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UNITED STATES DISTRICT COURT

for the

Northern District of California

- - -

RICHARD PEREZ JR., et al.,

Plaintiffs,

vs. C15-00256 WHA

WALLACE JENSEN,

Defendant.

-----/

DEPOSITION OF

MOHAMED DALEK

RICHMOND, CALIFORNIA

TUESDAY, OCTOBER 13, 2015

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REPORTED BY: JOANNE BALBONI, CSR NO. 10206

FILE NO.: A90B181

<div> 1 UNITED STATES DISTRICT COURT 2 for the 3 Northern District of California 4 - - - 5 RICHARD PEREZ JR., et al., 6 Plaintiffs, 7 vs. C15-00256 WHA 8 WALLACE JENSEN, 9 Defendant. 10 _____/ 11 12 13 14 15 Deposition of MOHAMED DALEK, taken on behalf of 16 defendant, at 1160 Brickyard Cove Road, Suite 200, 17 Richmond, California, commencing at 9:19 a.m., Tuesday, 18 October 13, 2015, before Joanne Balboni, CSR No. 10206. 19 20 21 22 23 24 25 </div> <div>Page 2</div>	<div> 1 I N D E X 2 WITNESS: MOHAMED DALEK 3 Examination Page 4 By Mr. Blechman 5 5 6 EXHIBITS 7 8 DEFENDANT'S 9 NUMBER DESCRIPTION PAGE 10 2- Document entitled "Subpoena to Testify 11 at a Deposition in a Civil Action" 41 12 3- Disk entitled "RPD 235, Mohamed Dalek" 41 13 4- Disk entitled "Store Surveillance, RPD 14 218" 48 15 16 17 18 19 20 21 22 23 24 25 </div> <div>Page 4</div>
<div> 1 A P P E A R A N C E S : 2 3 FOR THE PLAINTIFFS: 4 LAW OFFICES OF JOHN L. BURRIS 5 BY: DEWITT M. LACY, ESQ. 6 7677 Oakport Street, Suite 1120 7 Oakland, California 94621 8 (510) 839-5200 9 FOR THE DEFENDANT: 10 MCNAMARA, NEY, BEATTY, SLATTERY, BORGES & AMBACHER 11 BY: NOAH G. BLECHMAN, ESQ. 12 1211 Newell Avenue 13 Walnut Creek, California 94596 14 (925) 939-5330 15 AFAF STEIERT, INTERPRETER 16 17 18 19 20 21 22 23 24 25 </div> <div>Page 3</div>	<div> 1 AFAF STEIERT, 2 was sworn to act as English/Arabic interpreter. 3 MOHAMED DALEK, 4 having been first duly sworn through the interpreter was 5 examined and testified as follows: 6 BY MR. BLECHMAN: 7 Q. Could you please state and spell your full name 8 for the record? 9 A. Mohamed Dalek. 10 Q. Could you spell your first and last name for 11 us, please? 12 THE INTERPRETER: He will give the card. The 13 spelling -- 14 MR. BLECHMAN: Why don't I spell it? Mr. Dalek 15 has provided his California identification card. First 16 name Mohamed, M-o-h-a-m-e-d. Middle initial M. Last 17 name Dalek, D-a-l-e-k. The address on here is 3322 18 Cutting Boulevard, Richmond, California. 19 Q. Is that correct, Mr. Dalek? 20 A. Yes. 21 Q. I'll give your license back. We do have an 22 Arabic interpreter here. Mr. Dalek, I understand you do 23 understand English and speak some English. I did talk 24 to you briefly before we came here today to make sure I 25 had an interpreter who spoke Arabic, which is what you </div> <div>Page 5</div>

<p>1 requested, in case that became an issue.</p> <p>2 Mr. Dalek --</p> <p>3 A. I know how to speak a little bit of English,</p> <p>4 not so much.</p> <p>5 Q. Okay. And that's why I wanted to have an</p> <p>6 interpreter here to make this as easy for you as</p> <p>7 possible to understand the statements and questions. So</p> <p>8 let me explain this process to you.</p> <p>9 This is a formal legal proceeding today. It's</p> <p>10 like we are in court today even though we are in a</p> <p>11 conference room by this beautiful marina here. The</p> <p>12 court reporter just administered you an oath to tell the</p> <p>13 truth. So it's important when I ask you questions</p> <p>14 today, you tell me the truth as if you were testifying</p> <p>15 in court.</p> <p>16 Does that make sense?</p> <p>17 A. Yeah.</p> <p>18 Q. Did you answer?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Thank you.</p> <p>21 I'm going to be asking you a series of</p> <p>22 questions today because you were a witness to some</p> <p>23 events that occurred last year. Because this is a legal</p> <p>24 proceeding, the court reporter is typing up everything</p> <p>25 we are saying now here on the record.</p> <p style="text-align: right;">Page 6</p>	<p>1 able to give us an estimate, please try to do so.</p> <p>2 Does that make sense?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. We will be able to take breaks. We are</p> <p>5 going to be here this morning. We are not going to be</p> <p>6 here all day, but let us know if you need to take a</p> <p>7 break.</p> <p>8 A. Okay.</p> <p>9 Q. Even though this is a formal legal proceeding,</p> <p>10 there is no judge here. From time to time, Mr. Lacy or</p> <p>11 myself may make objections. What we are doing is, we</p> <p>12 are putting something on the record that the court</p> <p>13 reporter is typing up in case we need to talk to the</p> <p>14 judge about it later. So even though Mr. Lacy or myself</p> <p>15 make an objection, you can still answer the question</p> <p>16 asked of you.</p> <p>17 Does that make sense?</p> <p>18 A. Yes.</p> <p>19 Q. All right. Thank you.</p> <p>20 At the end of this deposition, the court</p> <p>21 reporter is going to type everything up and print it out</p> <p>22 in a booklet format. You'll have an opportunity to</p> <p>23 review all your testimony, and you can make changes if</p> <p>24 you want to.</p> <p>25 A. Okay.</p> <p style="text-align: right;">Page 8</p>
<p>1 A. Yes.</p> <p>2 Q. We are probably not going to be talking over</p> <p>3 each other because we have the benefit of the</p> <p>4 interpreter. I'm going to be asking you questions. And</p> <p>5 if you understand my question, please try to give me</p> <p>6 your best response.</p> <p>7 A. Okay.</p> <p>8 Q. And if you don't understand one of my</p> <p>9 questions, which is likely to happen, let me know, and I</p> <p>10 will rephrase it. From time to time, I may ask for you</p> <p>11 to give us an estimate or an approximation. For example</p> <p>12 if I were to ask you the length of this table, you'd be</p> <p>13 able to look at this table and estimate or approximate</p> <p>14 it's about ten feet long.</p> <p>15 Does that make sense?</p> <p>16 A. M-hm, yes.</p> <p>17 Q. What we do not want you to do is to totally</p> <p>18 guess or speculate about something. Like if I asked you</p> <p>19 for the length of the table in my house, my dining room</p> <p>20 table, you would have to guess or speculate about that,</p> <p>21 and we don't want you to do that.</p> <p>22 A. This is a witness. I understand that it's an</p> <p>23 eyewitness, that I should say the truth.</p> <p>24 Q. Right. But I may ask you about your</p> <p>25 approximation as to time or distance. So if you are</p> <p style="text-align: right;">Page 7</p>	<p>1 Q. If you do make changes to your testimony, and</p> <p>2 there's any important changes that you make, that could</p> <p>3 affect your credibility if you testify at a trial, and</p> <p>4 any of the attorneys can comment upon any of those</p> <p>5 changes.</p> <p>6 THE INTERPRETER: That's a long sentence.</p> <p>7 BY MR. BLECHMAN:</p> <p>8 Q. Okay. If you make any changes to your</p> <p>9 testimony once the transcript comes out, then if they</p> <p>10 are important changes, any of the attorneys can comment</p> <p>11 upon those changes, and that could affect your</p> <p>12 credibility.</p> <p>13 Does that make sense?</p> <p>14 A. Okay.</p> <p>15 Q. Are you taking any medication right now that</p> <p>16 would affect your ability to testify truthfully?</p> <p>17 A. No. I usually take diabetes medicine and a</p> <p>18 heart medicine, but I didn't take them today.</p> <p>19 Q. Okay. Are you taking any medication today that</p> <p>20 may affect your ability to remember things about the</p> <p>21 incident?</p> <p>22 A. No.</p> <p>23 Q. Mr. Dalek, is there any reason you can think of</p> <p>24 as to why we cannot get your best testimony today?</p> <p>25 A. No.</p> <p style="text-align: right;">Page 9</p>

