

Capital Reporting Company
In the Matter of A.B.R.A. Agenda 10-24-2012

DISTRICT OF COLUMBIA

ALCOHOLIC BEVERAGE CONTROL BOARD

MEETING

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IN THE MATTER OF: :
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A.B.R.A. AGENDA :
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October 24, 2012

The Alcoholic Beverage Control

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

PRESENT

- RUTHANNE MILLER, Chairperson
- NICK ALBERTI, Member
- DONALD BROOKS, Member
- HERMAN JONES, Member
- CALVIN NOPHLIN, Member
- MIKE SILVERSTEIN, Member

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2	<p style="text-align: center;">P R O C E E D I N G S</p> <p style="text-align: center;">1:17 p.m.</p> <p>CHAIRPERSON MILLER: We're on the -- back on the record for the Board's meeting on our agenda items for Wednesday, October 24th, 2012.</p> <p>The first item on our agenda is applicant's motion for reconsideration of Board Order, dated October 11, 2012 from Andrew Kline to which the Office of the Attorney General responded. The establishment is Pan Mar Liquors. It's located at 1926 I Street, N.W., License No. 60242. And I'm going to ask Mr. Alberti to lead the discussion on this motion.</p> <p>MR. ALBERTI: The motion from the applicant has two parts. The first part is a motion to dismiss the charges stemming from a violation of Title 25-783. The Board agrees with the government that it can -- it can bring both charges and convict the applicant of both charges. So we are denying the motion on -- we're denying that aspect of the motion for reconsideration. Our decision to --</p> <p>CHAIRPERSON MILLER: No, you're proposing that the Board deny.</p>	4
3	<p>MR. ALBERTI: Right, right, right. So --</p> <p>CHAIRPERSON MILLER: Go ahead.</p> <p>MR. ALBERTI: Right. I will make that motion. I will make it.</p> <p>CHAIRPERSON MILLER: Okay.</p> <p>MR. ALBERTI: So my motion will be to deny that portion of the -- that portion of the motion. And let's stand our conviction on the violation of both 781 -- 25- 781 and 25-83. The second part of the -- of the motion from the applicant was to reduce the fine for the violation stemming from 25-783. I will note that the fine that was -- the monetary fine that was levied by the Board in its Order stems from -- well, it stems from a transcription error.</p> <p>The Board, in its decision, had intended to fine the applicant \$2000 with five days suspension, one served and four stayed. So we are granting the motion to reduce the monetary fine stemming from 25-783. So in the end -- so that is -- that is my motion, to grant the second part of the motion, which is to reduce the monetary fine stemming from 25-783.</p> <p>And we'll just say in summary, the final</p>	5
2	<p>penalty here is \$4000 for 25-781 with ten days suspension, six -- four served and six stayed and for the violation of 25- 783, the final Order will have a fine of \$2000 with five days suspension, one served and four stayed. So my recommendation is to -- that is my recommendation to the Board.</p> <p>MR. BROOKS: I second.</p> <p>CHAIRPERSON MILLER: Discussion? I would just like to say that with respect to the two charges, 25-781 and 25-783, while I think maybe the Board may charge both -- or the government may charge both, I think that we -- it would be good to use discretion to only charge one in my view and that was the one under 25-783. So -- and my other comment is that in 25-783 one talks about suspending the license for five consecutive days.</p> <p>And then it say, "The five-day suspension may be stayed by the Board for one year if all employees who serve alcoholic beverages in the licensed establishment complete an alcohol training program within three months," which is -- my understanding is what's going to happen here and what our Order says</p>	4
3	<p>that should be done. And I read this provision strictly as the applicant does, that all five days should be stayed and not just a part of the five days.</p> <p>So I would be in opposition to the motion with respect to that part. So --</p> <p>MR. ALBERTI: I believe there are additional comments.</p> <p>CHAIRPERSON MILLER: Other comments? Yes.</p> <p>MR. JONES: Thank you. Just for clarification, I believe the wording is, "May," and not, "Should be stayed."</p> <p>CHAIRPERSON MILLER: It -- yes. It -- are you asking me a question? Yes, it is -- it's -- the five-day suspension maybe stayed. So it gives the Board the discretion to stay the five-day suspension. I see a distinction between that and Paragraph 2 and 3, where the language says that the Board may stay up to a certain amount of days.</p> <p>MR. JONES: But just for clarification purposes, you -- in your statement, I believe you said, "Should."</p> <p>CHAIRPERSON MILLER: Oh, I did? I didn't</p>	5

