. And at that point did you do anything, sir, to try to  
17 resolve these violations?

18 A. Of course. I handed them to Rochelle Malik and also I  
19 handed them to Guy Shir, which is also a lawyer, and we tried  
20 to appeal the violations.

21 Q. Let's start one at a time, and I know sometimes dates are  
22 hard to remember, but do your best, please, for the Court.

23 When you came back in late June, did you personally do  
24 anything at that time other than to contact Ms. Malik?

25 A. I went to the city on June 27 and I tried to pay the BTR.

1 Q. You physically went where?

2 A. To finance.

3 Q. Describe for the Court where that is physically.

4 A. I think it's on Meridian and 18, first floor.

5 Q. So there is a counter or something you go to?

6 A. It's a counter. You take a number, you stand in line, and  
7 you do a few things over there, I mean, and --

8 Q. So you personally went in late June --

9 A. Yes.

10 Q. -- to the city. And describe for us what happened when you  
11 were at the counter.

12 A. They did not renew. They didn't let me renew the license.  
13 So I went to Rochelle office.

14 THE COURT: What did you tell the person at the  
15 counter and what did the person tell you?

16 THE WITNESS: I don't remember exactly the  
17 conversation, but I went over there, tried to renew, to pay my  
18 BTR because I got the violation of the BTR. So I went to the  
19 finance, tried to pay. For some reason they probably show me a  
20 violation or some -- I don't remember exactly. I went to  
21 Rochelle.

22 THE COURT: You went to what?

23 THE WITNESS: To Rochelle Malik, to the woman that  
24 usually take care of --

25 THE COURT: No. I am talking about when you were at

1 the finance department in Miami Beach. Tell me exactly what  
2 did you do; how much money did you give them; did you give them  
3 cash, check; who do you give it to?

4 THE WITNESS: No. You ask them for how much to pay,  
5 how much to pay. Then say they are not allow you to renew the  
6 license.

7 THE COURT: Okay.

8 BY MR. HUDSON:

9 Q. So they told you specifically that day, someone behind the  
10 counter at Miami Beach, that they would not allow to you renew  
11 the license; is that your testimony?

12 A. Yes.

13 Q. Then what did you do next?

14 A. I went to Rochelle office and I hand her the violations and  
15 I ask her to do, to appeal it.

16 Q. Explain to the court who Rochelle Malik is, to the best of  
17 your knowledge.

18 A. Rochelle Malik, she is the wife of the former mayor of  
19 Miami Beach. She is dealing with the Miami Beach city on  
20 stuff, like on violations and BTR and helping people like me,  
21 small business owners, to try to resolve problems. So she know  
22 the system, how it's working. And I work with her for a few  
23 years already and she usually help me to renew the license, or  
24 maybe she go, maybe she pay some kind of checks. Sometimes  
25 it's me.

1 Q. Earlier you told the court that you had hired folks from  
2 time to time that helped you with the BTR process prior to when  
3 you found out you had the problem, right? Ms. Malik had  
4 already been working for you for some time to help you with  
5 licensing and to help you with issues on Miami Beach, correct?

6 A. Yes.

7 Q. So when you couldn't accomplish what you wanted to  
8 accomplish trying to get your BTR, you then asked her to get  
9 involved, correct?

10 A. Yes.

11 Q. And you hired her to go down and try to pay the BTR as  
12 well?

13 A. Yes.

14 Q. Was she successful?

15 A. No. From few month.

16 Q. How many times, let's --

17 THE COURT: I am a little confused. His testimony  
18 before you started leading him was, I went to Malik, I handed  
19 her the tickets and asked her to appeal it. He didn't say I  
20 went to Malik and said, hey, they are not taking my money for  
21 the license. He said I went to Malik, handed her the tickets  
22 and said appeal it, is what I remember him saying.

23 So now all of a sudden you jump to Malik -- what he  
24 testified to is he told Malik to appeal the tickets. Appealing  
25 the tickets is not get me my BTR.

1 MR. HUDSON: I am not sure --

2 THE COURT: They are two different things. I think  
3 it's extremely important. So you need to get answers from him  
4 and he needs to provide answers.

5 MR. HUDSON: I agree with you, Judge. There is a big  
6 distinction. I am trying to --

7 THE COURT: You seem to be doing it now by telling him  
8 what he is going to say. I want to hear what he has to say  
9 rather than what you have to say.

10 MR. HUDSON: I understand.

11 BY MR. HUDSON:

12 Q. Mr. Doar, focus on my questions and the Court's questions.

13 Okay. Let's go back. You personally went down at the  
14 end of June, correct, to try to get a BTR license? Correct?

15 A. Yes.

16 Q. You had previously hired Ms. Malik to do other things for  
17 you before the BTR problem, including renewing BTRs, paying  
18 violations; is that correct?

19 A. Yes.

20 Q. After June 27 or 28 when you were unsuccessful at renewing  
21 your BTR, did you hire Ms. Malik to assist you with the BTR?

22 A. Yes.

23 Q. And what was it that you asked her to try to accomplish?

24 A. I told her -- I give her the violations and I ask her to  
25 deal with the violation. Part of the dealing with the



1 violation, as I understand, we have a few days to appeal it.

2 Q. So the violations that you are talking about is the Exhibit  
3 5 in front of you, correct?

4 A. Yes.

5 Q. The violation ending in 102 and 103.

6 A. Yes.

7 If I am not mistaken, it was one more violation.

8 Q. There was a third violation from December of '16 as well,  
9 correct?

10 A. Yes.

11 Q. That she was dealing with?

12 A. Yes.

13 Q. It was not a BTR violation, correct?

14 A. No.

15 Q. Okay. Did Ms. Malik report back to you whether she was  
16 able to resolve the BTR problem?

17 A. She always told me that it's okay, it's under control, that  
18 she's dealing with that. But she could not resolve the  
19 problem.

20 Q. She could not. Please get closer to the microphone. I  
21 can't hear you.

22 A. Rochelle Malik didn't resolve the -- she resolved the  
23 problem with the violation but not with the BTR. They never  
24 let her pay or me to pay the BTR.

25 Q. Did you specifically charge Ms. Malik with going down and

1     trying to get a BTR for you in June or July of 2017?

2     A.   Yes.

3     Q.   Did you either give her money to do so or did you have an  
4     understanding that if she paid, you would repay her?

5     A.   We have understanding.  I didn't give her money but we have  
6     understanding that, you know, she pay with her checks and she  
7     get the money from me all the time.

8     Q.   That understanding goes back years, correct?

9     A.   Yes.

10    Q.   It's a course and custom in business, correct?

11                 MR. PAPPAS:  I have got to object to the leading at  
12    this point.

13                 THE COURT:  Stop the leading.  On this part it doesn't  
14    make much difference to me, but go ahead.

15    BY MR. HUDSON:

16    Q.   When Ms. Malik reported that she was unsuccessful at  
17    getting a BTR, what did you do next?

18    A.   Also at the same time I went to a Guy, Shir which is a  
19    lawyer from --

20                 THE COURT:  Can you spell that name?

21                 MR. HUDSON:  S-H-I-R.

22                 THE COURT:  The first name Guy?

23                 MR. HUDSON:  Yes.

24    BY MR. HUDSON:

25    Q.   So you retained an attorney by the name of Guy Shir?

1 A. Guy Shir, and I also emailing the violations. And because  
2 Rochelle had a hard time to deal with the city or with the  
3 violation, he send the letter with the checks of \$100 to the  
4 city to appeal with the letter to appeal the violation.

5 Q. The violations?

6 A. And for some reason after he send the letter, the city  
7 didn't accept it.

8 Q. Mr. --

9 A. Because -- some reason.

10 Q. I am sorry. I didn't mean to cut you off.

11 A. Okay.

12 Q. So Mr. Shir was unsuccessful in getting you a BTR, correct?

13 MR. ARANA: Leading.

14 THE COURT: Sustained.

15 What he is talking about is that he sent a check with  
16 \$100 to appeal, which they didn't accept, is what he said. I  
17 mean, that's the way I understand what he said.

18 THE WITNESS: Yes. That's what I said. And I know  
19 that Mr. Shir was speaking with a woman named Cindy in the  
20 special master and she give him instruction, different  
21 instruction than what he had, you know, to appeal it.

22 BY MR. HUDSON:

23 Q. Was Mr. Shir successful at getting you a BTR in 2017?

24 A. No.

25 Q. What did you do next?

1           THE COURT: Excuse me. What did Mr. Shir do to get  
2 you a BTR in or last year before October of 2017, this past  
3 year?

4           THE WITNESS: We understand from the city that without  
5 resolve the violation we cannot get a BTR several time.

6           MR. HUDSON: May I continue, Judge?

7           THE COURT: Yes.

8 BY MR. HUDSON:

9 Q. So after Mr. Shir was unsuccessful, what did you do next?

10 A. I went to Harold Rosen.

11 Q. Who is Harold Rosen?

12 A. He is a lawyer that used to be a -- he is a former, of  
13 Miami Beach that also dealing with violations and special  
14 masters and tries to resolve problem for people like business  
15 owners.

16 Q. So you retained Mr. Rosen, correct?

17 A. Yes. I hire him and -- I hire him in July, the end of  
18 July. They lead me that without resolve the violation cannot  
19 renew the BTR. So he had a special master on August 28th. On  
20 August 28th he had an order with the special master.

21 Q. So let's break it down a little bit so everybody can  
22 understand.

23           You hired Mr. Rosen, you said, sometime in late July?

24 A. Yes.

25 Q. And was Mr. Rosen successful at making some progress on the

1 violations and the BTR?

2 A. Not on the BTR, on the violation. He had some agreement  
3 with the special master.

4 Q. Okay. How many violations were outstanding at the time  
5 that you hired Harold Rosen?

6 A. Three.

7 Q. And what were those violations for?

8 A. One violation from December 22, if I don't mistake. That  
9 say that I selling liquor before 10:00 a.m. This was maybe one  
10 week, two weeks after the new ordinance, that they change the  
11 time.

12 Q. That was one. What was the next one?

13 A. The second one, it was selling alcohol after 10:00 p.m.,  
14 and the third violation was not having a BTR.

15 Q. So when Mr. Rosen was successful at getting a special  
16 master involved, was he dealing with two of those or three of  
17 those?

18 A. With the three of them.

19 Q. All three of them, correct?

20 A. All three of them.

21 Q. Including the BTR issue, correct?

22 A. All of them.

23 Q. Was he also retained by you to assist or try to get you a  
24 BTR in 2017?

25 A. Excuse me. I didn't understand.

1 Q. Did you also hire him to help you get a BTR in 2017?

2 A. So I hired him to resolve my problem. So probably to get  
3 the BTR was part of it, yeah.

4 Q. Was he successful at getting you a BTR in 2017?

5 A. No.

6 Q. At some point did Mr. Rosen indicate that he had an  
7 agreement with the City of Miami Beach regarding the resolution  
8 of all of the violations?

9 A. I am sorry. Can you repeat?

10 Q. Did Mr. Rosen tell you at any time that he had reached an  
11 agreement with the city to solve all of the violations, all  
12 three?

13 A. Yes.

14 Q. When did he tell you that?

15 A. On August 28th.

16 Q. Of what year?

17 A. 2017.

18 Q. Did he ask you to do anything on that date?

19 A. Yes. He asked me to give, to give a check to the City of  
20 Miami Beach for \$1,000.

21 Q. Did you do so?

22 A. Yes.

23 Q. Turn to tab 1 in your book in front of you, please. Please  
24 look at that.

25 Is that the check that you are talking about?

1 A. Yes.

2 Q. So did you write that check on or about August 28 of '17?

3 A. Yes.

4 Q. Is that your signature?

5 A. Yes.

6 Q. Is that your handwriting on the rest of the check?

7 A. Yes.

8 Q. And I note that it says in the line "paid in full," and it  
9 seems to list the three violations. Is that a fair reading of  
10 that document?

11 A. Yes.

12 Q. When did you give that to Mr. Rosen or -- I am sorry. Whom  
13 did you deliver that check to?

14 A. To Mr. Rosen, in the meeting between Mr. Rosen and Rochelle  
15 Malik.

16 Q. Did Mr. Rosen tell you that after that date that he had  
17 delivered that to the City of Miami Beach?

18 A. He admit a few times in front of us.

19 Q. Did he tell you who at the City of Miami Beach he gave it  
20 to?

21 A. He gave it to Alex Baxter, I think. He is deputy of city  
22 attorney.

23 Q. Alex Boxner?

24 A. Alex Boxner.

25 Q. Did he say when he gave it to Mr. Boxner?

1 A. He said on August 28 or August 29.

2 Q. About the time, within a day or two of when you delivered  
3 the check?

4 A. Yes. That's what he said, within a day or two.

5 Q. Look at the second page there, the back of the check.

6 Do you see that?

7 A. Yes.

8 Q. It seems to have been deposited by the City of Miami Beach  
9 on 10/18/2017.

10 Do you have any idea why it would have taken the city  
11 a month and a half, if not more, to deposit that check?

12 A. You are asking me?

13 MR. PAPPAS: Foundation, your Honor.

14 THE COURT: Overruled.

15 If you know, you know. If you don't, you don't.

16 MR. HUDSON: Exactly.

17 THE COURT: I assume he doesn't know, but maybe he  
18 does.

19 Did he answer?

20 Do you know?

21 A. No, I don't know why.

22 BY MR. HUDSON:

23 Q. After you gave Mr. Rosen the check, did you personally go  
24 down and try to obtain a BTR now that the violations were  
25 cleared?



1 A. I don't remember if after I give him the check I went to  
2 try to pay the BTR.

3 Q. Let's go to --

4 A. I tried on the month of September.

5 Q. I know. We are jumping ahead.

6 Turn to page 7 of your binder, please.

7 Have you seen that document before?

8 A. This is the agreed order. Yes.

9 Q. What do you understand this order to do?

10 A. I understand that this order, it's agreement between the  
11 Beach Blitz to the City of Miami Beach regarding the three  
12 violation that say they agree that \$3,000 resolve the problem.

13 Q. Do you have any idea why it took a month from August 28  
14 when you delivered the check to Mr. Rosen told you he had a  
15 deal for this order to be prepared and signed?

16 A. I don't have any idea.

17 Q. When did you first see this order?

18 A. Excuse me?

19 Q. When did you first see this order?

20 A. This order, on August -- when I see the order, I think on  
21 September 28.

22 Q. Did Mr. Rosen give it to you?

23 A. Yes.

24 Q. At that time when you received it, did you personally go  
25 down and try to get your BTR again?

1 A. Yes.

2 Q. September 28 was 2017 was a Thursday, was it not?

3 A. Yeah, Thursday.

4 Q. Do you recall?

5 A. It's either was Thursday or Friday.

6 THE COURT: It was a Thursday. I will take judicial  
7 notice of that.

8 MR. HUDSON: Thank you, Judge.

9 BY MR. HUDSON:

10 Q. Do you recall, did you go down on the 28th or 29th, or  
11 both?

12 A. Either the 28th or the 29th. Either was Thursday or  
13 Friday.

14 Q. And so you personally once again went down to the city  
15 first floor counter, correct?

16 A. Yes.

17 Q. And you personally asked to please allow to you get a BTR,  
18 correct?

19 A. Yes.

20 Q. What did they tell you?

21 A. They tell me that they are not going to issue me a BTR  
22 because I have the violations.

23 MR. HUDSON: One moment, your Honor.

24 THE COURT: Yes.

25 MR. ARANA: Your Honor, we were presented with a

1 document this morning that plaintiffs want to add to an exhibit  
2 list. It appears to be a city record, but we haven't had an  
3 opportunity to confirm.

4 We object on timeliness grounds.

5 THE COURT: What is it?

6 MR. HUDSON: It was potentially a rebuttal or  
7 impeachment exhibit. It's a record that basically shows  
8 internally why they closed his license and that it couldn't be  
9 renewed or replied for. I believe the witness will testify  
10 that it was given to him that day.