<p>1 Q. Okay. So let's get started.</p> <p>2 What's your date of birth?</p> <p>3 A. December 12, 1956.</p> <p>4 Q. And I understand that back in September of</p> <p>5 2014, you were working at Uncle Sam's Liquors on</p> <p>6 Cutting?</p> <p>7 A. Yes.</p> <p>8 Q. Do you still work there now?</p> <p>9 A. Yes.</p> <p>10 Q. How long have you worked there?</p> <p>11 A. Two years and three months.</p> <p>12 Q. Okay. There was an incident that occurred on</p> <p>13 the evening of September 14th in front of the store</p> <p>14 where a man was shot.</p> <p>15 Is that your understanding?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. So I'm going to refer to that as the</p> <p>18 incident. Okay?</p> <p>19 A. Yes.</p> <p>20 Q. And I'm going to refer to that date as the</p> <p>21 night of the incident. Okay?</p> <p>22 A. Okay.</p> <p>23 Q. The address that's on your license, that is</p> <p>24 Uncle Sam's Liquors' address, correct?</p> <p>25 A. Yes.</p> <p style="text-align: right;">Page 10</p>	<p>1 Q. Okay. Now, on the night of the incident, in</p> <p>2 addition to you, who else was working that night at the</p> <p>3 liquor store?</p> <p>4 A. There was another guy working, but he left work</p> <p>5 a month after the incident, the event.</p> <p>6 Q. What was his name?</p> <p>7 A. Agel Somaha.</p> <p>8 THE INTERPRETER: Agel, A-g-e-l, Sumeh,</p> <p>9 S-u-m-e-h.</p> <p>10 BY MR. BLECHMAN:</p> <p>11 Q. Is it Somaha, S-o-m-a-h-a?</p> <p>12 A. Yes.</p> <p>13 Q. Who is Moufid Alsahri? Moufid, M-o-u-f-i-d.</p> <p>14 Last name A-l-s-a-h-r-i.</p> <p>15 A. What are you asking about exactly?</p> <p>16 Q. Who is he? Was he an employee as well of the</p> <p>17 liquor store?</p> <p>18 A. So Moufid works in the morning. I work at</p> <p>19 night.</p> <p>20 Q. Who was working the cash register on the night</p> <p>21 of the incident?</p> <p>22 A. Somaha.</p> <p>23 Q. Were you and Mr. Somaha the only employees at</p> <p>24 the store at the time of the incident?</p> <p>25 A. Yes.</p> <p style="text-align: right;">Page 12</p>
<p>1 Q. Okay. It's my understanding that you live</p> <p>2 across the street, though; is that correct?</p> <p>3 A. Yes.</p> <p>4 Q. Do you have any plans to move to a new area in</p> <p>5 the next six months to a year?</p> <p>6 A. Yeah. Maybe I'll return to Yemen.</p> <p>7 Q. Tell me your plans or potential plans about</p> <p>8 that.</p> <p>9 A. I'm not too sure when. I just want to go back</p> <p>10 to my wife.</p> <p>11 Q. We have a trial in June of next year in this</p> <p>12 case.</p> <p>13 Do you think that you will still be in this</p> <p>14 area in June of next year?</p> <p>15 A. I'm not so sure.</p> <p>16 Q. Okay. Do you know who the owner is of the</p> <p>17 liquor store?</p> <p>18 A. What is his name?</p> <p>19 Q. Yes.</p> <p>20 A. Ali Salah.</p> <p>21 THE INTERPRETER: Ali, A-l-i, Salah, S-a-l-a-h.</p> <p>22 BY MR. BLECHMAN:</p> <p>23 Q. Is that correct, the way the interpreter</p> <p>24 spelled it?</p> <p>25 A. Uh-huh, yes.</p> <p style="text-align: right;">Page 11</p>	<p>1 Q. Okay. I understand that the store had</p> <p>2 surveillance camera equipment.</p> <p>3 Is that your understanding?</p> <p>4 A. Yes.</p> <p>5 Q. By the way, where did Mr. Somaha go? Do you</p> <p>6 know if he is still in the area?</p> <p>7 A. He went to Alabama.</p> <p>8 Q. Alabama?</p> <p>9 A. M-hm.</p> <p>10 Q. Okay. There were cameras that were working</p> <p>11 inside the store and recording on the night of the</p> <p>12 incident, correct?</p> <p>13 A. Yes.</p> <p>14 Q. We have received those videos, and it appears</p> <p>15 that there were two cameras that were working. One</p> <p>16 appeared to be behind the register area pointing towards</p> <p>17 the front door; is that correct?</p> <p>18 A. Yes.</p> <p>19 Q. And the other one appeared to be looking down</p> <p>20 the front aisle towards the register and the front door</p> <p>21 area?</p> <p>22 MR. LACY: Objection; calls for speculation,</p> <p>23 lacks foundation. I mean, he can't testify to what</p> <p>24 you've seen. I don't even know if that's an appropriate</p> <p>25 question. You can translate that.</p> <p style="text-align: right;">Page 13</p>

<p>1 MR. BLECHMAN: Did he answer?</p> <p>2 MR. LACY: I'd like to meet and confer about</p> <p>3 this, Counsel. I don't think you asked him a question.</p> <p>4 I think you are telling him what you saw. If you want</p> <p>5 to ask him what he knows, I think that's more</p> <p>6 appropriate. I can't tell him one way or the other on</p> <p>7 what to answer, but --</p> <p>8 MR. BLECHMAN: Well, I asked if there's --</p> <p>9 there's two angles of video, of store camera video</p> <p>10 angles.</p> <p>11 MR. LACY: You specifically asked whether or</p> <p>12 not -- you didn't even ask. You said cameras that</p> <p>13 you've seen show two angles.</p> <p>14 MR. BLECHMAN: Right.</p> <p>15 MR. LACY: I mean, how is he supposed to know</p> <p>16 what you've seen?</p> <p>17 MR. BLECHMAN: Well, he knows. He works there.</p> <p>18 So --</p> <p>19 MR. LACY: Well, what --</p> <p>20 MR. BLECHMAN: -- I'm going to ask him</p> <p>21 follow-up questions.</p> <p>22 MR. LACY: Sure.</p> <p>23 MR. BLECHMAN: So let me clarify.</p> <p>24 Q. Mr. Dalek, are you aware of whether there were</p> <p>25 any more cameras that were recording other than two</p> <p style="text-align: right;">Page 14</p>	<p>1 Do you recall Mr. Perez earlier that evening</p> <p>2 coming to the store several times?</p> <p>3 A. Yes.</p> <p>4 Q. What do you recall about that?</p> <p>5 A. He came several times to get some things and</p> <p>6 leave.</p> <p>7 Q. At any point, did you notice whether or not you</p> <p>8 believed he appeared to be intoxicated or drunk?</p> <p>9 A. Yeah.</p> <p>10 Q. What did you notice about that?</p> <p>11 A. He wasn't balanced.</p> <p>12 Q. Before he came to the store and the police were</p> <p>13 close by, so earlier in the evening, did he buy alcohol</p> <p>14 from the store?</p> <p>15 THE INTERPRETER: Can you repeat the question?</p> <p>16 MR. BLECHMAN: Sure.</p> <p>17 Q. Before the police made contact with him that</p> <p>18 night, when he was at the store, did he buy alcohol?</p> <p>19 A. Yes.</p> <p>20 Q. Can you estimate how many times he came to the</p> <p>21 store that night before he was contacted by the police?</p> <p>22 A. About two times.</p> <p>23 Q. And was it on the third time that he came to</p> <p>24 the store that he was contacted by the police?</p> <p>25 A. Yeah.</p> <p style="text-align: right;">Page 16</p>
<p>1 camera angles?</p> <p>2 A. There's about eight cameras in the store.</p> <p>3 Q. Were there any cameras that were recording out</p> <p>4 in the front of the store on the, you know, sidewalk</p> <p>5 front area in front of the front doors?</p> <p>6 A. No.</p> <p>7 Q. Was it broken?</p> <p>8 A. There was one, and it was stolen. It was</p> <p>9 stolen before the event.</p> <p>10 Q. Okay. Now, I will represent to you that the</p> <p>11 person who was shot, his name is Mr. Perez.</p> <p>12 Prior to that night, had you seen Mr. Perez</p> <p>13 come into the liquor store before?</p> <p>14 A. Yes.</p> <p>15 Q. Was he a frequent customer?</p> <p>16 A. Yes.</p> <p>17 Q. What type of items would he purchase when he</p> <p>18 came to the store?</p> <p>19 MR. LACY: Objection; calls for speculation,</p> <p>20 lacks foundation.</p> <p>21 BY MR. BLECHMAN:</p> <p>22 Q. You can answer.</p> <p>23 A. He used to buy alcohol, liquor.</p> <p>24 Q. All right. Let's talk about the evening of the</p> <p>25 incident.</p> <p style="text-align: right;">Page 15</p>	<p>1 Q. On those two prior occasions, did he buy</p> <p>2 alcohol from the store?</p> <p>3 A. Yes.</p> <p>4 Q. Did you or the store ever allow him to buy</p> <p>5 alcohol on credit? Meaning he did not have to pay for</p> <p>6 it. There was some notation about it.</p> <p>7 A. He didn't have money last time. So we didn't</p> <p>8 want to give him alcohol.</p> <p>9 Q. On the two prior occasions that evening, when</p> <p>10 he bought alcohol, did he pay for the alcohol?</p> <p>11 A. Yes.</p> <p>12 Q. And you are saying the last time he wanted</p> <p>13 alcohol, he didn't have anything to pay for it?</p> <p>14 A. Yes.</p> <p>15 Q. And then did you or Mr. Somaha tell him that</p> <p>16 you are not going to allow him to purchase alcohol</p> <p>17 without any money?</p> <p>18 A. Yes.</p> <p>19 Q. Did you make observations of Mr. Perez -- the</p> <p>20 way he was acting, his demeanor -- just prior to the</p> <p>21 police contact?</p> <p>22 A. Yeah.</p> <p>23 Q. Did Mr. Perez appear to be intoxicated just</p> <p>24 prior to the police contact?</p> <p>25 A. Yes.</p> <p style="text-align: right;">Page 17</p>