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<p style="text-align: right;">6</p> <p>1 mean to.</p> <p>2 MR. JONES: Okay.</p> <p>3 CHAIRPERSON MILLER: I mean -- oh --</p> <p>4 MR. JONES: Because it's, "May."</p> <p>5 CHAIRPERSON MILLER: Yes, it's, "May."</p> <p>6 MR. JONES: And I think your contention had</p> <p>7 to do with the totality of the five days.</p> <p>8 CHAIRPERSON MILLER: Right.</p> <p>9 MR. JONES: As it was clearly up to is in</p> <p>10 perspective, as you read it, we don't have -- or should</p> <p>11 not take a portion of those days and either choose to</p> <p>12 stay a portion and serve a portion. It's either we do</p> <p>13 all five, i.e., we have them serve all five or stay all</p> <p>14 five. But it's a may do that, correct?</p> <p>15 CHAIRPERSON MILLER: Correct.</p> <p>16 MR. JONES: Okay.</p> <p>17 CHAIRPERSON MILLER: Correct. And we may.</p> <p>18 We don't have to do that. But if we do it, we --</p> <p>19 literally it looks like we do it for all five.</p> <p>20 MR. JONES: Okay.</p> <p>21 CHAIRPERSON MILLER: Yeah.</p> <p>22 MR. JONES: So -- and my other concern was</p>	<p style="text-align: right;">8</p> <p>1 MR. ALBERTI: Thank you.</p> <p>2 CHAIRPERSON MILLER: Is it my understanding -</p> <p>3 - that Order precedes me -- that he had his employees</p> <p>4 trained but he didn't -- he didn't get trained? Is</p> <p>5 that what you mean by didn't comply with it?</p> <p>6 MR. JONES: He was unable to provide any</p> <p>7 proof of the fact that his employees were trained, nor</p> <p>8 did he take the training, which was part of the request</p> <p>9 that was made.</p> <p>10 CHAIRPERSON MILLER: Okay. Mr. Silverstein?</p> <p>11 MR. SILVERSTEIN: Madam Chair, I agree with</p> <p>12 you. This is a difficult case and it's a close call</p> <p>13 because the establishment did in fact at least have a</p> <p>14 cursory glance at an ID. But a cursory glance is not</p> <p>15 defined specifically by the statute as being adequate.</p> <p>16 And I believe that the government made its case just</p> <p>17 barely, but yet, it still did. The issue of a five-day</p> <p>18 suspension versus zero, if it was to be a five -- if it</p> <p>19 was either/or and not allow us to lessen it, I would go</p> <p>20 for the five days.</p> <p>21 CHAIRPERSON MILLER: Uh-huh.</p> <p>22 MR. SILVERSTEIN: But I feel that by lowering</p>
<p style="text-align: right;">7</p> <p>1 regarding the training that the Licensee had said they</p> <p>2 were going to do and by Order should have done and by</p> <p>3 them not completing that in the first time that we</p> <p>4 ordered them to do that, by their admission on the</p> <p>5 record, when we had the case, I have very little faith</p> <p>6 that this Licensee respects the Board enough to follow</p> <p>7 through on the request that we ordered them to have</p> <p>8 training done.</p> <p>9 Therefore, I don't hold any credence to that</p> <p>10 as I evaluate the decision regarding this Order.</p> <p>11 CHAIRPERSON MILLER: Okay.</p> <p>12 MR. ALBERTI: Mr. Jones, just to be clear,</p> <p>13 you're talking about the -- a previous Order --</p> <p>14 MR. JONES: Correct.</p> <p>15 MR. ALBERTI: -- to this one where we ordered</p> <p>16 training and they admitted they had not fulfilled the</p> <p>17 Board's instructions in that Order?</p> <p>18 MR. JONES: Yes, sir. I am referring to a</p> <p>19 previous --</p> <p>20 MR. ALBERTI: Thank you.</p> <p>21 CHAIRPERSON MILLER: Is it my --</p> <p>22 MR. JONES: -- (inaudible) clarification.</p>	<p style="text-align: right;">9</p> <p>1 it to one day, we're showing fairness to the</p> <p>2 establishment. And as such, I would agree with Board</p> <p>3 Member Alberti's motion but I do respect and understand</p> <p>4 those who would feel otherwise. It is a close call.</p> <p>5 CHAIRPERSON MILLER: Okay. Others? There</p> <p>6 was a motion -- what -- and it was seconded by Mr.</p> <p>7 Jones, correct?</p> <p>8 MR. ALBERTI: By Mr. Brooks.</p> <p>9 CHAIRPERSON MILLER: Oh, Mr. Brooks. I'm</p> <p>10 sorry. Okay. Mr. Alberti made a motion. Mr. Brooks</p> <p>11 seconded it. It's -- I believe the motion is to grant</p> <p>12 the motion for reconsideration in part and deny it in</p> <p>13 part in the manner that Mr. Alberti stated. If there's</p> <p>14 no question on the motion, then I'll call the vote.</p> <p>15 All those in favor, say aye?</p> <p>16 (Chorus of ayes.)</p> <p>17 CHAIRPERSON MILLER: All those opposed?</p> <p>18 Opposed. All those abstaining?</p> <p>19 (No audible response.)</p> <p>20 CHAIRPERSON MILLER: Then the vote is 5-1-0</p> <p>21 to grant Mr. Alberti's motion -- to grant in part and</p> <p>22 deny in part the motion for reconsideration.</p>