11 THE COURT: Well, I will allow it subject to the city,  
12 if you determine that it's not a record, then let me know  
13 afterwards and I will take the opportunity to strike it.

14 MR. HUDSON: This will be admitted?

15 MR. BYERS: Your Honor, we have an objection. It's  
16 dated after September 28 and 29th. There's actually markings  
17 on there showing October 6th of 2017. So therefore it is  
18 impossible --

19 THE COURT: You should have saved that for  
20 cross-examination.

21 MR. HUDSON: We don't know what it is. That's the  
22 problem, Judge. But he is going to testify that he was given  
23 this by the city.

24 THE DEPUTY CLERK: Speak into the microphone.

25 MR. HUDSON: May I approach the witness, your Honor?

1 THE COURT: We will mark that as 17. Is that your  
2 next exhibit?

3 THE DEPUTY CLERK: Yes.

4 Can I have a brief description of it. Brief.

5 MR. HUDSON: It is a screenshot from the City of Miami  
6 Beach that has, for lack of a better word, a rectangle in the  
7 middle of it, that we can't see what it is, and I can't tell  
8 you when it's dated, to be honest with you. Maybe the city  
9 can, if they know how to read it. But we can't tell when it's  
10 dated.

11 THE COURT: Okay. Give it to the witness to look at  
12 it.

13 MR. HUDSON: Do you need a copy?

14 THE DEPUTY CLERK: I don't.

15 THE COURT: I do.

16 BY MR. HUDSON:

17 Q. Sir, you went down to the city on either the Thursday or  
18 the Friday and, once again, they told you they could not give  
19 you the BTR, correct?

20 A. Yes.

21 Q. Did you indicate to them at that time that your violations  
22 had been resolved?

23 A. Yeah.

24 Q. And what did they say? What was their response?

25 A. I have a violation, that they cannot renew the BTR.

1 Q. Do you understand that to mean that their system had not  
2 been updated or did you understand that to mean something else?

3 A. That's what Rochelle told me, that probably the system is  
4 not updated.

5 Q. So when you were told you couldn't do it, did you call  
6 Ms. Malik or did you ask her to go do it as well?

7 A. Yes. Yes. I told her that I can't renew it.

8 Q. Do you know whether Ms. Malik went down there that Thursday  
9 or Friday to try to renew it?

10 A. I am not sure.

11 Q. But you were unable to, correct?

12 A. I wasn't.

13 Q. You went down there for the specific purpose of renewing  
14 it?

15 A. Correct.

16 Q. You had the financial capability of renewing it at that  
17 time?

18 A. Of course. The financial was no problem at any time.

19 Q. Okay. So next Monday was October 1st, correct?

20 MR. HUDSON: The court will take judicial notice of  
21 that?

22 THE COURT: Next Monday was what?

23 MR. HUDSON: October 1.

24 THE COURT: No, that's not true. October 2.

25 MR. HUDSON: Okay. Thank you, Judge.

1           THE COURT: October 1st was Sunday. At least that's  
2 what my government calendar says.

3 BY MR. HUDSON:

4 Q. So the following week, starting on October 2nd, any time  
5 during that week did you go down and try to get the BTR?

6 A. Which week are you talking about?

7 Q. The Thursday or Friday was the 28th --

8 A. Yes.

9 Q. -- and 29th.

10           The next Monday or any day that following week  
11 starting on October 2nd, as the court has just indicated, did  
12 you personally go down to the city to try to get a BTR?

13 A. Yes, on October 3. On October 3.

14 Q. Did you go on October 3 for other reasons as well?

15 A. Yeah. I renew my Ocean 11 BTR, because they didn't want to  
16 renew it on September 28. They told me that I had a violation.

17 Q. So turn to page 9.

18           THE COURT: You say page 9. You mean Exhibit 9?

19           MR. HUDSON: Exhibit 9, please.

20 BY MR. HUDSON:

21 Q. Please, in the book. You are at tab 9.

22           Is that an invoice for Miami Beach for \$966?

23 A. Yes.

24 Q. What is that, sir?

25 A. It's a payment of --

1 THE COURT: You need to talk into the microphone.

2 A. It's a license for Ocean 11 Market.

3 Q. So is this something that was given to you the day that you  
4 were -- on October 3 when you were at the city? Did they give  
5 this to you that day so you could tell how much to pay?

6 A. No, they didn't give me this paper. They give me the  
7 receipt.

8 Q. So you had this paper in advance?

9 A. No, I didn't have. They give me this on October, on  
10 October 9.

11 Q. So turning to Exhibit 10, tell us what Exhibit 10 is.

12 A. This is the bill for -- this is the bill for Ocean 11  
13 Market.

14 Q. Is this the receipt that was physically given to you on  
15 October 3 when you paid the bill for Ocean 11 Market?

16 A. I don't remember. But it's another receipt that I remember  
17 they give it to me. I don't remember this one was together.

18 Q. Look at the date, sir.

19 A. Yes, yes. Actually, yes. They give me this. They give me  
20 this and they give me also another receipt.

21 Q. Okay. So this Exhibit 10 was physically given to you by  
22 someone at the City of Miami Beach on October 3, correct?

23 A. Yes.

24 Q. At that same time you attempted to pay the BTR for your  
25 other business, Ocean 9, correct?

1 A. Of course.

2 Q. They refused?

3 A. They refused to take the money.

4 Q. Did they tell you why they refused?

5 A. Because I have violations.

6 Q. Because you had open violations?

7 A. Open violations.

8 Q. Consistent with everything they have told you in the past,  
9 correct?

10 A. Yes.

11 Q. Do you know if Ms. Malik or Mr. Rosen or Mr. Shir or  
12 anybody else continued to try to ask the city to --

13 A. All the time. All the time. Every day. Every day phone  
14 calls.

15 Q. Ms. Malik's job, in fact, was to stay on top of this,  
16 correct?

17 A. Yes.

18 Q. And she was unsuccessful, correct?

19 A. Yes. Also, Harold Rosen was calling.

20 Q. Turn to Exhibit 11, please. Tell the court what Exhibit 11  
21 is, if you know.

22 A. This is the receipt and my check from the city after I paid  
23 the BTR of Ocean 11.

24 Q. I am looking at --

25 A. Eleven you said?



1 Q. -- Exhibit 11. I think that's 10, sir.

2 A. Sorry.

3 Q. Eleven should be a document, a Miami Beach document  
4 regarding the closing of violation 102.

5 A. Okay. The exhibit it's after the number, right? After the  
6 number?

7 Q. It should be after the tab, correct.

8 Is that what you are looking at, sir?

9 A. Yeah, I think so, if it's regarding violation ending 102.

10 Q. Yes.

11 A. Yes, that's what I have.

12 Q. Do you know why only that violation was closed out on 10/4,  
13 yet you had paid all three violations at one time?

14 MR. PAPPAS: Objection, your Honor. No foundation  
15 whatsoever.

16 THE COURT: On the next day it shows all three were  
17 closed out on the same day. So it's a bad question to start  
18 with.

19 MR. HUDSON: Your Honor, part of our problem is we  
20 don't have access to the records. We are using what we have.  
21 But there were three violations.

22 THE COURT: You just asked the question why was 02  
23 closed out. You look on the next page, 03 was closed out on  
24 the next day.

25 MR. HUDSON: But the third wasn't. That's where we

1 are going.

2 THE COURT: Ask him if he knows why the third wasn't  
3 closed out.

4 MR. PAPPAS: There's no foundation -- he hasn't  
5 established that it was or it wasn't, and he can't with this  
6 witness.

7 THE COURT: Overruled. He can if he knows. Hearsay  
8 is admissible here. Maybe someone from Miami Beach told him  
9 it's not closed out because we don't like you or something. I  
10 don't know what they told him.

11 MR. PAPPAS: Let's hear.

12 BY MR. HUDSON:

13 Q. Turn to Exhibit 12.

14 A. Violation 704.

15 Q. Yes.

16 Do you have any idea why that violation was closed out  
17 on 10/13 as opposed to 10/4?

18 A. What is this violation?

19 Q. Sir, if you know, you do. If you don't, you don't.

20 THE COURT: I think that's the earlier one. The  
21 December 2016, if I recall.

22 MR. HUDSON: Correct.

23 A. Yes, I recall. This violation, it's for before 10:00 a.m.

24 BY MR. HUDSON:

25 Q. So you paid all three violations at one time with one

1 check, correct?

2 A. Yes.

3 Q. You have no idea why one lasted for two weeks into October,  
4 correct?

5 A. No, I don't.

6 MR. PAPPAS: Leading.

7 THE COURT: Sustained.

8 MR. PAPPAS: No foundation.

9 A. This is part of the reloader.

10 BY MR. HUDSON:

11 Q. So to the best of your ability, sir, how many times between  
12 you, Ms. Malik, Mr. Shir, and Mr. Rosen do you believe Beach  
13 Blitz and Ocean 9 tried to get the 2016/2017 BTR before  
14 October 1st of 2017?

15 A. Many, many times. Many times. I don't remember all the  
16 dates, but many times.

17 Q. How much would the BTR have been?

18 A. Excuse me?

19 Q. How much would the BTR have been?

20 A. What do you mean?

21 Q. Money. How much would it cost?

22 A. About, I think, \$2,000 and change.

23 Q. Beach Blitz and Ocean 9 had the financial ability to pay  
24 that, correct?

25 A. Of course.

1 Q. Today if you were to apply for a new license, do you  
2 believe the City of Miami Beach would give you a new license?

3 A. I don't believe because of the new ordinance.

4 Q. That does what? Which ordinance?

5 A. That I'm not allowed to have -- if I went to renew, you ask  
6 me?

7 Q. No. To apply for a new license.

8 A. To apply for a new license. They are not going to give me  
9 a liquor license.

10 Q. Please look at the document that we gave you to the right  
11 that's marked as 17.

12 A. This one?

13 Q. Yes.

14 A. Yes.

15 Q. Was that document given to you by someone at the City of  
16 Miami Beach?

17 A. Yes.

18 Q. Do you recall which of the visits that you went that it was  
19 given to you?

20 A. I think this give it to me, I think, I think on October --  
21 I think on October -- Monday. It was a Monday, I think.

22 Q. Monday?

23 THE COURT: Monday was October 2nd.

24 THE WITNESS: No, the next, following Monday. After  
25 October 6th.

1 BY MR. HUDSON:

2 Q. So let's talk about October 6th.

3 October 6th was a Friday.

4 A. Yes.

5 Q. What happened on October 6th?

6 A. October 6th, about 5:00 o'clock, two law code enforcement  
7 came --

8 Q. Speak up, please.

9 A. On October 6th, about 5:00 o'clock afternoon, two code  
10 enforcement came to my store with two policeman, Miami Beach  
11 policemen, and give me violation for not having a BTR. They  
12 told me that I have to shut down my store, and I told them that  
13 it's impossible. I have agreed order for the violation. I  
14 didn't understand exactly what they want from me. And they  
15 told me within five minutes I am not shutting the door of the  
16 business, I am going to be arrested.

17 I tried to talk to them, to show them paper, and they  
18 told me, listen, we give you five minutes to close the door or  
19 we taking you right now. There was very, very tough with me.  
20 They didn't want to see any paper of mine, just want me to sign  
21 and shut down the doors.

22 Q. That was a Friday, correct?

23 A. Yes.

24 Q. Are you aware of any contact on behalf of Beach Blitz the  
25 day before that event?

1 A. What -- I don't understand.

2 Q. Do you recall -- strike that.

3 MR. HUDSON: Judge, I have no further questions.

4 THE COURT: Any cross-examination?

5 MR. PAPPAS: Yes, your Honor.

6 May I approach to give Mr. Doar a copy of the exhibits  
7 as well?

8 CROSS-EXAMINATION

9 BY MR. PAPPAS:

10 Q. Mr. Doar, my name is Gary Pappas.

11 You and I have never met before, right?

12 A. Right. How are you doing?

13 Q. Nice to meet you.

14 A. Nice to meet you.

15 Q. Your spoken English is a little broken. My question for  
16 you, and I don't mean this personally at all, do you read  
17 English?

18 A. I read. I read, not perfect.

19 Q. Not perfect?

20 A. Yes.

21 Q. But you can read English?

22 A. I can read, but not perfect.

23 Q. Okay. Now, does Beach Blitz own any other businesses  
24 besides the package store on 865 Collins, Ocean 9, and the  
25 market on 1100 Collins, Ocean 11?

1 A. No.

2 Q. Those are the only two businesses that Beach Blitz owns and  
3 operates?

4 A. Yes.

5 Q. Okay. And you are the sole shareholder, sole owner?

6 A. Yes.

7 Q. And just in general, given the location of those markets,  
8 is it fair to say that customer base is tourists?

9 A. Yes.

10 Q. Almost exclusively, right?

11 A. Yes. I would say 85 percent.

12 Q. Before December 16, 2016, did either of your businesses --  
13 strike that for a second.

14 Do you go by the Ocean 9, Ocean 11, or do you go by  
15 the address? What's the best way you want to talk about them?

16 A. Any way you want.

17 Q. I have in my mind the address.

18 Ocean 9 is 865 Collins, correct?

19 A. Yes.

20 Q. And Ocean 11 is the 1100?

21 A. Yes.

22 Q. So back to my question. Before December 16, 2016, had  
23 either Ocean 9 or Ocean 11 ever received any type of citation  
24 from the City of Miami Beach for any reason?

25 A. Before? What you mean before?

1 Q. December 16, 2016 is when Ocean 9 received a citation by  
2 the City of Miami Beach for selling alcohol too early, right?

3 A. I don't remember.

4 Q. Well, I mean, it's in all of our exhibits.

5 If you will just turn to -- I didn't want to get hung  
6 up on that, but we could just turn to your exhibits.

7 MR. HUDSON: Yours and ours or yours?

8 MR. PAPPAS: He can do them off mine, too. I think  
9 it's in mine. I will go to mine.

10 BY MR. PAPPAS:

11 Q. If you will turn in the black binder to tab 10E,  
12 Plaintiff's 10.

13 Tell me when you are there. Are you there?

14 A. Yes.

15 Q. Okay. That is the citation that the City of Miami Beach  
16 issued to 865 Collins Avenue, which is Ocean 9, on December 21,  
17 2016 at 8:39 in the morning for selling alcohol too early in  
18 the morning?

19 A. I recognize this. I thought you ask me about December 16,  
20 2016. I'm sorry.

21 Q. That's the date of Defendants' 10, correct?

22 THE COURT: No, it's December 21.

23 BY MR. PAPPAS:

24 Q. My apologies. I was thinking 2016. December 21. Okay.

25 A. I recognize it.



1 Q. Right. No doubt that that citation was issued to your  
2 store on December 21st at 8:39 in the morning, right?

3 A. Yes.

4 Q. Before December 21, 2016 -- let's start with Ocean 9. Had  
5 Ocean 9 ever received a citation from the City of Miami Beach?

6 A. I think so. I don't remember, but I think so, after that  
7 code enforcement on my store.

8 Q. And how about Ocean 11, had it received citations?

9 A. I believe so.

10 Q. All right. So let's just talk about 865 for the time  
11 being. If you will turn to tab 4 in the black binder,  
12 Defendants' 4.

13 That is the original BTR issued by the City of Miami  
14 Beach for 865 Collins Avenue, correct?

15 A. The first BTR.

16 Q. The very first BTR?

17 A. I am getting confused.

18 Q. That's all right.

19 You are on Defendants' 4, correct? You are in number  
20 4?

21 A. I think so.

22 Q. So let's start up in the upper left -- yes, you are in 4 --  
23 upper left-hand corner. The trade name is Beach Blitz.

24 Do you see that?

25 A. Yes.

1 Q. And it says in care of you, Doran Doar, correct?

2 A. Yes.

3 Q. And then it has an address, 1344 Northwest 5th Court in  
4 Plantation?

5 A. Correct.

6 Q. Who lives there?

7 A. Me.

8 Q. Is that where you live today?

9 A. Yes.

10 THE COURT: You have got about a half an hour more to  
11 cross-examine this fellow. If you want to go through each of  
12 these, you are welcome to. Nobody is saying -- I don't know  
13 what this has to do with his cross-examination or how it's  
14 moving the ball for you.