<p>1 Q. Did Mr. Perez appear to be more intoxicated at 2 that point than he was in the other two prior times he 3 came to the store that evening? 4 MR. LACY: Objection; calls for speculation, 5 lacks foundation. You can answer, Mr. Dalek. 6 THE WITNESS: Yes. 7 BY MR. BLECHMAN: 8 Q. Was one reason that the store refused to 9 provide Mr. Perez with more alcohol because of his state 10 of intoxication? 11 A. Yeah. He was drunk, and he didn't have money, 12 both. 13 Q. If he had money, would you guys have sold him 14 alcohol based upon how you observed him being at that 15 point? 16 MR. LACY: Objection; calls for speculation, 17 lacks foundation. You can answer, though. 18 THE WITNESS: What is the question again? 19 BY MR. BLECHMAN: 20 Q. Sure. 21 Even if Mr. Perez had money, would you guys 22 have sold him alcohol based on your observations of him 23 at that point? 24 A. I wasn't at the cash register. So I don't know 25 if we would have sold to him or not. When there is</p> <p style="text-align: right;">Page 18</p>	<p>1 THE WITNESS: What's the question? 2 THE INTERPRETER: Oh, okay. "What's the 3 question?" 4 BY MR. BLECHMAN: 5 Q. Did you witness Mr. Perez come into the store 6 on this third occasion that evening and ask for alcohol? 7 A. Yes. I was present. 8 Q. Did you or Mr. Somaha respond to Mr. Perez's 9 request? 10 A. Me. 11 Q. And what was the response? 12 A. He told me, "I want to buy more alcohol." I 13 said, "No. I'm not selling you any more." Then he 14 left. 15 Q. Before he left, do you recall either yourself 16 or Mr. Somaha telling Mr. Perez he needs to leave or the 17 police will be called? 18 A. He left alone. 19 Q. Was there any mention of police when he asked 20 for more alcohol, and he was told no? 21 A. No. 22 Q. Do you recall at some point Mr. Perez showed 23 you a telephone where he had already dialed 911, but did 24 not press send to send the call? 25 A. No. I don't recall.</p> <p style="text-align: right;">Page 20</p>
<p>1 somebody who is so drunk, we usually don't sell. 2 Q. Did Mr. Perez appear to you to be so drunk that 3 it would not be smart for the store to sell him alcohol? 4 A. Yeah. 5 MR. LACY: Objection; speculation, lacks 6 foundation, and vague and ambiguous. 7 THE WITNESS: Yes. 8 BY MR. BLECHMAN: 9 Q. And this is on the third occasion when he was 10 in the store that evening; is that correct? 11 A. Yes, correct. 12 Q. Were you the manager that night or was Mr. 13 Somaha? 14 A. Manager? 15 Q. Well, who was in charge between the two of you? 16 Yourself or Mr. Somaha? 17 A. The responsibility for cash or for what? 18 Q. If there was a problem at the store, who would 19 be the one to handle it? You or Mr. Somaha, or were you 20 both equal? 21 A. Equal. We are both equal. 22 Q. Were you present when Mr. Perez wanted to buy 23 more alcohol, and he was told no? 24 THE INTERPRETER: Repeat again. I cannot 25 understand you.</p> <p style="text-align: right;">Page 19</p>	<p>1 Q. Okay. Do you recall at some point you saw a 2 police officer walking in front of the store? 3 A. Yes. 4 Q. Okay. And then you went and got that police 5 officer's attention. Is that accurate? 6 A. Yes. 7 Q. What did you say to that police officer? 8 A. I told the officer, "Please tell Mr. Perez" -- 9 "tell him to leave." 10 Q. Why did you want Mr. Perez to leave? 11 A. Because he was drunk, and he wanted more 12 alcohol. 13 Q. Was Mr. Perez causing a disturbance inside the 14 store? 15 A. No problems in the store, because all the time 16 he keeps coming and he wants alcohol again. 17 Q. We are going to go back a little bit. 18 Do you remember approximately what times Mr. 19 Perez came to the store that evening on those two prior 20 occasions? 21 A. No. I don't recall. 22 Q. You started your shift that day around 1:00 or 23 2:00 p.m.; is that correct? 24 A. Yes. At 2:00 o'clock. 25 Q. When Mr. Perez first came to the store that</p> <p style="text-align: right;">Page 21</p>

<p>1 date, September 13th of 2014, was it nighttime already, 2 or was it light out? 3 A. Like after sunset. 4 Q. So both times he came to the store that evening 5 was after sunset? 6 A. Yes. 7 Q. On the third occasion is when the police 8 contact occurred. 9 My question is: When was he previously in the 10 store that evening, approximately? Was it 30 minutes 11 before that, an hour, two hours? What's your best 12 estimate? 13 A. Can you repeat the question? 14 Q. Sure. We know on the third occasion is when 15 there was some contact with the police officer and Mr. 16 Perez. 17 When was the most recent time before that that 18 he was in the store that evening? 19 A. Like the second visit, about an hour before the 20 third visit. 21 Q. Okay. Thank you. We are talking about the 22 third visit now. 23 When you saw the police officer, you told the 24 police officer that you wanted Mr. Perez to leave the 25 store; is that correct?</p> <p style="text-align: right;">Page 22</p>	<p>1 Q. Okay. But the officer did not put his hands on 2 Mr. Perez at that point, did he? 3 A. The first time there was no problem. He told 4 him to sit. He sat. 5 Q. Okay. Did you hear the officer ask Mr. Perez 6 any questions at that point or ask for identification? 7 A. Yeah. When he was sitting -- right. I heard 8 he is asking him, "What's your name? Give me your ID." 9 He was on the curb. He was just sitting on the curb at 10 the time. 11 Q. Did the officer appear to you to have a calm 12 demeanor? 13 MR. LACY: Objection; calls for speculation, 14 lacks foundation, leading. 15 THE WITNESS: I'm not so sure. You know, I 16 couldn't decide what demeanor he had. You know, it's 17 just like normal. 18 BY MR. BLECHMAN: 19 Q. Okay. The officer was wearing a uniform, 20 correct? 21 A. Yeah. 22 Q. Was the officer standing up next to Mr. Perez 23 who was sitting on the curb? 24 A. Yeah, next to him. 25 Q. Okay. At some point, did you see Mr. Perez get</p> <p style="text-align: right;">Page 24</p>
<p>1 A. Yes. 2 Q. And you pointed out Mr. Perez to the officer; 3 is that right? 4 A. Yes. 5 Q. And then did Mr. Perez walk outside of the 6 store? 7 A. I don't understand the question. He sat on the 8 floor. So can you repeat the question again? 9 Q. Sure. 10 After you pointed out Mr. Perez to the officer, 11 did Mr. Perez then walk outside of the store to go talk 12 to the officer? 13 MR. LACY: Objection; calls for speculation, 14 lacks foundation, leading. Go ahead. 15 THE WITNESS: He sat on the floor. 16 BY MR. BLECHMAN: 17 Q. You are saying Mr. Perez came outside of the 18 store and sat down on the curb? 19 A. The officer actually directed Perez to sit on 20 the curb. 21 Q. And did Mr. Perez sit on the curb? 22 A. Yes, he sat. 23 Q. You never saw the officer put his hands on Mr. 24 Perez to get him to sit on the curb, did you? 25 A. He told him to sit. He sat.</p> <p style="text-align: right;">Page 23</p>	<p>1 up from the curb? 2 A. So I went actually inside the store after that, 3 and Somaha saw him. So Somaha was telling me that he 4 saw him running from the officer, trying to escape. He 5 was running away. 6 Q. Did you see Mr. Perez try to run away or move 7 away from the officer? 8 A. All I saw, when he was sitting on the floor, he 9 just didn't give him his hands to put the cuffs on. 10 That's all I saw, but I didn't see running. 11 Q. You are saying you saw the officer and Mr. 12 Perez struggling at some point? Is that what you mean? 13 A. I saw that. I saw the struggle. 14 Q. Okay. So before the struggle, did you see Mr. 15 Perez try to get away from the officer from the point 16 when he was sitting on the curb to the point of the 17 struggle? 18 A. I just saw the part of the cuffs. Like once he 19 wanted to cuff him, he didn't want to be cuffed. 20 Q. From where Mr. Perez was sitting on the curb to 21 the area where the struggle occurred was some distance. 22 Would you agree? 23 THE INTERPRETER: Can you repeat the question? 24 MR. BLECHMAN: Sure. 25 Q. The area where Mr. Perez was sitting down on</p> <p style="text-align: right;">Page 25</p>

