

Capital Reporting Company
In the Matter of: A.B.R.A. Agenda 10-31-2012

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 31, 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

Capital Reporting Company
In the Matter of: A.B.R.A. Agenda 10-31-2012

2

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

2 3:41 p.m.

3 CHAIRPERSON MILLER: We're back on the record
4 for the meeting agenda.

5 First for Wednesday, October 31st, 2012, the
6 first item on our agenda is a manager's application for
7 Robert L. Belmonte. And do we have a motion on that?

8 MR. ALBERTI: I move that we approve the
9 manager's license for Robert L. Belmonte.

10 CHAIRPERSON MILLER: And do we have a second?

11 MR. SILVERSTEIN: Second.

12 CHAIRPERSON MILLER: Mr. Silverstein seconds.
13 All those in favor, say aye?

14 (Chorus of ayes.)

15 CHAIRPERSON MILLER: All those opposed?

16 (No audible response.)

17 CHAIRPERSON MILLER: All those abstaining?
18 I'm abstaining. So the vote is 3-0-1 to approve.

19 Next is a solicitor's application for Rapheal
20 Johnson. I move that we approve this application.

21 Do I have a second?

22 MR. SILVERSTEIN: Second.

Capital Reporting Company
In the Matter of: A.B.R.A. Agenda 10-31-2012

3

1 CHAIRPERSON MILLER: Mr. Silverstein seconds
2 the motion. All those in favor, say aye?

3 (Chorus of ayes.)

4 CHAIRPERSON MILLER: All those opposed?

5 (No audible response.)

6 CHAIRPERSON MILLER: All those abstaining?

7 (No audible response.)

8 CHAIRPERSON MILLER: The vote passes 4 -- the
9 motion passes 4-0-0 to approve. Oh, hello.

10 No. 3 on the agenda is a review of a sidewalk
11 application for 34 seats. The application is Buck's
12 Fishing & Camping at 5031 Connecticut Avenue, N.W. I
13 move that we approve this application.

14 Do I have a second?

15 MR. SILVERSTEIN: Second.

16 CHAIRPERSON MILLER: The motion's been
17 seconded by Mr. Silverstein. All those in favor, say
18 aye?

19 (Chorus of ayes.)

20 CHAIRPERSON MILLER: All those opposed?

21 (No audible response.)

22 CHAIRPERSON MILLER: All those abstaining?

Capital Reporting Company
In the Matter of: A.B.R.A. Agenda 10-31-2012

4

1 (No audible response.)

2 CHAIRPERSON MILLER: The next one is also
3 Buck's Fishing & Camping. It's a change of hours
4 application. And I would note that both No. 3 and 4
5 have the support of the ANC and are not in conflict
6 with their voluntary agreement. So I would move that
7 we approve this change of hours application as well.

8 Do I have a second?

9 MR. SILVERSTEIN: Second.

10 CHAIRPERSON MILLER: The motion's been
11 seconded by Mr. Silverstein. Any further comments?

12 (No audible response.)

13 CHAIRPERSON MILLER: All those in favor, say
14 aye?

15 (Chorus of ayes.)

16 CHAIRPERSON MILLER: All those opposed?

17 (No audible response.)

18 CHAIRPERSON MILLER: All those abstaining?

19 (No audible response.)

20 CHAIRPERSON MILLER: The motion to approve
21 passes by a vote of 4-0-0.

22 No. 5 is an entertainment endorsement

Capital Reporting Company
In the Matter of: A.B.R.A. Agenda 10-31-2012

5

1 application for live music. And the proposed
2 entertainment hours are Thursday 10:00 p.m. to 1:30
3 a.m. And there's no fines outstanding or no pending
4 investigative matters, no voluntary agreements. It's
5 in ANC 2E. The establishment is Bodega, 3116 M Street,
6 N.W., License No. 78301. I move that we approve the
7 application.

8 MR. SILVERSTEIN: Second.

9 CHAIRPERSON MILLER: Mr. Silverstein seconds.
10 Any comments?

11 (No audible response.)

12 CHAIRPERSON MILLER: All those in favor, say
13 aye?

14 (Chorus of ayes.)

15 CHAIRPERSON MILLER: All those opposed?

16 (No audible response.)

17 CHAIRPERSON MILLER: All those abstaining?

18 (No audible response.)

19 CHAIRPERSON MILLER: The motion passes on a
20 4-0- 0 vote.

21 No. 6 is a review of entertainment
22 endorsement application for DJ, live musical

Capital Reporting Company
In the Matter of: A.B.R.A. Agenda 10-31-2012

6

1 performances and dancing. It's for the Crowne Plaza,
2 which is a hotel, at 1001 14th Street, N.W., License
3 No. 25161. There's no voluntary agreement and no
4 pending fines or citations, no pending investigative
5 matters. And the entertainment hours would be Monday
6 through Sunday, 6:00 p.m. to 2:00 a.m. I move that we
7 approve the application.

8 Do I have a second?

9 MR. BROOKS: Second.

10 CHAIRPERSON MILLER: Mr. Brooks has seconded
11 the motion. All those in favor, say aye?

12 (Chorus of ayes.)

13 CHAIRPERSON MILLER: All those opposed?

14 (No audible response.)

15 CHAIRPERSON MILLER: All those abstaining?

16 (No audible response.)

17 CHAIRPERSON MILLER: The vote is 4-0-0 to
18 approve.

19 No. 7 is a change of hours application to
20 change hours of operation, hours of alcoholic beverage
21 sales/service, and entertainment hours. The current
22 hours of operation and the hours of alcoholic beverage

Capital Reporting Company
In the Matter of: A.B.R.A. Agenda 10-31-2012

7

1 sales/services are Sunday, 10:00 a.m. to 12:00 a.m.;
2 Monday through Saturday, 8:00 a.m. to 12:00 a.m.
3 Current entertainment hours are Thursday through
4 Saturday, 7:00 p.m. to 10:00 p.m.

5 Proposed hours of operation and the hours of
6 alcoholic beverage sales/services are Sunday at 10:00
7 a.m. to 2:00 a.m.; Monday through Thursday, 8:00 a.m.
8 to 2:00 a.m.; Friday and Saturday, 8:00 a.m. to 3:00
9 a.m. Proposed entertainment hours, Thursday from
10 Sunday, 8:00 p.m. to 1:00 a.m. There are no pending
11 investigative matters, no outstanding fines, citations,
12 no voluntary agreements. It's in ANC 1C.

13 It's Combination Restaurant, 1772 Columbia
14 Road, N.W., License No. 75479. And it's my
15 understanding that these hours are in line with
16 surrounding licensees' hours. So I would move that we
17 approve the application.

18 Do I have a second?

19 MR. BROOKS: Second.

20 CHAIRPERSON MILLER: Mr. Brooks has seconded
21 the motion. All those in favor, say aye?

22 (Chorus of ayes.)

Capital Reporting Company
In the Matter of: A.B.R.A. Agenda 10-31-2012

8

1 CHAIRPERSON MILLER: All those opposed?

2 (No audible response.)