15 MR. PAPPAS: Judge, I will move on.

16 BY MR. PAPPAS:

17 Q. That's where you live, right?

18 A. Yes.

19 Q. Do you receive mail --

20 A. Yes.

21 Q. -- at that address?

22 A. Yes.

23 Q. Related to Beach Blitz?

24 A. Yes.

25 Q. And if you go to the right-hand side of Defendants' 4, it

1 shows that the beginning date for this BTR is October 1, 2011,  
2 correct?

3 A. Yes.

4 Q. That was the first year Ocean 9 had a BTR?

5 A. I don't think so.

6 Q. All right. If you turn to --

7 A. You confuse me, because Beach Blitz -- Beach Blitz, if you  
8 call it BTR or occupational license before this.

9 Q. But not for the 865 location?

10 A. Of course for the 865 location.

11 Q. Okay. And so if you turn to, if you turn to the second  
12 page of Defendants' 4, you see that there is an application;  
13 correct? Do you see the application on the second page of  
14 Defendants' 4, with handwriting on it?

15 A. Yes.

16 Q. Is that your handwriting?

17 A. No.

18 Q. That's not your handwriting?

19 A. No.

20 Q. How about the signature on the third page, is that your  
21 signature?

22 A. No.

23 Q. That's not your signature either?

24 A. No.

25 Q. It says your name. Your name is printed there. Is that

1 correct?

2 A. Yes.

3 Q. So someone forged your signature. On June 15, 2012 someone  
4 forged your signature on an application for a BTR with the City  
5 of Miami Beach?

6 A. You are talking on the right side?

7 THE COURT: Talk into the microphone. We can't hear  
8 you, sir. What did you say?

9 Sir, look at me when I ask you a question. You have  
10 got to answer. I said, what did you say? Look at me again.

11 THE WITNESS: Yes.

12 THE COURT: You said something when you were facing  
13 the other way. I didn't hear it. You need to repeat what you  
14 said.

15 THE WITNESS: This is not my signature.

16 THE COURT: You said something after that.

17 THE WITNESS: I don't remember. Sorry.

18 BY MR. PAPPAS:

19 Q. Do you recognize the signature? Do you recognize the  
20 handwriting or the signature?

21 A. No.

22 Q. Is this Ms. Malik's signature and handwriting?

23 A. No. I don't know.

24 Q. In the years from 2011, 2012, 2013, 2014, did you receive  
25 renewal notices from the City of Miami Beach in or about July

1 of each year notifying you that your BTR would expire on  
2 September 30th?

3 A. Usually, yes.

4 Q. Yes.

5 To your address at home, correct?

6 A. Yes.

7 Q. And then what would you do with those renewal notices?

8 A. I renew.

9 Q. Before September 30, before the BTR expired, correct?

10 A. Sometime I was late.

11 Q. Sometimes you were late. But would you go down personally  
12 and pay the check and renew?

13 A. I don't remember all the situation, but we renew the BTR.

14 Q. Well, I want to be clear. When you say we renew. Is there  
15 anyone else that's associated with Beach Blitz that would go  
16 down and renew BTR applications?

17 A. Yes.

18 Q. Who?

19 A. If it's not me, it was Rochelle Malik.

20 Q. Okay. Now did you receive -- turn to Defendants' 7. Are  
21 you on Defendants' 7? Tab 7.

22 A. I think so.

23 Q. What is the address 865 Collins Avenue D?

24 A. Yes.

25 Q. Is that the address of --

1 A. Yes. This is the address of the Ocean 9 Liquor.

2 Q. This is an invoice from the City of Miami dated July 1,  
3 2016, correct?

4 A. Yes.

5 Q. For the renewal of your BTR for that location?

6 A. This is what it look like. I never receive it.

7 Q. You never received it?

8 A. I never receive it.

9 Q. Okay. You received one, though, for 1100 Collins Avenue  
10 because you renewed that license?

11 A. I receive for -- yeah, I receive it to 13441 Northwest 5th  
12 Court.

13 Q. For 1100?

14 A. Yes.

15 Q. And you renewed 1100?

16 A. Yes.

17 Q. Why didn't you renew 865 Ocean 9 when you renewed 1100?  
18 You knew they expired on the exact same date. Why didn't you  
19 do that?

20 A. Because I didn't have the renewal, and I don't recall why,  
21 what's happened. I don't remember what's happened, why.

22 Q. You knew --

23 A. I don't remember the situation.

24 Q. You knew that the BTRs expired on the exact same day year  
25 after year after year, correct?

1 A. I do. I do remember the dates.

2 Q. Right. So when you renewed 1100, Ocean 11, for the  
3 2016/2017 year beginning on October 1, 2016, you could have  
4 renewed Ocean 9, but you didn't, right?

5 A. If I had a choice to renew it from the city, I would renew  
6 it for sure. If something happened with the city -- I don't  
7 remember what it was before -- they not allow me to renew the  
8 license.

9 Q. You are testifying under oath here today that when you  
10 renewed Ocean 11 for the 2016/2017 year, you tried to renew  
11 Ocean 9 and the city told you you could not; that's your  
12 testimony?

13 A. Yes.

14 Q. Did you bring a check?

15 A. I asked them, you know, to give me the bill. They didn't  
16 give me the bill.

17 Q. When you went down --

18 A. How can I make a check if I don't have the bill. I don't  
19 know how much.

20 Q. Did you bring your checkbook with you?

21 A. Of course. Always I have my credit card. I have anything  
22 to pay. It's not a problem, the payment.

23 Q. When did you go back -- so this was what, before  
24 September 30, 2016, you renewed Ocean 11 and you tried to renew  
25 Ocean 9 and the city wouldn't give you an invoice; is that what

1 you are saying?

2 A. I said that I tried to pay before, before.

3 Q. I am talking -- I want to be very clear about the time we  
4 are talking about. We are talking about before your BTR  
5 expired on September 30, 2016.

6 Both of your BTRs for your two businesses expired on  
7 the exact same date, correct?

8 A. Should, because this is from the Miami Beach. Yes.

9 Q. You got a renewal notice for Ocean 11 and you usually got a  
10 renewal notice for Ocean 9, but you didn't this year, correct?  
11 That's your testimony?

12 A. That I didn't renew? I don't remember the situation when I  
13 renew exactly on Ocean 11. It was before 2016, 30th of  
14 September or not, I don't remember. Maybe it was after.

15 Q. Well, sir, you know that the city charges you a late fee if  
16 you renew after October 1, correct?

17 A. Yes, I know.

18 Q. You would always try to renew before to save the late fee,  
19 correct?

20 A. You always try to save the money, but it's --

21 Q. So I am asking a very specific question. You went down and  
22 renewed your license, your BTR license, for Ocean 11 before  
23 September 30, 2016?

24 A. I don't think I renew it before September 30, 2016. I  
25 don't think I -- I renew Ocean 11 before.



1 Q. After?

2 A. September.

3 Q. After.

4 A. Maybe after sometime, yeah. I don't remember the date.

5 Q. You only own two businesses. They have two BTRs. You went  
6 down to renew Ocean 11 just like you had year after year after  
7 year. You always have two to renew.

8 Are you saying you tried to renew Ocean 9 when you  
9 renewed Ocean 11?

10 A. I don't remember what was the situation.

11 Q. Okay. So you don't remember?

12 A. I don't remember.

13 Q. You are not testifying --

14 THE COURT: Wait. He is talking.

15 MR. HUDSON: Your Honor, asked and answered as well.

16 THE COURT: Well, he's given a couple of different  
17 answers is the problem.

18 BY MR. PAPPAS:

19 Q. Finish your answer.

20 A. I don't remember exactly the situation when I paid the  
21 2016, '17 for Ocean 11 Market. I don't remember the situation,  
22 if it was Ocean 9 or not, if I try, and I don't remember the  
23 situation.

24 Q. So you are not saying that the city prohibited you from  
25 renewing Ocean 9 when you renewed Ocean 11, correct?

1 A. I don't remember the situation. I don't remember the  
2 situation. I don't remember.

3 Q. There is no doubt whatsoever as we sit here today that your  
4 Ocean 9 BTR expired on September 30, 2016, correct?

5 MR. HUDSON: Objection to the extent it calls for a  
6 legal conclusion.

7 THE COURT: Overruled.

8 BY MR. PAPPAS:

9 Q. Correct?

10 A. Yeah. According to the papers, yes.

11 Q. Did you display your BTR license prominently and  
12 conspicuously at the location just as the BTR says you are  
13 supposed to?

14 A. Usually, yes.

15 Q. Posted like right above the cash register or something,  
16 right?

17 A. Usually, yes, something like that. I have a folder with --  
18 I should have a folder with the license.

19 Q. But you know the license says it has to be posted somewhere  
20 conspicuously, right?

21 A. Yes.

22 Q. You had the license posted at your store, right?

23 A. Usually, yes.

24 Q. And you work at the store, don't you?

25 A. I work. Of course I work.

1 Q. And so it was sitting there for nine months expired and you  
2 didn't notice and you didn't remember that it was expired for  
3 nine months, correct?

4 A. It's possible I didn't put, I didn't put it.

5 Q. You didn't notice. You testified on direct examination  
6 that the first time you found out that you did not have a BTR  
7 for Ocean 9 --

8 A. Was June 27th.

9 Q. June 27th?

10 A. June 25, yeah.

11 Q. Well --

12 A. Twenty-five, 27.

13 Q. So what happened was you were in Israel on June 25,  
14 correct?

15 A. Yes.

16 Q. And one of your clerks sent you the notices of violation in  
17 Israel?

18 A. I think so.

19 Q. And you came right back, correct?

20 A. Yes.

21 Q. And by the way, do you do the bookkeeping for your stores?

22 A. Most of it.

23 Q. Right. So don't you have a journal somewhere that says BTR  
24 license every year? And you knew you wrote a check for Ocean  
25 11 but you didn't write one for Ocean 9?

1 A. Usually I don't do mistakes. Usually I don't do mistakes.

2 Q. So you come back and -- let me back up for a second.

3 I want you to go back to Defendants' 10. Okay. Black  
4 binder number ten. Right. That's the December 16 violation.  
5 Okay.

6 THE COURT: December 21.

7 BY MR. PAPPAS:

8 Q. December 21, 2016. I will get my year. December 21.

9 Are you there, sir?

10 A. I think so, yeah.

11 Q. Did you receive this violation personally? Did you look at  
12 it in person?

13 A. Yes. I didn't receive it personal, but I look at it.

14 Q. Did you obtain a copy of it at or about the time of  
15 December 21, 2016?

16 A. If I had a copy of this violation, that's what you are  
17 asking me?

18 Q. Yes. Within 24 hours of getting the violation you had a  
19 copy of it, right?

20 A. I am not sure about 24 hours.

21 Q. Had you ever seen -- you said you thought you had received  
22 violations before. You are familiar with the City of Miami  
23 Beach's violation, aren't you?

24 A. Yes.

25 Q. Right at the bottom it says: Important. Appeal and ADA

1 information on the back.

2 Do you see that right at the bottom of the ticket?

3 A. What it says?

4 Q. Important?

5 A. Important appeal.

6 Q. Important appeal, right?

7 A. Yeah.

8 Q. And then turn over to the next page. You have read these  
9 before, haven't you?

10 A. Usually I give it to -- when it's come to violation, I give  
11 it to professional people to deal with it.

12 Q. You know that the city's policy is that you can appeal a  
13 ticket within 20 days, correct?

14 MR. HUDSON: Objection on legal conclusion, your  
15 Honor.

16 THE COURT: Overruled.

17 BY MR. PAPPAS:

18 Q. Correct.

19 A. I know that it's a different time for appeal for different  
20 kind of violations. It's not all the same.

21 Q. And this ticket says right on the back of it that it must  
22 be appealed within 20 days by a written request to the clerk.  
23 Do you see that?

24 A. No. Where is it?

25 MR. PAPPAS: May I, your Honor?

1 THE COURT: Yes.

2 MR. HUDSON: I will object to this line of questioning  
3 because the special master accepted jurisdiction and resolved  
4 these three violations.

5 THE COURT: Overruled.

6 BY MR. PAPPAS:

7 Q. Sir, you never appealed this ticket, did you? Within 20  
8 days you never filed a written appeal of this ticket, correct?

9 A. No, I didn't.

10 Q. Okay. So now let's go to December 25th. You find out  
11 about the new hour violation, different than December 21, and  
12 you find out that for the first time that you did not have a  
13 BTR.

14 Are you with me?

15 THE COURT: I think you meant June 25. You said  
16 December 25, I think. But go ahead.

17 MR. PAPPAS: My apologies. It's dyslexia kicking in.

18 THE COURT: Maybe you are thinking about Christmas. I  
19 don't know.

20 BY MR. PAPPAS:

21 Q. And you personally went right down to the finance  
22 department in person with the violations, correct?

23 A. Yes.

24 Q. That's what you testified. You went down in person with  
25 the violations. You went to the finance department and you

1 have got your number. You waited to be called. You met face  
2 to face with a human being at the City of Miami Beach finance  
3 department, correct?

4 A. Yes.

5 Q. At that point in time you testified on direct examination  
6 that you were told -- in fact, I wrote that they showed you  
7 that you had an outstanding violation, correct?

8 A. Yes.

9 Q. That was the December 21, 2016 ticket that you did not  
10 appeal, correct?

11 A. I don't remember which one it was.

12 Yes. Yes.

13 Q. And they told you, the people at the finance department  
14 told you that in order to renew your BTR license you had to pay  
15 the ticket?

16 MR. HUDSON: Objection. Speculation. He is  
17 testifying to what someone at the counter told him. He can  
18 testify differently.

19 THE COURT: That's what happens when you get to lead.  
20 He says yes or no.

21 MR. HUDSON: It's leading, but it's an inappropriate.

22 THE COURT: Stand up if you are objecting, and the  
23 objection is overruled.

24 You can answer the question, sir.

25

1 BY MR. PAPPAS:

2 Q. You can answer, sir.

3 A. Ask it again, the question, please.

4 Q. When you went down with the June 25th tickets on June 27th  
5 in person and met with another human being from the City of  
6 Miami Beach, they showed you you had an outstanding violation  
7 back from December that you had to pay first in order to renew  
8 your BTR license, correct?

9 A. I am not sure what they show me. I am not sure what they  
10 show me.

11 Q. They showed you you had a violation?

12 A. They told me that I cannot renew the license.

13 Q. Because you had an outstanding violation, correct?

14 A. I don't remember for what. I think because of having  
15 violations.

16 Q. Right, and they told you all you have to do, sir, is pay  
17 the violation and you can renew your BTR license?

18 MR. HUDSON: Objection, your Honor. He's asked three  
19 times and he's answered the same way three times.

20 THE COURT: He hasn't answered the question yet.

21 You need to stand up if you want to be recognized in  
22 this courtroom. Okay?

23 MR. HUDSON: He said he doesn't remember three times,  
24 your Honor. He's trying to get him to answer it. He says I  
25 don't remember.



1 THE COURT: The question is, sir, they told you all  
2 you have to do, sir, is pay the violation and you can renew  
3 your BTR license. Answer that question, please.

4 A. I don't remember this exactly what they told me.

5 BY MR. PAPPAS:

6 Q. Was it something sort of like that if not exactly?

7 A. What I understand is that I cannot renew my license because  
8 I have violations.

9 Q. Right. Did you ask how do I pay for the violations so I  
10 can renew? Did you ask that?

11 A. I went to Rochelle Malik.

12 Q. No. I am talking about -- we are not at Rochelle Malik.

13 A. I don't remember exactly the conversation that I had with  
14 cashier over there, the officer in the finance.

15 Q. We are sitting there on December 27th. You are sitting  
16 there talking to a finance department --

17 THE COURT: I am sorry. You keep using the wrong  
18 date. It's June 27.

19 MR. PAPPAS: June 27th.

20 BY MR. PAPPAS:

21 Q. You are sitting face to face at the finance department on  
22 June 27th. They told you you could not renew because you had  
23 an outstanding violation. Correct?

