

1 FAIR EMPLOYMENT AND HOUSING COUNCIL

2 Meeting Notice and Agenda

3

4 VIII. Public Hearing: Proposed Employment Regulations
5 Regarding Criminal History, the California Family Rights
6 Act, and the New Parent Leave Act

7 CORRECTED TRANSCRIPT 6-6-18

8 Attachment E: Notice of Proposed Rulemaking

9 Attachment F: Initial Statement of Reasons

10 Attachment G: Proposed Employment Regulations

11 Regarding Criminal History, the California Family
12 Rights Act, and the New Parent Leave Act

13

14 Junipero Serra Building

15 Carmel Room Auditorium (First Floor)

16 328 W. 4th Street

17 Los Angeles, California

18 Wednesday, April 4, 2018

19

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<p>1 APPEARANCES: 2 CHAIRMAN CHAYA MANDELBAUM 3 COUNCIL MEMBER DARA SCHUR 4 COUNCIL MEMBER LISA CISNEROS 5 COUNCIL MEMBER JOSEPH ORTIZ 6 COUNCIL MEMBER DALE BRODSKY 7 COUNCIL MEMBER TIM IGLESIAS 8 9 DIRECTOR KEVIN KISH 10 HOLLY A. THOMAS 11 BRIAN SPERBER 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: right;">9 SPEAKERS 10 MELISSA PATAK 11 DOUG BONEY 12 SARAH GLENN-LEISTIKOW 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: right;">Page 2</p>	<p>1 gender, gender identity, gender expression, age, sexual 2 orientation and military and/or veteran status. 3 Proposed regulations are slated to appear in 4 the California Code of Regulations at Title 2, Sections 5 11017.1 and 11087 through -97. 6 Copies of the proposed amendments are 7 available in the back of the room and are reflected in 8 Attachment D to the materials. 9 The Notice and assistant Initial Statement 10 of Reasons are reflected in attachments. 11 I'm sorry, the proposed regulations are in 12 Attachment G to the materials. And the Notice and 13 additional Statement of Reasons are there. 14 The proposed regulations can also be found 15 on the Council's web page, the same case the last screen 16 is on. 17 We're holding this hearing as part of our 18 formal rulemaking process. We noticed the hearing more 19 than 45-days ago in the California Regulatory Notice 20 Register when it's published on February 16th, 2018, and 21 also noticed it via e-mail sent to thousands of 22 individuals and stakeholders on the department's e-mail 23 list and through posting on the Council's web page. 24 Pursuant to the notice, we are taking 25 testimony here today and we'll also accept written</p> <p style="text-align: right;">Page 4</p>
<p>1 Los Angeles, California, Wednesday, April 4, 2018 2 11:40 a.m. - 12:36 p.m. 3 4 CHAIRMAN MANDELBAUM: All right. We are 5 back on the record and ready to commence with our public 6 hearing regarding the Fair Employment Housing Act 7 Employment Regulations that address new provisions on 8 criminal history and employment, the California Family 9 Rights Act and the New Parent Leave Act. 10 Again, welcome to this section of the 11 meeting and this hearing. 12 I'm the Chair of the Council, Chaya 13 Mandelbaum, and joining me are colleagues on the 14 Council, Dale Brodsky, Dara Schur, Tim Iglesias, Joseph 15 Ortiz, and Lisa Cisneros, along with the ex-officio 16 member and director of the department, Kevin Kish. 17 We are here to take public comments and 18 testimony regarding the criminal history and employment, 19 California Family Rights Act and New Parent Leave Act 20 draft proposed -- amended to the FEHA regulations. 21 As it relates to employment, the FEHA 22 prohibits harassment and discrimination because of race, 23 religious creed, color, national origin, ancestry, 24 physical disability, mental disability, medical 25 condition, genetic information, marital status, sex,</p> <p style="text-align: right;">Page 3</p>	<p>1 comments until 5 p.m. today, April 4th, 2018. 2 You may e-mail your written comments to 3 DFEHCouncil@DFEH.ca.gov, or you can submit them in the 4 mail to the Council in care of Brian Sperber at the 5 DFEH's Los Angeles office located at 320 West 6 4th Street, 10th Floor, Los Angeles, California, 90013. 7 If you brought a written copy of your 8 comments and you have not separately submitted them, you 9 can give them to Brian Sperber here today. 10 If you haven't brought them, please remember 11 to submit them by 5 p.m. today. 12 Anyone who testifies here today or submits 13 written comments will receive a copy of any changes or 14 amendments the Council makes in response to this round 15 of public comment and will have an opportunity to 16 provide additional comments during a 15-day period if 17 the Council makes further changes. 18 We'll consider each comment here today as 19 well as all written comments received and the comments 20 will be responded to in the Council's Final Statement of 21 Reasons, which will be part of the rulemaking record. 22 The hearing is being transcribed by a 23 certified court reporter and the transcript of the 24 hearing as well as the written comments will be part of 25 the official rulemaking record.</p> <p style="text-align: right;">Page 5</p>

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1 Because this hearing is being transcribed,
2 it is critical that we speak as slowly -- slower than we
3 would in the ordinary course of conversation,
4 particularly given the technical terms being used. And
5 that one person, only one person speaks at a time.
6 We'd ask that you come to the front and
7 speak into the microphone when you testify. You will
8 not be sworn in. But hopefully you can please start by
9 introducing yourselves, spelling your name. And if you
10 brought a card, you can give it to the court reporter.
11 That will help create a nice, clean
12 transcript of what you're saying.
13 So we'll hear testimony until all those
14 wishing to testify have had an opportunity to do so.
15 Without further ado, would someone like to
16 start us off on public comment?
17 MS. PATAK: Members of the Council, my name
18 is Melissa Patak. P-a-t- -- I'm going to bring you a
19 card.
20 THE REPORTER: Thank you.
21 MS. PATAK: Melissa Patak with the Motion
22 Picture Association of America.
23 The MPAA is the trade association. We're
24 the leading producers and distributors of film and
25 creative content across all platforms, from movie

Page 6

1 theaters to home entertainment to streaming services.
2 We are here also today in conjunction -- in
3 representation of our sister trade association, the
4 Alliance of Motion Picture and Television Producers,
5 which is the multi-employer collective bargaining agent
6 for these producers and distributors.
7 Our member companies, which are shared by
8 both associations, are Disney, Fox, NBC Universal,
9 Paramount Pictures, Sony Pictures and Warner Brothers.
10 In addition, CBS is an associate member of the MPAA.
11 So let me start by framing the issues. And
12 I'm here to talk really only about the background
13 checks, the criminal history background check provision
14 of the regulation.
15 And this is really about a narrow part of
16 our industry. And it concerns children and the people
17 who are onset to educate the children, who are working
18 as performers, and also provide for their safety, health
19 and welfare, studio teachers.
20 So the teachers hold appropriate credentials
21 from the California Commission on Teacher Credentials.
22 And they can only be employed if they have appropriate
23 teacher credential. And as we -- as you may be aware,
24 under the Education Code, teachers, in order to hold
25 their jobs, must undergo a background check, and that is

Page 7

1 done through the Department of Education.
2 In the motion picture industry, time and
3 production -- production scheduling is a major factor.
4 It's not -- our -- our sets are not run the way other
5 businesses are, that you come in at 9 o'clock in the
6 morning and you work until 5 o'clock at night.
7 Production has very irregular hours. And in the case of
8 production, minors -- it could be that a teacher could
9 get a call at 5 o'clock one afternoon asking if that
10 teacher's available to report to work at 8 a.m. the next
11 morning.
12 So there really isn't the opportunity for
13 the employer/producer to do a background check once they
14 have made an offer to that particular teacher.
15 So through the collective bargaining process
16 with IATSE, the International Alliance of Theatrical and
17 Stage Employees, and Local 884, that is the local union
18 that represents studio teachers -- and you'll hear from
19 my colleague, Doug Boney, who is the business agent with
20 that local. And we have -- we agree on many, many
21 principles about this issue. A slightly different
22 approach, but we agree in the principles.
23 And through that collective bargaining
24 process, what has developed -- what has been developed
25 is an availability list of teachers. And that

Page 8

1 availability list is maintained by an organization
2 called Contract Services. It's a trust fund. The
3 employer pays into the trust fund and Contract Services
4 performs many functions for the convenience and good of
5 the motion picture and television industry.
6 And so one of the tasks that it does is to
7 keep this availability list.
8 And so, again, through the bargaining
9 process, the parties agree -- that is, producers and the
10 union agree -- that CATS should conduct a background
11 check periodically and to ensure that those teachers who
12 are on the availability list do not have any negative
13 criminal history in their background.
14 And that way when the producer calls, like I
15 said at 5 o'clock one afternoon for an 8 o'clock report
16 time or at 8 o'clock in the morning asking for a noon
17 report time, that that producer can have the confidence
18 that that teacher is appropriate to be working with
19 children.
20 So that's the basic issue.
21 Now, you overlay that with the current law
22 and these regulations, which say that only upon an offer
23 of employment is an employer allowed to conduct a
24 background check.
25 So we would like some clarity from the