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<p style="text-align: right;">10</p> <p>1 No. 2 is --</p> <p>2 MR. ALBERTI: Ms. Miller opposed.</p> <p>3 CHAIRPERSON MILLER: No. 2 is a review of a</p> <p>4 new cooperative agreement concerning issuance of</p> <p>5 license for sale of alcoholic beverages dated October</p> <p>6 3, 2012 between Mellow Mushroom, ANC 1C, the Kalorama</p> <p>7 Citizens Association, and the Reed-Cooke Neighborhood</p> <p>8 Association. The establishment is Mellow Mushroom,</p> <p>9 located at 2436 18th Street, N.W., License No. 86063.</p> <p>10 So this is a voluntary agreement which we're reviewing</p> <p>11 to see if we have any concerns with any of the</p> <p>12 provisions.</p> <p>13 Okay. Looking at Page 1, Paragraph 3, it</p> <p>14 says, "Whereas, the applicant and protestants seek to</p> <p>15 combine the previous voluntary agreement, Board Order,</p> <p>16 and two amendments into one document to be considered a</p> <p>17 new voluntary agreement, upon the occasion of the</p> <p>18 applicant's simultaneous request to the Board for a</p> <p>19 sidewalk cafe/summer garden in the front of the</p> <p>20 establishment in 2436 18th Street, N.W."</p> <p>21 Okay. I would propose that the Board Order</p> <p>22 language come out of this, "Whereas," and that a Board</p>	<p style="text-align: right;">12</p> <p>1 So those are my only comments on this</p> <p>2 voluntary agreement. Are there others?</p> <p>3 (No audible response.)</p> <p>4 CHAIRPERSON MILLER: All right. Then I'm</p> <p>5 going to move approval of this voluntary agreement with</p> <p>6 those few recommendations.</p> <p>7 Do I have a second?</p> <p>8 MR. NOPHLIN: Second.</p> <p>9 CHAIRPERSON MILLER: Mr. Nophlin has seconded</p> <p>10 the motion. Any comments?</p> <p>11 (No audible response.)</p> <p>12 CHAIRPERSON MILLER: All those in favor, say</p> <p>13 aye?</p> <p>14 (Chorus of ayes.)</p> <p>15 CHAIRPERSON MILLER: All those opposed?</p> <p>16 (No audible response.)</p> <p>17 CHAIRPERSON MILLER: All those abstaining?</p> <p>18 (No audible response.)</p> <p>19 CHAIRPERSON MILLER: The vote is 6-0-0 to</p> <p>20 approve with those -- with those recommendations.</p> <p>21 No. 3 on our agenda is a voluntary agreement</p> <p>22 dated October 10, 2012 between La Plaza Mexican</p>
<p style="text-align: right;">11</p> <p>1 Order not be grouped into one document as the document</p> <p>2 with other voluntary agreements, but that the parties</p> <p>3 know that they can make reference to reading the</p> <p>4 combined voluntary agreement with Board Orders that are</p> <p>5 in existence.</p> <p>6 That was the first recommendation. I don't</p> <p>7 know if there are any other comments on that. Not</p> <p>8 hearing any, Page 2, the Paragraph B and C discussed</p> <p>9 protestants being able to petition the Board and a more</p> <p>10 accurate process. That should be deleted, "The more</p> <p>11 accurate process is that they may file a complaint with</p> <p>12 ABRA." I don't know if anybody has any more comments</p> <p>13 on that.</p> <p>14 And Page 3, just to make a comment -- no</p> <p>15 change -- it talk about the applicant agreeing to</p> <p>16 provide the ANC with a copy of the contract to remove</p> <p>17 grease/fatty oils from the establishment. That's in</p> <p>18 Paragraph 5C and I don't have a problem with that. But</p> <p>19 just as a comment to the parties, I think it's the</p> <p>20 Board's view that information such as cost of the</p> <p>21 services or whatever, things dealing with money and</p> <p>22 price could be redacted.</p>	<p style="text-align: right;">13</p> <p>1 Restaurant and ANC 6B. And La Plaza Mexican Restaurant</p> <p>2 is located at 629 Pennsylvania Avenue, S.E., License</p> <p>3 No. 60614. Okay. Just on Page 1 of that voluntary</p> <p>4 agreement, I recommend that, "Serving Mexican food," be</p> <p>5 deleted from Paragraph 2. And the reason for that is</p> <p>6 if this -- if this license is transferred to another</p> <p>7 restaurant serving a different type of food, it creates</p> <p>8 complications in having to amend a voluntary agreement.</p> <p>9 So it would read, "The applicant will manage</p> <p>10 and operate a restaurant at the listed address." I</p> <p>11 don't have any other concerns on this. Anybody else?</p> <p>12 (No audible response.)</p> <p>13 CHAIRPERSON MILLER: Not hearing anybody --</p> <p>14 hearing any, I move to approve this voluntary agreement</p> <p>15 -- sorry -- with that one recommended change.</p> <p>16 Do I have a second?</p> <p>17 MR. NOPHLIN: Second.</p> <p>18 CHAIRPERSON MILLER: Mr. Nophlin has seconded</p> <p>19 the motion. All those in favor, say aye?</p> <p>20 (Chorus of ayes.)</p> <p>21 CHAIRPERSON MILLER: All those opposed?</p> <p>22 (No audible response.)</p>