24 A. Something make a noise like that over here like boom, boom  
25 something. Like a noise.

1 Q. They told you that you could not renew.

2 THE COURT: Now asked and answered. Let's go.

3 BY MR. PAPPAS:

4 Q. Did you simply ask while you were sitting there --

5 A. They told me -- I understand in general that I need to  
6 resolve the violations in order to come and pay my license.

7 Q. Okay.

8 A. That's what I understand.

9 Q. And --

10 A. I didn't understand --

11 Q. And did you say, great, how do I resolve my violation from  
12 December? Where do I pay it?

13 A. That's what I say great, to who?

14 Q. You wanted your BTR, didn't you?

15 A. What you mean I say great?

16 Q. They told you you had to resolve the violation in order to  
17 get your BTR, right?

18 A. Yes. They told me that I need to resolve my violations in  
19 order to pay my BTR.

20 Q. And resolve the violation from back --

21 THE COURT: Hold on a second. He is saying violations  
22 and you are saying violation. So you can't change his  
23 testimony. He is saying violations, which would include the  
24 December 1 and the one that he got two days before, is what his  
25 testimony is that he was told he had to resolve.

1 BY MR. PAPPAS:

2 Q. Right. And so you distinctly recall them telling you on  
3 December 27th that you had to resolve all three of your  
4 violations to get your BTR?

5 A. June 27. I don't understand.

6 THE COURT: You have to get the dates.

7 MR. HUDSON: Creating confusion.

8 A. December 27. I am sorry.

9 BY MR. PAPPAS:

10 Q. When you were there in person on June 27th --

11 A. When I was there on June 27.

12 Q. -- did the clerk from the finance department tell you you  
13 had to resolve all three outstanding violations or only the  
14 December 21, 2016 violation in order to renew your BTR?

15 A. I understand that I cannot renew my BTR until I resolve my  
16 violation. I don't know what it mean, but I assume it's not --  
17 they don't mean that the other two because it was new. But I  
18 assumed that it was maybe the other.

19 Q. You understood and assumed it was the December violation,  
20 which you didn't appeal, right?

21 A. That I had a violation and I need to -- I didn't know  
22 exactly which violation. They show you a paper all the time  
23 with more than ten violations. And some violation close, some  
24 violation open, some violation this. It's very hard for me to  
25 read this paper when it's with a lot of violation. It's taking

1 time to understand what's going on. So I am going to a  
2 professional people and I am trying to get explanation how it's  
3 work. I don't know exactly how it's work because --

4 Q. Before you went to professionals, while you were still  
5 sitting there, did you say to the clerk, I have my checkbook, I  
6 am ready to pay for the December violation, I have the money,  
7 where do I pay so can I renew my BTR? Did you do that?

8 A. I came to pay. I came to get my BTR.

9 Q. Did you do that? Did you ask?

10 A. Probably. I probably say it. I don't remember exactly  
11 what it was I said, but probably I came to pay my BTR. What I  
12 came for what? I came to finance to what? To find out about  
13 my violation? To find out about my violation you go to the  
14 code enforcement.

15 Q. Did you ask how much you owed for your BTR?

16 A. I think so.

17 Q. Okay. Turn to Defendants' Exhibit 15 in the black book.  
18 The black book. That's the white one. The black one. Sir,  
19 the other one. The Defendants' 15.

20 Are you there?

21 A. Yes.

22 Q. If you look in the upper right-hand corner, it's an Ocean 9  
23 invoice. Correct?

24 A. Yes.

25 Q. It's dated June 27th, 2017, correct?

1 A. Yes.

2 Q. They handed this to you on June 27 when you were there  
3 trying to renew your BTR license, didn't they?

4 A. Yes.

5 Q. And it has the \$570 late charge on it because your license  
6 had been expired for nine months, correct?

7 First line. The very first line. Late fee, \$570.  
8 Right?

9 A. Yes.

10 Q. And you had your checkbook with you, didn't you?

11 A. Always I have my checkbook with me.

12 Q. And you had plenty of money to pay the \$2,246 for this BTR  
13 license, right?

14 A. Yes.

15 Q. And you had an extra thousand dollars to pay the December  
16 invoice to resolve it, didn't you?

17 A. Yes.

18 Q. And you never paid the December 16 invoice?

19 A. They didn't accept my money.

20 Q. Did you try to pay?

21 A. I tried to pay. They told me that I need to resolve my  
22 violation.

23 Q. I am talking about the violation, sir. Did you go and try  
24 to pay the \$1,000 violation from December to resolve it?

25 A. I give it to my professional people. I give it to my

1 professional people to deal with that because I wasn't agree  
2 about this violation.

3 This violation, this violation that they give me on  
4 December, it was selling before 10:00 a.m., 8:33 or something  
5 in the morning, which we didn't even know that this ordinance,  
6 it's already in order.

7 Q. So on June 27th you voluntarily refused to pay the  
8 outstanding December 2016 violation which you never appealed?

9 MR. HUDSON: Objection, your Honor. Mischaracterizes  
10 his testimony.

11 THE COURT: Overruled.

12 BY MR. PAPPAS:

13 Q. You chose not to pay it at that time even though the clerk  
14 said to you if you just paid the thousand dollars and resolved  
15 the violation, we will give you your BTR for \$2,246.46, just  
16 like it says on Defendants' Exhibit 15, right?

17 A. I don't remember exactly what was the situation with the  
18 violation, but they told me that I need to resolve the  
19 violation and either way in order to pay the BTR.

20 Q. And you knew when you --

21 A. I went to my professional people to see what we doing, and  
22 we agreed that we need to appeal a violation of thousand  
23 dollar, that it's not correct to give, it's not right to give  
24 it to me if they create a new ordinance and it doesn't let us  
25 know that we have a new ordinance and they just come and give

1 you a violation and you come and you just pay thousand dollar  
2 like, like we make the thousand dollars in one second and just,  
3 you know, for to pay the BTR.

4 I think the mind on the same moment was the violation  
5 wasn't right and the other violation wasn't right and they  
6 attacking me and they trap us and they tried to get us out of  
7 business by giving us violation on violation on violation  
8 without us to know anything, what's going on. They create a  
9 new ordinance and changing the ordinance and nobody recognize  
10 what is real and what is not and what to do right and what to  
11 do wrong, and every move I had to go to professional people to  
12 see if I am doing the right thing or not. This exactly what's  
13 happening.

14 Q. And so on June 27, 2017 it was already six months after the  
15 December 2016 citation had been issued to you, correct? Right?

16 A. Probably.

17 Q. You knew you couldn't file a written appeal like it says  
18 right on the citation. You knew you waived your right to  
19 appeal it, correct?

20 A. We appeal. I didn't waive the right to appeal. Maybe I  
21 didn't appeal in the first 20 days because I didn't exactly  
22 know the situation, but we didn't waive the right to appeal  
23 because we appeal it after.

24 Q. Did you ever file a written notice of appeal for the  
25 June 25, 2017 violations?

1 A. Excuse me again?

2 Q. I will rephrase it.

3 The June 25th violations were on the exact same ticket  
4 form that the December violation was on, correct?

5 A. I am sorry. I am not --

6 Q. The tickets from June.

7 A. June 25.

8 Q. They were exactly the same form as the December tickets,  
9 right?

10 A. Yes.

11 Q. You knew you had time to appeal them in writing just like  
12 it says on the ticket, correct?

13 A. Yes. I brought it to the professional people.

14 Q. You never appealed in writing with the special master's  
15 office just like it says on the ticket, correct?

16 A. Yes, correct.

17 You are talking about the December?

18 Q. And the June.

19 You never filed a written appeal?

20 A. We had filed an appeal and they didn't accept our appeal.

21 Q. Because it was too late?

22 A. Not because it was too late. Because they said -- not  
23 because it was too late. Because they said that we send the  
24 appeal to a wrong office in the Miami Beach. We send it to,  
25 maybe to Miami Beach instead of to Miami City of Miami Beach,



1 maybe to the cashier instead of to -- I don't know exactly the  
2 situation, but not the reason because of the 20 days.

3 Q. When you say "we," you are referring to some professional  
4 that you hired? Not you personally, correct?

5 A. Yes.

6 Q. So the professional that you hired sent the notice of  
7 appeal to the wrong office; is that what you are saying?

8 A. They sent the appeal and I don't know what is the reason it  
9 didn't exactly accept it, but what I understand it was a wrong  
10 address.

11 Q. Did you ever sign a written notice of appeal of the  
12 June 25, 2017 violations within 20 days? Did you ever do that?

13 A. If I sign -- tell me again the question.

14 Q. You never --

15 A. I don't want to a make mistakes.

16 Q. You never filed a written appeal according to the City of  
17 Miami Beach's procedures for the June 25th, 2017 violations,  
18 correct?

19 A. We send appeal. We send appeal. I mean, Guy Shir send  
20 appeal with a \$100 check. We send appeal. But they didn't --  
21 for some reason it didn't work.

22 Q. When you say "we," you are talking about Ms. Malik?

23 A. Ms. Malik and Guy Shir, yeah.

24 Q. So your professionals that you hired, you claim took care  
25 of it for you, and they sent the appeal to the wrong location,

1 correct?

2 A. The professional, all the professional that I hire, any  
3 time that you come and try to do movement, they get some  
4 problem, you know, to deal with my cases.

5 Q. Did you ever --

6 A. I don't understand what is that. The professional try and  
7 try and try and all the time they have a problem and problem.  
8 You are not talking about one professional, another one,  
9 another one, another one. I did anything I can. Anything I  
10 can to try to resolve the problem with the city.

11 The City set me up. The city trap me. The city set  
12 me up not to get the license. That's what the city did. They  
13 set me up not to get the license in order to take for me my  
14 liquor store and destroy my business. That's exactly what's  
15 happened.

16 Q. You said it just now. You did everything in your power,  
17 right?

18 A. Everything in my power.

19 Q. When you were sitting with across from the clerk on  
20 June 27th at the finance department did you say, look, I have  
21 got my checkbook, how much do I owe you to get my BTR? Did you  
22 ask that?

23 A. But you are talking about the violation from December and  
24 then violation from June 25 and then another violation that  
25 come and come and come. So when does it stop? When are you

1 going to stop with it? When are you going to let me work and  
2 not attack me with all the violations? When you going to do  
3 it?

4 Q. Sir, answer my question.

5 A. Why should I answer you?

6 Q. Answer my question, sir. When you were sitting in front of  
7 that clerk on June 27th, did you say I have my checkbook right  
8 here, how much do I owe you to get the BTR? You didn't do  
9 that, did you, sir?

10 A. I answer you many time already.

11 Q. You didn't do it?

12 A. I don't have problem to pay any money. If any money, I  
13 don't have problem to pay.

14 Q. You refused to pay the December 16, 2016 invoice, the  
15 citation, you refused to pay it on June 27?

16 A. I appeal it because it was the wrong violation and I wasn't  
17 agreeing with all these violations, that we getting attacked  
18 from the city for no reasons. And changing ordinance from time  
19 to time. You know, how many time you change the ordinance in  
20 the city in the last year? Maybe four or five times. If you  
21 ask any liquor store or any convenience store what time is the  
22 hours right now, right now today, even the code enforcement  
23 doesn't know when to open and when to close. Then you come  
24 with the code enforcement and give violation, then you attack  
25 me and what? Just pay the thousand dollars, just pay another

1 thousand dollars, and then it's \$5,000 and then \$10,000.

2 Q. The answer to my question is --

3 THE COURT: Let's move on to another area.

4 BY MR. PAPPAS:

5 Q. Sir, you were not present with Mr. Rosen --

6 A. Shame on you.

7 Q. You were in the presence -- excuse me? Excuse me, sir?

8 A. Sorry.

9 Q. What did you say?

10 THE COURT: He said shame on you. Let's go. Move  
11 along.

12 BY MR. PAPPAS:

13 Q. You were not present with Mr. Rosen on August 28 when you  
14 allegedly met with the special master, correct? You were not  
15 there?

16 A. No.

17 Q. You have no idea what he did with the check, do you?

18 A. Who? Mr. Rosen?

19 Q. Yes.

20 A. He told us that he gave the check.

21 Q. You weren't there though, right?

22 A. I wasn't there.

23 Q. Were you in Miami in September?

24 A. Yes.

25 Q. Right. Do you remember what happened on the weekend of

1 September 9th and 10th?

2 A. No.

3 Q. Do you remember Hurricane Irma?

4 A. I remember Hurricane Irma.

5 Q. You remember the city shut down on a Thursday? The city  
6 shut down I think even on Wednesday.

7 A. So what's happened before. Every Thursday you have the  
8 special master. What happened before, the week before? You  
9 move the computer from office to another office and then shut  
10 down again.

11 Q. Right, sir. You know that the city was shut down on  
12 September 7th, correct? Correct? That was the --

13 A. I didn't know exactly when the city shut down, when the  
14 city opened.

15 Q. And you knew that the city remained shut down on  
16 September 14th after Hurricane Irma, correct? Correct?

17 A. I am sorry. I need to drink some water. Can I?

18 Q. Yes, of course. Tell me when you are ready.

19 Are you all set?

20 A. Yes.

21 Q. You did not go down to the City of Miami Beach on  
22 September 28th, Thursday, September 28th, 2017, correct?

23 A. What you mean?

24 Q. You didn't go in person on Thursday, September 28?

25 A. I went on 28, 29.

1 Q. You did?

2 A. I went. I don't remember the date exactly, you know, but I  
3 went after they told me to sign the order and go pay your BTR.

4 Q. Right. And --

5 A. Harold told me go pay your BTR.

6 Q. Did you renew your Ocean 11 BTR on September 28?

7 A. They didn't allow me.

8 Q. Why not?

9 A. Because they told me that I have a violation.

10 Q. Did you have a violation on Ocean 11?

11 A. Some signed violation.

12 Q. Did you pay for the violation?

13 A. No. They dismiss the violation.

14 Q. When?

15 A. They dismiss it for some -- they dismiss the violation and  
16 then I went Monday and I paid.

17 Q. Tuesday?

18 A. Actually, actually, I don't remember how it was working.

19 Q. So you had an open violation on September 28th on Ocean 11  
20 and they wouldn't let you renew, correct?

21 A. Yeah, I think so.

22 Q. Right. Then when you had to pay -- then you renewed Ocean  
23 11 on October 3?

24 A. On October 3.

25 Q. You went down in person with your checkbook. Now the

1 violation was resolved and you could pay your bill, right, just  
2 like they told you for Ocean 9 back on June 27? Right?

3 A. The code enforcement dismiss the violation.

4 Q. It was resolved?

5 A. They dismiss the violation and then I went and pay, yeah.

6 And exactly like I tried to do on September 28th when the  
7 violation, the three violation was resolved with the special  
8 master, I went to pay and they didn't accept it.

9 Q. Right.

10 A. They didn't accept both of them.

11 Q. You went to the cashier, right?

12 A. On October 3, yeah.

13 Q. No. On September 28 you went to the cashier at the finance  
14 department?

15 A. No. No.

16 Q. Did you go personally?

17 A. I went to finance, not to the cashier. It's two different  
18 windows.

19 Q. Right, and they opened up your screen and still saw open  
20 violations?

21 A. Yes.

22 Q. Did you have the agreed order with you? Did you have it  
23 with you?

24 A. No, I didn't have it.

25 Q. Right. Was --

1 A. I didn't have that, the agreed order. I had it -- I had  
2 agreed order. Rochelle -- I didn't have the agreed order with  
3 me.