Page 9

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<p>1 Council that the circumstances that I have just 2 described, that availability list, is the equivalent of 3 an offer of employment. It's not for any particular 4 employer, we can see that, but it is an offer -- a 5 presentation that the teacher is available and that the 6 employers know that that teacher is -- has the 7 credentials as well as the appropriate background to be 8 working with children. 9 We think that the two -- there are two 10 exceptions that this falls into potentially with a 11 little bit of clarification. Exception A says that, 12 "where the position is one for which a state or local 13 agency is otherwise required by law to conduct a 14 conviction history background check" -- and we think by 15 adding a few extra words -- "including a position 16 requiring a credential issued by the California 17 Commission on Teacher Credentialing," that that would 18 recognize our process. 19 And again, put the premature of, you know, a 20 stamp that indicates that the commission -- that the 21 Department of Fair Employment and Housing would regard 22 our process as within the boundaries of the law. 23 Alternatively, exception D says that, "where 24 the position is one that an employer and employer's 25 agent is required by any state, federal or local law" --</p> <p style="text-align: right;">Page 10</p>	<p>1 MS. PATAK: Sure. 2 COUNCIL MEMBER SCHUR: I just want to make 3 sure that I understand the process. 4 So in order to get the credentials, the 5 state conducts a background check. 6 MS. PATAK: Yes. 7 COUNCIL MEMBER SCHUR: But then your 8 contracting association conducts an additional 9 background check before the teachers are put on the 10 list. 11 MS. PATAK: Availability list, yes. 12 COUNCIL MEMBER SCHUR: Okay. 13 MS. PATAK: Yes. The education department, 14 they do a background check when the credential is up for 15 renewal. There is also a -- the live -- we 16 understand -- we know and recognize that the education 17 department does have an ongoing obligation. However, we 18 feel very strongly and have reached this agreement with 19 the union who represents the teachers and they also feel 20 it's important that the teachers -- they're not working 21 in a classroom setting, they're working individually. 22 They're also responsible not just for teaching children 23 under five, they're responsible for the health, safety 24 and welfare of the children. 25 And so maybe it's a little bit belt and</p> <p style="text-align: right;">Page 12</p>
<p>1 and again, the Educational Code does require that 2 teachers undergo a background check by any state, 3 federal or local law to conduct criminal background 4 checks for employment purposes or to restrict employment 5 based on criminal history. 6 And then, again, we would recommend 7 asserting that same clause at the end of that, including 8 a position requiring a credential issued by the 9 California Commission on Teacher Credentialing. 10 So we're recommending and we're requesting 11 that the Council give consideration to adding some 12 clarity for us in either of those sections that 13 currently provide for an exception. 14 And I would also just point out that the 15 draft regulations made reference to a law in 16 Los Angeles, we -- we have worked out an arrangement 17 with the City of Los Angeles with the help -- in 18 partnership with Local 884 and the City of Los Angeles, 19 the law that they have on background checks acknowledges 20 our process and our process of having this availability 21 list and having Contract Services provide this -- 22 conduct the background check, if that is not contrary to 23 the Los Angeles city ordinance. 24 COUNCIL MEMBER SCHUR: May I ask a 25 clarifying question?</p> <p style="text-align: right;">Page 11</p>	<p>1 suspenders, but there is a collective bargaining 2 understanding through the collective bargaining process, 3 an agreement that Contract Services should conduct this 4 background check to ensure that the teachers have the 5 appropriate background. 6 We understand that the framework in which 7 we're allowed to conduct motion picture production is 8 unconventional. You know, we're taking kids out of 9 school and we are providing education, but we're also -- 10 producers are providing education through the studio 11 teachers as well as working to ensure the safety of the 12 children as well. 13 So may be extra precautionary, but we think 14 it's warranted and it's worked for decades and decades. 15 COUNCIL MEMBER BRODSKY: Another point of 16 clarification. Once you get on the list, you're 17 basically offered the position? 18 MS. PATAK: Well, you're available for a 19 position. Remember, there are many, many production 20 companies. It doesn't mean that you have a report date 21 or time. What it means is that at any time a producer 22 calls you to check your availability and asks if you're 23 available to report, you know, the next day or -- 24 COUNCIL MEMBER BRODSKY: Do you have to go 25 through an additional screening process after you're</p> <p style="text-align: right;">Page 13</p>

4 (Pages 10 to 13)

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1 placed on that availability list?
2 MS. PATAK: I don't -- I think that's why
3 and maybe that does speak to this a little bit better
4 that the individual company would then probably not
5 conduct an additional background check.
6 Some of this is also -- if we didn't have
7 this mechanism, somebody might work at Paramount this
8 week, next week get a job at Warner Brothers, they've
9 undergone a background check from Paramount, now
10 Warner Brothers wants to do a background check only one
11 week later.
12 So knowing that Contract Services has
13 performed and conducted this background check, I think,
14 gives all the companies, you know, comfort and assurance
15 that there is criminal-free background.
16 COUNCIL MEMBER BRODSKY: I'm trying to get a
17 sense of how the availability list goes into the
18 framework of post offer and preoffer. And in public
19 education, which I deal with a lot in my 9:00 to 5:00
20 job, you do -- I mean, there is substitute teachers all
21 the time.
22 MS. PATAK: The school would rely on that
23 credential as being --
24 COUNCIL MEMBER BRODSKY: You have gone
25 through, you know, but if -- if there is a post offer,

Page 14

1 you may be subjected to a live -- but that's after
2 you've been offered the position. I'm trying to get a
3 sense in this context whether that availability is pre
4 or post offer?
5 MS. PATAK: It's -- again, it's -- it
6 doesn't fit exactly into that model because, like I
7 said, you could get a call at 5 o'clock today asking the
8 teacher could you come to work tomorrow at 8 a.m.
9 And so at that point, that's an offer,
10 that's a firm offer. Once -- if they're on the
11 availability list, they're available and eligible, not
12 necessarily with a specific report time or --
13 COUNCIL MEMBER BRODSKY: No, I understand
14 that.
15 MS. PATAK: So that really -- the reason
16 for this Contract Services conducted background check is
17 the recognition that in that short time gap the employer
18 isn't going to have time to run the background check.
19 COUNCIL MEMBER BRODSKY: There are a lot of
20 other entities and circumstances where people have to be
21 licensed. So I'm concerned about putting into a
22 regulation one particular type of -- because then we're
23 opening up does that mean, for example, medical
24 licensing personnel have to -- you know, should be
25 accepted in the same way or wherever do you draw the

Page 15

1 line between what you're going to, you know, include in
2 your exemption?
3 MS. PATAK: Well, again our -- correct.
4 Our suggested language references only the California
5 commission on teacher credentialing. It would be
6 that -- that category.
7 COUNCIL MEMBER BRODSKY: Which is my point.
8 It's singling out one type of licensing. And then
9 you -- you know, it presents a lot of questions, what
10 about the others where their licensing departments or
11 background checks might, you know, come up.
12 COUNCIL MEMBER ORTIZ: I have questions too
13 about where this falls in the process. Because I know I
14 can label my expertise as a laborer, but I know there
15 are unions quite often that have availability lists
16 where these individuals are tested, not only in order to
17 get on the list but then before they are dispatched to
18 the contractor in the cases I know.
19 I'm wondering if we've ever solicited input
20 from the DIR or figure out where the state's position is
21 and how that's interpreted, whether there's somehow an
22 exemption that's implied in here or whether it, perhaps,
23 doesn't fall into the rubric of a preemployment inquiry
24 if it's an availability list.
25 I guess I need clarification.

Page 16

1 CHAIRMAN MANDELBAUM: Do you know whether
2 this issue was raised with the legislature when they
3 were adopting the --
4 MS. PATAK: It was not.
5 CHAIRMAN MANDELBAUM: So it wasn't expressly
6 considered and rejected in terms of the exception, the
7 delineated statute?
8 MS. PATAK: Exactly right. We did not
9 engage in the legislative process last year.
10 Any other questions?
11 Okay. I've submitted a letter and I will
12 also submit it by e-mail this afternoon.
13 Thank you for your time and your
14 consideration.
15 CHAIRMAN MANDELBAUM: Thank you.
16 COUNCIL MEMBER ORTIZ: Thank you for raising
17 this issue.
18 MR. BONEY: Council members, my name is Doug
19 Boney, B-o-n-e-y. I am the business representative for
20 the Motion Pictures Studio Teachers and Welfare Workers
21 of Local 884 of the International Alliance of Theatrical
22 Stage Employees, Moving Picture Technicians, Artists and
23 Allied Crafts of the United States, its territories and
24 Canada.
25 Pleased to be here to present the views on

Page 17

5 (Pages 14 to 17)

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<p>1 Local 884 on the proposed rulemaking, and hopefully 2 answer some of your questions that you have. 3 The proposed language suggested by Local 884 4 and its international union, the IATSE, for a new 5 subsection on the regulations is contained in a letter 6 from the IATSE to the Council which was e-mailed to the 7 Council yesterday. 8 I'll provide you an additional copy of that 9 letter. 10 My purpose here today is to amplify on that 11 proposal. AB 1008, eliminates a preoffer of employment 12 criminal background check and provides an applicant who 13 has a negative result with an opportunity to respond in 14 an individualized assessment of whether the individual 15 should be hired. 16 Unfortunately, this protocol is almost 17 impossible to administer in the context of employment of 18 studio teachers because of the intermittent nature of 19 their employment and it ends up disadvantaging the 20 employee applicant rather than helping. 21 This defeats the very purpose for which the 22 statute was enacted. These problems are of fundamental 23 importance to studio teachers because an application of 24 the statute that ignores the singular issues confronted 25 by studio teachers deprive a great many studio teachers</p> <p style="text-align: right;">Page 18</p>	<p>1 teacher. 2 On the other hand, in Local 884's view, 3 studio teachers are not subject to the statutory 4 exemptions in Government Code Section 12952 in large 5 part because they are employed by production companies, 6 not by school districts or private schools. 7 The very fact that studio teachers work for 8 production companies means that their employment is 9 generally short term. Many studio teachers teach and 10 work for multiple production companies in a single year. 11 And while a studio teacher's assignment can extend for 12 weeks or even months, many assignments are short term, 13 often just a day. 14 So preemployment screening is often 15 impractical. 16 Given those competing requirements, the 17 union represented studio teachers have agreed in a 18 collective bargaining to a background check that is 19 conducted not after an offer has made by a production 20 company, but prior to placement on an availability list, 21 which is pretty much a roster of studio teachers 22 entitled Contractual Priority in Hiring By Signatory 23 Entertainment Industry Employers, and annually 24 thereafter. 25 This contest (sic) has been crafted to take</p> <p style="text-align: right;">Page 20</p>
<p>1 an opportunity for gainful employment they enjoyed 2 before the statute was passed and will make it harder to 3 provide children in the entertainment industry the 4 protections that they need and that only a studio 5 teacher can provide. 6 These problems must be addressed in a 7 regulation because, as described in our letter, studio 8 teachers do not fit within the exemptions from the 9 requirements of Government Code Section 12952 set forth 10 in subsections (d)(1) or (d)(4). 11 Under the California Code of Regulations, 12 studio teachers have a legal responsibility for caring 13 for and attending to the health, safety and worlds of 14 child performers under 16 years of age while those 15 children are engaged or employed in any activity 16 pertaining to the entertainment industry. 17 Studio teachers must possess two teaching 18 credentials, both of which require that the studio 19 teacher not have been convicted of certain disqualifying 20 offenses. 21 Studio teachers also must hold a 22 certification that is issued by the DLSE. 23 So on one hand, studio teachers have great 24 responsibilities for the children in their charge and 25 must be even more qualified than regular classroom</p> <p style="text-align: right;">Page 19</p>	<p>1 into account the intermittent nature of studio teacher 2 employment. And the fact that if each employer were 3 required or allowed to conduct background checks, studio 4 teachers, especially those who had not worked for an 5 employer in the recent past, would not be able to be 6 hired when needed. 7 This would not just deprive many studio 8 teachers of work but, because of the limited number of 9 qualified studio teachers, the danger to child 10 performers who need the supervision and education 11 provided by the studio teacher. 12 Further, a system that called for a 13 background check by each employer would also subject 14 studio teachers to having to provide each of potentially 15 dozens of employers each year with responses to the same 16 erroneous information. 17 The collectively bargained procedure affords 18 at least as much protection to the studio teacher as the 19 statutory protocol because the removal from the 20 availability list can be challenged in arbitration. 21 For these reasons, we hope that you can find 22 a way to include in the regulations an acknowledgment 23 that a collectively bargained procedure that provides 24 studio teachers with at least as much protection as the 25 statutory procedure satisfies a requirements of</p> <p style="text-align: right;">Page 21</p>