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14	<p>1 CHAIRPERSON MILLER: All those abstaining? 2 (No audible response.) 3 CHAIRPERSON MILLER: The motion passes to 4 approve the voluntary agreement with the one change. 5 Okay. 6 No. 4 is a review of a second amendment dated 7 September 25th, 2012 between VSLS, LLC, LivingSocial, 8 and the Ventana Homeowners Association. VSLS, LLC is 9 located at 918 F Street, N.W., License No. 88360. I 10 move that we postpone our consideration of this 11 amendment pending our review of the application. And 12 we will be able to rule on this next week. 13 Do I have a second? 14 MR. NOPHLIN: Second. 15 CHAIRPERSON MILLER: All those in favor, say 16 aye? 17 (Chorus of ayes.) 18 CHAIRPERSON MILLER: All those opposed? 19 (No audible response.) 20 CHAIRPERSON MILLER: All those abstaining? 21 (No audible response.) 22 CHAIRPERSON MILLER: The vote is 6-0-0 to</p>	16	<p>1 CHAIRPERSON MILLER: The motion passes 6-0-0. 2 No. 2 is a request for a stipulated license 3 to change hours of operation dated September 5, 2012. 4 And the -- there is a letter of support from ANC 1A. 5 The establishment is Ma Ma's Southern Cuisine, located 6 at 3118 Georgia Avenue, N.W., License No. 85583. I 7 move that we grant this request. 8 Do I have a second? 9 MR. NOPHLIN: Second. 10 CHAIRPERSON MILLER: Is that Mr. Nophlin? 11 Okay. Mr. Nophlin has seconded the motion. Any 12 comments? 13 (No audible response.) 14 CHAIRPERSON MILLER: All those in favor, say 15 aye? 16 (Chorus of ayes.) 17 CHAIRPERSON MILLER: All those opposed? 18 (No audible response.) 19 CHAIRPERSON MILLER: All those abstaining? 20 (No audible response.) 21 CHAIRPERSON MILLER: The vote is 6-0-0 to 22 approve.</p>
15	<p>1 postpone -- okay -- until next week. That is -- that 2 concludes our regular agenda. We have a supplemental 3 agenda, just a few items. 4 First on our supplemental agenda is a request 5 for a stipulated license to change the hours of 6 operation dated August 16, 2012, and a letter of 7 support from ANC 6B. The establishment is La Plaza 8 Mexican Restaurant, located at 629 Pennsylvania Avenue, 9 S.E., License No. 60614. I move that we approve this 10 request. 11 Do I have a second? 12 MR. SILVERSTEIN: Second. 13 CHAIRPERSON MILLER: Any comments? 14 (No audible response.) 15 CHAIRPERSON MILLER: Okay. The motion has 16 been seconded by Mr. Silverstein. All those in favor, 17 say aye? 18 (Chorus of ayes.) 19 CHAIRPERSON MILLER: All those opposed? 20 (No audible response.) 21 CHAIRPERSON MILLER: All those abstaining? 22 (No audible response.)</p>	17	<p>1 Next -- the next and last item on our 2 supplemental agenda is correspondence dated October 23, 3 2012 from David Chung requesting permission to have 4 alcoholic beverages delivered on Friday, October 26th, 5 2012 for an event at the Carnegie Library on Saturday, 6 October 27, 2012. It's K Street Lounge, 1301 K Street, 7 N.W., License No. 72225. I move that we approve this 8 request. 9 Do I have a second? 10 MR. SILVERSTEIN: Second. 11 CHAIRPERSON MILLER: Motion was seconded by 12 Mr. Silverstein. All those in favor, say aye? 13 (Chorus of ayes.) 14 CHAIRPERSON MILLER: All those opposed? 15 (No audible response.) 16 CHAIRPERSON MILLER: All those abstaining? 17 (No audible response.) 18 CHAIRPERSON MILLER: The motion passes 6-0-0. 19 Okay. That completes our agenda and our 20 supplemental agenda. 21 We have just some cancellations to -- we're 22 requested to approve. They are as follows -- I think</p>