3 CHAIRPERSON MILLER: All those abstaining?

4 (No audible response.)

5 CHAIRPERSON MILLER: The vote is 4-0-0 to
6 approve.

7 No. 8 is a request dated October 19, 2012 to
8 store invoices and records in an offsite location in
9 the District. The establishment is The Coupe, 3415
10 11th Street, N.W., License No. 86623. I move that we
11 approve the application.

12 Do I have a second?

13 MR. SILVERSTEIN: Second.

14 CHAIRPERSON MILLER: Mr. Silverstein has
15 seconded the motion. All those in favor, say 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 motion passes 4-0-0
22 to approve.

Capital Reporting Company
In the Matter of: A.B.R.A. Agenda 10-31-2012

9

1 No. 9 is a correspondence dated October 16th,
2 2012 from Paul Pascal requesting that the Board
3 reschedule the protest hearing for CVS Pharmacy No.
4 1354. The protest is -- hearing is currently scheduled
5 for February 13th, 2013 -- or it was initially
6 scheduled for that. CVS Pharmacy is 1354, located at
7 2601 Connecticut Avenue, N.W. I move that we grant the
8 motion to reschedule and have our staff determine the
9 date that it will be scheduled for.

10 Do I have a second?

11 MR. SILVERSTEIN: Second.

12 CHAIRPERSON MILLER: Okay. Mr. Silverstein
13 has seconded the motion. Any comments?

14 (No audible response.)

15 CHAIRPERSON MILLER: All those in favor then,
16 say 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 motion passes 4-0-0.

Capital Reporting Company
In the Matter of: A.B.R.A. Agenda 10-31-2012

10

1 No. 10 is a review of a request for
2 reinstatement dated October 17th, 2012 from a group of
3 five or more. The group of five was dismissed via
4 Board Order No. 2012-412 for failure to appear at the
5 roll call hearing. The establishment is Costa Brava,
6 located at 1837 1st Street, N.W. The License No. is
7 90223. I move that we grant the request for
8 reinstatement and that they be granted conditional
9 standing on the condition that five individuals appear
10 at the status hearing.

11 MR. SILVERSTEIN: Second.

12 CHAIRPERSON MILLER: Okay. Mr. Silverstein
13 has seconded the motion. Any further comments?

14 (No audible response.)

15 CHAIRPERSON MILLER: Okay. All those in
16 favor, say 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 motion passes by a

Capital Reporting Company
In the Matter of: A.B.R.A. Agenda 10-31-2012

11

1 vote of 4-0-0.

2 No. 11 is a review of a protestant's
3 opposition to applicant's motion to withdraw
4 application dated October 22, 2012 from Don Padou. The
5 establishment is Hush Restaurant and Lounge, located at
6 2121 New York Avenue, N.E., 89332. I move that we
7 refer this opposition to legal and that this be
8 postponed for consideration by the Board for two weeks.

9 Do I have a second?

10 MR. SILVERSTEIN: Second.

11 CHAIRPERSON MILLER: Mr. Silverstein has
12 seconded the motion. 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 by a
19 vote of 4-0-0.

20 No. 12 is a voluntary agreement for our
21 review dated October 15th, 2012 between Midtown and ANC
22 2B. Midtown is located at 1319 Connecticut Avenue,

Capital Reporting Company
In the Matter of: A.B.R.A. Agenda 10-31-2012

12

1 N.W., License No. 72087. I would move that we approve
2 this application.

3 Do I have a second?

4 MR. BROOKS.: Second.

5 CHAIRPERSON MILLER: And any comments?

6 (No audible response.)

7 CHAIRPERSON MILLER: All right. Then all
8 those in favor of the motion to approve, say aye?

9 (Chorus of ayes.)

10 CHAIRPERSON MILLER: All those opposed?

11 (No audible response.)

12 CHAIRPERSON MILLER: All those abstaining?

13 (No audible response.)

14 CHAIRPERSON MILLER: Then the motion passes
15 by a vote of 4-0-0.

16 No. 13 on our agenda is a voluntary agreement
17 dated October 19th, 2012 between B Too, James Kane, Joe
18 Findley, Mark Marino, Patti Bennett, Jeffrey
19 Dziejecznski, Beth Stewart, and Patti Aronsson. B Too
20 is located at 1324 14th Street, N.W., License No.
21 89499. I believe that we may have a concern just with
22 the language in the notice and opportunity to cure No.

Capital Reporting Company
In the Matter of: A.B.R.A. Agenda 10-31-2012

13

1 17 regarding, "The failure shall constitute a cause for
2 seeking a show cause order from the ABC Board."

3 I believe it's been our understanding that
4 the - - such a failure would result in a complaint to
5 the ABC Board. So I would approve this voluntary -- I
6 would more to approve this voluntary agreement with our
7 recommendation that that language be adjusted. Were
8 there any other concerns with this voluntary agreement?

9 (No audible response.)

10 CHAIRPERSON MILLER: Okay. Did you
11 understand that?

12 MR. SILVERSTEIN: Move we approve with
13 modifications.

14 CHAIRPERSON MILLER: Okay.

15 MR. ALBERTI: Item 17?

16 CHAIRPERSON MILLER: Yeah.

17 MR. ALBERTI: Yeah.

18 CHAIRPERSON MILLER: Notice to cure.

19 MR. ALBERTI: Yes.

20 CHAIRPERSON MILLER: Okay. So did you make a
21 motion? Was that a motion?

22 MR. SILVERSTEIN: Move that we approve with

Capital Reporting Company
In the Matter of: A.B.R.A. Agenda 10-31-2012

14

1 modifications.

2 CHAIRPERSON MILLER: Okay. Add to Paragraph
3 No. 17 just so that's clear. Okay. Is there a second?

4 MR. ALBERTI: I second.

5 CHAIRPERSON MILLER: Okay. There's a motion
6 that's been seconded by Mr. Alberti. All those in
7 favor to approve this voluntary agreement with
8 modification to Paragraph 17, say aye?

9 (Chorus of ayes.)

10 CHAIRPERSON MILLER: All those opposed?

11 (No audible response.)

12 CHAIRPERSON MILLER: All those abstaining?

13 (No audible response.)

14 CHAIRPERSON MILLER: Then the vote is 4-0-0
15 to approve the voluntary agreement with such
16 modification. Okay.

17 MR. SILVERSTEIN: Okay.

18 CHAIRPERSON MILLER: Okay. Next on our
19 agenda is review and approval of rulemaking to
20 determine requirement of safety plans. And I would
21 move that we postpone this rulemaking for one week.

22 Do I have a second?

Capital Reporting Company
In the Matter of: A.B.R.A. Agenda 10-31-2012

15

1 MR. SILVERSTEIN: Second.

2 CHAIRPERSON MILLER: Okay. All those in
3 favor, say aye?

4 (Chorus of ayes.)

5 CHAIRPERSON MILLER: All those opposed?

6 (No audible response.)

7 CHAIRPERSON MILLER: All those abstaining?

8 (No audible response.)