4 Q. You didn't?

5 A. I didn't have the agreed order with me. I didn't.

6 Q. You didn't have a copy of it?

7 A. I had a copy.

8 Q. You didn't have it with you?

9 A. I didn't have it with me.

10 Q. The clerk at the city finance department said I have no  
11 evidence that you have an agreed order, correct?

12 A. So what did -- I don't understand. So I don't think that  
13 you going to trick me another two days or something happen. I  
14 just thought that I resolved the problem. I come to pay. They  
15 tell me you can't pay because you still have the violations.  
16 It doesn't -- to something like this, you think it's a matter  
17 of one day, you know. So I went Friday -- I think Friday -- it  
18 was Thursday or Friday, and then I went again on Tuesday.

19 Q. Sir --

20 A. I went every day. Almost every day I tried to pay.

21 Q. Your license was now over a year old at that point in time,  
22 expired, correct?

23 A. After.

24 Q. Right. You had admitted the violations of the hours  
25 problems at your stores, correct? You admitted that those



1 violations were valid, correct?

2 A. Yeah.

3 Q. And you never ever wrote a check for --

4 A. They never accept a check for me.

5 Q. My question is --

6 A. They never accept without result of violation. They never  
7 accept the check. After September 28, when I was in the  
8 finance, they never accept a check from Ocean 9 Liquor.

9 Q. On June 27 --

10 A. Back to June 27?

11 Q. From June 27 --

12 A. Okay.

13 Q. -- until October 6th, you never wrote a check for the  
14 \$2,240 that they showed was owing for your BTR just like on the  
15 invoice that they gave you on June 27 in person with the late  
16 charge? You never, ever wrote that check and handed it to  
17 them, did you?

18 A. They never let me hand it.

19 Q. My question is different. You never wrote the check like  
20 you wrote the thousand dollar check, you never wrote the  
21 2,200 --

22 A. Everybody leave me. The city, the city, the officer in the  
23 city, everybody there, Rochelle Malik, Rosen, everybody leave  
24 me that I need to resolve the violation in order to pay my BTR.  
25 I never, technically I never did it. I never did it. I never

1 did it.

2 Q. Thank you.

3 A. I never did it because -- I never did it because nobody  
4 allowed me to pay. Nobody allowed me to pay.

5 Q. I think you have answered my question.

6 A. This is the way, you know, the city set you up. So it's --

7 Q. You never appealed the October 6th, 2017 violation, did  
8 you?

9 A. They told me -- no, I never appealed this September 6.

10 Q. October 6.

11 A. October 6 violation.

12 Q. The violation when they closed you down for not having a  
13 BTR, you never appealed that according to the city's procedures  
14 of filing a written notice of appeal; you never did that, did  
15 you?

16 A. I never appealed it.

17 Q. Correct?

18 A. I never appeal it.

19 Q. Right.

20 A. I never appeal. I went to a lawsuit.

21 Q. You have never --

22 A. I went to a lawsuit.

23 Q. You have never --

24 A. I saw that I can't do anything, you know, without lawsuit,  
25 without sitting with the city authority and talk to them and

1 try to resolve the problem.

2 Q. You have never filled out an application for a new BTR,  
3 correct?

4 THE WITNESS: What shall I --

5 THE COURT: Just answer the question yes or no.

6 A. No.

7 BY MR. PAPPAS:

8 Q. You have never appealed from your claim that the city will  
9 not issue you a new BTR, correct?

10 A. I never appeal if you mean on the October 6 violation, I  
11 never appeal. I went to a lawsuit.

12 Q. And you have never gone to the city and said you have  
13 wrongfully refused my BTR, I want to appeal, correct?

14 A. I had people, professional people, trying to deal with the  
15 city every day, every day. Every day talking with the city  
16 manager, talking with the city attorney, talking with anybody  
17 possible.

18 Q. You have never had a hearing with the city manager  
19 regarding your BTR license, correct?

20 A. What? Excuse me?

21 Q. I will rephrase it.

22 A. Okay.

23 Q. You have never had a meeting with the city manager,  
24 regarding your BTR license for Ocean 9, 865 Collins Avenue,  
25 correct?

1 A. I had a meeting with the city manager.

2 Q. You had a meeting with the city manager. Have you ever had  
3 a hearing with the city manager?

4 A. I had a meeting with the city manager. We did  
5 professional. We did Rochelle Malik. We tried to resolve the  
6 problem to pay the BTR and they didn't accept it.

7 Q. And did you appeal the city manager's refusal to accept  
8 your BTR? Did you appeal?

9 A. I didn't appeal. On the violation you are talking about or  
10 not accept my payment for the BTR?

11 Q. Yes.

12 A. I don't understand what you are asking me.

13 Q. We are talking about your claim that the city refused --

14 A. What answer I can do? I had three lawyers working on it.

15 Q. Sir --

16 A. With a city manager, with a city attorney, with all the  
17 people. You asked me if I didn't appeal.

18 Q. Yes.

19 A. It was obvious that I can't get anything. I can't get  
20 anything. It over here that the city attorney order not to  
21 issue me any license. It's over here. How can I -- what  
22 appeal what? I went to lawsuit. What appeal? You ask me for  
23 appeal.

24 Q. Did you ever file a lawsuit in the state court system  
25 claiming --

1 THE COURT: You don't need to ask these questions.  
2 It's uncontroverted that he never filed any lawsuit.

3 MR. PAPPAS: We don't know that.

4 THE COURT: Stipulate that -- excuse me, sir? Quiet.

5 THE WITNESS: I am sorry, your Honor.

6 THE COURT: Let me tell you something. You are in a  
7 court of law. You answer a question when you are asked. This  
8 isn't for you to stand on a podium and make announcements.

9 Do you understand?

10 THE WITNESS: Yes. I am sorry.

11 THE COURT: Do you stipulate there has not been a  
12 state lawsuit filed in this matter?

13 MR. PAPPAS: Yes.

14 THE COURT: How much more do you have?

15 MR. PAPPAS: None.

16 THE COURT: Redirect.

17 MR. HUDSON: Nothing, your Honor.

18 THE COURT: You can step down, sir.

19 (Witness excused)

20 THE COURT: We are going to take a lunch break.

21 Is the plaintiff calling anybody else?

22 MR. HUDSON: No. We are done.

23 THE COURT: Defendants, who are you calling?

24 MR. ARANA: Manuel Marquez.

25 THE COURT: What about the second person?

1 MR. ARANA: No, your Honor.

2 THE COURT: I don't want 80 pages on this thing.

3 MR. HUDSON: No, I won't have time to do 80. We will  
4 do ten good pages.

5 THE COURT: Thanks, everybody, for your hard work  
6 today. I will try to get something out quickly.

7 Court is in recess.

8 Thank you, all. Have a good Thanksgiving.

9 MR. HUDSON: Thank you for giving us a quick hearing.  
10 We appreciate it.

11 C E R T I F I C A T E  
12

13 I hereby certify that the foregoing is an accurate  
14 transcription of the proceedings in the above-entitled matter.  
15  
16

17 November 22, 2017 /s/ Jill M. Felicetti  
18 Jill M. Felicetti, RPR, CRR, CSR  
19 Official Court Reporter  
20 400 N. Miami Avenue, Suite 08S27  
21 Miami, Florida 33128  
22 jill\_felicetti@flsd.uscourts.gov  
23  
24  
25

# **EXHIBIT L**

**From:** Caba, Sandra  
**Sent:** Monday, September 25, 2017 11:12 AM  
**To:** Satchell, Isabel  
**Cc:** Boksner, Aleksandr  
**Subject:** Agreed Order - 865 Collins Avenue, #D, Beach Blitz Co and Doar, Doron - CC2016-01704, CC2017-03102, CC2017-03103

Hi Isabel,

Also, the attached Agreed Order must be signed the earliest possible either on 9/27 or 9/28. If Harold Rosen passes by your office he will need a copy of the executed Agreed Order.

Thank you,  
Sandra

# MIAMIBEACH

Sandra Caba, *Legal Assistant to*  
*Aleksandr Boksner, Deputy City Attorney,*  
*Gisela Nanson Torres, Senior Assistant City Attorney, and*  
*Nicholas Kallergis, Assistant City Attorney I*  
OFFICE OF THE CITY ATTORNEY  
1700 Convention Center Drive, 4th floor, Miami Beach, FL 33139  
Tel: (305)673-7470 or (305)673-7000 ext. 6561 / Fax: (305)673-7002 /  
[SandraCaba@miamibeachfl.gov](mailto:SandraCaba@miamibeachfl.gov)

*We are committed to providing excellent public service and safety to all who live, work and play in our vibrant, tropical, historic community.*

Please note that Florida has a broad public records law and that any communication with the City of Miami Beach could be considered a public record. If you do not wish for your email address to become a public record, please do not send electronic communications to the City of Miami Beach.

**From:** Caba, Sandra  
**Sent:** Monday, September 18, 2017 11:47 AM  
**To:** Neves, Cynthia; Satchell, Isabel; Silva, Fernanda  
**Subject:** RE: Agreed Order - 865 Collins Avenue, #D, Beach Blitz Co and Doar, Doron - CC2016-01704, CC2017-03102, CC2017-03103

Hi. Hope all is well.

Was this Agreed Order signed by the Special Master?

Please advise.

Thank you,  
Sandra

# MIAMIBEACH

Sandra Caba, *Legal Assistant to*  
*Aleksandr Boksner, Deputy City Attorney,*  
*Gisela Nanson Torres, Senior Assistant City Attorney, and*  
*Nicholas Kallergis, Assistant City Attorney I*  
OFFICE OF THE CITY ATTORNEY  
1700 Convention Center Drive, 4th floor, Miami Beach, FL 33139  
Tel: (305)673-7470 or (305)673-7000 ext. 6561 / Fax: (305)673-7002 /



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**From:** Caba, Sandra

**Sent:** Friday, September 01, 2017 2:31 PM

**To:** Neves, Cynthia; Satchell, Isabel; Silva, Fernanda

**Cc:** Boksner, Aleksandr

**Subject:** Agreed Order - 865 Collins Avenue, #D, Beach Blitz Co and Doar, Doron - CC2016-01704, CC2017-03102, CC2017-03103

Please see attached Agreed Order to be given to the first available Special Master to be executed. Kindly provide me with an executed copy

Thank you,  
Sandra

MIAMIBeach

Sandra Caba, *Legal Assistant to*  
*Aleksandr Boksner, Deputy City Attorney,*  
*Gisela Nanson Torres, Senior Assistant City Attorney, and*  
*Nicholas Kallergis, Assistant City Attorney I*

OFFICE OF THE CITY ATTORNEY

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IN AND BEFORE THE SPECIAL MASTER OF  
THE CITY OF MIAMI BEACH

CODE VIOLATION CASE NOS. CC2016-01704  
CC2017-03102  
CC2017-03103

BEACH BLITZ, CO. c/o  
DOAR, DORON,

Petitioner,

vs.

CITY OF MIAMI BEACH,

Respondent.

---

**AGREED ORDER**

This cause came before the Special Master of the City of Miami Beach, upon stipulation and agreement of Harold Rosen, Esquire, on behalf of Beach Blitz, Co. c/o Doar, Doron, 865 Collins Avenue, #D, Miami Beach (hereinafter referenced as the "Petitioner"), and Deputy City Attorney, Aleksandr Boksner, counsel to Respondent, the City of Miami Beach (hereinafter referenced as the "City"), regarding the above-styled appeal before the Special Master of certain violation(s) against the real property which is located at 865 Collins Avenue, #D, Miami Beach, Florida (the "Property") and the Code Enforcement matter referenced below in this Agreed Order. Respective counsel to City and the Petitioner having agreed to the terms of this Order,

IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. Petitioner, Beach Blitz Co. c/o Doron Doar admit to the legitimacy of the violation charged under Citation/Violation Nos. CC2016-01704, CC2017-03102 and CC2017-03103, and recognize that the violation was properly issued by the City of Miami Beach.

2. Citation/Violation Nos. CC2016-01704, CC2017-03102 and CC2017-03103 are hereby AFFIRMED. The Parties stipulate that a factual basis exists to establish this offense violation by the appropriate legal standard for this proceeding, and the City shall not need to establish the legitimacy.

3. The Petitioner shall be assessed a fine in the amount of One Thousand (\$1,000.00) Dollars, which shall be due within thirty (30) days of the entry of this Agreed Order.

DONE AND ORDERED by the Special Master of the City of Miami Beach, this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
SPECIAL MASTER  
As Special Master for the City of Miami Beach

Copies furnished to:

Aleksandr Boksner, First Assistant City Attorney at sandracaba@miamibeachfl.gov  
Harold Rosen, 407 Lincoln Road, Suite 2A, Miami Beach, Florida 33139

# **EXHIBIT M**

[Home](#)[Planning](#)[Permits](#)[Citizen Req.](#)[Code](#)[Business](#)[Other](#)

Subscribe / Follow On:

Welcome Doron Doar! [[Log Off](#)] / [[Manage My Account](#)]

License Number: BTR003568-12-2017

[UnSubscribe](#)

## Business Details

Company Name: BEACH BLITZ CO. D/B/A  
OCEAN 9 LIQUOR

DBA Name: OCEAN 9 LIQUOR

Status: Active

## License Details

License Type: Business License

District: CCC

Applied Date: 12/27/2017

Classification: BTR

Issued By:

Issued Date: None

Status: Applied

Account Number:

Expiration Date: None

Description: Retail sale of ...

License Year: 2017

Last Renewal Date: None

## Primary Address Details

Parcel:

Address: 865 COLLINS AVE

MIAMI BEACH, FL -  
331396820

USA

## Contacts

| Type  | Company     | First Name | Last Name | Title |
|-------|-------------|------------|-----------|-------|
| Owner | Beach Blitz | Doron      | Doar      |       |

1

Displaying items 1 - 1 of 1

## Inspection Details

| Details                | Type | Status | Request Date | Sch |
|------------------------|------|--------|--------------|-----|
| No records to display. |      |        |              |     |

1

Displaying items 0 - 0 of 0

## License Fees

| Fee Name               | Status | Amount |
|------------------------|--------|--------|
| No records to display. |        |        |

1

Displaying items 0 - 0 of 0

## Business Types

| Code Number | Code Name    | Code Category |
|-------------|--------------|---------------|
| 4007701     | Liquor sales | Occupation    |

1

Displaying items 1 - 1 of 1

## Attachment Details

| File Name |
|-----------|
|-----------|

No records to display.

Displaying items 0 - 0 of 0

### ADDENDUM TO LEASE

This ADDENDUM TO LEASE is made this 4<sup>th</sup> Day of February, 2014 by and between PMJ HOLDING COMPANY, LLC a Florida limited liability company ("Landlord") and BEACH BLITZ CO. a Florida corporation ("Tenant").

### WITNESSETH:

In reference to the Lease Agreement (the "Lease") dated January 26, 2004, for the premises located at 865 Collins Ave, Units D, F, and G, Miami Beach, FL 33139 (hereafter referred to as "Premises") and a Lease Renewal dated February 1, 2009 which expired on January 31, 2014.

Landlord and Tenant now desire to renew the Lease and make certain changes, all as more specifically set forth below.