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18	<p>1 we can do them en masse. I'm going to read them. 2 MR. SILVERSTEIN: Yes. 3 CHAIRPERSON MILLER: Okay. 026504, Zanzibar 4 on the Waterfront; Licensee did not make the third year 5 payment. 6 076295, Champel's; Licensee did not make the 7 second and third year payments. 8 Rail Station Lounge, 2001 Benning Road, N.E.; 9 Licensee did not make second and third year payments. 10 License No. 084695, Desperados Pizza, located 11 at 1387 H Street, N.W.; Licensee did not make third 12 year payment. 13 087075, Happy Hour, at 1201 U Street, N.W.; 14 Licensee did not make second and third year payment. 15 ABRA License No. 088292, Sol Mexican Grill, 16 1251 H Street, N.E.; Licensee did not make third year 17 payment. 18 ABRA License No. 022973, Saloun; Licensee did 19 not make third year payment. 20 And 082038, FunXion; Licensee did not make 21 second year and third year payment. 22 I move that we approve the -- those license</p>	20
19	<p>1 cancellations for the reasons I just articulated. 2 Do I have a second? 3 MR. NOPHLIN: Second. 4 CHAIRPERSON MILLER: Any comments? 5 (No audible response.) 6 CHAIRPERSON MILLER: All those in favor, say 7 aye? 8 (Chorus of ayes.) 9 CHAIRPERSON MILLER: All those opposed? 10 (No audible response.) 11 CHAIRPERSON MILLER: All those abstaining? 12 (No audible response.) 13 CHAIRPERSON MILLER: The motion passes 6-0-0. 14 Okay. All right. I'm going to do this 15 quickly as well as the last item on our agenda, our 16 orders to cease and desist as follows: 17 075156, Tattoo, 1413 K Street, N.W.; didn't 18 make third year payment. 19 075162, Lotus, 1420 K Street, N.W.; didn't 20 make third year payment. 21 083133, Eye Bar/Garden of Eden, 1716 I 22 Street, N.W.; did not make third year payment.</p>	21
18	<p>1 Okay. The following I'm going to read all 2 did not make third year payments: 084726, Love, 1350 3 Okie Street, N.E.; 087317, U4RIA@Republic Gardens, 1335 4 U Street, N.W.; 087875, Louis Rogue, 476 K Street, 5 N.W.; 000964, Hawk 'N Dove, 329 Pennsylvania Avenue, 6 S.E.; 075377, Manchester Bar & Restaurant, 944 Florida 7 Avenue, N.W. 8 Okay. All of these did not make third year 9 payments: Solly's U Street Tavern, No. 075811, 1942 10 11th Street, N.W.; 076726, Veritas Wine Bar, 2031 11 Florida Avenue; Current Sushi, No. 077883, 1215 12 Connecticut Avenue, N.W.; 078578, SOVA Espresso & Wine, 13 1359 H Street, N.E.; 083552, Optimism, 3301 12th 14 Street, N.E.; 086037, Mood, 1318 19th [sic] Street, 15 N.W.; 087045, DC Reynolds, 3628 Georgia Avenue; 087398, 16 the Big Board, 421 H Street, N.E.; King of Kabob, No. 17 088347, 1018 Vermont Avenue, N.W.; 088592, HR-57, 1007 18 H Street, N.E.; 088924, Koffee's Lounge, 2632 Georgia 19 Avenue, N.W., Unit 2. 20 My goodness, all right. Here are -- the 21 following did not make second year payments: 025561, 22 Royal Market, at 4600 14th Street, N.W.; 060197, 10th</p>	21