<p>1 the curb to the area where the struggle occurred, there 2 was some distance between those two points. Would you 3 agree?</p> <p>4 A. He was sitting on the floor in the beginning, 5 Mr. Perez, and the officer went away a bit from him. 6 The officer said, "What's your name? Give me your ID." 7 Then I left and I went inside of the store. Somaha told 8 me that he was trying to escape, Mr. Perez.</p> <p>9 I returned back to have a look, what's going on 10 on the curb. I saw that he was on the floor. He is 11 trying to tie him with his hands, and he is trying to 12 put him down, his face to the curb.</p> <p>13 Q. You saw him sitting on the curb, and then you 14 went back in the store a bit. When you next came close 15 to the door, Mr. Perez was in a different spot on the 16 ground? Is that what you are saying?</p> <p>17 A. Yes. I saw him, yes, on a different spot. The 18 policeman was over him to try to tie him because he was 19 trying to escape, as I heard before.</p> <p>20 Q. And you saw that the officer was trying to 21 handcuff Mr. Perez?</p> <p>22 A. I saw the officer. He was trying to hold his 23 hands. He is trying to hold his hands and fix his knees 24 so he can put him in position.</p> <p>25 Q. Was Mr. Perez allowing the officer to control</p> <p style="text-align: right;">Page 26</p>	<p>1 A. No, from the front. The officer was holding 2 Perez frontward. Perez had his head downward and 3 holding his arms.</p> <p>4 Q. And then did they go back to the ground at that 5 point?</p> <p>6 A. He didn't sit anymore, no.</p> <p>7 Q. At some point, did you see the two men stop 8 struggling?</p> <p>9 A. No. Perez was yelling. So he didn't calm 10 down, no.</p> <p>11 Q. Did you hear anything that Mr. Perez was 12 yelling?</p> <p>13 A. He was just screaming. Perez was screaming. 14 There was nothing to be said, just screaming.</p> <p>15 Q. Let's back up a little bit. 16 You saw the two men struggling on the ground in 17 front of the store; is that correct?</p> <p>18 A. Yeah.</p> <p>19 Q. Okay. At some point, did you then see Mr. 20 Perez stand up on his feet?</p> <p>21 A. He wasn't standing upright, Perez. I saw him 22 standing front-wise, bowing, and the officer in front of 23 Perez holding his arms. The officer is holding his 24 arms.</p> <p>25 Q. Then what happened next?</p> <p style="text-align: right;">Page 28</p>
<p>1 him?</p> <p>2 A. Yeah. Mr. Perez was struggling with him. He 3 didn't want to give him his hands.</p> <p>4 Q. Did you hear the officer saying anything during 5 this point to Mr. Perez, to stop doing what he was 6 doing, or those types of things?</p> <p>7 A. Yeah. I heard it from the officer. He was 8 trying to say to Mr. Perez, "Don't try to fight me," 9 yeah.</p> <p>10 Q. How many times did the officer say that, "Don't 11 try to fight me"?</p> <p>12 A. About three times.</p> <p>13 Q. Did Mr. Perez listen to those statements? Did 14 he stop fighting?</p> <p>15 A. No, he wasn't. He wasn't giving up.</p> <p>16 Q. He continued to struggle?</p> <p>17 A. Yeah.</p> <p>18 Q. What did you see next after the officer makes 19 those statements several times? Mr. Perez continued to 20 struggle. What did you see next?</p> <p>21 A. So he stood up Perez, and then the officer had 22 his hands. He tied his hands. So Perez, his head was 23 leaning forward, and the officer had his hands.</p> <p>24 Q. Was the officer behind him in a bearhug type 25 position?</p> <p style="text-align: right;">Page 27</p>	<p>1 A. Afterwards, the police let go Perez, and then 2 he shot.</p> <p>3 Q. So let's talk about that. 4 You are saying Mr. Perez is standing up, but he 5 is bent over at the waist; is that correct?</p> <p>6 A. Yes. It was like Perez was standing frontward, 7 bowing, had a bear hug with the officer, like face to 8 face. Then the officer let go of him. So he left him 9 backward, moving, and then he got his gun and shot him.</p> <p>10 Q. When the officer let go, did he push Mr. Perez 11 back?</p> <p>12 A. Yes. He let go of him and pushed him back, and 13 then he took the gun and shot.</p> <p>14 Q. When the officer pushed Mr. Perez, was the 15 officer now moving backwards?</p> <p>16 A. Yeah. About two steps backwards or one step.</p> <p>17 Q. One to two steps? Is that your best estimate? 18 A. So it's about this distance, like about two 19 meters.</p> <p>20 Q. What is that distance that you are referring to 21 that is about two meters?</p> <p>22 A. It's two meters between Perez and the officer.</p> <p>23 Q. At the time that the first shot occurred? 24 A. Yes. It was all after each other. There 25 wasn't like one and then wait. It was like boom, boom,</p> <p style="text-align: right;">Page 29</p>

<p>1 boom.</p> <p>2 Q. How many shots did you hear or observe?</p> <p>3 A. About four. Yeah, four.</p> <p>4 Q. Before the shots, when the officer pushed Mr.</p> <p>5 Perez back, did he push him in any certain part of his</p> <p>6 body? His shoulder, his neck, his chest, his stomach,</p> <p>7 or some other part?</p> <p>8 A. So he was holding him, hugging him, and then he</p> <p>9 let go of him. So he pushed him backwards.</p> <p>10 Q. Did he push him in the chest?</p> <p>11 A. Yeah.</p> <p>12 Q. After the officer pushed Mr. Perez in the</p> <p>13 chest, did Mr. Perez start coming towards the officer?</p> <p>14 A. He shot him, four shots, and then he got to the</p> <p>15 side of him.</p> <p>16 Q. But before the shots, once the officer got away</p> <p>17 from Mr. Perez, did Mr. Perez come closer towards the</p> <p>18 officer?</p> <p>19 A. Yes. It was quick. He pushed him back, shot</p> <p>20 him, he's thrown, and then he left.</p> <p>21 Q. I know things happened fast. I'm trying to</p> <p>22 slow it down with my questions.</p> <p>23 So once the officer pushed Mr. Perez back, did</p> <p>24 Mr. Perez move forward towards the officer before you</p> <p>25 hear the first shot?</p> <p style="text-align: right;">Page 30</p>	<p>1 Q. Once he went back, did he then go forward?</p> <p>2 A. I do not understand the question.</p> <p>3 Q. Okay. Let me ask it differently.</p> <p>4 When Mr. Perez was pushed in the chest, did Mr.</p> <p>5 Perez run away from the officer at that point?</p> <p>6 A. No. He did not run.</p> <p>7 Q. When he was pushed in the chest, he did not run</p> <p>8 away from the officer, correct?</p> <p>9 A. No. He went backwards.</p> <p>10 Q. He went backwards like a step back?</p> <p>11 A. It's more leaning, leaning backwards.</p> <p>12 Q. And did he then lean forward towards the</p> <p>13 officer after the push?</p> <p>14 A. This, I don't recall in detail, you know. No.</p> <p>15 I do not recall all this, you know.</p> <p>16 Q. I understand. It's been a year.</p> <p>17 What I'm trying to figure out is, once Mr.</p> <p>18 Perez is pushed, did he come closer towards the officer</p> <p>19 after that, and before there's any shots?</p> <p>20 A. Yeah. When he pushed him backwards -- the</p> <p>21 officer pushed Perez. He leaned backwards. Then he</p> <p>22 tried to come next to him, like closer -- Perez to come</p> <p>23 closer to the officer, and then he shot him.</p> <p>24 Q. Okay. So at the time Mr. Perez was shot, was</p> <p>25 Mr. Perez trying to get closer towards the officer?</p> <p style="text-align: right;">Page 32</p>
<p>1 A. So he pushed him back. He pushed him. He</p> <p>2 tried to go forward, then he shot him, then he fell.</p> <p>3 Q. When you say, "he tried to go forward," you are</p> <p>4 talking about Mr. Perez, correct?</p> <p>5 A. Yes.</p> <p>6 Q. How far forward did Mr. Perez go? Did he take</p> <p>7 one step, two steps, three steps, more? How would you</p> <p>8 describe that, when you said he tried to go forward?</p> <p>9 A. Because he was drunk, when he pushed him</p> <p>10 backwards, he is going forward about a step. Then he</p> <p>11 shot him. The police took aside (as said), then shot</p> <p>12 him, and then he fell.</p> <p>13 Q. So was Mr. Perez leaning forward at the time</p> <p>14 the first shot occurred?</p> <p>15 A. Yeah. He was upright.</p> <p>16 Q. Was he standing straight up and down at the</p> <p>17 time of the first shot, or was he leaning back, forward,</p> <p>18 or to the side?</p> <p>19 A. Straight.</p> <p>20 Q. Once Mr. Perez was pushed, did Mr. Perez go</p> <p>21 back because of that briefly?</p> <p>22 A. Yes.</p> <p>23 MR. BLECHMAN: What was the answer?</p> <p>24 THE INTERPRETER: "Yes."</p> <p>25 BY MR. BLECHMAN:</p> <p style="text-align: right;">Page 31</p>	<p>1 A. Yeah. It was in his direction but upright.</p> <p>2 Perez was upright. He wasn't leaning forward. When he</p> <p>3 shot him, he was upright.</p> <p>4 Q. He was upright, but Mr. Perez was moving closer</p> <p>5 towards the officer? Is that what you are saying?</p> <p>6 A. Repeat the question.</p> <p>7 Q. After Mr. Perez was pushed, Mr. Perez tried to</p> <p>8 move forward closer towards the officer's location,</p> <p>9 correct?</p> <p>10 A. So when the officer pushed him backwards, he</p> <p>11 was -- Perez was getting upright, and then he shot him.</p> <p>12 Then he started to come closer to the officer.</p> <p>13 Q. I thought you said that Mr. Perez after the</p> <p>14 push tried to get closer to the officer before you even</p> <p>15 hear or see the first shot. Isn't that what happened?</p> <p>16 A. After. After he shot him. After the officer</p> <p>17 shot Perez, the first shot, then he started to come</p> <p>18 towards him.</p> <p>19 Q. You saw a couple of the shots hit Perez in the</p> <p>20 chest; is that right?</p> <p>21 A. Yeah.</p> <p>22 Q. But you did not see the first shot hit Mr.</p> <p>23 Perez; is that correct?</p> <p>24 A. I didn't see the first shot.</p> <p>25 Q. In other words, do you think the first shot by</p> <p style="text-align: right;">Page 33</p>