9 CHAIRPERSON MILLER: Then the vote is 4-0-0.

10 The next item on our agenda is, I believe,
11 the sale to minor rulemaking. There's a mistake on the
12 Board agenda that I have in front of me, which says,
13 "Civil Penalty Proposed Rulemaking." Anyway, the civil
14 penalty we had a hearing on. We don't -- we're not
15 going to be doing a decision on today. Okay. Thank
16 you.

17 On our supplemental agenda, we have three
18 items. The first item is a request from Jes Julius on
19 behalf of the Licensee to change the hours of the
20 alcoholic beverage sales/service for VSLs, LLC, located
21 at 918 F Street, N.W., License No. 88360. The current
22 hours of alcoholic beverage sales/services are Sunday

Capital Reporting Company
In the Matter of: A.B.R.A. Agenda 10-31-2012

16

1 through Thursday, 8:00 a.m. to 10:00 p.m.; Friday and
2 Saturday, 8:00 a.m. til 1:00 a.m.

3 The proposed hours of alcoholic beverage
4 sales/services are Sunday through Tuesday, 8:00 a.m.
5 til 11:00 p.m.; Wednesday and Thursday, 8:00 a.m. to
6 12:00 a.m.; Friday and Saturday, 8:00 a.m. to 1:00 a.m.
7 There's no pending investigative matters, no
8 outstanding fines/citations. There's an amended
9 voluntary agreement submitted for approval. And that,
10 I believe, is Item No. 2, related to the same
11 establishment. So I'm going to move these two
12 together.

13 No. 2 is review of second amendment dated
14 September 25, 2012 between VSLs, LLC, LivingSocial, and
15 the Ventana Homeowners Association. So that's the same
16 establishment. So I move that we approve both the
17 change of hours and the amendment to the voluntary
18 agreement, one and two.

19 Do I have a second?

20 MR. BROOKS: Second.

21 MR. SILVERSTEIN: Second.

22 CHAIRPERSON MILLER: Okay. Any comments?

Capital Reporting Company
In the Matter of: A.B.R.A. Agenda 10-31-2012

17

1 (No audible response.)

2 CHAIRPERSON MILLER: All right, then. All
3 those in favor of approving No. 1 and No. 2, the
4 request and the amendments, say aye?

5 (Chorus of ayes.)

6 CHAIRPERSON MILLER: All those opposed?

7 (No audible response.)

8 CHAIRPERSON MILLER: All those abstaining?

9 (No audible response.)

10 CHAIRPERSON MILLER: Then the motion passes
11 to approve both by a vote of 4-0-0.

12 Okay. The last item on our agenda is a sale
13 to minor egregious rulemaking. And that one involves a
14 little bit of discussion on the proposed rule. All
15 right. I think I'll start with a little bit of
16 context. But then I'm going to move to let Mr. Alberti
17 address this proposed rulemaking. I'm just going to
18 give a little background. And Mr. Alberti, feel free
19 to correct me if there's something I mischaracterize.

20 We had a hearing originally on a proposed
21 rulemaking dealing with changing the definition of
22 egregious in our rules on June 13th, 2012. The

Capital Reporting Company
In the Matter of: A.B.R.A. Agenda 10-31-2012

18

1 proposed rule expanded the definition of egregious to
2 include where the licensee, quote, "Did not ask the
3 minor for identification." And at that hearing, the
4 rulemaking was supported by Dennis James and it was
5 opposed by the Restaurant Association of Metropolitan
6 Washington.

7 And the Board considered comments and amended
8 the proposed rule. So there is a different proposed
9 rulemaking now that was responsive to some of the
10 comments. The first change was -- the Board made was
11 change to, "Shall," in 807.1. So the -- that statement
12 reads, "The Board shall give warnings to first-time
13 sale to minor violations, excluding egregious sale to
14 minor violations."

15 And that's consistent with the statute 25-
16 830(e)(1). The second change expands the definition of
17 egregious to include fail to ask the minor for
18 identification. The third change is a new provision
19 changed from the previous -- also from the regulation
20 as is as a new provision that the Board may, in its
21 discretion, give warnings for egregious, first-time
22 sale to minor violations if the licensee shows good

Capital Reporting Company
In the Matter of: A.B.R.A. Agenda 10-31-2012

19

1 cause for failure to ask the minor for identification.

2 And the Restaurant Association also submitted
3 comments on the proposed rule supporting the first
4 amendment, changing, "May," to, "Shall," and opposing
5 the other two. So I think I'm going to turn to Mr.
6 Alberti now, who -- to speak for this rulemaking.

7 MR. ALBERTI: Are you suggesting I'm making
8 my recommendation now or just speak? Yeah, as Ms.
9 Miller said, this rulemaking expands the definition of
10 an egregious violation for a first -- for sale to
11 minors. Because this rulemaking expands the definition
12 of what is egregious and because it clarifies that the
13 Board, in its discretion, may issue warnings for
14 egregious violations, in effect this new rulemaking
15 gives the Board additional discretion with regards to
16 issuing warnings for egregious violations based on the
17 facts of the case.

18 And because of that, I am in favor of the --
19 this rulemaking.

20 CHAIRPERSON MILLER: Okay. And I'm not in
21 favor of the rulemaking. And I would like, to speak to
22 why that is. I think that egregious was meant to be

Capital Reporting Company
In the Matter of: A.B.R.A. Agenda 10-31-2012

20

1 the exception to the rule of the legislation, that
2 there be a system of warnings and that this amendment
3 is so broad that it actually swallows the rule in my
4 view. And the history of violations that I have seen
5 is that almost all violations have been because a
6 licensee has failed to ask for an identification.

7 In reaching this decision, I looked at the
8 statute, Section -- it's 25-830(e)(1), which says,
9 "Except for an egregious violation that may be later
10 defined by ABC rulemaking, no licensee shall be found
11 to be in violation of a first-time of Section 25-781,
12 sale to minor, unless the licensee has been given a
13 written warning or received a citation to the
14 violation, or had an enforcement proceeding before the
15 Board during the four years preceding the violation.

16 And then the ABC Board did define,
17 "egregious." And now that agency is -- now the Board
18 would be broadening that definition. And I don't
19 believe that there is cause to violate it -- that we
20 have a high compliance rate, as shown by the statistics
21 that our agency has been providing to us. It's 80 --
22 in 2011 -- in 2012 there was 89.72 percent compliance

Capital Reporting Company
In the Matter of: A.B.R.A. Agenda 10-31-2012

21

1 rate. And in 2009 it was 88.3 percent compliance rate.
2 In 2010 it was 89.38 percent compliance rate.

3 And the chairman of the ABC testified before
4 the council that -- this same point, I think, that --
5 you know, he said, "In almost sale to minor violations
6 the selling of alcoholic beverages to minors is the
7 result of the minor's identification not being checked
8 by the establishment. As such, to have a warning
9 system in place where the establishments are actually
10 eligible to receive warnings, it was necessary for the
11 Board's warning policy to take this factor into
12 account."