6 (Pages 18 to 21)

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<p>1 Government Code Section 12952. 2 Thank you. 3 CHAIRMAN MANDELBAUM: Thank you. 4 COUNCIL MEMBER SCHUR: May I ask another 5 question? 6 So it seems -- I understand the scheme I 7 think, but I think your proposal totally exempts both 8 the ultimate employer and the contract agency from 9 complying with the terms of this law, as I read it, 10 because they would fall under one of the exemptions. 11 And I'm just wondering, it seems to me, perhaps, then in 12 the circumstance, the contracting agency that does the 13 criminal screen should be able to -- to be required by 14 the law by putting people on the list -- or tentatively 15 approving people for the list and then complying with 16 the background screening. 17 Is that -- am I correct about that as an 18 alternative? 19 MR. BONEY: Well, our position is that the 20 background checks were done by Contract Services should 21 be exempt. 22 Under our Collective Bargaining Agreement, 23 each company still has the opportunity to do an 24 additional background check based on their company 25 policies.</p> <p style="text-align: right;">Page 22</p>	<p>1 and they are available to work on any union job where 2 there's no union teacher available to take the job. 3 CHAIRMAN MANDELBAUM: So I think one 4 question that seems to be a thread on a lot of our 5 questions, our concern is where is the kind of merit 6 selection decisions being made? 7 So how does one get on that list, leaving 8 aside, you know, passing a background check, how does 9 someone get on that first list and what goes into a 10 studio's decision about who on this list they're going 11 to call first? 12 Like who -- where is -- where are 13 qualifications beyond merely background checks being 14 evaluated? 15 Are they being evaluated to get on the list 16 and a selection from the list, or both? 17 MR. BONEY: So, as I said, it's a freelance 18 position. So this is -- the availability list is our 19 roster. It just -- since the companies that we -- that 20 employ our members, because of our Collective Bargaining 21 Agreement, they are required to first check -- hire 22 someone off the availability list. 23 This -- these positions are hired -- 24 companies have worked with previous studio teachers. 25 It's usually not the company itself hiring. It's</p> <p style="text-align: right;">Page 24</p>
<p>1 We feel that those background checks should 2 fall under this regulation. But the only background 3 check is the preemployment background check that should 4 be exempt and one that is done by Contract Services -- 5 is the only background check that should be exempt 6 because it is a roster of available studio teachers 7 instead of not -- they're not being offered a job at the 8 time, but they are available for future jobs. 9 COUNCIL MEMBER SCHUR: But if I understand 10 the implication, if you don't get on that list, you 11 could never get one of these jobs. So it does serve a 12 significant screening function. 13 MR. BONEY: You could not get a union -- 14 this only covers union studio teachers. So just out in 15 the -- it's a freelance job. So there are nonunion 16 productions that use nonunion studio teachers. Those 17 teachers are not subject to a background check like the 18 studio teachers that are on our availability list. 19 There are nonunion studio teachers on a 20 separate list that would be covered by this. You have a 21 separate list called a Dual Credential Substitute List. 22 That list is a list of nonunion studio teachers who have 23 their cert credentials, their two credentials have been 24 verified, their certification by the DLSE has been 25 certified. They have gone through a background check</p> <p style="text-align: right;">Page 23</p>	<p>1 usually the individual productions for the companies, 2 different producers, production coordinators, assistant 3 directors who will call studio teachers they know. But 4 the list is not a list that is just who is available on 5 that day. It is just our term for using the roster, 6 that they had gone through the process of having their 7 certifications and credentials verified and going 8 through a background check. 9 COUNCIL MEMBER BRODSKY: But do you actually 10 have to apply to get onto the availability list? 11 MR. BONEY: No. 12 COUNCIL MEMBER BRODSKY: Are there 13 qualifications -- other than certification, are there 14 other qualifications to get on the availability list? 15 MR. BONEY: So anyone who has -- is 16 certified by the State of California to work as a studio 17 teacher is eligible to apply beyond our -- it's an 18 application. They have to provide proof of their two 19 credentials, they have to provide proof of their 20 certification and then they must go through a background 21 check, and we have separate safety classes that are 22 required for all employees in the entertainment industry 23 in Contract Services under the Collective Bargaining 24 Agreement. 25 Any of those people -- anyone who has a</p> <p style="text-align: right;">Page 25</p>

7 (Pages 22 to 25)

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<p>1 certification as a studio teacher can ask for their name 2 to be put on the list.</p> <p>3 COUNCIL MEMBER BRODSKY: So when a studio 4 calls and says I need somebody at 8 a.m. tomorrow 5 morning, they could send somebody? Can they say no? 6 Can they interview them?</p> <p>7 MR. BONEY: They don't usually interview 8 them unless -- last-minute jobs are usually -- we have a 9 separate -- we have a separate available list that is a 10 list of teachers who call in -- we have a dispatch 11 office that will call in and say I'm available tomorrow 12 and -- you know, some weekly list that they'll say I'm 13 available Monday, Wednesday, Thursday of next week. 14 Productions can call the dispatch office to get a list 15 of teachers or the first person off that list.</p> <p>16 Productions have the right to -- they can 17 call the individual teacher directly. They can --if 18 there's no -- there's not -- the production themselves 19 the -- it's a freelance job. Just as if a director, 20 photographer, a -- a production designer, if it's a 21 studio teacher, if it's a last-minute job sometimes -- 22 since it's the state law that they're required to have 23 them, if they don't know anyone, they'll just call the 24 dispatch office and have someone sent to the job. 25 For long-term projects, they may want to</p> <p style="text-align: right;">Page 26</p>	<p>1 our availability list or substitute list.</p> <p>2 Not all of the companies, I'm not sure from 3 their parent companies, not all companies are able to 4 use that background check for themselves.</p> <p>5 So we do have a couple of companies that 6 require a second background check, because -- for their 7 own internal purposes.</p> <p>8 That is not covered by our CBA. We do not 9 think that that one should be exempt.</p> <p>10 We just feel that the background check done 11 by Contract Services that have been collectively 12 bargained and the individuals -- even the union and 13 nonunion individuals have an opportunity in arbitration 14 to -- to respond to any information.</p> <p>15 COUNCIL MEMBER ORTIZ: So the background 16 check by the ultimate employer, the studio, you're 17 referring to that's covered and it would be after an 18 initial offer, right?</p> <p>19 MR. BONEY: Correct.</p> <p>20 COUNCIL MEMBER ORTIZ: I guess my inquiry is 21 the union is not employing these individuals; correct?</p> <p>22 MR. BONEY: The union is not employing these 23 individuals and the union is not doing the background 24 check. Contract Services is a trust fund that has been 25 bargained into our contracts. It's employer funded and</p> <p style="text-align: right;">Page 28</p>
<p>1 interview. If there's certain educational requirements 2 for -- something of that sort, they may interview a 3 studio teacher. But that's usually not on the 4 last-minute job.</p> <p>5 COUNCIL MEMBER SCHUR: Who actually pays 6 the --</p> <p>7 MR. BONEY: Production company. In the 8 entertainment business, the employer of record is 9 usually a payroll company, such as Entertainment 10 Partners or Cast & Crew. The employer would be the 11 production company.</p> <p>12 COUNCIL MEMBER ORTIZ: Mr. Boney, just to be 13 clear, there are two background checks. There's one 14 that the production company or the payroll company will 15 perform before a person actually begins to work, right? 16 So after an initial offer.</p> <p>17 And then there's one in order for the 18 individual to get on the availability list, that's 19 performed on behalf of the union. The union says in 20 order to be on a list, you need to have this check, 21 right?</p> <p>22 MR. BONEY: The -- so our Collective 23 Bargaining Agreement, the studios came together to have 24 a background check done through Contract Services that 25 the union agreed to as -- as a condition to be placed on</p> <p style="text-align: right;">Page 27</p>	<p>1 an employer run, but it is something that is in our 2 contracts, not just for Local 884 but for the entire 3 IATSE covered under the basic agreement, which is one of 4 our contracts.</p> <p>5 COUNCIL MEMBER ORTIZ: I think where I'm 6 kind of going is I'm thinking generally and not just 7 unions in general, they're not the employers, but I know 8 that they often maintain these availability lists.</p> <p>9 And I guess my initial thought is that they 10 wouldn't be employers and so their checks wouldn't be 11 under the rubric of this criminal history check, the ban 12 the box law, so to speak. And I wonder --</p> <p>13 COUNCIL MEMBER BRODSKY: I don't think 14 that -- no. This isn't going -- it's the union only 15 negotiating on behalf of the individuals who are 16 members. It's not they're conducting a background 17 check. So the employer is the production company.</p> <p>18 COUNCIL MEMBER ORTIZ: On the behest, that's 19 not just specific, on the behest of the union so they 20 can maintain an availability list.</p> <p>21 Then is it really the employer who is doing 22 the check? I guess that's kind of where I'm going with 23 it.</p> <p>24 DIRECTOR KISH: I would just say from an 25 enforcement perspective the aiding and abetting statute</p> <p style="text-align: right;">Page 29</p>

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1 of FEHA is just so broad that I don't think that's the
2 particular avenue that we should encourage people to go
3 down.
4 But I do have one question for you, which
5 is, in order to get the teacher credential in the first
6 place, you go through a background check that's required
7 by the Education Code, correct?
8 MR. BONEY: Correct.
9 DIRECTOR KISH: And if you have some kind of
10 disqualifying criminal conviction for that credential,
11 the Department of Education is required to decertify
12 you; is that correct?
13 MR. BONEY: Correct.
14 DIRECTOR KISH: So what is the -- is it
15 correct to say that the added value of the background
16 check that's performed by Contract Services to place
17 people on a list or a roster is just kind of a
18 reassurance that that check is recent?
19 MR. BONEY: That is correct. I mean, it's
20 the reason where the law does require schools in a
21 school district or a private school to also be able to
22 do a separate background check on top of the
23 credentialed background check. But the problem is that
24 law is very specific to teachers in school districts and
25 private schools.