<p>1 the officer impacted Mr. Perez?</p> <p>2 A. The first shot was in his shoulder. So I can</p> <p>3 believe it could affect Perez, that he moved towards the</p> <p>4 officer. Maybe Perez tried to come closer to the</p> <p>5 officer so he can stop him from shooting him more.</p> <p>6 Q. After you see the first shot hit Mr. Perez in</p> <p>7 the shoulder, did Mr. Perez go towards the officer?</p> <p>8 A. Yes, because this was like -- Perez screamed</p> <p>9 after the first shot. Then he started to come closer to</p> <p>10 the officer, and then he shot him the other three shots.</p> <p>11 Q. And the other shots, did you see where those</p> <p>12 landed?</p> <p>13 A. Yeah. I saw it all, the shots, the other</p> <p>14 three shots. The blood was flying. It was a mess.</p> <p>15 Q. After you saw Mr. Perez shot in the chest, is</p> <p>16 that when you saw Mr. Perez go into the store?</p> <p>17 A. So once he was shot, the first shot, he started</p> <p>18 to come towards the officer. The officer went out of</p> <p>19 his way. So once the officer went out of his way, he</p> <p>20 fell into the store.</p> <p>21 Q. When the officer was firing at Mr. Perez, was</p> <p>22 the officer moving backwards?</p> <p>23 A. No. He wasn't moving backwards, no. This is</p> <p>24 so much of detail. You know, no. I don't know.</p> <p>25 Q. I understand that I'm asking very specific</p> <p style="text-align: right;">Page 34</p>	<p>1 A. Yeah.</p> <p>2 MR. LACY: Same objections.</p> <p>3 THE WITNESS: The officer pushed Perez, quickly</p> <p>4 shoot him. There is no time to check out if he is going</p> <p>5 to attack or going to give up.</p> <p>6 BY MR. BLECHMAN:</p> <p>7 Q. Okay. Let's assume that the officer did not</p> <p>8 shoot at Mr. Perez. What do you think was going to</p> <p>9 happen next from what you saw between the two men?</p> <p>10 MR. LACY: Objection; improper hypothetical,</p> <p>11 calls for speculation, lacks foundation.</p> <p>12 THE WITNESS: I don't know.</p> <p>13 BY MR. BLECHMAN:</p> <p>14 Q. Before you see the first shot hit Mr. Perez in</p> <p>15 the shoulder, did it look to you that Mr. Perez wanted</p> <p>16 --</p> <p>17 (Cell phone interruption.)</p> <p>18 MR. BLECHMAN: I'll start over. Thank you.</p> <p>19 Q. Before you see Mr. Perez hit with the first</p> <p>20 shot in the shoulder, did it appear to you that Mr.</p> <p>21 Perez was going to be coming towards the officer to</p> <p>22 continue to fight with him?</p> <p>23 MR. LACY: Same objections.</p> <p>24 THE WITNESS: I don't really know.</p> <p>25 BY MR. BLECHMAN:</p> <p style="text-align: right;">Page 36</p>
<p>1 questions about things that happened very quickly.</p> <p>2 Would you agree that things happened quickly</p> <p>3 from the point of the struggle of the two men on the</p> <p>4 ground to when Mr. Perez is shot and goes into the</p> <p>5 store?</p> <p>6 A. Yeah, very quickly.</p> <p>7 Q. Before you hear any shots or see any gunshots,</p> <p>8 when Mr. Perez was on his feet, and the officer was on</p> <p>9 his feet, and they are some distance away, did it look</p> <p>10 to you that Mr. Perez wanted to continue fighting with</p> <p>11 the officer?</p> <p>12 MR. LACY: Objection; calls for speculation,</p> <p>13 lacks foundation.</p> <p>14 THE WITNESS: What is your question?</p> <p>15 BY MR. BLECHMAN:</p> <p>16 Q. Once the two men are on their feet --</p> <p>17 A. M-hm.</p> <p>18 Q. -- did it look to you that Mr. Perez wanted to</p> <p>19 continue fighting or struggling with the officer?</p> <p>20 A. I don't recall.</p> <p>21 MR. LACY: Same objections.</p> <p>22 THE WITNESS: I don't know.</p> <p>23 BY MR. BLECHMAN:</p> <p>24 Q. Did it look to you that Mr. Perez was giving up</p> <p>25 at that point?</p> <p style="text-align: right;">Page 35</p>	<p>1 Q. Once the two men got on their feet, did you</p> <p>2 believe that Mr. Perez was still a threat to the safety</p> <p>3 of the officer?</p> <p>4 MR. LACY: Objection; calls for speculation,</p> <p>5 lacks foundation.</p> <p>6 THE WITNESS: I don't know.</p> <p>7 BY MR. BLECHMAN:</p> <p>8 Q. You don't know, or you don't recall whether you</p> <p>9 thought that?</p> <p>10 THE INTERPRETER: Repeat the question, please.</p> <p>11 MR. BLECHMAN: Let me ask a different question.</p> <p>12 Q. At the time Mr. Perez was shot, the first shot,</p> <p>13 did it appear to you that Mr. Perez was giving up or</p> <p>14 surrendering?</p> <p>15 A. There was no time. The first, the second, the</p> <p>16 third, and fourth, it was all after each other. There</p> <p>17 was no time for him to surrender.</p> <p>18 Q. Before the first shot, once Mr. Perez was on</p> <p>19 his feet, before any shots by the officer, did it appear</p> <p>20 to you that Mr. Perez was surrendering?</p> <p>21 MR. LACY: Objection; asked and answered,</p> <p>22 harassing, argumentative.</p> <p>23 THE WITNESS: Yeah. It was no time for</p> <p>24 surrender. It was four shots, and he was dead. I left</p> <p>25 and he left after.</p> <p style="text-align: right;">Page 37</p>