13 So that was what he said in conjunction with
14 the report that was filed at the council in 2010 as to
15 whether the system was working. I think it's working
16 because our compliance rate also was higher than
17 Montgomery County, where we don't have that evidence.
18 I don't believe they have a warning system. So the
19 only plus -- I don't even -- I don't think it's a plus
20 though. I think that the impact of this change would be
21 to assess more fines against licensees, which I don't
22 think is at all what the council intended.

Capital Reporting Company
In the Matter of: A.B.R.A. Agenda 10-31-2012

22

1 Mr. Silverstein?

2 MR. SILVERSTEIN: Madam Chair, I respectfully
3 disagree. The issue is not about those who obey the
4 law, but about those who do not. Sales to minor is a
5 serious issue. In at least one case involving -- it
6 was serious enough for the police of Montgomery County
7 to come out here and to come into the District, across
8 our borders, and stake out a licensee who was selling
9 to minors.

10 The issue is not just one of peace, order and
11 quiet but a public safety issue. These are young
12 people who are driving along with liquor in their cars
13 illegally. The sale of liquor is a right and not a
14 privilege. And in exchange for granting that
15 privilege, we have the responsibility to demand that
16 those who get the privilege take steps to ensure that
17 the sales are only to those of legal age.

18 This is a greater challenge today than it has
19 been in the past because of technology. You can buy
20 very good fake IDs on the internet, often from out of
21 the country. And as such, it is more difficult for
22 these folks to be able to check and determine which IDs

Capital Reporting Company
In the Matter of: A.B.R.A. Agenda 10-31-2012

23

1 are legal and which are not. And the question then
2 becomes, how do you differentiate? Those who do not
3 even check for an ID, that is egregious.

4 The difference is similar to that between
5 someone going a few miles above the speed limit and
6 getting a ticket and someone who is driving with
7 reckless disregard. And failing to ask for an ID is,
8 in effect, selling liquor without reckless disregard
9 and that is egregious.

10 CHAIRPERSON MILLER: Thank you. What I would
11 say though is while we have some leeway in our
12 rulemaking, we are bound to in good faith interpret the
13 statute controls. And So DC Code 25-830(e)(1) says,
14 "Except for an egregious violation, as may be later
15 defined by ABC rulemaking, no licensee shall be found
16 to be in violation without -- unless they get a warning
17 first."

18 So my question to you is, egregious seems to
19 be the exception here, so what would be different -- in
20 which cases -- which cases would now be mandated to
21 have a warning?

22 MR. SILVERSTEIN: I would say first that

Capital Reporting Company
In the Matter of: A.B.R.A. Agenda 10-31-2012

24

1 those who do (inaudible) that that is egregious.
2 Second (inaudible) til one would show me. If a six
3 year (inaudible) and a person would look at that person
4 and see (inaudible) six years old, that would be
5 (inaudible) but I can't (inaudible) --

6 CHAIRPERSON MILLER: Yes.

7 MR. ALBERTI: Yes. Ms. Miller, I think that
8 one of the inferences you made is that the vast
9 majority of cases that we see are cases where we fine
10 (inaudible) on the first time are violations where they
11 didn't check the ID of the minor. And I think we'll
12 just have to agree to disagree on that because my
13 impression is that most of the time, what we're seeing
14 in our (inaudible) the -- in most cases where we give
15 warnings, they have the ID of the minor. So it's
16 certainly my (inaudible) what we're seeing is that the
17 licensees are checking, even though (inaudible) they're
18 not (inaudible) failed to check is just the exception
19 or is so (inaudible) that aren't egregious. I think
20 they're (inaudible) violations that we see that are not
21 (inaudible) the rule. And I think we're going to
22 (inaudible) on this. I don't think -- you know, we

Capital Reporting Company
In the Matter of: A.B.R.A. Agenda 10-31-2012

25

1 certainly have (inaudible) collect data from the
2 reports on number of investigative reports where they
3 checked or haven't checked.

4 And so I'm just going to repeat something I
5 said in the hearing we had on this, and that is -- is
6 that well over 90 percent of the (inaudible) for sale
7 to minors come about because of our compliance checks.
8 And our compliance checks are (inaudible) 18 or under.
9 So now (inaudible) seeing that we (inaudible) under 21,
10 they certainly look to be 18 or under. So when an
11 individual like that (inaudible) for an ID, I certainly
12 think that's an egregious violation.

13 MR. SILVERSTEIN: Madam Chair, I agree that
14 we are bound by the regulation, but the regulation does
15 speak of egregious violations. And I would ask you if
16 you could perhaps explain what you would consider an
17 egregious violation.

18 CHAIRPERSON MILLER: Well, okay. First of
19 all, my point is that the way the statute is written,
20 it says, "Except for an egregious violation," which
21 means to me that that's the exception, not the whole
22 universe of sale to minors. The regulation as written

Capital Reporting Company
In the Matter of: A.B.R.A. Agenda 10-31-2012

26

1 says an intentional sale. Well, that's certainly
2 egregious. If the licensee intentionally, knowingly
3 sells to a minor, that's egregious to me. Okay. So I
4 don't really have a problem anyway with the statute --
5 the regulation as is.

6 MR. SILVERSTEIN: Thank you.

7 CHAIRPERSON MILLER: It says if a minor is --
8 if you ask a minor for an ID and they don't produce it
9 and you let them have a drink anyway, again, that's
10 kind of, like, egregious because it's an intentional
11 act. So I think that can clearly be separated. I
12 think what's happening -- what happened in this case is
13 -- I don't know what would happen to all our compliance
14 checks because that's mind memory. They go in. They
15 look young and they get served anyway. They don't get
16 asked for an ID.

17 And the way it is now, they get a warning for
18 the first time. And that situation is not analogous
19 necessarily to -- at all to the one on MacArthur
20 Boulevard where it was known to sell to minors. And
21 that is egregious. There was a pattern there of
22 selling to minors. I mean, that would be another

Capital Reporting Company
In the Matter of: A.B.R.A. Agenda 10-31-2012

27

1 thing. Here, they just get -- the first time they get
2 a warning.

3 And I think that that's -- whether -- even if
4 the Board thinks that it's bad, that they should be
5 giving a warning to people who don't ask for -- if you
6 don't ask for an ID, I don't believe that the council
7 intended it to envelop that whole world. Because as I
8 asked, I don't -- what is left if it -- if you ask for
9 an ID and they don't produce it, you serve them -- if
10 you don't ask for an ID, what's left?

11 I believe what I've been told is left is you
12 ask for an ID and they show you one that really looks
13 wrong and you serve them a drink anyway. So that to me
14 is a very small universe. And so I can -- I can
15 understand that the intent of this Board that while we
16 think it's a -- we -- this Board thinks it's bad that
17 they -- that they should have a warning because this is
18 a bad thing to sell to minors, but to me, I don't
19 believe that the council intended that the system work
20 that way.

21 And just because they get a warning the first
22 time doesn't mean that it's not a serious offense. So

Capital Reporting Company
In the Matter of: A.B.R.A. Agenda 10-31-2012

28

1 I don't -- my other question to -- I guess to Mr.
2 Alberti is what's driving this? What data is driving
3 the Board to broaden the definition of, "egregious," at
4 this time?