Page 30

1 COUNCIL MEMBER BRODSKY: It's also after the
2 offer is made. So it implies that the procedure
3 complies with the law.
4 MR. BONEY: Okay. But our, you know --
5 it's -- our understanding is that because of the nature
6 of being -- you know, one, you could work for -- as
7 Melissa said, you could work for different production
8 companies in a week. You could actually work for five
9 different production companies in one week. I mean,
10 each day work for a separate production company. So we
11 feel like this -- having this background check so that
12 you will be available for these jobs through Contract
13 Services when you have a collectively bargained
14 arbitration procedure to answer to any and to respond to
15 any -- any negative -- negative that shows up, that it
16 should be exempt.
17 COUNCIL MEMBER SCHUR: So what I'm trying to
18 figure out is given that the employers under these
19 circumstances don't really do any -- often don't do
20 background checks, but this background check does act as
21 a barrier for people being able to get a job, a union
22 job. Is there any tactical reason why the contract
23 folks couldn't follow the same procedure? I.e.,
24 tentatively approve people for the list subject to
25 background check and then do their background check?

Page 31

1 MR. BONEY: That, I guess, is a possibility.
2 The problem being that it's freelance and that if you're
3 waiting and you're not able to get on the list -- so I
4 guess what you're saying is you get a conditional
5 placement on the list and so after the background check
6 is performed and then you're either removed or then you
7 are kept on the list is what you're suggesting.
8 COUNCIL MEMBER SCHUR: Something along those
9 lines so that those folks who want to get on the list
10 have the protections of the statute, which is
11 limitations on the background list instead of on the
12 check (sic) as opposed to being totally exempted but
13 you're still not messing with the employer's right to
14 get somebody at 8 a.m. the next morning so that the
15 contracting people, it would require some rewriting, I
16 think, but as agents of the employees and the
17 contractors have to follow this statute.
18 MR. BONEY: I don't think the local would be
19 opposed to that. I would just need to make sure that
20 there are no barriers in our CBA that would -- that we
21 may have to complete some language in our CBA in order
22 to do -- you know, so that it would fall under and be
23 spelled out.
24 COUNCIL MEMBER SCHUR: I mean, I'm not
25 saying we should do that. I'm exploring alternatives

Page 32

1 that seem to me to be the protection of the statute
2 without interfering with what is obviously very time
3 sensitive.
4 COUNCIL MEMBER BRODSKY: The other thing is
5 the credentialing process. If someone is convicted of
6 an offense, immediately that is communicated from the
7 DOJ to the Commission on Teacher Credentialing and the
8 person's credential is defended right then and there.
9 So it shows up right away if you've got a conviction.
10 So it's not as though there's a layer or
11 anything. It is timely. There is a list of convictions
12 in the code that require immediate suspension of the
13 credential.
14 CHAIRMAN MANDELBAUM: I appreciate -- I
15 think this gives us a good sense on the -- on the
16 quagmire and we'll look forward to reviewing the written
17 comments.
18 MR. BONEY: Thank you very much.
19 MS. GLENN-LEISTOKOW: Good afternoon. My
20 name is Sarah, S-a-r-a-h, Glenn, like G-l-e-n-n, hyphen,
21 L-e-i-s-t-i-k-o-w. I'm here on behalf of Center For
22 Employment Opportunities. They're nonprofit. That
23 helps people coming home from jail and prisons to get
24 jobs, to reduce recidivism, increase public safety and
25 improve our community.

Page 33

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1 Thank you so much for your time and the
2 ability to present oral comments on the proposed
3 regulations.
4 We are submitting written comments in
5 conjunction as well as a number of other folks who were
6 part of the coalition that worked to get AB 1008 passed.
7 And I'm here today to actually respond to a few of the
8 comments already raised.
9 As you give a summary of the comments, we'll
10 be giving in written statement later today.
11 I'm actually very glad I was able to hear
12 those concerns that were just presented by the two
13 previous speakers, because they're important and very
14 relevant and I want to just offer a couple areas for
15 further consideration on those issues.
16 No. 1, I want to highlight what you so
17 astutely noticed, that it's very dangerous to allow
18 employers to go around these by allowing staffing
19 agencies or contracting agencies like this to do
20 background checks at impermissible times and then relay
21 that information to the employer such that the employer
22 never did the background check, but somehow they are now
23 benefitting from somebody having done the background
24 check impermissibly.
25 So I just want to urge you to be careful in

Page 34

1 your considerations on -- when the background check can
2 be done and by who.
3 Ms. Schur, I appreciate your creative
4 understanding that one way that this could be done to
5 better follow the law would be to have the contracting
6 agency do it as a conditional -- at -- you know, in
7 reference to their conditional offer. The concern I
8 have there is be careful not to frame somebody like this
9 contracting agency as having made a conditional offer
10 when there isn't actually employment on the line because
11 of the potential implications that could have for
12 staffing agencies and unions.
13 So the majority of folks, one in three
14 Americans, have no convictions or arrest records that
15 could potentially show up on employment background
16 checks. So this affects a vast number of people.
17 And many of these people may be coming in to
18 jobs through staffing agencies, through unions, through
19 construction agencies that create these lists, these
20 availability lists. And if we start construing beyond
21 an availability list as a conditional offer, it will
22 allow far more people to potentially conduct background
23 checks in disagreement with the intent of this law.
24 So if you apply to a staffing agency and
25 you're required to undergo a background check to even be

Page 35

1 put on the list, the difference between the example they
2 gave where everybody on that list is going into a very
3 particular field right where it is a vulnerable
4 population and they would be allowed to do background
5 checks and to screen out people very clearly as they --
6 based on business necessity and nexus of the conviction
7 to the job.
8 If you apply to a staffing agency, they
9 might have 10 different places they can send you. One
10 of them could be residential construction where a
11 particular conviction would be impermissible in that
12 location. Another one could be street cleaning at night
13 where your criminal conviction has nothing to do with
14 that potential job, there's no nexus, there's nothing
15 related.
16 A staffing agency can and does -- we work
17 with thousands of people a year and many staffing
18 agencies they can use background checks as these
19 preliminary screening tools to then blanket, not hire
20 people, put them on their list or their rosters because
21 they say, well, we have one of 10 clients who you might
22 not be able to be placed. That would be a perversion of
23 the intent of this law and it would create some concern
24 for us considering very high number of our folks are
25 hired through background -- I'm sorry, through staffing

Page 36

1 agencies.
2 So I don't have exactly the answers. I know
3 this is a consideration that will be ongoing. I just
4 want to urge you to keep thinking of the potential
5 consequences of considering the points that they made.
6 And I do understand, those are valid points.
7 I also want to commend you on pointing out
8 that we don't want to overlay more barriers when they
9 are already covered by existing laws.
10 So because the teaching credential is
11 already heavily regulated and the information from the
12 DOJ is immediately reported, there is an existing way in
13 which you can make sure that you're not allowing people
14 to maintain a credential when they shouldn't be because
15 they worked with vulnerable populations.
16 So I believe there are some narrow ways in
17 which the issues that were important, that were already
18 raised, are already addressed. And I want to urge you
19 to be careful about allowing exemptions and writing in
20 more exemptions into the clause because that can affect
21 all sorts of people that are not in this very particular
22 situation.
23 So I wanted to make sure I was able to state
24 that. And then I just want to give a brief summary of
25 the comments that were provided in case you have

Page 37

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1 questions on those.
2 So we're very thankful for the regulations
3 and we're very appreciative of the way in which they
4 further promote the ideals of AB 1008.
5 And I just have a few points of requests for
6 consideration and/or clarification of the regulations.
7 No. 1, we would like to ask that the Council
8 establish a rebuttable presumption, that the employer
9 failed to adequately conduct an individualized
10 assessment, unless the employer recorded that assessment
11 in writing.
12 So if it's just a clarification of what it
13 means to conduct an individualized assessment and how
14 you show that.
15 So if the individual was in litigation over
16 the decision, either with DFEH or in the court after
17 getting a Right to Sue Letter, it would be very hard for
18 them to prove a negative. It would be very hard for
19 them to prove that no individual assessment existed when
20 the employer just said I did one.
21 We ask that a rebuttable presumption be
22 created that unless you can provide in writing that you
23 did an assessment, that it be presumed that you did not
24 do one. It would then be very easy to rebut by showing
25 yes, I did do an individualized assessment because I

Page 38

1 considered this, this, this and this.
2 So the idea is to make it much more
3 logically clear for the potential defendant to redress
4 the situation that they feel they were not subject to
5 individualized assessment, which is one of the most
6 important provisions of the law. Employers are actually
7 doing individualized assessments.
8 No. 2, we would like to ask that you clarify
9 that an employer is required to identify the source of
10 conviction history information on which it bases its
11 decision through both a conditional offer, even if the
12 employer did not obtain the information from a
13 conviction history report.
14 The way the law and the regulations are
15 currently written, it provides a little bit of ambiguity
16 over if you have to provide the written document if it
17 wasn't a formal criminal history conviction report.
18 For example, you could ask the candidate
19 themselves if you're doing so at the permissible time.
20 That can be the basis of your information. And nothing
21 in the regulations or law currently specify that you
22 would then write that down as the reason because the
23 language just says Criminal Conviction History Report.
24 We're just asking that you clarify whatever
25 the source of the information is, you need to identify