<p>1 BY MR. BLECHMAN:</p> <p>2 Q. Are you saying that once Mr. Perez was on his</p> <p>3 feet, the shooting happened pretty quickly after that?</p> <p>4 A. Yes. There was no time between the stand up</p> <p>5 and the shooting, there was barely any time.</p> <p>6 Q. Are you able to estimate in feet how far the</p> <p>7 two men were away from each other at the time Mr. Perez</p> <p>8 was shot first in the shoulder? How far between the two</p> <p>9 men?</p> <p>10 A. About two steps, three steps.</p> <p>11 Q. Your best estimate is the two men were about</p> <p>12 two to three steps away from each other?</p> <p>13 A. Yeah, about two steps nearly.</p> <p>14 Q. Two steps is your best estimate; is that</p> <p>15 correct?</p> <p>16 A. Yes.</p> <p>17 Q. When the officer shot the first time, was the</p> <p>18 officer's arm straight out, pointing straight, or was</p> <p>19 the gun down by the officer's hip, or another location?</p> <p>20 A. He was straight.</p> <p>21 Q. The first shot, was the officer's arm straight</p> <p>22 out?</p> <p>23 A. Yes, straight.</p> <p>24 Q. The end of the gun, would that have been closer</p> <p>25 to Mr. Perez than two steps away?</p> <p style="text-align: right;">Page 38</p>	<p>1 A. Yeah. What I saw her, I have talked. I</p> <p>2 wouldn't say something I didn't see. Anything I saw, I</p> <p>3 said it.</p> <p>4 Q. Do you agree that your memory of the incident</p> <p>5 was better at the time the two investigators were</p> <p>6 interviewing you than it is today about the incident?</p> <p>7 A. Yes.</p> <p>8 Q. Do you recall where Mr. Perez's hands were or</p> <p>9 arms were at the time he was first shot in the shoulder?</p> <p>10 A. Yeah. I believe it was downward.</p> <p>11 Q. Down by his sides?</p> <p>12 A. Yeah. It was like next to his legs.</p> <p>13 Q. When you say like this, I can see it, but the</p> <p>14 court reporter cannot type down what you look like. So</p> <p>15 we have to use words.</p> <p>16 Can you describe it with words?</p> <p>17 A. Yes. The hands were next to the legs.</p> <p>18 Q. Okay. So his hands were not straight up in the</p> <p>19 air like I'm demonstrating now with both of my arms,</p> <p>20 straight up, were they?</p> <p>21 A. No. I don't recall this.</p> <p>22 Q. His hands were down by his sides at the time he</p> <p>23 was first shot?</p> <p>24 A. Yeah. Most probably, yes.</p> <p>25 Q. You mean that's what you saw, correct?</p> <p style="text-align: right;">Page 40</p>
<p>1 A. Yeah.</p> <p>2 Q. The end of the gun was closer to Mr. Perez at</p> <p>3 the time of the first shot, correct?</p> <p>4 A. I don't recall.</p> <p>5 Q. When you said that the two men were two steps</p> <p>6 away from each other at the time of the shooting, that</p> <p>7 was where the two men's legs were? Would you agree with</p> <p>8 that?</p> <p>9 A. Two steps.</p> <p>10 Q. Okay. So if the arm of the officer was pointed</p> <p>11 out, the end of the gun would be closer to Mr. Perez</p> <p>12 than two steps. Do you agree with that?</p> <p>13 A. I cannot recall exactly the measurements.</p> <p>14 Q. But it was closer to Mr. Perez? The end of the</p> <p>15 gun was closer to Mr. Perez than the officer's feet.</p> <p>16 Agreed?</p> <p>17 A. Yes.</p> <p>18 Q. Do you remember that night being interviewed at</p> <p>19 the police department?</p> <p>20 A. Yeah.</p> <p>21 Q. And you were asked a bunch of questions by the</p> <p>22 investigators?</p> <p>23 A. Yes.</p> <p>24 Q. And were you answering truthfully when you were</p> <p>25 asked questions by the investigators?</p> <p style="text-align: right;">Page 39</p>	<p>1 A. That's what I remember, yeah.</p> <p>2 Q. I want to play you a quick part of your video</p> <p>3 interview with investigators on the night of the</p> <p>4 incident. A copy of this --</p> <p>5 A. Yeah. I usually don't understand very good</p> <p>6 English. So I replied as much as I could understand</p> <p>7 from them.</p> <p>8 Q. Understood. I appreciate that.</p> <p>9 A. M-hm.</p> <p>10 MR. BLECHMAN: We are going to mark the</p> <p>11 subpoena as Exhibit 2, and then I have a copy of this</p> <p>12 interview of Mr. Dalek, which is Bates stamped RPD 235.</p> <p>13 We'll mark that as 3.</p> <p>14 (Defendant's Exhibits 2, 3 marked.)</p> <p>15 MR. LACY: Do you have a copy for me, Counsel?</p> <p>16 MR. BLECHMAN: I do not. I just burned one</p> <p>17 copy for the record. It's Bates stamped 235.</p> <p>18 Q. Do you see this image video here, Mr. Dalek?</p> <p>19 A. Yeah.</p> <p>20 Q. And do you recognize yourself in that video?</p> <p>21 A. Barely.</p> <p>22 Q. Okay. I mean, do you see yourself in the</p> <p>23 left-hand corner?</p> <p>24 A. Yeah.</p> <p>25 MR. BLECHMAN: I don't know how loud this is</p> <p style="text-align: right;">Page 41</p>

<p>1 going to be, but I'm going play a portion of this and 2 then ask you some questions. So try to listen to what 3 you hear yourself saying. 4 (Video playing.) 5 BY MR. BLECHMAN: 6 Q. Did you hear that part when the detective asked 7 you -- once the two men got up, you said the officer 8 went back a little bit, and then Mr. Perez came at the 9 officer? Did you hear yourself say that? 10 A. So what I'm saying now is more accurate. After 11 he was shot, Perez, he came closer to the officer. 12 Q. So are you saying the clip I just played where 13 you said the officer went back a little bit, and then 14 Mr. Perez came at the officer is not accurate? 15 A. I don't understand. Can you repeat? 16 MR. BLECHMAN: Sure. Let me play the clip 17 again and see if you can hear better, and then I'll ask 18 you a question. So I am starting this at 4:35:19 as 19 listed on the video. 20 (Video playing.) 21 THE WITNESS: This is the same statements, 22 which I'm saying now. So what's the difference? 23 BY MR. BLECHMAN: 24 Q. Okay. That's fair. 25 The snippet I just played you, is that how you Page 42</p>	<p>1 MR. LACY: Asked and answered. 2 THE WITNESS: I cannot witness if it's exactly 3 in the shoulder or where, but it was said that it was in 4 the shoulder. 5 BY MR. BLECHMAN: 6 Q. Okay. When you demonstrated on the video of 7 Mr. Perez -- 8 When you had your hands open palm in front of 9 your stomach area, when you were demonstrating that, at 10 what point in time did you see Mr. Perez in that 11 position? 12 A. Repeat. What is before and after. 13 Q. When you just did that demonstration -- and I 14 will play it again for you to be fair to you. Let me 15 play it again for you, Mr. Dalek, so you can see. 16 (Video playing.) 17 THE WITNESS: What I'm answering here is, I'm 18 mainly telling them what did I see. I don't really keep 19 listening on the question, you know, before or after. I 20 definitely didn't focus, you know, what's the question 21 before or after. So what is the question in the video 22 right now? Where was the question? 23 BY MR. BLECHMAN: 24 Q. The question was: "How quickly was he moving 25 forward towards the officer?" You then stood up. You Page 44</p>
<p>1 recall things occurring just before the shooting? 2 A. I did not hear the part where the officer went 3 backward and Perez came closer. I just said that they 4 were close to each other. That's what I hear right now. 5 MR. BLECHMAN: Let me play the next portion 6 where you actually make a demonstration of the video, I 7 believe, of how Mr. Perez was positioned at the time he 8 was shot. I'm going to start this at 4:35:55. 9 (Video playing.) 10 THE WITNESS: The question wasn't very clear in 11 the investigation. It wasn't clear if it before or 12 after. I said it was after he got shot. So that's 13 exactly what happened. 14 BY MR. BLECHMAN: 15 Q. So the demonstration you just did on this video 16 from approximately 4:35:55 seconds to when I stopped it 17 at 4:36:21 seconds, are you saying that's the way Mr. 18 Perez moved after he was shot the first time? 19 THE WITNESS: Repeat the question. 20 BY MR. BLECHMAN: 21 Q. Okay. What I'm trying to understand is: Did 22 Mr. Perez move toward the officer before he was shot in 23 the shoulder -- let me clarify. 24 Is it your testimony that the first shot hit 25 Mr. Perez in the shoulder? Page 43</p>	<p>1 had your hands in front of your stomach open palms. You 2 took a step or two forward. Isn't that what you were 3 demonstrating? 4 A. You know, obviously in the video, it wasn't 5 really, like I said, before or after clearly, like the 6 shooting. So when I replied, I said what I just saw. 7 It wasn't really clear, you know, before or after the 8 shooting. 9 Q. Do you recall ever seeing Mr. Perez in that 10 position you just demonstrated with his hands out in 11 front of him, in front of his stomach, open palms, 12 facing out at any point that night? 13 A. What is the question in the interview? 14 Q. Do you want me to replay the portion of the 15 video and go back a little bit? 16 A. Yeah. I don't actually see what is the 17 question, and what did I answer. Play it again, yeah. 18 MR. BLECHMAN: Okay. Let me go back. I'm 19 going to play this, Mr. Dalek, all the way back up until 20 your demonstration in the video. So we'll start at 21 4:35:18, and we'll go until 4:36 at some point. Now we 22 are going to play it. 23 (Video playing.) 24 THE WITNESS: I see that what I said is exactly 25 what I'm saying right now. Page 45</p>