5 MR. ALBERTI: And I will repeat what I said
6 at the rulemaking hearing. I don't have hard data but
7 I certainly -- it's my impression that we often -- and
8 not all cases. I mean, this is still the minority of
9 cases that we reports come before us but in that
10 minority -- there is a minority but it's substantial.
11 There's substantial minority where we see that
12 licensees don't ask these people -- these individuals
13 who obviously look like they're 18 or younger -- they
14 aren't asking them for an ID.

15 And I just think -- as I said, I think that
16 that's -- when you have someone who is so obviously
17 younger than 21, it's egregious when you fail to ask
18 for their ID. And I see it often enough -- not in the
19 majority of cases but I see it often enough that it's
20 troubling to me. So Madam Chair, I move that we
21 approve the sale to minors rulemaking as proposed.

22 MR. BROOKS: I second.

Capital Reporting Company
In the Matter of: A.B.R.A. Agenda 10-31-2012

29

1 CHAIRPERSON MILLER: Further comments?

2 (No audible response.)

3 CHAIRPERSON MILLER: Okay. There's been a
4 motion that's been seconded by Mr. Brooks to approve
5 the proposed rulemaking regarding the definition of
6 egregiousness. All those in favor, say aye?

7 (Chorus of ayes.)

8 CHAIRPERSON MILLER: All those opposed?

9 Opposed. So the motion passes by a vote of 3-1-0.

10 MR. SILVERSTEIN: Thank you, Madam Chair.

11 CHAIRPERSON MILLER: Okay. Thank you.

12 MR. ALBERTI: Thank you.

13 CHAIRPERSON MILLER: We have a couple more
14 items on our agenda this afternoon -- cancellations.
15 Okay.

16 We have a notice of meeting, license
17 cancellations, for October 31st, 2012. Okay. The
18 Board is requested to approve the following license
19 cancellations for the licensees' non-payment of their
20 second year payment.

21 And those licensees are ABRA license 088061,
22 Matthew Brantingham, Brandeau Wines at 8314 Weyburn

Capital Reporting Company
In the Matter of: A.B.R.A. Agenda 10-31-2012

30

1 Road, Richmond Virginia.

2 ABRA-087655, Jeffrey Beaudoin, Capital City
3 Brewing Company, 1612 U Street, N.W.

4 ABRA-089243, Ricardo P. Nogueira, Comete
5 Wines, LLC, 611 McNeill Road, Silver Spring, Maryland.

6 ABRA-086465, Laura Lee Holbrook, Elk Run
7 Vineyards, 15113 Liberty Road, Mount Airy, Maryland.

8 ABRA-087569, John F. Henderson, 1180 Seminole
9 Trail, Station No. 290, Charlottesville, Virginia,
10 22901.

11 ABRA-086750 [sic], Eric C. Grasser, JW Sieg
12 Wines, 1180 Seminole Trail, Station 290,
13 Charlottesville, Virginia.

14 ABRA-088430 [sic], Geoffrey Hoffman, JW Sieg
15 Wines, 1180 Seminole Trail, Station 290,
16 Charlottesville, Virginia.

17 ABRA-083912, Timothy Schlifftman, Legends
18 Ltd., 8901 A Yellow Brick Road, Baltimore, Maryland.

19 ABRA-087335, Harmohinder S. Bakshi, Lux
20 International Trading, 119 Old Court Road, Pikesville,
21 Maryland.

22 ABRA-085938, Sean B. Yisrael, Markell-Bani

Capital Reporting Company
In the Matter of: A.B.R.A. Agenda 10-31-2012

31

1 Fine Wines, 260 Northland Boulevard, Suite 314,
2 Cincinnati, Ohio.

3 ABRA-087463, Jason E. Wauer, Metropolitan
4 Wine Group, Inc., 43009 Mill Race Terrace, Leesburg,
5 Virginia.

6 ABRA-088170, Edwin C. Higgison, Oyster Bay
7 Wines USA, 1110 Greene Street, Suite 9G, New York, New
8 York.

9 ABRA-088170, LaMean B. Koroma, Ozak, LLC,
10 3381 75th Avenue, No. C, Hyattsville, Maryland.

11 ABRA-088643, Nina Y. Fulkoski, Republican
12 [sic] National Distributing Company, LLC, 4235 Sheriff
13 Road, N.E., Washington, DC.

14 ABRA-086455, Antonio M. Madarang, Jr.,
15 Republic National Distributing Company, LLC, 4235
16 Sheriff Road, N.E., Washington, DC.

17 ABRA-088519, Kenneth M. Mulling [sic], 200
18 Luna Park Drive, Unit No. 238, Alexandria, Virginia.

19 ABRA-082337, Jed Ross, Virtuoso Distillers,
20 LLC, 4211 Grape Road, Mishawaka, Indiana 46 -- never
21 mind.

22 ABRA-083433, Matthew D. Doherty, Washburn

Capital Reporting Company
In the Matter of: A.B.R.A. Agenda 10-31-2012

32

1 Wine Company, 6801 Eastern Avenue, Baltimore, Maryland.

2 There's one licensee that's listed on this
3 cancellation list that should not be cancelled. So
4 I'll be denying it because -- we should deny because
5 the payment was made October 24th, 2012 and that is
6 ABRA- 078694 from Michael C. Leopard, Mondo Vino, 8703
7 Pulaski Highway, Rosedale, Maryland. So that one has
8 been paid so we'll deny approving that cancellation.

9 Okay. Then I would move that we approve the
10 cancellations that I read and -- my motion would be to
11 approve the cancellations that I read except for
12 Michael C. Leopard, which would be to deny that one.

13 Do I have a second?

14 MR. BROOKS: 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: Then the vote is 3-0-0.

Capital Reporting Company
In the Matter of: A.B.R.A. Agenda 10-31-2012

33

1 Okay. Let me see if we have one more item here. I'm
2 not sure. We do. We have one more list for change of
3 hours requests, which relates to the change in the law
4 regarding the extension of legal hours act in the
5 Budget Support Act for all these establishments that
6 I'm going to list.

7 The first one is Cleveland Park Liquors and -
8 - at 3423 Connecticut Avenue, N.W., License No. 016969,
9 in ANC 3C.

10 The second is Georgia Avenue Food Barn,
11 located at 6205 Georgia Avenue, N.W., License No.
12 071950, located in ANC 4B.

13 King's Deli & Grocery, No. 3, located at 3651
14 Georgia Avenue, N.W., License No. 087806, located in
15 ANC 1A.

16 No. 4 is Uneeda Market, 4400 Georgia Avenue,
17 N.W., License No. 060662, in ANC 4C.

18 No. 5 is Tenley Market, located at 4326
19 Wisconsin Avenue, N.W., License No. 06821, in ANC 3F.

20 No. 6 is DC Supermarket at 539 8th Street,
21 N.E., License No. 074927, in ANC 6A.

22 No. 7 is Mini-Market [sic], located at 3904

Capital Reporting Company
In the Matter of: A.B.R.A. Agenda 10-31-2012

34

1 14th Street, N.W., License No. 021260, in ANC 4C.