NOW, THEREFORE, in consideration of the covenants of the parties herein and in the Lease, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. **EFFECTIVE DATE OF ADDENDUM.** From and after the date of this Addendum to Lease (hereafter referred to as "Addendum"), the Lease shall be amended as set forth below.
2. **CAPITALIZED TERMS.** All capitalized terms in this Addendum shall have the same meanings as those in the Lease, unless specifically set forth otherwise herein.
3. **TERM.** This Lease shall be renewed as of February 1, 2014 (Lease Commencement Date) and shall expire on January 31, 2019.
4. **RENT.** The base rent beginning February 1, 2014 through April 30, 2014 shall be \$15,513.28, plus sales tax and operating expenses. Beginning May 1, 2014, the base rent will be increased to \$18,513.28, plus sales tax, followed by five percent (5%) increases on September 1, 2016 and February 1, 2018. Below is a complete rent schedule for the Premises for renewal term of the Lease:

| Months              | Increase | Base Rent   | *Operating Expenses (aka CAM) | Sales Tax  | Monthly Rent | Monthly Rent w/ Sales Tax |
|---------------------|----------|-------------|-------------------------------|------------|--------------|---------------------------|
| 02/01/14 - 04/30/14 | -----    | \$15,513.28 | \$1,942.67                    | \$1,085.93 | \$18,541.88  | \$19,839.81               |
| 05/01/14 - 01/31/15 | -----    | \$18,513.28 | \$1,942.67                    | \$1,295.93 | \$21,751.88  | \$23,274.51               |
| 02/01/15 - 01/31/16 | -----    | \$18,513.28 | \$1,942.67                    | \$1,295.93 | \$21,751.88  | \$23,274.51               |
| 02/01/16 - 08/31/16 | -----    | \$18,513.28 | \$1,942.67                    | \$1,295.93 | \$21,751.88  | \$23,274.51               |
| 09/01/16 - 01/31/17 | 5%       | \$19,438.94 | \$1,942.67                    | \$1,360.73 | \$22,742.34  | \$24,334.30               |
| 02/01/17 - 01/31/18 | -----    | \$19,438.94 | \$1,942.67                    | \$1,360.73 | \$22,742.34  | \$24,334.30               |
| 02/01/18 - 01/31/19 | 5%       | \$20,410.89 | \$1,942.67                    | \$1,428.76 | \$23,782.32  | \$25,447.09               |

*\*Operating expenses are subject to change*

5. **USE OF PREMISES.** Tenant is authorized to use the Premises as a retail store that's sells wine and spirits and other beverages, provided that the container size of other beverages are of a minimum size/volume of 1 liter. In addition, Tenant agrees to the following requirements of Landlord:
  - (a) The interior décor and design of Premises must meet Landlord's approval at all times. Interior décor and design includes and is not limited to shelving, displays, store front design, furniture, show cases, wall style and color, window treatments and signage. Any changes requested by Landlord in regard to design and décor, must begin within thirty (30) days from receipt of Landlord's notice.
  - (b) Tenant must store non-displayed inventory in a separate storage unit off the premises.

6. **OPTION TO RENEW LEASE.** At the expiration of the term stated in the Addendum to Lease, Tenant will have two (2) options to renew the Lease for an additional forty-eight (48) months each, provided that Tenant is not in default in the performance of this lease, beginning on the Lease Commencement Date.

(a) All of the terms and conditions of the Lease shall apply during the renewal term except: (i) the base rent during the option term will be the greater of market rent or a five percent (5%) increase of the previous base year's rent, plus sales tax and operating expenses, followed by a three percent (3%) annual increase on the anniversary of the Lease Commencement Date; (ii) any rent free periods, rental concessions, inducements, allowances and other similar items applicable during the initial lease term will not apply during any renewal term; (ii) Tenant will accept Premises in as is condition; (iii) Landlord shall have no obligation to perform any work in Premises. There shall be no further privilege of extension after the expiration of option period.

(b) This option must be agreed to by both Tenant and Landlord with an executed written agreement signed by both parties, not less than one hundred and eighty (180) days prior to the expiration of the initial lease term. If this agreement is not entered into within the stated time this option shall expire.

(c) Both Tenant and Landlord have the option to terminate the lease at any time and for any reason, provided that the terminating party gives the other a thirty (30) day written notice.

7. **TENANT AUTHORIZATION.** Tenant represents and warrants to Landlord that this Addendum has been validly authorized and is executed by an authorized officer of Tenant and that its terms are binding upon and enforceable against Tenant in accordance Herewith.

8. **TENANT REAFFIRMATION OF LEASE.** Tenant affirms that the Lease shall remain in full force and effect and only the specific terms stated in the Addendum to Lease shall override the Lease. This agreement shall be binding upon and shall inure to the benefit of the parties, their successors, assigns and personal representatives.

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their respective seals the day and year written below.

**LANDLORD:                      TENANT:**

PMJ HOLDING COMPANY, LLC

BEACH BLITZ CO

A Florida Limited Liability Company

A Florida Corporation

By: Philip Saada, Manager

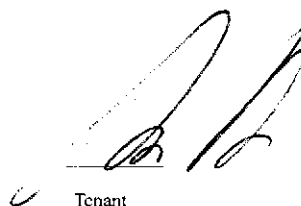
By: Doron Doar, President

Date: February                      , 2014

Date: February                      , 2014



Landlord

  
Tenant



[Florida Department of State](#)

DIVISION OF CORPORATIONS

[Department of State](#) / [Division of Corporations](#) / [Search Records](#) / [Detail By Document Number](#) /

## Detail by Entity Name

Florida Profit Corporation  
BEACH BLITZ CO.

### Filing Information

|                             |              |
|-----------------------------|--------------|
| <b>Document Number</b>      | P02000089651 |
| <b>FEI/EIN Number</b>       | 02-0639801   |
| <b>Date Filed</b>           | 08/16/2002   |
| <b>State</b>                | FL           |
| <b>Status</b>               | ACTIVE       |
| <b>Last Event</b>           | AMENDMENT    |
| <b>Event Date Filed</b>     | 09/26/2016   |
| <b>Event Effective Date</b> | NONE         |

### Principal Address

13441 NW 5TH COURT  
PLANTATION, FL 33325

### Mailing Address

13441 NW 5TH COURT  
PLANTATION, FL 33325

### Registered Agent Name & Address

DOAR, DORON  
13441 NW 5 COURT  
FORT LAUDERDALE, FL 33325

Name Changed: 08/09/2012

Address Changed: 07/24/2003

### Officer/Director Detail

#### **Name & Address**

Title PD

DOAR, DORON  
13441 NW 5TH COURT  
PLANTATION, FL 33325

### Annual Reports

| <b>Report Year</b> | <b>Filed Date</b> |
|--------------------|-------------------|
| 2015               | 02/21/2015        |

2016 04/16/2016  
2017 06/11/2017

**Document Images**

|                                                   |                                          |
|---------------------------------------------------|------------------------------------------|
| <a href="#">12/11/2017 -- Off/Dir Resignation</a> | <a href="#">View image in PDF format</a> |
| <a href="#">12/11/2017 -- Off/Dir Resignation</a> | <a href="#">View image in PDF format</a> |
| <a href="#">06/11/2017 -- ANNUAL REPORT</a>       | <a href="#">View image in PDF format</a> |
| <a href="#">09/26/2016 -- Amendment</a>           | <a href="#">View image in PDF format</a> |
| <a href="#">04/16/2016 -- ANNUAL REPORT</a>       | <a href="#">View image in PDF format</a> |
| <a href="#">02/21/2015 -- ANNUAL REPORT</a>       | <a href="#">View image in PDF format</a> |
| <a href="#">03/27/2014 -- ANNUAL REPORT</a>       | <a href="#">View image in PDF format</a> |
| <a href="#">04/15/2013 -- ANNUAL REPORT</a>       | <a href="#">View image in PDF format</a> |
| <a href="#">08/09/2012 -- Amendment</a>           | <a href="#">View image in PDF format</a> |
| <a href="#">07/24/2012 -- REINSTATEMENT</a>       | <a href="#">View image in PDF format</a> |
| <a href="#">01/17/2008 -- ANNUAL REPORT</a>       | <a href="#">View image in PDF format</a> |
| <a href="#">05/17/2007 -- REINSTATEMENT</a>       | <a href="#">View image in PDF format</a> |
| <a href="#">05/03/2004 -- ANNUAL REPORT</a>       | <a href="#">View image in PDF format</a> |
| <a href="#">07/24/2003 -- ANNUAL REPORT</a>       | <a href="#">View image in PDF format</a> |
| <a href="#">08/16/2002 -- Domestic Profit</a>     | <a href="#">View image in PDF format</a> |
| <a href="#">08/16/2002 -- Off/Dir Resignation</a> | <a href="#">View image in PDF format</a> |

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Fictitious Name Search

[Filing History](#)

Submit

## Fictitious Name Detail

### Fictitious Name

OCEAN 9 LIQUOR

### Filing Information

Registration Number G12000088585

Status ACTIVE

Filed Date 09/10/2012

Expiration Date 12/31/2022

Current Owners 1

County MIAMI-DADE

Total Pages 2

Events Filed 1

FEI/EIN Number NONE

### Mailing Address

13441 NW 5TH COURT  
PLANTATION, FL 33325

### Owner Information

BEACH BLITZ CO.  
13441 NW 5TH COURT  
PLANTATION, FL 33325  
FEI/EIN Number: 02-0639801  
Document Number: P02000089651

### Document Images

[09/10/2012 -- Fictitious Name Filing](#)

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[12/05/2017 -- Fictitious Name Renewal Filing](#)

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Fictitious Name Search

[Filing History](#)

Submit

Florida Department of State, Division of Corporations

3:11:35 PM 1/8/2018

## Licensee Details

### Licensee Information

Name: **BEACH BLITZ CO (Primary Name)**  
**OCEAN 9 LIQUOR (DBA Name)**

Main Address: **13441 NW 5 CT**  
**PLANTATION Florida 33325**

County: **BROWARD**

License Mailing:

LicenseLocation: **865 COLLINS AVENUE**  
**MIAMI BEACH FL 33139**

County: **DADE**

### License Information

License Type: **Retail Beverage**

Rank: **3PS**

License Number: **BEV2302831**

Status: **Current,Active**

Licensure Date: **09/07/2012**

Expires: **03/31/2018**

| Special Qualifications            | Qualification Effective |
|-----------------------------------|-------------------------|
| Invoice Sent                      | 02/21/2013              |
| No Sale                           | 12/27/2017              |
| Dual Beverage and Tobacco License | 09/18/2015              |
| Quota License                     | 09/07/2012              |
| Liens                             |                         |
| Over the Counter                  | 09/18/2015              |

### Alternate Names

[View Related License Information](#)

[View License Complaint](#)

2601 Blair Stone Road, Tallahassee FL 32399 :: Email: [Customer Contact Center](#) :: Customer Contact Center: 850.487.1395

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3:11:49 PM 1/8/2018

## Licensee Details

### Licensee Information

Name: **BEACH BLITZ CO (Primary Name)**  
**OCEAN 11 (DBA Name)**

Main Address: **13441 NW 5TH COURT**  
**PLANTATION Florida 33325**

County: **BROWARD**

License Mailing:

LicenseLocation: **1100 COLLINS AVENUE CU-7**  
**MIAMI BEACH FL 33139**

County: **DADE**

### License Information

License Type: **Retail Beverage**

Rank: **2APS**

License Number: **BEV2332190**

Status: **Current,Active**

Licensure Date: **06/13/2013**

Expires: **03/31/2018**

| Special Qualifications            | Qualification Effective |
|-----------------------------------|-------------------------|
| Invoice Sent                      | 06/26/2013              |
| Dual Beverage and Tobacco License | 06/13/2013              |
| Over the Counter                  | 06/13/2013              |

### Alternate Names

[View Related License Information](#)

[View License Complaint](#)

[2601 Blair Stone Road, Tallahassee FL 32399](#) :: Email: [Customer Contact Center](#) :: Customer Contact Center: 850.487.1395

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licensed under Chapter 455, F.S. must provide the Department with an email address if they have one. The emails provided may be used for official communication with the licensee. However email addresses are public record. If you do not wish to supply a personal address, please provide the Department with an email address which can be made available to the public. Please see our **Chapter 455** page to determine if you are affected by this change.

**CITY OF MIAMI BEACH**  
**CERTIFICATE OF USE, ANNUAL FIRE FEE, AND BUSINESS TAX RECEIPT**

---

1700 Convention Center Drive  
Miami Beach, Florida 33139-1819

TRADE NAME: BEACH BLITZ CO. D/B/A OCEAN 9 LIQUOR  
IN CARE OF: DORAN DOAR  
ADDRESS: 13441 NW 5 CT  
PLANTATION, FL 33325

RECEIPT NUMBER: RL-10005692  
Beginning: 10/01/2015  
Expires: 09/30/2016  
Parcel No: 0242032580040

A penalty is imposed for failure to keep this Business Tax Receipt exhibited conspicuously at your place of business.

A certificate of Use / Business Tax Receipt issued under this article does not waive or supersede other City laws, does not constitute City approval of a particular business activity and does not excuse the licensee from all other laws applicable to the licensee's business.

This Receipt may be transferred:

A. Within 30 days of a bonafide sale, otherwise a complete annual payment is due.

B. To another location within the City if proper approvals and the Receipt are obtained prior to the opening of the new location.

Additional Information

Storage Locations

**TRADE ADDRESS: 865 COLLINS AVE, D**

| Code   | Certificate of Use/Occupation           |
|--------|-----------------------------------------|
| 003602 | AUTO TELLER MACHINES                    |
| 007700 | FOOD SALES                              |
| 007701 | LIQUOR SALES                            |
| 012065 | MERCHANTS SALES                         |
| 240029 | ENTERTAINMENT ESTABLISHMENT W/O DANCING |

|                      |          |
|----------------------|----------|
| CERTIFICATE OF USE   | 300      |
| SQUARE FOOTAGE       | 1800     |
| RETAIL INVENTORY     | \$ 15000 |
| C_U # OF UNITS       | 1800     |
| FOOD INVENTORY       | \$ 500   |
| LIQUOR INVENTORY     | \$ 1000  |
| # OF AUTOTELLER MACH | 1        |
| DANCE_ENT W_O ALCOH  | Y        |

FROM: CITY OF MIAMI BEACH  
1700 CONVENTION CENTER DRIVE  
MIAMI BEACH, FL 33139-1819

PRESORTED  
FIRST CLASS  
U.S. POSTAGE  
PAID  
MIAMI BEACH, FL  
PERMIT No 1525

BEACH BLITZ CO.  
865 COLLINS AVE, D  
MIAMI BEACH, FL 33139-5807





# **EXHIBIT N**

**UPLOADED ON CAP  
AND HAND DELIVERED TO  
ROGELIO A. MADAN, AICP  
CHIEF OF COMMUNITY PLANNING AND SUSTAINABILITY**

February 16, 2018

Miami Beach  
Planning Department  
1700 Convention Center Drive, 2<sup>nd</sup> Floor  
Miami Beach, Florida 33139

Re: Letter of Intent for Administrative Appeal  
865 Collins Avenue

Dear Sir/Madam:

This letter of intent is submitted in support of Beach Blitz Co., a Florida corporation d/b/a Ocean 9 Liquor ("**Ocean 9**"). Ocean 9 appeals the denial by the Planning Department with respect to allowed zoning in the district in which Ocean 9 operates. Said denial results in Ocean 9's inability to obtain a Business Tax Receipt.

Until October 6, 2017, Ocean 9 serviced South Beach, Florida, with a wide variety of packaged beer, wine, liquor, and related supplies. Ocean 9's location is 865 Collins Avenue. Ocean 9 offered free delivery to the surrounding area of hotels, residences, and the beach. In addition Ocean 9 maintained a live disc jockey on the premises. Ocean 9 had operated at 865 Collins Avenue since 2011. Doron Doar is Ocean 9's principal.

**A. The Events Leading up to the Instant Appeal**

**a. December 2016**

1. On Wednesday, December 21, 2016 at 8:39 a.m. Ocean 9 was cited for alleged violation of Section 6-3(1)(A) of the City Code. The Notice stated that the violation was based upon Ocean 9's sale of alcoholic beverages between the hours of midnight and 10:00 a.m. The violation was identified as Case Number 2016-11719. See Exhibit A.

2. Subsequently, Ocean 9 was provided a different sheet of paper for the December violation bearing Case Number CC2016-01704 and alleging a violation of Section 6-3(1)(A) of the City Code. Id. See Exhibit B.

3. In this notice, the violation stated that Section 6-3(1)(A) of the City Code provides that retail stores in the MXE district for package sales only may make sales of alcohol for off-premises consumption between the hours of 8:00 a.m. and midnight. Id.