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22	24
1 CHAIRPERSON MILLER: Passes 6-0-0. Okay. 2 That concludes our agenda for this afternoon. 3 (WHEREUPON, at 1:42 p.m., the hearing was 4 concluded.) 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	1 CERTIFICATE OF TRANSCRIPTION 2 3 I, MIRANDA PENNACHI, hereby certify that I am not 4 the Court Reporter who reported the proceeding and that 5 I have typed the transcript of the proceeding using the 6 Court Reporter's notes and recordings. The 7 foregoing/attached transcript is a true, correct and 8 complete transcription of the proceedings. 9 10 11 12 13 _____ 14 Date MIRANDA PENNACHI 15 Transcriptionist 16 17 18 19 20 21 22
23	
1 CERTIFICATE OF NOTARY PUBLIC 2 3 I, LINDA METCALF, the officer before whom the 4 foregoing hearing was taken, do hereby certify that the 5 testimony appearing in the foregoing pages was recorded 6 by me and thereafter reduced to typewriting under my 7 direction; that said transcription is a true record of 8 the testimony given by said parties; that I am neither 9 counsel for, related to, nor employed by any of the 10 parties to the action in which this hearing was taken; 11 and, further, that I am not a relative or employee of 12 any counsel or attorney employed by the parties hereto, 13 nor financially or otherwise interested in the outcome 14 of this action. 15 16 17 _____ 18 LINDA METCALF 19 Notary Public in and for the 20 District of Columbia 21 22	

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