2 No. 8 is Arthur's Grocery, 3301 11th Street,
3 N.W., License No. 000249, in ANC 1A.

4 No. 9 is Capitol View Market, 4920 Central
5 Avenue, N.E., License No. 076250, located in ANC 7C.

6 No. 10 is Fair Liquors, Inc., located at 5008
7 1st Street, N.W., License No. 076782, in ANC 4D.

8 No. 11 is DC Fish & Carryout, located at 3475
9 14th Street, N.W., License No. 074236, in ANC 1A.

10 No. 12 is Dollar Plus Food Store, 1443-53
11 Howard Road, S.E., License No. 088380, located in ANC
12 8A.

13 No. 13 is Brookland Supermarket & Deli,
14 located at 2815 7th Street, N.E., License No. 071058,
15 in ANC 5C.

16 Located at -- No. 14 is Family Liquors,
17 located at 710 H Street, N.E., License No. 21877,
18 located in ANC 6A.

19 No. 15 is Liff's Market, 600 Alabama Avenue,
20 S.E., License No. 088858, located in ANC 8C.

21 No. 16 is Lobby Mart, located at 501 3rd
22 Street, S.W., License No. 060734, located in ANC 6C.

Capital Reporting Company
In the Matter of: A.B.R.A. Agenda 10-31-2012

35

1 No. 17 is Mac Market & Deli, located at 5185
2 MacArthur Boulevard, N.W., License No. 072037, located
3 in ANC 3D.

4 No. 18 is Nam's Market, 1327 W Street, S.E.,
5 License No. 087641, located in ANC 8A.

6 No. 19 is Quality Convenience Store, located
7 at 2922 1/2 Martin Luther King, Jr., Avenue, S.E.,
8 License No. 083074, located in ANC 8C.

9 No. 20 is Wheeler Market, 4133 Wheeler Road,
10 S.E., License No. 088835, located in ANC 8E.

11 And finally, Randall Grocery, located at 2924
12 Minnesota Avenue, S.E., License No. 019046, located in
13 7A.

14 So none of these conflict with voluntary
15 agreements and I would move that we approve all of the
16 hours applications for all of these licensees.

17 MR. SILVERSTEIN: Second.

18 CHAIRPERSON MILLER: Mr. Silverstein has
19 seconded the motion. Is there a -- so the motion is --
20 the motion's been seconded. All those in favor, say
21 aye?

22 (Chorus of ayes.)

Capital Reporting Company
In the Matter of: A.B.R.A. Agenda 10-31-2012

36

1 CHAIRPERSON MILLER: All those opposed?

2 (No audible response.)

3 CHAIRPERSON MILLER: Okay. The motion passes
4 by a vote of 4-0-0.

5 Okay. I think that concludes our agenda
6 items for October 31st. And -- okay.

7 As Chairperson of the Alcoholic Beverage
8 Control Board for the District of Columbia and in
9 accordance with Section 405 of the Open Meetings
10 Amendment Act of 2010, I move that the ABC Board hold a
11 closed meeting on November 7, 2012 for the purpose of
12 seeking legal advice from our counsel on the matters
13 identified on the Board's agenda for November 7th, 2012
14 as published in the DC Register on November 2nd, 2012.

15 Is there a second?

16 MR. BROOKS: Second.

17 CHAIRPERSON MILLER: Mr. Brooks has seconded
18 the motion. I'll take a roll call. Mr. Brooks?

19 MR. BROOKS: I agree.

20 CHAIRPERSON MILLER: Ms. Miller agrees. Mr.
21 Silverstein?

22 MR. SILVERSTEIN: I agree.

Capital Reporting Company
In the Matter of: A.B.R.A. Agenda 10-31-2012

37

1 CHAIRPERSON MILLER: It appears the motion
2 has passed by a vote of 3-0-0. Pursuant to the Open
3 Meetings Amendment Act of 2010, notice will also be
4 posted on the ABC Board hearing room bulletin board,
5 placed on the electronic calendar on ABRA's website and
6 published in the DC Register in as timely a manner as
7 practical that the ABC Board will hold this closed
8 meeting -- aforementioned closed meeting.

9 As Chairperson of the Alcoholic Beverage
10 Control Board for the District of Columbia and in
11 accordance with Section 405 of the Open Meetings
12 Amendment Act of 2010, I move that the ABC Board hold a
13 closed meeting on November 7th, 2012 for the purpose of
14 discussing and hearing reports concerning ongoing or
15 planned investigations of alleged criminal or civil
16 misconduct or violations of law or regulations and
17 seeking legal advice from our counsel on the Board's
18 investigative agenda for November 7th, 2012, as
19 published in the DC Register on November 2nd, 2012.

20 Is there a second?

21 MR. BROOKS: Second.

22 CHAIRPERSON MILLER: Mr. Brooks has seconded

Capital Reporting Company
In the Matter of: A.B.R.A. Agenda 10-31-2012

38

1 the motion. I will now take a roll call vote. Mr.
2 Brooks?

3 MR. BROOKS: I agree.

4 CHAIRPERSON MILLER: Ms. Miller agrees. Mr.
5 Silverstein?

6 MR. SILVERSTEIN: I agree.

7 CHAIRPERSON MILLER: As it appears the motion
8 has passed by a 3-0-0 vote, I hereby give notice that
9 the ABC Board will hold this aforementioned closed
10 meeting. Pursuant to the Open Meetings Amendment Act of
11 2010, notice will also be posted on the ABC Board
12 hearing room bulletin board, placed on the electronic
13 calendar on ABRA's website and published in the DC
14 Register in as timely a manner as practical.

15 So this concludes the Board's matters for
16 October 31, 2012 and we are adjourned.

17 (WHEREUPON, at 4:31 p.m., the hearing was
18 concluded.)

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Capital Reporting Company
In the Matter of: A.B.R.A. Agenda 10-31-2012

1 CERTIFICATE OF NOTARY PUBLIC

2

3 I, RICK SANBORN, 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

RICK SANBORN

19

Notary Public in and for the

20

District of Columbia

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Capital Reporting Company
In the Matter of: A.B.R.A. Agenda 10-31-2012

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CERTIFICATE OF TRANSCRIPTION

I, MIRANDA PENNACHI, hereby certify that I am not the Court Reporter who reported the proceeding and that I have typed the transcript of the proceeding using the Court Reporter's notes and recordings. The foregoing/attached transcript is a true, correct and complete transcription of the proceedings.