Page 39

1 that. It would be challenging for somebody to address
2 an issue where they felt the law wasn't followed
3 properly if they didn't know the source of the
4 information. And the way it's written, it could
5 potentially be confusing to employers and they think,
6 oh, well, I didn't use a -- a Criminal Conviction
7 History Report and therefore I don't have to indicate
8 the source of the information.
9 We'd also ask that you clarify the bar
10 against inquiring into job applicants' conviction
11 history before a conditional offer to include Internet
12 searches performed to uncover online evidence of
13 conviction or history.
14 So similar to the point I just made is
15 currently not clear in those regulations or in the law
16 that these more informal methods of acquiring
17 information are also impermissible before the
18 conditional offer.
19 So simply adding clarifying language, and
20 details of this proposed language are in the comments.
21 So the idea that an employer may not be in
22 fear right now that though I cannot conduct a background
23 check through an agency, which is what most people do,
24 they hire commercial agencies to do the background
25 check, they may think it's okay for me to go Google

Page 40

1 something real quick. And that's what I do all day
2 long, I Google complaints. You know, that's pretty
3 informal.
4 We just want to clarify that that action
5 would also be impermissible under these regulations.
6 No. 4, we would suggest providing additional
7 examples of evidence of mitigating circumstances or
8 rehabilitation efforts to assist both the job applicants
9 and the employers in understanding what mitigating
10 circumstances may look like.
11 This again, under the written comments, but
12 examples of this would be just listing some of the
13 information that the EEOC put out in their guidelines to
14 Title 7. So including some of the character
15 information, some of the other very specifically
16 enumerated ways in which you can do individualized
17 consideration and show evidence of rehabilitation under
18 the EEOC guidelines.
19 No. 5, and I'm almost done here, just a few
20 more. We would ask that the regulations provide clearer
21 and more detailed guidance with regard to the local Fair
22 Chance hiring laws. There is already mentioned in
23 there -- and this is a little bit technical, so I'll
24 defer to the -- to the written comments -- about a
25 proposal as to how to clarify, again, just the principle

Page 41

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<p>1 of law that people are required to follow any local 2 ordinances or guidelines that relate to the same issue 3 and that people aren't confused which to follow or what 4 to follow. 5 They need to follow the stricter guidelines 6 that may exist in Los Angeles or San Francisco. And 7 just a little bit of clarity in the wording so that's 8 clear to employers. 9 We request that the -- that you reinsert the 10 deleted language that describes the requirements of an 11 individualized assessment for adverse employment actions 12 other than hiring decisions, such as "promotion" and 13 "termination." We're worried that as it exists by 14 deleting that, it becomes unclear to people that -- that 15 the existing DFEH regulations outside of the Fair Chance 16 Act applies to those other points within an employee's 17 cycle, such as promotion and termination. 18 I understand that this act in particular 19 applies to hiring, but we know that the 2017 guidelines 20 that -- included in FEHA specifically discussed the 21 other points of the -- of the employee's life cycle, 22 such as promotion and termination and we just wanted 23 that to be clarified. 24 Again, a bit specific and technical and 25 those are in the written comments.</p> <p style="text-align: right;">Page 42</p>	<p>1 CHAIRMAN MANDELBAUM: Any other public 2 comments for this morning's hearing? 3 COUNCIL MEMBER BRODSKY: I have a question. 4 There's no further public comment. Should we wait until 5 after the court reporter concludes? 6 CHAIRMAN MANDELBAUM: Sorry. Is this -- 7 COUNCIL MEMBER BRODSKY: I have a question 8 for the subcommittee, but I don't know that it needs --- 9 CHAIRMAN MANDELBAUM: Okay. So why don't we 10 do that after. 11 Any e-mailed comments? 12 Okay. Well, thank you. 13 That concludes the public hearing for the 14 proposed new Employment Regulations Regarding Criminal 15 History, the California Family Rights Act and the 16 New Parent Leave Act. I feel like those two latter 17 statutes -- we look forward to written comments on them. 18 Written comments need to be submitted by 5 p.m. today. 19 So if you haven't already done so, please do so. 20 And that concludes our second portion of the 21 hearing and we can go off the record. 22 (Off record at 12:36 p.m.) 23 24 25</p> <p style="text-align: right;">Page 44</p>
<p>1 Too fast. So sorry. Bad habit. And I 2 think we're wrapping up. One more. 3 We'd like to clarify that the job applicant 4 shall be permitted five additional business days. This 5 is just very specifically inserting the word "business" 6 into that Section 2-C at the very end throughout that -- 7 that proposed languages, that insertion, "business days" 8 was written except for in the very last sentence. 9 Now it just says five days. 10 So we're just asking that it's clear that 11 not only the initial five days are business days but 12 that the additional five days are business days. Just a 13 very small insertion of the word "business." 14 And one more and then we're done. 15 We also request that you delete the word 16 "permitting" from the subheading of Section G because it 17 incorrectly summarizes the law on this point. And the 18 details of that are in the written comments as to why we 19 believe the word "permitting" actually changes these -- 20 the meeting here and it's involved elimination of that 21 word, so that's the integrity of the sentence has not 22 changed the legal meaning. 23 That is all I have. 24 CHAIRMAN MANDELBAUM: Thank you. 25 MS. GLENN-LEISTOKOW: Thank you.</p> <p style="text-align: right;">Page 43</p>	<p>1 REPORTER'S CERTIFICATION 2 3 I, Marceline F. Noble, a Certified Shorthand 4 Reporter in and for the State of California, do hereby 5 certify: 6 7 That the foregoing meeting was then taken before me 8 at the time and place herein set forth; that the meeting 9 was reported stenographically by me and later 10 transcribed into typewriting under my direction; that 11 the foregoing is a true record of the meeting taken at 12 that time. 13 14 IN WITNESS WHEREOF, I have subscribed my name this 15 12th day of April, 2018. 16 17 18 19 _____ 20 Marceline F. Noble, CSR No. 3024 21 22 23 24 25</p> <p style="text-align: right;">Page 45</p>

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<p>31:10 competing 20:16 complaints 41:2 complete 32:21 complies 31:3 complying 22:9,15 concern 24:5 35:7 36:23 concerned 15:21 concerns 7:16 34:12 concludes 44:5,13,20 condition 3:25 27:25 conditional 32:4 35:6,7 35:9,21 39:11 40:11 40:18 conduct 9:10,23 10:13 11:3,22 13:3,7 14:5 21:3 35:22 38:9,13 40:22 conducted 14:13 15:16 20:19 conducting 29:16 conducts 12:5,8 confidence 9:17 confronted 18:24 confused 42:3 confusing 40:5 conjunction 7:2 34:5 consequences 37:5 consider 5:18 consideration 11:11 17:14 34:15 37:3 38:6 41:17 considerations 35:1 considered 17:6 39:1 considering 36:24 37:5 construction 35:19 36:10 construing 35:20 contained 18:5 content 6:25 contest 20:25 context 15:3 18:17 contract 9:2,3 11:21 13:3 14:12 15:16 22:8 22:20 23:4 25:23 27:24 28:11,24 30:16 31:12,22 contracting 12:8 22:12 32:15 34:19 35:5,9 contractor 16:18 contractors 32:17 contracts 28:25 29:2,4 Contractural 20:22 contrary 11:22 convenience 9:4 conversation 6:3 convicted 19:19 33:5 conviction 10:14 30:10 33:9 36:6,11,13 39:10 39:13,17,23 40:6,10 40:13 convictions 33:11 35:14 coordinators 25:2 Copies 4:6 copy 5:7,13 18:8 correct 16:3 22:17 28:19 28:21 30:7,8,12,13,15 30:19</p>	<p>CORRECTED 1:7 Council 1:1 2:2,3,3,4,4 3:12,14 5:4,14,17 6:17 10:1 11:11,24 12:2,7 12:12 13:15,24 14:16 14:24 15:13,19 16:7 16:12 17:16,18 18:6,7 22:4 23:9 25:9,12 26:3 27:5,12 28:15,20 29:5 29:13,18 31:1,17 32:8 32:24 33:4 38:7 44:3,7 Council's 4:15,23 5:20 couple 28:5 34:14 course 6:3 court 1:20 5:23 6:10 38:16 44:5 covered 23:20 28:8,17 29:3 37:9 covers 23:14 crafted 20:25 Crafts 17:23 create 6:11 35:19 36:23 created 38:22 creative 6:25 35:3 credential 7:23 10:16 11:8 12:14 14:23 23:21 30:5,10 33:8,13 37:10,14 credentialed 30:23 credentiaing 10:17 11:9 16:5 33:5,7 credentials 7:20,21 10:7 12:4 19:18 23:23,23 25:7,19 creed 3:23 Crew 27:10 criminal 1:5,11 3:8,18 7:13 9:13 11:3,5 18:12 22:13 29:11 30:10 36:13 39:17,23 40:6 44:14 criminal-free 14:15 critical 6:2 CSR 1:23 45:19 current 9:21 currently 11:13 39:15,21 40:15 cycle 42:17,21</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>d 4:8 10:23 19:10,10 Dale 2:4 3:14 danger 21:9 dangerous 34:17 Dara 2:2 3:14 date 13:20 day 13:23 20:13 25:5 31:10 41:1 45:15 days 43:4,7,9,11,11,12 43:12 deal 14:19 decades 13:14,14 decertify 30:11 decision 24:10 38:16 39:11 decisions 24:6 42:12 defeats 18:21 defendant 39:3</p>	<p>defended 33:8 defer 41:24 delete 43:15 deleted 42:10 deleting 42:14 delineated 17:7 department 3:16 8:1 10:21 12:13,17 30:11 department's 4:22 departments 16:10 deprive 18:25 21:7 described 10:2 19:7 describes 42:10 designer 26:20 detailed 41:21 details 40:20 43:18 developed 8:24,24 DFEH 38:16 42:15 DFEH's 5:5 DFEHCouncil@DFEH.... 5:3 difference 36:1 different 8:21 25:2 31:7 31:9 36:9 DIR 16:20 direction 45:10 directly 26:17 director 2:5 3:16 26:19 29:24 30:9,14 directors 25:3 disability 3:24,24 disadvantaging 18:19 disagreement 35:23 discrimination 3:22 discussed 42:20 Disney 7:8 dispatch 26:10,14,24 dispatched 16:17 disqualifying 19:19 30:10 distributors 6:24 7:6 district 30:21 districts 20:6 30:24 DLSE 19:22 23:24 document 39:16 doing 28:23 29:21 39:7 39:19 DOJ 33:7 37:12 Doug 2:10 8:19 17:18 dozens 21:15 draft 3:20 11:15 draw 15:25 Dual 23:21</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>E 1:8 e-mail 4:21,22 5:2 17:12 e-mailed 18:6 44:11 easy 38:24 educate 7:17 education 7:24 8:1 12:13,16 13:9,10 14:19 21:10 30:7,11 educational 11:1 27:1 EEOC 41:13,18 efforts 41:8 either 11:12 32:6 38:16 eligible 15:11 25:17</p>	<p>eliminates 18:11 elimination 43:20 employ 24:20 employed 7:22 19:15 20:5 employee 18:20 employee's 42:16,21 employees 8:17 17:22 25:22 32:16 employer 9:3,23 10:4,24 15:17 21:2,5,13 22:8 27:8,10 28:16,25 29:1 29:17,21 34:21,21 38:8,10,20 39:9,12 40:21 employer's 10:24 32:13 employer/producer 8:13 employers 10:6 20:23 21:15 29:7,10 31:18 34:18 39:6 40:5 41:9 42:8 employing 28:21,22 employment 1:1,4,10 3:6,7,8,18,21 9:23 10:3,21 11:4,4 18:11 18:17,19 19:1 20:8 21:2 33:22 35:10,15 42:11 44:14 enacted 18:22 encourage 30:2 ends 18:19 enforcement 29:25 engage 17:9 engaged 19:15 enjoyed 19:1 ensure 9:11 13:4,11 entertainment 7:1 19:3 19:16 20:23 25:22 27:8,9 entire 29:2 entities 15:20 entitled 20:22 enumerated 41:16 equivalent 10:2 erroneous 21:16 especially 21:4 establish 38:8 evaluated 24:14,15 everybody 36:2 evidence 40:12 41:7,17 ex-officio 3:15 exactly 15:6 17:8 37:2 example 15:23 36:1 39:18 examples 41:7,12 exception 10:11,23 11:13 17:6 exceptions 10:10 exempt 22:21 23:4,5 28:9 31:16 exempted 32:12 exemption 16:2,22 exemptions 19:8 20:4 22:10 37:19,20 exempts 22:7 exist 42:6 existed 38:19 existing 37:9,12 42:15</p>	<p>exists 42:13 expertise 16:14 exploring 32:25 expression 4:1 expressly 17:5 extend 20:11 extra 10:15 13:13</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>F 1:9,23 45:3,19 fact 20:7 21:2 factor 8:3 failed 38:9 Fair 1:1 3:6 10:21 41:21 42:15 fall 16:23 22:10 23:2 32:22 falls 10:10 16:13 Family 1:5,11 3:8,19 44:15 far 35:22 fast 43:1 fear 40:22 February 4:20 federal 10:25 11:3 feel 12:18,19 23:1 28:10 31:11 39:4 44:16 FEHA 3:20,21 30:1 42:20 felt 40:2 field 36:3 figure 16:20 31:18 FILE 1:24 film 6:24 Final 5:20 find 21:21 firm 15:10 first 1:15 24:9,11,21 26:15 30:5 fit 15:6 19:8 five 12:23 31:8 43:4,9,11 43:12 Floor 1:15,21 5:6 folks 31:23 32:9 34:5 35:13 36:24 follow 31:23 32:17 35:5 42:1,3,4,5 followed 40:2 foregoing 45:7,11 formal 4:18 39:17 forth 19:9 45:8 forward 33:16 44:17 found 4:14 Fox 7:8 frame 35:8 framework 13:6 14:18 framing 7:11 Francisco 42:6 freelance 23:15 24:17 26:19 32:2 front 6:6 function 23:12 functions 9:4 fund 9:2,3 28:24 fundamental 18:22 funded 28:25 further 5:17 6:15 21:12 34:15 38:4 44:4 future 23:8</p>
--	---	---	---	--