<p>1 BY MR. BLECHMAN:</p> <p>2 Q. Okay. But when you demonstrated Mr. Perez</p> <p>3 taking a step forward, was that before any of the</p> <p>4 gunshots?</p> <p>5 A. He was shot at that time.</p> <p>6 Q. At the time he takes a step forward, he had</p> <p>7 already been shot at?</p> <p>8 A. Yes.</p> <p>9 Q. Did he move forward like that at all towards</p> <p>10 the officer once he is on his feet before any shots were</p> <p>11 fired?</p> <p>12 A. No.</p> <p>13 Q. Once Mr. Perez gets to his feet, was he</p> <p>14 standing still at the time he was first shot?</p> <p>15 A. Yeah. He was upright. So once the officer</p> <p>16 pushed him backward, he let go of him. He was upright,</p> <p>17 and then he shot him.</p> <p>18 Q. All right. I understand Mr. Perez is upright.</p> <p>19 He is standing on his feet. Is that what you mean?</p> <p>20 A. Yes.</p> <p>21 Q. Did Mr. Perez, once he is on his feet, move any</p> <p>22 of his feet forward towards the officer before you hear</p> <p>23 or see any shots?</p> <p>24 A. I did not see.</p> <p>25 Q. What do you mean you did not see?</p> <p style="text-align: right;">Page 46</p>	<p>1 the store surveillance videos. I'm now showing the</p> <p>2 witness this video.</p> <p>3 (Defendant's Exhibit 4 marked.)</p> <p>4 BY MR. BLECHMAN:</p> <p>5 Q. Do you see that, Mr. Dalek?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And you recognize this as one of the</p> <p>8 camera angles within Uncle Sam's Liquors?</p> <p>9 A. Yeah.</p> <p>10 Q. I stopped it at 1:03:15 a.m.</p> <p>11 Do you see a man entering the store?</p> <p>12 A. Yeah.</p> <p>13 Q. Do you recognize who that is?</p> <p>14 A. It looks like Perez.</p> <p>15 MR. BLECHMAN: Okay. I'm going to start</p> <p>16 playing this now, and I'll ask you some questions as we</p> <p>17 move on.</p> <p>18 (Video playing.)</p> <p>19 THE WITNESS: He was drunk.</p> <p>20 BY MR. BLECHMAN:</p> <p>21 Q. Let me stop there at 1:03:55.</p> <p>22 Did you see Mr. Perez look to be holding his</p> <p>23 phone up towards somebody over by the register?</p> <p>24 A. Yeah. It's in the video.</p> <p>25 Q. Do you remember seeing that on the night of the</p> <p style="text-align: right;">Page 48</p>
<p>1 A. Yeah. I just saw him when the police was there</p> <p>2 in the beginning.</p> <p>3 Q. Did Mr. Perez get closer to the officer once</p> <p>4 the officer started firing at Mr. Perez?</p> <p>5 A. After he shot, he came closer.</p> <p>6 Q. After all the shots were completed?</p> <p>7 A. After the first.</p> <p>8 Q. Okay. So let's make sure I understand.</p> <p>9 After the first shot, between that point and</p> <p>10 the last shot, Mr. Perez was moving closer towards the</p> <p>11 officer; is that correct?</p> <p>12 A. Yes.</p> <p>13 Q. How many steps closer did Mr. Perez go between</p> <p>14 the first shot and the last shot?</p> <p>15 A. I don't know.</p> <p>16 Q. But you saw him moving forward closer to the</p> <p>17 officer, correct?</p> <p>18 A. Yes, after the shot.</p> <p>19 Q. After the first shot but before the last shot?</p> <p>20 A. Yes.</p> <p>21 MR. BLECHMAN: Does anybody need a break?</p> <p>22 THE COURT REPORTER: Yes.</p> <p>23 (Recess.)</p> <p>24 MR. BLECHMAN: We'll mark next in order</p> <p>25 Exhibit 4, which is Bates stamped RPD 218. These are</p> <p style="text-align: right;">Page 47</p>	<p>1 incident?</p> <p>2 A. Yeah. The day of the incident, yeah.</p> <p>3 Q. All right. Let's continue to play it. Tell</p> <p>4 me, Mr. Dalek, when you see yourself come into view of</p> <p>5 the video, and I'll stop it.</p> <p>6 A. Okay.</p> <p>7 (Video playing.)</p> <p>8 THE WITNESS: I see, yeah.</p> <p>9 BY MR. BLECHMAN:</p> <p>10 Q. Okay. I stopped at 1:04:25.</p> <p>11 Is that you in the middle of the video looking</p> <p>12 like you are wearing some sort of a light shirt and a</p> <p>13 sweater or jacket?</p> <p>14 A. M-hm.</p> <p>15 Q. That's you?</p> <p>16 A. Yeah. That's me.</p> <p>17 Q. And Mr. Perez is next to you on the right of</p> <p>18 this video wearing what looks like a black T-shirt?</p> <p>19 A. Yes.</p> <p>20 MR. BLECHMAN: So I'm going to play the video,</p> <p>21 and then I'll ask you follow-up questions.</p> <p>22 (Video playing.)</p> <p>23 BY MR. BLECHMAN:</p> <p>24 Q. Did you see what just happened there?</p> <p>25 A. Yeah. I can see the officer was outside, yeah.</p> <p style="text-align: right;">Page 49</p>

<p>1 So I went to him to talk to him.</p> <p>2 Q. And we talked about that earlier, right?</p> <p>3 A. Yeah.</p> <p>4 MR. BLECHMAN: Okay. Let's continue to play</p> <p>5 it, starting at 1:04:36.</p> <p>6 (Video playing.)</p> <p>7 BY MR. BLECHMAN:</p> <p>8 Q. You come back inside around 1:05:02; is that</p> <p>9 correct?</p> <p>10 A. Yeah.</p> <p>11 MR. BLECHMAN: Okay. I'll continue to play it</p> <p>12 from there.</p> <p>13 (Video playing.)</p> <p>14 BY MR. BLECHMAN:</p> <p>15 Q. I believe what we'll see now is you hanging out</p> <p>16 towards the front of the store watching customers make</p> <p>17 purchases; is that correct?</p> <p>18 A. M-hm, yes.</p> <p>19 MR. BLECHMAN: We are watching the video</p> <p>20 continue to play here.</p> <p>21 (Video playing.)</p> <p>22 BY MR. BLECHMAN:</p> <p>23 Q. There is a gentleman who just walked into the</p> <p>24 store at 1:05:55.</p> <p>25 Do you know who that person is?</p> <p style="text-align: right;">Page 50</p>	<p>1 Q. Was the struggle occurring at that point when</p> <p>2 you started walking towards the front door?</p> <p>3 A. It could be around that time or maybe after.</p> <p>4 Q. And you stood in that position for a period of</p> <p>5 time watching the struggle, correct?</p> <p>6 A. Yes.</p> <p>7 Q. Was the struggle between the two men happening</p> <p>8 quickly?</p> <p>9 A. Yeah, quick.</p> <p>10 Q. Was there a lot of movement between the two men</p> <p>11 struggling?</p> <p>12 THE INTERPRETER: Which men?</p> <p>13 MR. BLECHMAN: The two men struggling.</p> <p>14 THE INTERPRETER: Two men?</p> <p>15 MR. BLECHMAN: Two men.</p> <p>16 THE WITNESS: Which ones. Who are the men?</p> <p>17 BY MR. BLECHMAN:</p> <p>18 Q. The officer and Mr. Perez, during the struggle,</p> <p>19 was there a lot of movement between those two men?</p> <p>20 A. Yeah, of course.</p> <p>21 Q. Did you ever see Mr. Perez with one of his</p> <p>22 hands near the officer's gun during the struggle?</p> <p>23 A. No.</p> <p>24 Q. Could you see every movement that was being</p> <p>25 made between the two men during the struggle?</p> <p style="text-align: right;">Page 52</p>
<p>1 A. I don't know.</p> <p>2 Q. Do you know if that gentleman is a friend of</p> <p>3 Perez?</p> <p>4 A. Yeah. They were two.</p> <p>5 Q. It's your understanding that that is a friend</p> <p>6 of Mr. Perez?</p> <p>7 A. Yeah.</p> <p>8 Q. Did you see that gentleman come in the store</p> <p>9 earlier that evening with Mr. Perez?</p> <p>10 A. Yeah.</p> <p>11 MR. BLECHMAN: Okay. We'll continue to play</p> <p>12 now at 1:05:55.</p> <p>13 (Video playing.)</p> <p>14 BY MR. BLECHMAN:</p> <p>15 Q. You see yourself now walking towards another</p> <p>16 part of the store; is that correct?</p> <p>17 A. Yeah.</p> <p>18 Q. Now, around 1:06:15, you come towards the front</p> <p>19 of the store. It appears like you are looking out the</p> <p>20 window above or to the left of the door, and then you go</p> <p>21 stand next to the door; is that correct?</p> <p>22 A. Yes.</p> <p>23 Q. What drew your attention outside the front of</p> <p>24 the store at that time?</p> <p>25 A. Only other people.</p> <p style="text-align: right;">Page 51</p>	<p>1 A. Yeah. I was seeing them.</p> <p>2 Q. The two men were struggling next to a post or a</p> <p>3 pole right in front of the store; is that correct?</p> <p>4 A. On the side of it.</p> <p>5 MR. BLECHMAN: Okay. Let's continue to play</p> <p>6 it. I'm starting at 1:06:19.</p> <p>7 (Video playing.)</p> <p>8 MR. BLECHMAN: I stopped it at 1:06:40.</p> <p>9 Q. For that 21 seconds that we just played, you</p> <p>10 are watching the struggle occur, correct?</p> <p>11 A. Yeah.</p> <p>12 Q. And then a man walks in the store.</p> <p>13 Do you recall a man walking in the store just</p> <p>14 before the shooting and standing near you?</p> <p>15 A. Yeah. There was a customer.</p> <p>16 Q. All right. I'm going to continue to play it.</p> <p>17 Before I do that, do you believe this clock is</p> <p>18 accurate for the actual time this incident occurred?</p> <p>19 A. It's correct.</p> <p>20 Q. It's correct?</p> <p>21 A. M-hm.</p> <p>22 Q. So you think the shooting happened sometime</p> <p>23 after 1:00 in the morning?</p> <p>24 A. Yeah, about.</p> <p>25 MR. BLECHMAN: All right. I'm going to</p> <p style="text-align: right;">Page 53</p>