Date

MIRANDA PENNACHI

Transcriptionist

Capital Reporting Company
In the Matter of: A.B.R.A. Agenda 10-31-2012

Page 1

<u>0</u>	11 11:2 34:8	1C 7:12	2601 9:7
0 5:20	11:00 16:5	1st 10:6 34:7	2815 34:14
000249 34:3	1110 31:7	<u>2</u>	290 30:9,12,15
016969 33:8	1180 30:8,12,15	2 16:10,13 17:3	2922 35:7
019046 35:12	119 30:20	2:00 6:6 7:7,8	2924 35:11
021260 34:1	11th 8:10 34:2	20 35:9	2B 11:22
060662 33:17	12 11:20 34:10	200 31:17	2E 5:5
060734 34:22	12:00 7:1,2 16:6	2000 1:13	2nd 36:14 37:19
06821 33:19	13 12:16 34:13	2009 21:1	<u>3</u>
071058 34:14	1319 11:22	2010 21:2,14 36:10	3 3:10 4:4 33:13
071950 33:12	1324 12:20	37:3,12 38:11	3:00 7:8
072037 35:2	1327 35:4	2011 20:22	3:41 2:2
074236 34:9	1354 9:4,6	2012 1:11 2:5 8:7	3-0-0 32:22 37:2
074927 33:21	13th 9:5 17:22	9:2 10:2 11:4,21	38:8
076250 34:5	14 34:16	12:17 16:14	3-0-1 2:18
076782 34:7	1443-53 34:10	17:22 20:22	31 1:11 38:16
078694 32:6	14th 1:13 6:2	29:17 32:5	3-1-0 29:9
083074 35:8	12:20 34:1,9	36:11,13,14	3116 5:5
087641 35:5	15 34:19	37:13,18,19	314 31:1
087806 33:14	15113 30:7	38:16	31st 2:5 29:17 36:6
088061 29:21	15th 11:21	2012-412 10:4	3301 34:2
088380 34:11	16 34:21	2013 9:5	3381 31:10
088835 35:10	1612 30:3	21 25:9 28:17	34 3:11
088858 34:20	16th 9:1	2121 11:6	3415 8:9
<u>1</u>	17 13:1,15 14:3,8	21877 34:17	3423 33:8
1 17:3	35:1	22 11:4	3475 34:8
1/2 35:7	1772 7:13	22901 30:10	3651 33:13
1:00 7:10 16:2,6	17th 10:2	238 31:18	3904 33:22
1:30 5:2	18 25:8,10 28:13	24th 32:5	3C 33:9
10 10:1 34:6	35:4	25 16:14 18:15	3D 35:3
10:00 5:2 7:1,4,6	1837 10:6	25161 6:3	3F 33:19
16:1	19 8:7 35:6	25-781 20:11	3rd 34:21
1001 6:2	19th 12:17	25-830(e)(1) 20:8	
	1A 33:15 34:3,9	23:13	
		260 31:1	

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Capital Reporting Company
 In the Matter of: A.B.R.A. Agenda 10-31-2012

<hr/> <p style="text-align: center;">4</p> <hr/> <p>4 3:8 4:4 33:16 4:31 38:17 4-0 5:20 4-0-0 3:9 4:21 6:17 8:5,21 9:22 11:1,19 12:15 14:14 15:9 17:11 36:4 405 36:9 37:11 4133 35:9 4211 31:20 4235 31:12,15 43009 31:4 4326 33:18 4400 33:16 46 31:20 4920 34:4 4B 33:12 4C 33:17 34:1 4D 34:7</p> <hr/> <p style="text-align: center;">5</p> <hr/> <p>5 4:22 33:18 5008 34:6 501 34:21 5031 3:12 5185 35:1 539 33:20 5C 34:15</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p>6 5:21 33:20 6:00 6:6 600 34:19</p>	<p>611 30:5 6205 33:11 6801 32:1 6A 33:21 34:18 6C 34:22</p> <hr/> <p style="text-align: center;">7</p> <hr/> <p>7 6:19 33:22 36:11 7:00 7:4 710 34:17 72087 12:1 75479 7:14 75th 31:10 78301 5:6 7A 35:13 7C 34:5 7th 34:14 36:13 37:13,18</p> <hr/> <p style="text-align: center;">8</p> <hr/> <p>8 8:7 34:2 8:00 7:2,7,8,10 16:1,2,4,5,6 80 20:21 807.1 18:11 830(e)(1) 18:16 8314 29:22 86623 8:10 8703 32:6 88.3 21:1 88360 15:21 89.38 21:2 89.72 20:22 8901 30:18</p>	<p>89332 11:6 89499 12:21 8A 34:12 35:5 8C 34:20 35:8 8E 35:10 8th 33:20</p> <hr/> <p style="text-align: center;">9</p> <hr/> <p>9 9:1 34:4 90 25:6 90223 10:7 918 15:21 9G 31:7</p> <hr/> <p style="text-align: center;">A</p> <hr/> <p>A.B.R.A 1:8 a.m 5:3 6:6 7:1,2,7,8,9,10 16:1,2,4,5,6 ABC 13:2,5 20:10,16 21:3 23:15 36:10 37:4,7,12 38:9,11 able 22:22 ABRA 29:21 32:6 ABRA-082337 31:19 ABRA-083433 31:22 ABRA-083912 30:17 ABRA-085938 30:22 ABRA-086455 31:14 ABRA-086465</p>	<p>30:6 ABRA-086750 30:11 ABRA-087335 30:19 ABRA-087463 31:3 ABRA-087569 30:8 ABRA-087655 30:2 ABRA-088170 31:6,9 ABRA-088430 30:14 ABRA-088519 31:17 ABRA-088643 31:11 ABRA-089243 30:4 ABRA's 37:5 38:13 abstaining 2:17,18 3:6,22 4:18 5:17 6:15 8:3,19 9:20 10:20 11:16 12:12 14:12 15:7 17:8 32:20 accordance 36:9 37:11 account 21:12 across 22:7 act 26:11 33:4,5 36:10 37:3,12 38:10 action 39:10,14 actually 20:3 21:9</p>
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Capital Reporting Company
In the Matter of: A.B.R.A. Agenda 10-31-2012