Atkinson-Baker Court Reporters
www.depo.com

<p style="text-align: center;">G</p> <p>G 1:10 4:12 43:16 G-l-e-n-n 33:20 gainful 19:1 gap 15:17 gender 4:1,1,1 general 29:7 generally 20:9 29:6 genetic 3:25 getting 38:17 give 5:9 6:10 11:11 34:9 37:24 given 6:4 20:16 31:18 gives 14:14 33:15 giving 34:10 glad 34:11 Glendale 1:21 Glenn 33:20 GLENN-LEISTIKOW 2:11 GLENN-LEISTOKOW 33:19 43:25 go 13:24 25:20 30:2,6 34:18 40:25 44:21 goes 14:17 24:9 going 6:18 15:18 16:1 24:10 25:7 29:6,14,22 36:2 good 9:4 33:15,19 Google 40:25 41:2 Government 19:9 20:4 22:1 great 18:25 19:23 guess 16:25 28:20 29:9 29:22 32:1,4 guidance 41:21 guidelines 41:13,18 42:2 42:5,19</p> <p style="text-align: center;">H</p> <p>habit 43:1 hand 19:23 20:2 harassment 3:22 hard 38:17,18 harder 19:2 health 7:18 12:23 19:13 hear 6:13 8:18 34:11 hearing 1:4 3:6,11 4:17 4:18 5:22,24 6:1 44:2 44:13,21 heavily 37:11 help 6:11 11:17 helping 18:20 helps 33:23 high 36:24 highlight 34:16 hire 24:21 36:19 40:24 hired 18:15 21:6 24:23 36:25 hiring 20:22 24:25 41:22 42:12,19 history 1:5,11 3:8,18 7:13 9:13 10:14 11:5 29:11 39:10,13,17,23 40:7,11,13 44:15 hold 7:20,24 19:21 holding 4:17</p>	<p>HOLLY 2:6 home 7:1 33:23 hope 21:21 hopefully 6:8 18:1 hours 8:7 Housing 1:1 3:6 10:21 hyphen 33:20</p> <p style="text-align: center;">I</p> <p>I.e 31:23 IATSE 8:16 18:4,6 29:3 idea 39:2 40:21 ideals 38:4 identify 39:9,25 identity 4:1 Iglesias 2:4 3:14 ignores 18:24 immediate 33:12 immediately 33:6 37:12 impermissible 34:20 36:11 40:17 41:5 impermissibly 34:24 implication 23:10 implications 35:11 implied 16:22 implies 31:2 importance 18:23 important 12:20 34:13 37:17 39:6 impossible 18:17 impractical 20:15 improve 33:25 include 16:1 21:22 40:11 included 42:20 including 10:15 11:7 41:14 incorrectly 43:17 increase 33:24 indicate 40:7 indicates 10:20 individual 14:4 18:14 25:1 26:17 27:18 38:15,19 individualized 18:14 38:9,13,25 39:5,7 41:16 42:11 individually 12:21 individuals 4:22 16:16 28:12,13,21,23 29:15 industry 7:16 8:2 9:5 19:3,16 20:23 25:22 informal 40:16 41:3 information 3:25 21:16 28:14 34:21 37:11 39:10,12,20,25 40:4,8 40:17 41:13,15 initial 1:9 4:9 27:16 28:18 29:9 43:11 input 16:19 inquiring 40:10 inquiry 16:23 28:20 inserting 43:5 insertion 43:7,13 integrity 43:21 intent 35:23 36:23 interfering 33:2 intermittent 18:18 21:1 internal 28:7</p>	<p>international 8:16 17:21 18:4 Internet 40:11 interpreted 16:21 interview 26:6,7 27:1,2 introducing 6:9 involved 43:20 irregular 8:7 issue 8:21 9:20 17:2,17 40:2 42:2 issued 10:16 11:8 19:22 issues 7:11 18:24 34:15 37:17</p> <p style="text-align: center;">J</p> <p>jail 33:23 job 14:8,20 23:7,15 24:1 24:2 26:19,21,24 27:4 31:21,22 36:7,14 40:10 41:8 43:3 jobs 7:25 23:8,11 26:8 31:12 33:24 35:18 joining 3:13 Joseph 2:3 3:14 Junipero 1:14</p> <p style="text-align: center;">K</p> <p>keep 9:7 37:4 kept 32:7 Kevin 2:5 3:16 kids 13:8 kind 24:5 29:6,22 30:9 30:17 Kish 2:5 3:16 29:24 30:9 30:14 know 10:6,19 12:16 13:8 13:23 14:14,25 15:24 16:1,9,11,13,14,18 17:1 24:8 25:3 26:12 26:23 29:7 31:4,6 32:22 35:6 37:2 40:3 41:2 42:19 44:8 knowing 14:12</p> <p style="text-align: center;">L</p> <p>L-e-i-s-t-i-k-o-w 33:21 label 16:14 laborer 16:14 language 16:4 18:3 32:21 39:23 40:19,20 42:10 languages 43:7 large 20:4 last-minute 26:8,21 27:4 law 9:21 10:13,22,25 11:3,15,19 22:9,14 26:22 29:12 30:20,24 31:3 35:5,23 36:23 39:6,14,21 40:2,15 42:1 43:17 laws 37:9 41:22 layer 33:10 leading 6:24 Leave 1:6,12 3:9,19 44:16 leaving 24:7 legal 19:12 43:22</p>	<p>legislative 17:9 legislature 17:2 letter 17:11 18:5,9 19:7 38:17 licensed 15:21 licensing 15:24 16:8,10 life 42:21 limitations 32:11 limited 21:8 line 16:1 35:10 lines 32:9 Lisa 2:3 3:15 list 4:23 8:25 9:1,7,12 10:2 11:21 12:10,11 13:16 14:1,17 15:11 16:17,24 20:20 21:20 22:14,15 23:10,18,20 23:21,21,22,22 24:7,9 24:10,15,16,18,22 25:4,4,10,14 26:2,9,10 26:12,14,15 27:18,20 28:1,1 29:20 30:17 31:24 32:3,5,7,9,11 33:11 35:21 36:1,2,20 listing 41:12 lists 16:15 29:8 35:19,20 litigation 38:15 little 10:11 12:25 14:3 39:15 41:23 42:7 live 12:15 15:1 local 8:17,17,20 10:12 10:25 11:3,18 17:21 18:1,3 20:2 29:2 32:18 41:21 42:1 located 5:5 location 36:12 logically 39:3 long 41:2 long-term 26:25 look 33:16 41:10 44:17 Los 1:17 3:1 5:5,6 11:16 11:17,18,23 42:6 lot 14:19 15:19 16:9 24:4</p> <p style="text-align: center;">M</p> <p>mail 5:4 maintain 29:8,20 37:14 maintained 9:1 major 8:3 majority 35:13 Mandelbaum 2:2 3:4,13 17:1,5,15 22:3 24:3 33:14 43:24 44:1,6,9 Marceline 1:23 45:3,19 marital 3:25 materials 4:8,12 mean 13:20 14:20 15:23 30:19 31:9 32:24 meaning 43:22 means 13:21 20:8 38:13 mechanism 14:7 medical 3:24 15:23 meeting 1:2 3:11 43:20 45:7,8,11 Melissa 2:10 6:18,21 31:7 member 2:2,3,3,4,4 3:16 7:7,10 11:24 12:2,7,12</p>	<p>13:15,24 14:16,24 15:13,19 16:7,12 17:16 22:4 23:9 25:9 25:12 26:3 27:5,12 28:15,20 29:5,13,18 31:1,17 32:8,24 33:4 44:3,7 members 6:17 17:18 24:20 29:16 mental 3:24 mentioned 41:22 merely 24:13 merit 24:5 messing 32:13 methods 40:16 microphone 6:7 military 4:2 minors 8:8 mitigating 41:7,9 model 15:6 Monday 26:13 months 20:12 morning 8:6,11 9:16 26:5 32:14 morning's 44:2 motion 6:21 7:4 8:2 9:5 13:7 17:20 movie 6:25 Moving 17:22 MPAA 6:23 7:10 multi-employer 7:5 multiple 20:10</p> <p style="text-align: center;">N</p> <p>name 6:9,17 17:18 26:1 33:20 45:14 narrow 7:15 37:16 national 3:23 nature 18:18 21:1 31:5 NBC 7:8 necessarily 15:12 necessity 36:6 need 16:25 19:4 21:10 26:4 27:20 32:19 39:25 42:5 44:18 needed 21:6 needs 44:8 negative 9:12 18:13 31:15,15 38:18 negotiating 29:15 never 23:11 34:22 new 1:6,12 3:7,9,19 18:4 44:14,16 nexus 36:6,14 nice 6:11 night 8:6 36:12 Noble 1:23 45:3,19 nonprofit 33:22 nonunion 23:15,16,19 23:22 28:13 noon 9:16 North 1:21 notice 1:2,8 4:9,12,19,24 noticed 4:18,21 34:17 number 21:8 34:5 35:16 36:24</p> <p style="text-align: center;">O</p>
---	--	---	---	---