4. The December violation was issued at 8:39 a.m. – thus within the then existing lawful time periods for sale.

5. As more fully discussed below, Ocean 9 appealed the December violation to the Special Master as allowed by the Code.

**b. June 2017**

6. On Sunday, June 25, 2017 at 11:30 p.m., a Code Compliance Officer presented the following notices of violation to Ocean 9:

- Violation identified as Code Case Number CC2017-03102, alleging a violation of . See Exhibit C.
- Violation identified as Code Case Number CC2017-03103, alleging a violation of Article V, Section 102-377 of the City Code by failing to obtain a Business Tax Receipt. See Exhibit D.

**c. Ocean 9 appeals the fines and/or violations of the December and June notices**

7. Consistent with the Code and as set forth in the violation notices, Ocean 9 appealed the December and June violations to the Special Master. The Special Master accepted jurisdiction and proceeded in the ordinary course.

8. A hearing was held on the appeal to the Special Master on August 28, 2017. At that time, the parties advised the Special Master that they had reached an agreement which would resolve the violations. The agreement required Ocean 9 to pay a fine in the sum of One Thousand (\$1,000.00) Dollars. The Special Master approved the agreement.

9. As a result, on the very same day, Ocean 9 issued Check No. 2738 in the sum of \$1,000.00. However, because a written order had not been issued by the Special Master, the City would not accept the payment as an order had not been submitted and entered into the “system”. This entry into the “system” is necessary to lift the restriction on tendering payment to, *inter alia*, renew the BTR license. These facts were testified to by Manuel Marquez, Assistant Director of the Finance Department. See Exhibit E.

10. On Thursday, September 28, 2017, a full month after reaching an agreement, the Special Master issued an agreed order affirming Citations CC2016-01704, CC2017-03102 and CC2017-03103. See Exhibit F.

11. In its agreed order the Special Master assessed a fine in the amount of One Thousand (\$1,000.00) Dollars against Ocean 9. Id. The order required Ocean 9 to pay the fine within thirty (30) days of the entry of the agreed order – to wit: October 28, 2017. Id.

12. From Thursday, September 28, 2017 through and including Wednesday, October

4, 2017, Ocean 9 repeatedly presented payment to the City to comply with the Special Master's order and to obtain its BTR. See Exhibit E.

13. From Thursday, September 28, 2017 through and including Wednesday, October 4, 2017, the City provided a series of reasons of why payment could not be accepted. For example, the City claimed that it could not accept payment because the Special Master's order had not yet been put into the system. Id.

14. Finally, on Wednesday, October 4, 2017, the City accepted Ocean 9's payment of the \$1,000 fine.

15. The City also accepted late fees relative to the BTR; however it refused to accept the payment to renew the BTR.

16. This fact is confirmed by the on-line registry which shows that violations CC2017-03102 and CC2017-03103 were closed on October 4, 2017. See Exhibit G.

17. Significantly, although paid the same day as the other violations, the on-line registry shows that violation CC2016-01704 was closed on October 13, 2017 (9 days after the City accepted Ocean 9's check, 16 days after the Special Master's order and 46 days after the parties had agreed to a resolution of the issues raised by the 3 violations). See Exhibit H.

18. Despite accepting the payment which was in compliance with the Special Master's order, the City did not issue the BTR.

**d. October 2017**

19. On Friday, October 6, 2017 at 5:00 p.m., a Code Compliance Officer again presented a notice of violation to Ocean 9 alleging that Ocean 9 had violated Article V, Section 102-377 of the City Code by failing to obtain a BTR. See Exhibit I. The Code Case Number was set forth at CC2017-03686.

20. The October notice was issued during the period allowed for payment of the Special Master's fine relative to, in part, a violation of Article V, Section 102-377 of the City Code (failing to obtain a Business Tax Receipt) and after Ocean 9 had made the payment required by the Special Master to resolve three violations, one of which was failure to obtain a BTR.

**e. Ocean 9 is Closed Down by Code Enforcement for Failing to Have a BTR License**

21. On Friday, October 6, 2017, Code enforcement closed Ocean 9 for failure to obtain a BTR.

**f. Ocean 9 Seeks Relief in Court**

22. Ocean 9 initiated a case in Court to attempt to obtain its BTR. See Exhibit J.

23. Shortly thereafter, the Court held a hearing on Ocean 9's request for injunctive relief. See Exhibit E.

24. Although the Court denied the relief requested, it found Mr. Doar's testimony credible. See Exhibits K and L.

## **B. Grounds for Appeal**

Ocean 9 operated without issue relative to its BTR since 2011. Beginning in June 2017, when Ocean 9 was first cited for failure to obtain its BTR, Ocean 9 has been attempting to obtain the BTR. Despite its efforts and compliance with applicable requirements, the City's failures during the months of August and September 2017 to accept the payment under the Special Master's order and accept payment of the BTR related fees, led to the closing of Ocean 9's store. The City's failure to adhere to its policies and procedures (as admitted to by Mr. Marquez – Exhibit E) resulted in the Ocean 9 entering the new fiscal year 2017/2018 without a BTR. Because of that, Ocean 9 was not operating and is not protected from the ramifications of Ordinance No. 2016-4047 which prohibits package stores and package sales of alcoholic beverages by any retail store or alcoholic beverage establishment within the MXE district.<sup>1</sup> Additionally, the Ordinance prohibits entertainment in package stores.<sup>2</sup> Because Ocean 9's business at 865 Collins Avenue is now deemed non-conforming under said Ordinance, the Planning Department denied Ocean 9's application for a BTR. It is that decision which is being appealed.

Ocean 9 submits that the facts of this matter and the undeniable fact that the City's own procedures and policies were not followed, the appeal should be granted, the decision of the Planning Board reversed and the BTR issued to Ocean 9.

Respectfully submitted

Beach Blitz Co.  
through its President, Doron Doar

---

<sup>1</sup> All package stores in operation at the time the Ordinance was passed were grandfathered in as a matter of law.

<sup>2</sup> Ordinance No. 2016-4047 was passed on October 19, 2016. At that time Ocean 9 was in operation and lawfully provided entertainment.

**CITY OF MIAMI BEACH  
BOARD OF ADJUSTMENT**

IN RE: Appeal of Administrative Decision to Board of Adjustment

APPLICANT: Beach Blitz Co., a Florida corporation d/b/a Ocean 9 Liquor

PROPERTY: 865 Collins Avenue, Unit D, Miami Beach, Florida 33139

FILE NO. ZBA18-0062

HEARING DATE: May 4, 2018 Board of Adjustment Meeting

---

**THE CITY’S RESPONSE IN OPPOSITION TO BEACH BLITZ’S  
APPEAL FROM DENIAL OF BTR FOR 865 COLLINS AVENUE, UNIT D**

The City of Miami Beach and the City of Miami Beach Planning Department (the “City”) submit this Response in Opposition to Beach Blitz Co.’s appeal from a denial of its application for BTR.

**INTRODUCTION**

The Planning Department properly denied Beach Blitz’s request for a BTR to operate a package liquor store in the MXE District because package liquor stores are prohibited by Section 142-544 of the City’s Code of Ordinances:<sup>1</sup>

**Section 142-544. - Prohibited uses.**

The prohibited uses in the MXE mixed use entertainment district are accessory outdoor bar counters, except as provided in this chapter; *package stores; and package sales of alcoholic beverages by any retail store or alcoholic beverage establishment.*

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<sup>1</sup> January 19, 2018 Planning Review and BTR screenshots; email from Carlos Markovich, Senior Planner, City of Miami Beach Planning Department, to Doron Doar, dated January 23, 2018, attached hereto as Composite Exhibit A. A copy of all exhibits are included in the Appendix of Exhibits submitted contemporaneously herewith.

Additionally, entertainment uses shall be prohibited in package stores.<sup>2</sup>

Beach Blitz's suggestion that it should qualify as a legal non-conforming use is not properly before the Board of Adjustment because the question was never presented to the Planning Department below. Even if it had been, the record is clear that Beach Blitz is not a legal non-conforming use because it (1) failed to continually operate the nonconforming use; and (2) failed to continually possess the necessary BTR license required for the operation of that use.

## **RELEVANT FACTS AND PROCEDURES**

### **BTR Licenses**

1. The City of Miami Beach Code of Ordinances requires every business operating in the City to pay a business tax "for the privilege of engaging in or managing any business, profession or occupation within the city's jurisdiction."<sup>3</sup> Otherwise known as an occupational license fee, the Business Tax Receipt ("BTR license") is the "document that is issued by the city which bears the words 'Local Business Tax Receipt' and evidences that the person in whose name the document is issued has complied with the provisions of this article relating to business tax."<sup>4</sup>

2. Section 102-360 provides that a business tax receipt shall be valid for one year:

Each business tax receipt shall be valid for one year. Tax receipts shall be issued beginning October 1 of each year and shall expire on September 30 of the following year.<sup>5</sup>

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<sup>2</sup> Sec. 142-544. All City Code provisions are attached hereto as Composite Exhibit B.

<sup>3</sup> Sec. 102-356.

<sup>4</sup> Sec. 102-356.

<sup>5</sup> Sec. 102-360.

### **The Expiration of Beach Blitz's BTR**

3. Beach Blitz owned and operated a package liquor store in the City's Mixed Use Environment ("MXE").<sup>6</sup>

4. Effective October 1, 2015, Beach Blitz applied for and renewed its BTR license for the 2015-2016 fiscal year.<sup>7</sup>

5. On or about July 1, 2016, the City mailed Beach Blitz a renewal notice, reminding the company to renew its BTR license for the 2016-2017 fiscal year by September 30, 2016.<sup>8</sup> Beach Blitz did not pay its BTR license renewal fee by September 30, 2016.<sup>9</sup>

6. Beach Blitz's BTR license expired naturally on September 30, 2016 because Beach Blitz did not pay to renew it.<sup>10</sup> Thus, as of October 1, 2016, Beach Blitz was operating unlawfully without a BTR license.<sup>11</sup>

7. At no time during the 2016-2017 fiscal year, from October 1, 2016 through September 30, 2017, did Beach Blitz submit payment to the City to renew its BTR license.<sup>12</sup> While Beach Blitz contends it tried to pay for its BTR license several times, as the Magistrate's Report and Recommendation correctly concluded:

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<sup>6</sup> Affidavit of Manuel Marquez ("Marquez Aff.") ¶ 4, attached hereto as Exhibit C.

<sup>7</sup> Testimony of Manuel Marquez at November 17, 2017 Hearing on Plaintiff's Emergency Motion for Preliminary Injunction ("Marquez Testimony") at 90-92, attached hereto as Exhibit D; Marquez Aff. ¶ 6 & Ex. 3, 2015-2016 Application and BTR.

<sup>8</sup> Marquez Testimony at 93; Marquez Aff. ¶ 7 & Ex. 4, July 1, 2016 Invoice.

<sup>9</sup> Marquez Testimony at 93-94.; Marquez Aff. ¶ 7 & Ex. 3, 2015-2016 Application and BTR.

<sup>10</sup> Marquez Testimony at 92; Marquez Aff. ¶ 8; City Code Section 102-360.

<sup>11</sup> Marquez Testimony at 99-100; Marquez Aff. ¶ 8.

<sup>12</sup> Marquez Testimony at 99-100, 129; Marquez Aff. ¶ 9.



A business may pay the BTR renewal fee at City Hall, at the Customer Service Center, at the City's lockbox, at the City's satellite office in North Miami Beach or online. The online system does not prevent businesses from making an online payment for a BTR even if there are outstanding violations.

It is the City's practice to accept payments for BTRs. In instances where a business has outstanding fines or debts owed to the City, the City will withhold the BTR until the business pays the money owed. Once the debt is paid, the City will release the BTR. If a business has an outstanding code violation and that business presents evidence to the City of a proceeding before the Special Master challenging that code violation, the City will release the BTR. If however, a violation has been issued and the time to appeal that violation has passed, the debt becomes due to the City and the City expects the business to pay the debt owed before releasing the BTR. If a Special Master has adjudicated a business guilty and imposed a fine, that business would need to pay the fine before obtaining a BTR.<sup>13</sup>

### **The City Ordinances Regulating the Sale of Liquor in the City**

8. On October 19, 2016, the City of Miami Beach adopted an ordinance which prohibits package liquor stores and package sales of alcoholic beverages by any retail store or alcoholic beverage establishment within the MXE district (the "October 19 Ordinance").<sup>14</sup> The Commission Memorandum supporting the Ordinance explained that: "Package sales of alcoholic beverages may encourage patrons to walk around with alcoholic beverages and consume alcoholic beverages in the City's parks, and on the City's streets and sidewalks. The

---

<sup>13</sup> Magistrate Judge John O'Sullivan's Report and Recommendation dated December 1, 2017 ("R&R") at 4, attached hereto as Exhibit E. In the absence of outstanding violations, a business owner may ordinarily obtain a new BTR license in the fiscal year following its expiration by paying the BTR renewal fee and applicable late fees. If a BTR license is not renewed during the fiscal year after its expiration, the BTR will be placed in "closed" status and that business will need to file an application to obtain a new BTR license. R&R at 4-5 ("If a business misses the time period for renewing its BTR, that business will need to file a new application to obtain another BTR."); Marquez Testimony at 100-01, 123.

<sup>14</sup> October 19, 2016 Commission Memorandum and Ordinance, attached hereto as Exhibit F.

consumption of open containers of alcoholic beverages in public places may cause undesirable noise, as well as contribute to litter and noxious odors.”<sup>15</sup>

### **The Citations Issued to Beach Blitz**

9. On December 21, 2016, a City Code Enforcement officer issued a citation to Beach Blitz for selling liquor before 10:00 a.m., which imposed a \$1,000 civil fine.<sup>16</sup> The citation gave Beach Blitz 20 days to appeal the citation to the Special Master.<sup>17</sup> Beach Blitz did not timely appeal the citation or pay it.<sup>18</sup>

10. On June 25, 2017, a City Code Enforcement officer issued a citation to Beach Blitz for selling liquor after 10:00 p.m., which imposed a \$1,000 civil fine.<sup>19</sup> The citation

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<sup>15</sup> *Id.* at p. 926.

<sup>16</sup> Testimony of Hernan Cardeno (“Cardeno Testimony”) at 131-32, attached hereto as Exhibit G; Affidavit of Hernan Cardeno (“Cardeno Aff.”) ¶ 3 & Ex. 1, Dec. 21, 2016 Notice of City Code Violation and Fine, attached hereto as Exhibit H.

<sup>17</sup> Cardeno Testimony at 132 & Ex. 1, Dec. 21, 2016 Notice of City Code Violation and Fine.

<sup>18</sup> Cardeno Testimony at 132. Beach Blitz’s Amended Letter of Intent claims that this citation was issued improperly because liquor sales at 8:39 a.m. were permitted after 8:30 a.m. on December 21, 2016. This is mistaken. Effective November 9, 2016, Section 6-3(a)(1) of the City Code was amended to prohibit package liquor sales in retail before 10:00 a.m. in the MXE District. *See* Ordinance No. 2016-4058, attached hereto as Exhibit I. The handwritten Notice of Code Violation properly noted that operations before 10:00 a.m. violated Section 6-3(a)(1) of the Code. Beach Blitz’s Amended Letter of Intent for Administrative Appeal dated February 20, 2018 (“Beach Blitz”) at Ex. A. The computer-generated Notice of Violation referenced the pre-amendment version of the Code because the system had not been updated to reflect the November 9 amendment. Beach Blitz Ex. B.