<p>1 continue playing it starting at 1:06:40.</p> <p>2 Q. What did you just say, Mr. Dalek?</p> <p>3 A. Yeah. The customer went -- me and the</p> <p>4 customer, we saw the shooting. So this customer was</p> <p>5 also present at the shooting time.</p> <p>6 Q. Once the shooting started, is that when you</p> <p>7 retreated into the store down that aisle?</p> <p>8 A. Oh, yes.</p> <p>9 Q. And we saw that on that last video clip that we</p> <p>10 just played?</p> <p>11 A. Yeah.</p> <p>12 MR. BLECHMAN: Let me continue to play it</p> <p>13 starting at 1:06:48.</p> <p>14 (Video playing.)</p> <p>15 MR. BLECHMAN: Stopping at 1:06:53.</p> <p>16 THE WITNESS: He's already shooted (sic).</p> <p>17 BY MR. BLECHMAN:</p> <p>18 Q. You saw Mr. Perez then enter the store and lay</p> <p>19 down in the aisle?</p> <p>20 A. Yeah.</p> <p>21 Q. Okay. Do you know the names of any other</p> <p>22 people in the store at the time of the shooting?</p> <p>23 A. Yeah. I know the customer, but I don't know</p> <p>24 his name.</p> <p>25 Q. Which customer?</p> <p style="text-align: right;">Page 54</p>	<p>1 lacks foundation, irrelevant.</p> <p>2 THE WITNESS: No. I don't allow anybody to</p> <p>3 hang out.</p> <p>4 BY MR. BLECHMAN:</p> <p>5 Q. Okay. Do you sometimes have to kick people out</p> <p>6 of the front area of the store -- meaning in front of</p> <p>7 the store, outside the store -- for hanging out</p> <p>8 sometimes?</p> <p>9 A. Very rare.</p> <p>10 Q. Do people sometimes drink alcohol outside in</p> <p>11 front of the store?</p> <p>12 A. No. I don't allow this. I tell them to go</p> <p>13 away.</p> <p>14 Q. So if you see somebody doing that, you will</p> <p>15 tell them to go away?</p> <p>16 A. Yeah.</p> <p>17 Q. Do you ever have to call the police to come to</p> <p>18 the store to help you get people away from the front of</p> <p>19 the store or drinking, hanging out, that type of thing?</p> <p>20 A. Yeah. I do this often, yeah, if there is</p> <p>21 anybody.</p> <p>22 Q. The officer that you saw that night, had you</p> <p>23 ever seen him in this area before?</p> <p>24 A. No.</p> <p>25 Q. You did not call him to the scene that night to</p> <p style="text-align: right;">Page 56</p>
<p>1 A. The customer standing. This guy.</p> <p>2 Q. Okay. The guy who is walking in just before</p> <p>3 the shooting?</p> <p>4 A. Yeah. I know him. He comes often to the</p> <p>5 store.</p> <p>6 Q. Okay.</p> <p>7 A. He is a regular customer.</p> <p>8 MR. BLECKMAN: I'm backing it up and playing</p> <p>9 just before the shooting now starting at 1:06:43.</p> <p>10 (Video playing.)</p> <p>11 BY MR. BLECHMAN:</p> <p>12 Q. Did you see yourself flinch? I stopped it at</p> <p>13 1:06:46.</p> <p>14 A. Yeah.</p> <p>15 Q. Is that flinch the time you hear the first shot</p> <p>16 occur?</p> <p>17 A. Yeah, the first one. So at this moment, the</p> <p>18 officer simply give him away so he can just enter to the</p> <p>19 store (as said). So he let him go inside.</p> <p>20 MR. BLECHMAN: Okay. Thank you. We marked</p> <p>21 that video, RPD 218, Exhibit 4.</p> <p>22 Q. Mr. Dalek, was there sometimes a problem with</p> <p>23 people hanging out, loitering in front of the store, at</p> <p>24 Uncle Sam's?</p> <p>25 MR. LACY: Objection; calls for speculation,</p> <p style="text-align: right;">Page 55</p>	<p>1 deal with Mr. Perez. The officer was already there at</p> <p>2 the time you saw him that night, correct?</p> <p>3 A. Yeah.</p> <p>4 Q. Do you, yourself, have any problems with the</p> <p>5 Richmond Police Department?</p> <p>6 A. No.</p> <p>7 Q. What is your opinion of the Richmond Police</p> <p>8 Department?</p> <p>9 A. They are okay, good.</p> <p>10 Q. Have you ever spoken to the parents of Mr.</p> <p>11 Perez?</p> <p>12 A. Why?</p> <p>13 Q. After this incident, did they ever come to the</p> <p>14 store to speak to you, or did you ever go to their</p> <p>15 business to speak to them?</p> <p>16 A. No. I don't even speak English well.</p> <p>17 Q. Is there anything else you remember about the</p> <p>18 incident that we did not talk about as of yet?</p> <p>19 A. No.</p> <p>20 MR. BLECHMAN: I might have some more questions</p> <p>21 for you if Mr. Lacy has more. At this point, thank you</p> <p>22 for your time.</p> <p>23 MR. LACY: No questions.</p> <p>24 THE COURT REPORTER: Mr. Lacy, are you ordering</p> <p>25 a copy of the depo and the exhibits?</p> <p style="text-align: right;">Page 57</p>

<div>1 MR. LACY: Yes. Thank you. PDF copy.</div> <div>2 (Time noted: 11:48 a.m.)</div> <div>3</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> <div>Page 58</div>	<div>1 CERTIFICATE OF READER-INTERPRETER</div> <div>2</div> <div>3</div> <div>4 I, _____,</div> <div>5 whose address is _____</div> <div>6 _____</div> <div>7 a person who speaks the language of the witness;</div> <div>8 namely, _____, do hereby certify that on</div> <div>9 the _____ day of _____, 20____, I</div> <div>10 did translate the foregoing deposition from the</div> <div>11 _____ language into the _____</div> <div>12 language reading same to the witness in his/her native</div> <div>13 tongue, to the best of my ability;</div> <div>14 That all corrections and changes requested by</div> <div>15 the witness were made and initialed by the witness;</div> <div>16 That upon completion of said reading, the</div> <div>17 witness did confirm to me that he/she had understood the</div> <div>18 reading.</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23 _____</div> <div>24 AFAF STEIERT</div> <div>25</div> <div>Page 60</div>
<div>1 STATE OF _____)</div> <div>2 COUNTY OF _____)</div> <div>3</div> <div>4 I, the undersigned, declare under penalty of</div> <div>5 perjury that I have read the foregoing transcript, and I</div> <div>6 have made any corrections, additions, or deletions that</div> <div>7 I was desirous of making; that the foregoing is a true</div> <div>8 and correct transcript of my testimony contained</div> <div>9 therein.</div> <div>10 EXECUTED this _____ day of _____,</div> <div>11 _____, at _____, _____.</div> <div>12 (City) (State)</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19 _____</div> <div>20 MOHAMED DALEK</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> <div>Page 59</div>	<div>1 REPORTER'S CERTIFICATE</div> <div>2</div> <div>3 I, JOANNE BALBONI, CSR No. 10206, Certified</div> <div>4 Shorthand Reporter, certify:</div> <div>5 That the foregoing proceedings were taken before</div> <div>6 me at the time and place therein set forth, at which</div> <div>7 time the witness was put under oath by me;</div> <div>8 That the testimony of the witness, the questions</div> <div>9 propounded, and all objections and statements made at</div> <div>10 the time of the examination were recorded</div> <div>11 stenographically by me and were thereafter transcribed;</div> <div>12 That the foregoing is a true and correct</div> <div>13 transcript of my shorthand notes so taken.</div> <div>14 I further certify that I am not a relative or</div> <div>15 employee of any attorney of the parties, nor financially</div> <div>16 interested in the action.</div> <div>17 I declare under penalty of perjury under the</div> <div>18 laws of California that the foregoing is true and</div> <div>19 correct. Witness will read and sign.</div> <div>20 Dated this 22nd day of October 2015.</div> <div>21</div> <div>22</div> <div>23 _____</div> <div>24 JOANNE BALBONI, CSR No. 10206</div> <div>25</div> <div>Page 61</div>

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