Atkinson-Baker Court Reporters
www.depo.com

<p>o'clock 8:5,6,9 9:15,15 9:16 15:7 obligation 12:17 obtain 39:12 obviously 33:2 offense 33:6 offenses 19:20 offer 8:14 9:22 10:3,4 14:18,25 15:4,9,10 20:19 27:16 28:18 31:2 34:14 35:7,9,21 39:11 40:11,18 offered 13:17 15:2 23:7 office 5:5 26:11,14,24 official 5:25 oh 40:6 okay 12:12 17:11 31:4 40:25 44:9,12 once 8:13 13:16 15:10 ongoing 12:17 37:3 online 40:12 onset 7:17 opening 15:23 Opportunities 33:22 opportunity 5:15 6:14 8:12 18:13 19:1 22:23 28:13 opposed 32:12,19 oral 34:2 order 7:24 12:4 16:16 27:17,20 30:5 32:21 ordinance 11:23 ordinances 42:2 ordinary 6:3 organization 9:1 orientation 4:2 origin 3:23 Ortiz 2:3 3:15 16:12 17:16 27:12 28:15,20 29:5,18 outside 42:15 overlay 9:21 37:8</p> <hr/> <p style="text-align: center;">P</p> <p>P-a-t 6:18 p.m 3:2 5:1,11 44:18,22 page 4:15,23 PAGES 1:25 Paramount 7:9 14:7,9 parent 1:6,12 3:9,19 28:3 44:16 part 4:17 5:21,24 7:15 20:5 34:6 particular 8:14 10:3 15:22 30:2 36:3,11 37:21 42:18 particularly 6:4 parties 9:9 Partners 27:10 partnership 11:18 passed 19:2 34:6 passing 24:8 Patack 2:10 6:17,18,21 6:21 12:1,6,11,13 13:18 14:2,22 15:5,15 16:3 17:4,8 payroll 27:9,14 pays 9:3 27:5</p>	<p>people 7:16 15:20 22:14 22:15 25:25 30:2,17 31:21,24 32:15 33:23 35:16,17,22 36:5,17 36:20 37:13,21 40:23 42:1,3,14 perform 27:15 performed 14:13 27:19 30:16 32:6 40:12 performers 7:18 19:14 21:10 performs 9:4 period 5:16 periodically 9:11 permissible 39:19 permitted 43:4 permitting 43:16,19 person 6:5,5 26:15 27:15 person's 33:8 personnel 15:24 perspective 29:25 pertaining 19:16 perversion 36:22 photographer 26:20 physical 3:24 picture 6:22 7:4 8:2 9:5 13:7 17:22 Pictures 7:9,9 17:20 place 30:6,16 45:8 placed 14:1 27:25 36:22 placement 20:20 32:5 places 36:9 platforms 6:25 please 5:10 6:8 44:19 Pleased 17:25 point 11:14 13:15 15:9 16:7 40:14 43:17 pointing 37:7 points 37:5,6 38:5 42:16 42:21 policies 22:25 population 36:4 populations 37:15 portion 44:20 position 10:12,15,24 11:8 13:17,19 15:2 16:20 22:19 24:18 positions 24:23 possess 19:17 possibility 32:1 post 14:18,25 15:4 posting 4:23 potential 35:11 36:14 37:4 39:3 potentially 10:10 21:14 35:15,22 40:5 pre 15:3 precautionary 13:13 preemployment 16:23 20:14 23:3 preliminary 36:19 premature 10:19 preoffer 14:18 18:11 present 17:25 34:2 presentation 10:5 presented 34:12 presents 16:9</p>	<p>presumed 38:23 presumption 38:8,21 pretty 20:21 41:2 previous 24:24 34:13 principle 41:25 principles 8:21,22 prior 20:20 Priority 20:22 prisons 33:23 private 20:6 30:21,25 probably 14:4 problem 30:23 32:2 problems 18:22 19:6 procedure 21:17,23,25 31:2,14,23 process 4:18 8:15,24 9:9 10:18,22 11:20,20 12:3 13:2,25 16:13 17:9 25:6 33:5 producer 9:14,17 13:21 producers 6:24 7:4,6 9:9 13:10 25:2 production 8:3,3,7,8 13:7,19 20:5,8,10,19 25:2 26:18,20 27:7,11 27:14 29:17 31:7,9,10 productions 23:16 25:1 26:14,16 prohibits 3:22 projects 26:25 promote 38:4 promotion 42:12,17,22 proof 25:18,19 properly 40:3 proposal 18:11 22:7 41:25 proposed 1:4,8,10 3:20 4:3,6,11,14 18:1,3 34:2 40:20 43:7 44:14 protection 21:18,24 33:1 protections 19:4 32:10 protocol 18:16 21:19 prove 38:18,19 provide 5:16 7:18 11:13 11:21 18:8 19:3,5 21:14 25:18,19 38:22 39:16 41:20 provided 21:11 37:25 provides 18:12 21:23 39:15 providing 13:9,10 41:6 provision 7:13 provisions 3:7 39:6 public 1:4 3:5,17 5:15 6:16 14:18 33:24 44:1 44:4,13 published 4:20 purpose 18:10,21 purposes 11:4 28:7 Pursuant 4:24 put 10:19 12:9 26:2 36:1 36:20 41:13 putting 15:21 22:14</p> <hr/> <p style="text-align: center;">Q</p> <p>quagmire 33:16 qualifications 24:13 25:13,14</p>	<p>qualified 19:25 21:9 question 11:25 22:5 24:4 30:4 44:3,7 questions 16:9,12 17:10 18:2 24:5 38:1 quick 41:1 quite 16:15</p> <hr/> <p style="text-align: center;">R</p> <p>race 3:22 raised 17:2 34:8 37:18 raising 17:16 reached 12:18 read 22:9 ready 3:5 real 41:1 really 7:12,15 8:12 15:15 29:21 31:19 reason 15:15 30:20 31:22 39:22 reasons 1:9 4:10,13 5:21 21:21 reassurance 30:18 rebut 38:24 rebuttable 38:8,21 receive 5:13 received 5:19 recidivism 33:24 recognition 15:17 recognize 10:18 12:16 recommend 11:6 recommending 11:10 record 3:5 5:21,25 27:8 44:21,22 45:11 recorded 38:10 records 35:14 redress 39:3 reduce 33:24 reference 11:15 35:7 references 16:4 referring 28:17 reflected 4:7,10 regard 10:21 41:21 regarding 1:5,11 3:6,18 44:14 Register 4:20 regular 19:25 regulated 37:11 regulation 7:14 15:22 19:7 23:2 regulations 1:4,10 3:7 3:20 4:3,4,11,14 9:22 11:15 18:5 19:11 21:22 34:3 38:2,6 39:14,21 40:15 41:5 41:20 42:15 44:14 Regulatory 4:19 rehabilitation 41:8,17 reinsert 42:9 rejected 17:6 relate 42:2 related 36:15 relates 3:21 relay 34:20 relevant 34:14 religious 3:23 rely 14:22 remember 5:10 13:19</p>	<p>removal 21:19 removed 32:6 renewal 12:15 report 8:10 9:15,17 13:20,23 15:12 39:13 39:17,23 40:7 reported 1:23 37:12 45:9 reporter 5:23 6:10,20 44:5 45:4 REPORTER'S 45:1 REPORTERS 1:20 representation 7:3 representative 17:19 represented 20:17 represents 8:18 12:19 request 42:9 43:15 requesting 11:10 requests 38:5 require 11:1 19:18 28:6 30:20 32:15 33:12 required 10:13,25 21:3 22:13 24:21 25:22 26:22 30:6,11 35:25 39:9 42:1 requirements 19:9 20:16 21:25 27:1 42:10 requiring 10:16 11:8 residential 36:10 respond 18:13 28:14 31:14 34:7 responded 5:20 response 5:14 responses 21:15 responsibilities 19:24 responsibility 19:12 responsible 12:22,23 restrict 11:4 result 18:13 reviewing 33:16 rewriting 32:15 right 3:4 17:8 26:16 27:15,21 28:18 32:13 33:8,9 36:3 38:17 40:22 Rights 1:5,12 3:9,19 44:15 room 1:15 4:7 roster 20:21 23:6 24:19 25:5 30:17 rosters 36:20 round 5:14 rubric 16:23 29:11 rulemaking 1:8 4:18 5:21,25 18:1 run 8:4 15:18 29:1</p> <hr/> <p style="text-align: center;">S</p> <p>S-a-r-a-h 33:20 safety 7:18 12:23 13:11 19:13 25:21 33:24 San 42:6 Sarah 2:11 33:20 satisfies 21:25 saying 6:12 32:4,25 says 10:11,23 26:4 27:19 39:23 43:9 scheduling 8:3 scheme 22:6</p>
---	--	--	--	--