<sup>19</sup> Cardeno Testimony at 132-33; Cardeno Aff. ¶ 4 & Ex. 2, June 25, 2017 Notice of City Code Violation and Fine.

provided Beach Blitz 10 days to appeal the citation to the Special Master.<sup>20</sup> Beach Blitz did not timely appeal the citation or pay it.<sup>21</sup>

11. At the time of issuance, the City Code Compliance officer discovered that Beach Blitz was operating without a BTR license.<sup>22</sup> Accordingly, the City Code Enforcement officer also issued to Beach Blitz a Notice of Violation of Section 102-377 for “failing to obtain a Business Tax Receipt,” which imposed a \$1,000 civil fine. The Notice expressly directed Beach Blitz to “Cease immediately until you obtain a Business Tax Receipt from the City of Miami Beach.”<sup>23</sup> The citation gave Beach Blitz 10 days to appeal the citation to the Special Master.<sup>24</sup> Beach Blitz did not timely appeal the citation or pay it.<sup>25</sup>

#### **Beach Blitz’s Failure to Pay for a New BTR**

12. On June 27, 2017, Beach Blitz went to the City and obtained an invoice for \$2,246.46 for the cost of a new BTR license.<sup>26</sup> Beach Blitz could have obtained its BTR license that day if it had paid the invoice plus the \$1,000 six-month-old fine since the June 25, 2017

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<sup>20</sup> Cardeno Testimony at 132-33; Cardeno Aff. Ex. 2, June 25, 2017 Notice of City Code Violation and Fine.

<sup>21</sup> Cardeno Testimony at 132-33.

<sup>22</sup> Cardeno Testimony at 133; Cardeno Aff. ¶ 4.

<sup>23</sup> Cardeno Testimony at 133-34; Cardeno Aff. Ex. 2, June 25, 2017 Notice of Violation re BTR; Cardeno Aff. ¶ 5.

<sup>24</sup> Cardeno Testimony at 133-34; Cardeno Aff. Ex. 2, June 25, 2017 Notice of Violation re BTR.

<sup>25</sup> Cardeno Testimony at 133-34.

<sup>26</sup> Marquez Testimony at 96-97; June 27, 2017 Invoice, attached hereto as Exhibit J.

citations were not yet due.<sup>27</sup> Beach Blitz chose not to pay for the BTR license or the six-month-old fine at that time because it was unhappy about the violation.<sup>28</sup>

### **Beach Blitz's Untimely Challenge of Its Citation**

13. Contrary to the representations made in the Amended Letter of Intent, Beach Blitz did not timely pay or appeal any of the violations to the Special Master as directed in the Notices of Violations.<sup>29</sup> Instead, Beach Blitz hired a lawyer to contact the City's attorney's office to challenge them.<sup>30</sup> Because the citations were not timely appealed, they were considered obligations due and owing to the City as of the date the time to appeal expired.<sup>31</sup>

14. On or about August 28, 2017, Beach Blitz reached an agreement regarding outstanding and unpaid fines with the City Attorney's Office to resolve all three citations for \$1,000.<sup>32</sup> Contrary to the Beach Blitz's contention, there was no hearing before the Special

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<sup>27</sup> Marquez Testimony at 97-98. R&R at 7 ("If Mr. Doar had paid this amount plus the \$1,000 fine for the outstanding December 21, 2016 violation, he would have received the BTR.").

<sup>28</sup> Testimony of Doron Doar ("Doar Testimony") at 71-72, 76-77, attached hereto as Exhibit K; R&R at 7 ("Mr. Doar did not believe the December 21, 2016 violation was merited. He wanted his "professional people" to deal with that violation and the other two outstanding violations.").

<sup>29</sup> Cardeno Testimony at 132-35; Doar Testimony at 63, 73.

<sup>30</sup> Doar Testimony at 29-30; R&R at 8 ("At the end of July 2017, Mr. Doar hired another attorney, Harold Rosen. Mr. Rosen was successful in obtaining an appeal. However, it was not an ordinary appeal process through the Special Master's office. It was initiated through the City Attorney's office and later, an agreed order was placed before the Special Master for a hearing and ratification.").

<sup>31</sup> Marquez Testimony at 95.

<sup>32</sup> R&R at 8.

Master on August 28, 2017.<sup>33</sup> Instead, on September 1, 2017, the City Attorney's Office sent a proposed agreed order with an email to the Special Master's attorney that stated as follows:<sup>34</sup>

Please see attached Agreed Order to be given to the first available Special Master to be executed. Kindly provide me with an executed copy.

15. Due to the intervening Hurricane Irma, the Special Master's office did not execute the ordered until September 28, 2017.<sup>35</sup> On September 28, 2017, the Special Master entered an agreed order in which Beach Blitz admitted to the violations and agreed to pay \$1,000 to resolve all three citations.<sup>36</sup>

16. On or about October 4, 2017, Beach Blitz paid a \$1,000 fine pursuant to the consent agreement with the City to resolve the three outstanding notices of violation.<sup>37</sup> Plaintiff did not submit a payment to the City for a BTR license on that date.<sup>38</sup>

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<sup>33</sup> See Doar Testimony at 31-32 (stating that on August 28, 2017 an agreement was made with the City, not the Special Master); Cardeno Testimony at 131 (Beach Blitz's appeal of the violations did not go through the normal Special Master protocol and procedures).

<sup>34</sup> See 9/01/17 Email to Special Master, attached hereto as Exhibit L.

<sup>35</sup> R&R at 8.

<sup>36</sup> Cardeno Aff. ¶ 6 & Ex. 4; R&R at 8 ("Under the terms of the Agreed Order, the plaintiff admitted to the violations being properly issued by the City and the plaintiff was assessed a fine of \$1,000. While the Agreed Order's \$1,000 fine resolved all outstanding debt due to the City, Ocean 9 would still need to pay an additional amount to obtain a BTR.").

<sup>37</sup> Marquez Aff. ¶ 12.

<sup>38</sup> *Id.* As noted above, while Plaintiff contends the City would not accept Plaintiff's BTR payment on September 28 and 29, 2017 because the computer system was not updated to reflect the payment, the City's policy is to accept BTR payments notwithstanding the existence of outstanding violations and the computer system does not prevent businesses from making an online payment for a BTR even if there are outstanding violations. Marquez Testimony at 94-97, 122-23, 128.

### **The Beach Blitz Closure**

17. On October 6, 2017, the City issued Beach Blitz a citation for continuing to operate without a BTR license.<sup>39</sup> The citation again directed Beach Blitz to “Cease immediately until you obtain a Business Tax Receipt from the City of Miami Beach.” The City also ordered Beach Blitz to close for operating without a BTR license.<sup>40</sup> The citation gave Beach Blitz 10 days to appeal the citation to the Special Master.<sup>41</sup> Plaintiff neither appealed the citation nor paid it.<sup>42</sup>

18. On October 11, 2017, over one year after Beach Blitz’s 2016-2017 BTR license expired, Beach Blitz submitted payment to the City for a BTR license.<sup>43</sup> Because Beach Blitz had not renewed its license in the fiscal year after its expiration, its license was placed in “closed” status, and a new BTR license application would need to be submitted pursuant to Section 102-371 of the City Code in order for the City to act on a request for a BTR license.<sup>44</sup>

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<sup>39</sup> Cardeno Testimony at 134-35; Cardeno Aff. ¶ 8 & Ex. 5, Oct. 6, 2017 Notice of Violation re BTR.

<sup>40</sup> Cardeno Testimony at 135; Cardeno Aff. ¶ 8 & Ex. 5, Oct. 6, 2017 Notice of Violation re BTR.

<sup>41</sup> Cardeno Testimony at 135; Cardeno Aff. Ex. 5, Oct. 6, 2017 Notice of Violation re BTR.

<sup>42</sup> Cardeno Testimony at 135.

<sup>43</sup> Marquez Aff. ¶ 13 & Ex. 6, Oct. 11, 2017 payment.

<sup>44</sup> Marquez Testimony at 99-100 (“Their time frame to renew and pay for the renewal has expired. In order for him to get a BTR for that location they would have to reapply.”); Marquez Aff. ¶ 13; R&R at 4-5.

### **Beach Blitz's Application for a New BTR**

19. On or about December 27, 2017, nearly 15 months after its BTR expired for non-payment, Beach Blitz submitted an application for a new BTR.<sup>45</sup>

20. On or about January 19, 2018, the Planning Department denied the application because package liquor stores have not been permitted in the MXE District since October 8, 2016. As the Planning Department explained to Beach Blitz, “Per Section 142-544 (link below) the use that you have applied for is prohibited within your zoning district.”<sup>46</sup>

### **ARGUMENT**

#### **I. THE PLANNING DEPARTMENT'S DECISION DENYING BEACH BLITZ'S BTR APPLICATION WAS ABSOLUTELY CORRECT**

On December 27, 2017, Beach Blitz applied for a BTR license to operate a package store located at 865 Collins Avenue. On or about January 19, 2018, the BTR license application was denied because package stores are prohibited within that particular zoning district by Section 142-544 of the City of Miami Beach Code of Ordinances.<sup>47</sup> That Ordinance states:

#### **Sec. 142-544. - Prohibited uses.**

The prohibited uses in the MXE mixed use entertainment district are accessory outdoor bar counters, except as provided in this chapter; *package stores; and package sales of alcoholic beverages by any retail store or alcoholic beverage establishment.* Additionally, entertainment uses shall be prohibited in package stores.

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<sup>45</sup> See 12/27/17 BTR Application, attached hereto as Exhibit M.

<sup>46</sup> Exhibit A.

<sup>47</sup> Exhibit A.

Emphasis added.<sup>48</sup> Accordingly, because Beach Blitz was seeking a BTR for a use that is expressly prohibited within the zoning district, the Planning Department's decision denying the BTR application was undeniably correct and should be affirmed.

## **II. BEACH BLITZ'S SUGGESTION THAT IT SHOULD QUALIFY AS A LEGAL NONCONFORMING USE IS NOT PROPERLY BEFORE THE BOARD OF ADJUSTMENT IN THIS APPEAL**

In Beach Blitz's Amended Letter of Intent for Administrative Appeal, it notes that:

Packaged liquor stores were legally permitted uses in the MXE District under the City's Zoning Code until the City changed its code on October 19, 2016. Upon the City changing its zoning code to prohibit packaged liquor stores in the MXE District, all existing package liquor stores operating in the MXE District, including Ocean 9, became legal non-conforming uses. Ocean 9 never voluntarily abandoned the use of its store as a package liquor store.

Amended Letter of Intent dated February 20, 2018 at 4. However, the question of whether Beach Blitz qualified as a legal nonconforming use is not properly before the Board of Adjustment in this appeal.<sup>49</sup>

A nonconforming use generally refers to a use that does not comply with the City code. *See* Sec. 118-390(b), Code of Ordinances. However, a legally established nonconforming use is a use that, although impermissible under the current zoning restrictions, is allowed because the use conformed to the code at the time it was established. *See* Sec. 118-390(d)(3). To determine

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<sup>48</sup> Exhibit B.

<sup>49</sup> Notably, Beach Blitz's original Letter of Intent, dated February 16, 2018, recognizes that it was not a legal nonconforming use. *See* Letter of Intent, dated 2/16/18. In particular, Beach Blitz's Letter notes that, because Beach Blitz did not have a BTR license, it was "not protected from the ramifications of Ordinance No. 2016-4047 [Code Sec. 142-544] which prohibits packages stores and package sales of alcoholic beverages" in the MXE district, thus rendering it "non-conforming under said Ordinance." Letter of Intent, dated 2/16/18, at 4, attached hereto as Exhibit N.



whether a particular use qualifies as a nonconforming use, a party is required to seek a determination from the Planning Department. Section 118-397 of the City Code provides:

- (a) *The planning and zoning director shall make a determination as to the existence of a nonconforming use* or building and in so doing may make use of affidavits and investigation in addition to the data presented on the city's building card, occupational license or any other official record of the city.
- (b) *The question as to whether a nonconforming use or building exists shall be a question of fact and in case of doubt or challenge raised to the determination made by the planning and zoning director, the question shall be decided by appeal to the board of adjustment pursuant to the requirements of section 118-9.* In making the determination the board may require certain improvements that are necessary to insure that the nonconforming use or building will not have a negative impact on the neighborhood.

Sec. 118-397, Code of Ordinances (emphasis added).

Beach Blitz never raised this issue with the Planning Department and never sought any determination as to whether it was a legally established nonconforming use following the expiration of its BTR license. Thus, there is no determination made by the planning and zoning director to be appealed to the Board of Adjustment. Accordingly, Beach Blitz has waived any argument that it is a legally established nonconforming use, and this issue is not properly before the Board in this appeal.

### **III. IN ANY EVENT, THE RECORD IS CLEAR THAT BEACH BLITZ IS NOT A LEGALLY ESTABLISHED NONCONFORMING USE**

Even if Beach Blitz's status as a nonconforming use was before the Board of Adjustment, which it is not, the record is clear that Beach Blitz is not a legally established nonconforming use, and thus not exempt from the restrictions on package stores and package sales of alcoholic beverages in the MXE district.

City Code Section 118-394 makes clear that:

The planning director or designee shall evaluate the evidence of an intentional and voluntary abandonment of a nonconforming use and determine the status of the nonconforming use. ***In order for a nonconforming use to retain a nonconforming status, the evidence, collectively, shall at a minimum demonstrate at least one of the following:***

- (1) ***Continual operation of the use;***
- (2) ***Continual possession of any necessary and valid state and local permits, building permits, licenses, or active/pending application(s) for approval related to prolonging the existence of the use.***

Sec. 118-394(c), Code of Ordinances (emphasis added).

In this case, Beach Blitz did not retain any alleged nonconforming use status because it: (1) failed to continually operate the nonconforming use; and (2) failed to continually possess the necessary BTR license required for the operation of that use. Beach Blitz conceded as much in its original Letter of Intent.<sup>50</sup> In particular, Beach Blitz failed to possess a valid BTR license after it allowed the BTR to expire on September 30, 2016, and failed to continually operate the nonconforming use as it was ordered to close for operating without a BTR license for over a year.<sup>51</sup> The Planning Department's denial of Beach Blitz's BTR license application was correct and should be affirmed.

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<sup>50</sup> Letter of Intent, dated 2/19/18, at 4.

<sup>51</sup> Beach Blitz contends that it entered the 2017-2018 fiscal year without a BTR license because the City failed to adhere to its policies and procedures. Am. Letter of Intent at 4. However, nothing could be further from the truth. The undisputed record demonstrates that Beach Blitz's BTR expired naturally on September 30, 2016 for failure to renew it, and Beach Blitz was cited nine months later for operating without a BTR license. At no point during the 2016-2017 fiscal year did Beach Blitz submit payment to the City for its BTR, pay its outstanding violations, timely appeal them, or otherwise provide evidence to the City that it was negotiating the violations with the City Attorney's office. Thus, the reason Beach Blitz entered the 2017-2018 fiscal year without a BTR license was because it – not the City – failed to follow  
(footnote continued on next page)

## **CONCLUSION**

For the foregoing reasons, Beach Blitz's appeal should be denied.

Dated: March 21, 2018

Respectfully submitted,



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*Attorneys for City of Miami Beach and  
City of Miami Beach Planning Department*

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applicable procedures for maintaining its BTR license. Beach Blitz has only itself to blame for the denial of its BTR application.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 21st day of March, 2018, 14 copies of the foregoing Response and Appendix were hand delivered to:

City of Miami Beach  
Planning Department  
2nd Floor  
1700 Convention Center Drive  
Miami Beach, Florida 33139

I also certify that a copy of the foregoing Response and Appendix were served by electronic mail and U.S. Mail on the following:

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March 21, 2018

BY HAND DELIVERY

City of Miami Beach  
Planning Department  
2nd Floor  
1700 Convention Center Drive  
Miami Beach, Florida 33139

Attention: Mr. Rogelio A. Madan  
Chief of Community Planning and Sustainability

Re: Administrative Appeal of Beach Blitz Co.  
865 Collins Avenue, Unit D  
File No. ZBA18-0062

Dear Mr. Madan:

Enclosed please find 14 copies of the City's Response and Appendix in connection with the above-referenced appeal before the Board of Adjustment. A copy of the Response and Appendix is also being sent by email and First-Class Mail to Beach Blitz's counsel.

Very truly yours,



Enrique D. Arana  
Counsel for City of Miami Beach and  
City of Miami Beach Planning Department

EDA:cp  
Enclosures

cc (w/enc.):  
Nick Kallergis, Esq. (nickkallergis@miamibeachfl.gov) (*via email*)  
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