Atkinson-Baker Court Reporters
www.depo.com

<p>school 13:9 14:22 20:6 30:21,21,24 schools 20:6 30:20,25 Schur 2:2 3:14 11:24 12:2,7,12 22:4 23:9 27:5 31:17 32:8,24 35:3 screen 4:15 22:13 36:5 screening 13:25 20:14 22:16 23:12 36:19 searches 40:12 second 28:6 44:20 section 3:10 19:9 20:4 22:1 43:6,16 sections 4:4 11:12 see 10:4 selection 24:6,16 send 26:5 36:9 sense 14:17 15:3 33:15 sensitive 33:3 sent 4:21 26:24 sentence 43:8,21 separate 23:20,21 25:21 26:9,9 30:22 31:10 separately 5:8 Serra 1:14 serve 23:11 services 7:1 9:2,3 11:21 13:3 14:12 15:16 22:20 23:4 25:23 27:24 28:11,24 30:16 31:13 set 19:9 45:8 sets 8:4 setting 12:21 sex 3:25 sexual 4:1 shared 7:7 short 15:17 20:9,12 Shorthand 45:3 show 35:15 38:14 41:17 showing 38:24 shows 31:15 33:9 sic 20:25 32:12 Signatory 20:22 significant 23:12 similar 40:14 simply 40:19 single 20:10 singling 16:8 singular 18:24 sister 7:3 situation 37:22 39:4 slated 4:3 slightly 8:21 slower 6:2 slowly 6:2 small 43:13 solicited 16:19 somebody 14:7 26:4,5 32:14 34:23 35:8 40:1 Sony 7:9 sorry 4:11 36:25 43:1 44:6 sort 27:2 sorts 37:21 source 39:9,25 40:3,8 speak 6:2,7 14:3 29:12</p>	<p>speakers 2:9 34:13 speaks 6:5 specific 15:12 29:19 30:24 42:24 specifically 41:15 42:20 43:5 specify 39:21 spelled 32:23 spelling 6:9 Sperber 2:6 5:4,9 staffing 34:18 35:12,18 35:24 36:8,16,17,25 Stage 8:17 17:22 stakeholders 4:22 stamp 10:20 start 6:8,16 7:11 35:20 state 10:12,25 11:2 12:5 25:16 26:22 37:23 45:4 state's 16:20 statement 1:9 4:9,13 5:20 34:10 States 17:23 status 3:25 4:2 statute 17:7 18:22,24 19:2 29:25 32:10,17 33:1 statutes 44:17 statutory 20:3 21:19,25 stenographically 45:9 streaming 7:1 street 1:16 5:6 36:12 stricter 42:5 strongly 12:18 studio 7:19 8:18 13:10 17:20 18:18,23,25,25 19:4,7,12,17,18,21,23 20:3,7,9,11,17,21 21:1 21:3,7,9,11,14,18,24 23:6,14,16,18,19,22 24:24 25:3,16 26:1,3 26:21 27:3 28:16 studio's 24:10 studios 27:23 subcommittee 44:8 subheading 43:16 subject 20:3 21:13 23:17 31:24 39:4 subjected 15:1 submit 5:3,11 17:12 submits 5:12 submitted 5:8 17:11 44:18 submitting 34:4 subscribed 45:14 subsection 18:5 subsections 19:10 substitute 14:20 23:21 28:1 Sue 38:17 suggest 41:6 suggested 16:4 18:3 suggesting 32:7 summarizes 43:17 summary 34:9 37:24 supervision 21:10 sure 12:1,3 28:2 32:19 37:13,23</p>	<p>suspenders 13:1 suspension 33:12 sworn 6:8 system 21:12</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>tactical 31:22 take 3:17 20:25 24:2 taken 45:7,11 talk 7:12 tasks 9:6 teach 20:9 teacher 7:21,23 8:8,14 9:18 10:5,6,17 11:9 15:8 16:5 19:5,19 20:1 21:1,11,18 24:2 25:17 26:1,17,21 27:3 30:5 33:7 teacher's 8:10 20:11 teachers 7:19,20,24 8:18 8:25 9:11 11:2 12:9,19 12:20 13:4,11 14:20 18:18,23,25,25 19:8 19:12,17,21,23 20:3,7 20:9,17,21 21:4,8,9,14 21:24 23:6,14,16,17 23:18,19,22 24:24 25:3 26:10,15 30:24 Teaches 17:20 teaching 12:22 19:17 37:10 technical 6:4 41:23 42:24 Technicians 17:22 television 7:4 9:5 tentatively 22:14 31:24 term 20:9,12 25:5 termination 42:13,17,22 terms 6:4 17:6 22:9 territories 17:23 tested 16:16 testifies 5:12 testify 6:7,14 testimony 3:18 4:25 6:13 thank 6:20 17:13,15,16 22:2,3 33:18 34:1 43:24,25 44:12 thankful 38:2 theaters 7:1 Theatrical 8:16 17:21 thing 33:4 think 10:9,14 13:13 14:2 14:13 22:7,7 24:3 28:9 29:5,13 30:1 32:16,18 33:15 40:5,25 43:2 thinking 29:6 37:4 Third 1:21 THOMAS 2:6 thought 29:9 thousands 4:21 36:17 thread 24:4 three 35:13 Thursday 26:13 Tim 2:4 3:14 time 6:5 8:2 9:16,17 13:21,21 14:21 15:12 15:17,18 17:13 23:8 33:2 34:1 39:19 45:8</p>	<p>45:12 timely 33:11 times 34:20 Title 4:4 41:14 today 4:25 5:1,9,11,12 5:18 7:2 15:7 18:10 34:7,10 44:18 tomorrow 15:8 26:4,11 tools 36:19 top 30:22 totally 22:7 32:12 trade 6:23 7:3 transcribed 5:22 6:1 45:10 transcript 1:7 5:23 6:12 true 45:11 trust 9:2,3 28:24 trying 14:16 15:2 31:17 two 10:9,9 19:17 23:23 25:18 27:13 34:12 44:16 type 15:22 16:8 typewriting 45:10</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>ultimate 22:8 28:16 unclear 42:14 unconventional 13:8 uncover 40:12 undergo 7:25 11:2 35:25 undergone 14:9 understand 12:3,16 13:6 15:13 22:6 23:9 37:6 42:18 understanding 13:2 31:5 35:4 41:9 Unfortunately 18:16 union 8:17 9:10 12:19 18:4 20:17 23:13,14 24:1,2 27:19,19,25 28:12,21,22,23 29:14 29:19 31:21 unions 16:15 29:7 35:12 35:18 United 17:23 Universal 7:8 urge 34:25 37:4,18 use 23:16 28:4 36:18 40:6 usually 24:25 25:1 26:7 26:8 27:3,9</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>valid 37:6 value 30:15 vast 35:16 verified 23:24 25:7 veteran 4:2 view 20:2 views 17:25 VIII 1:4 vulnerable 36:3 37:15</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>W 1:16 wait 44:4 waiting 32:3</p>	<p>want 12:2 26:25 32:9 34:14,16,25 37:4,7,8 37:18,24 41:4 wanted 37:23 42:22 wants 14:10 Warner 7:9 14:8,10 warranted 13:14 wasn't 17:5 39:17 40:2 way 8:4 9:14 15:25 21:22 35:4 37:12 38:3 39:14 40:4 ways 37:16 41:16 we'll 4:25 5:18 6:13 33:16 34:9 we're 4:17 6:23 11:10,10 13:7,8,9 15:22 38:2,3 39:24 42:13 43:2,10 43:14 we've 16:19 web 4:15,23 Wednesday 1:18 3:1 26:13 week 14:8,8,11 26:13 31:8,9 weekly 26:12 weeks 20:12 welcome 3:10 welfare 7:19 12:24 17:20 West 5:5 WHEREOF 45:14 wishing 6:14 WITNESS 45:14 wonder 29:12 wondering 16:19 22:11 word 43:5,13,15,19,21 wording 42:7 words 10:15 work 8:6,10 14:7 15:8 20:7,10 21:8 24:1 25:16 27:15 31:6,7,8 31:10 36:16 worked 11:16 13:14 21:4 24:24 34:6 37:15 Workers 17:20 working 7:17 9:18 10:8 12:20,21 13:11 worlds 19:13 worried 42:13 wouldn't 29:10,10 wrapping 43:2 write 39:22 writing 37:19 38:11,22 written 4:25 5:2,7,13,19 5:24 33:16 34:4,10 39:15,16 40:4 41:11 41:24 42:25 43:8,18 44:17,18</p> <hr/> <p style="text-align: center;">X</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>year 17:9 20:10 21:15 36:17 years 19:14 yesterday 18:7</p> <hr/> <p style="text-align: center;">Z</p> <hr/>
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0				
1				
1 1:25 19:10 34:16 38:7 10 36:9,21 1008 18:11 34:6 38:4 10th 5:6 11:40 3:2 11017.1 4:5 11087 4:5 12:36 3:2 44:22 12952 19:9 20:4 22:1 12th 45:15 15-day 5:16 16 19:14 16th 4:20				
2				
2 4:4 39:8 2-C 43:6 2017 42:19 2018 1:18 3:1 4:20 5:1 45:15 288-3376 1:22				
3				
3024 1:23 45:19 320 5:5 328 1:16				
4				
4 1:18 3:1 19:10 41:6 45 1:25 45-days 4:19 4th 1:16 5:1,6				
5				
5 5:1,11 8:6,9 9:15 15:7 41:19 44:18 5:00 14:19 500 1:21				
6				
6-6-18 1:7				
7				
7 41:14				
8				
8 8:10 9:15,16 15:8 26:4 32:14 800 1:22 884 8:17 11:18 17:21 18:1,3 29:2 884's 20:2				
9				
9 8:5 9:00 14:19 90013 5:6 91203 1:21 97 4:5				