<p>Add 14:2 additional 19:15 address 17:17 adjourned 38:16 adjusted 13:7 advice 36:12 37:17 aforementioned 37:8 38:9 afternoon 29:14 against 21:21 age 22:17 agency 20:17,21 agenda 1:8 2:4,6 3:10 12:16 14:19 15:10,12,17 17:12 29:14 36:5,13 37:18 agreement 4:6 6:3 11:20 12:16 13:6,8 14:7,15 16:9,18 agreements 5:4 7:12 35:15 Airy 30:7 Alabama 34:19 Alberti 1:17 2:8 13:15,17,19 14:4,6 17:16,18 19:6,7 24:7 28:2,5 29:12 alcoholic 1:2,12,13 6:20,22 7:6 15:20,22 16:3 21:6 36:7 37:9 Alexandria 31:18 alleged 37:15 am 19:18 39:8,11</p>	<p>40:3 amended 16:8 18:7 amendment 16:13,17 19:4 20:2 36:10 37:3,12 38:10 amendments 17:4 analogous 26:18 ANC 4:5 5:5 7:12 11:21 33:9,12,15,17,19 ,21 34:1,3,5,7,9,11,1 5,18,20,22 35:3,5,8,10 Antonio 31:14 anyway 15:13 26:4,9,15 27:13 appear 10:4,9 appearing 39:5 appears 37:1 38:7 applicant's 11:3 application 2:6,19,20 3:11,13 4:4,7 5:1,7,22 6:7,19 7:17 8:11 11:4 12:2 applications 35:16 approval 14:19 16:9 approve 2:8,18,20 3:9,13 4:7,20 5:6 6:7,18 7:17 8:6,11,22 12:1,8 13:5,6,12,22 14:7,15 16:16 17:11 28:21</p>	<p>29:4,18 32:9,11 35:15 approving 17:3 32:8 aren't 24:19 28:14 Aronsson 12:19 Arthur's 34:2 assess 21:21 Association 16:15 18:5 19:2 attorney 39:12 audible 2:16 3:5,7,21 4:1,12,17,19 5:11,16,18 6:14,16 8:2,4,18,20 9:14,19,21 10:14,19,21 11:15,17 12:6,11,13 13:9 14:11,13 15:6,8 17:1,7,9 29:2 32:19,21 36:2 Avenue 3:12 9:7 11:6,22 31:10 32:1 33:8,10,11,14,16 ,19 34:5,19 35:7,12 aye 2:13 3:2,18 4:14 5:13 6:11 7:21 8:15 9:16 10:16 11:12 12:8 14:8 15:3 17:4 29:6 32:16 35:21 ayes 2:14 3:3,19 4:15 5:14 6:12 7:22 8:16 9:17 10:17 11:13 12:9 14:9 15:4 17:5</p>	<p>29:7 32:17 35:22 <hr/> B background 17:18 bad 27:4,16,18 Bakshi 30:19 Baltimore 30:18 32:1 Barn 33:10 based 19:16 Bay 31:6 Beaudoin 30:2 becomes 23:2 behalf 15:19 believe 12:21 13:3 15:10 16:10 20:19 21:18 27:6,11,19 Belmonte 2:7,9 Bennett 12:18 Beth 12:19 beverage 1:2,12,13 6:20,22 7:6 15:20,22 16:3 36:7 37:9 beverages 21:6 bit 17:14,15 board 1:2,13 9:2 10:4 11:8 13:2,5 15:12 18:7,10,12,20 19:13,15 20:15,16,17 27:4,15,16 28:3 29:18 36:8,10 37:4,7,10,12 38:9,11,12 Board's 21:11</p>
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Capital Reporting Company
 In the Matter of: A.B.R.A. Agenda 10-31-2012

<p>36:13 37:17 38:15 Bodega 5:5 borders 22:8 Boulevard 26:20 31:1 35:2 bound 23:12 25:14 Brandeau 29:22 Brantingham 29:22 Brava 10:5 Brewing 30:3 Brick 30:18 broad 20:3 broaden 28:3 broadening 20:18 Brookland 34:13 Brooks 1:17 6:9,10 7:19,20 12:4 16:20 28:22 29:4 32:14 36:16,17,18,19 37:21,22 38:2,3 Buck's 3:11 4:3 Budget 33:5 Building 1:13 bulletin 37:4 38:12 buy 22:19</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>calendar 37:5 38:13 CALVIN 1:18 Camping 3:12 4:3 cancellation 32:3,8</p>	<p>cancellations 29:14,17,19 32:10,11 cancelled 32:3 Capital 30:2 Capitol 34:4 Carryout 34:8 cars 22:12 case 19:17 22:5 26:12 cases 23:20 24:9,14 28:8,9,19 cause 13:1,2 19:1 20:19 Central 34:4 certainly 24:16 25:1,10,11 26:1 28:7 CERTIFICATE 39:1 40:1 certify 39:4 40:3 Chair 22:2 25:13 28:20 29:10 chairman 21:3 Chairperson 1:14,16 2:3,10,12,15,17 3:1,4,6,8,16,20,2 2 4:2,10,13,16,18, 20 5:9,12,15,17,19 6:10,13,15,17 7:20 8:1,3,5,14,17,19, 21 9:12,15,18,20,22 10:12,15,18,20,2</p>	<p>2 11:11,14,16,18 12:5,7,10,12,14 13:10,14,16,18,2 0 14:2,5,10,12,14, 18 15:2,5,7,9 16:22 17:2,6,8,10 19:20 23:10 24:6 25:18 26:7 29:1,3,8,11,13 32:15,18,20,22 35:18 36:1,3,7,17,20 37:1,9,22 38:4,7 challenge 22:18 change 4:3,7 6:19,20 15:19 16:17 18:10,11,16,18 21:20 33:2,3 changed 18:19 changing 17:21 19:4 Charlottesville 30:9,13,16 check 22:22 23:3 24:11,18 checked 21:7 25:3 checking 24:17 checks 25:7,8 26:14 Chorus 2:14 3:3,19 4:15 5:14 6:12 7:22 8:16 9:17 10:17 11:13 12:9 14:9 15:4 17:5 29:7 32:17 35:22 Cincinnati 31:2</p>	<p>citation 20:13 citations 6:4 7:11 City 30:2 civil 15:13 37:15 clarifies 19:12 clear 14:3 clearly 26:11 Cleveland 33:7 closed 36:11 37:7,8,13 38:9 Code 23:13 collect 25:1 Columbia 1:1 7:13 36:8 37:10 39:20 Combination 7:13 Comete 30:4 comments 4:11 5:10 9:13 10:13 12:5 16:22 18:7,10 19:3 29:1 Company 30:3 31:12,15 32:1 complaint 13:4 complete 40:8 compliance 20:20,22 21:1,2,16 25:7,8 26:13 concern 12:21 concerning 37:14 concerns 13:8 concluded 38:18 concludes 36:5 38:15 condition 10:9</p>
--	--	--	---

Capital Reporting Company
In the Matter of: A.B.R.A. Agenda 10-31-2012

<p>conditional 10:8 conflict 4:5 35:14 conjunction 21:13 Connecticut 3:12 9:7 11:22 33:8 consider 25:16 consideration 11:8 considered 18:7 consistent 18:15 constitute 13:1 context 17:16 Control 1:2,12,13 36:8 37:10 controls 23:13 Convenience 35:6 correct 17:19 40:7 correspondence 9:1 Costa 10:5 council 21:4,14,22 27:6,19 counsel 36:12 37:17 39:9,12 country 22:21 County 21:17 22:6 Coupe 8:9 couple 29:13 Court 30:20 40:4,6 criminal 37:15 Crowne 6:1 cure 12:22 13:18 current 6:21 7:3 15:21 currently 9:4</p>	<p>CVS 9:3,6 <hr/> D <hr/> D.C 1:14 dancing 6:1 data 25:1 28:2,6 date 9:9 40:14 dated 8:7 9:1 10:2 11:4,21 12:17 16:13 DC 23:13 31:13,16 33:20 34:8 36:14 37:6,19 38:13 dealing 17:21 decision 15:15 20:7 define 20:16 defined 20:10 23:15 definition 17:21 18:1,16 19:9,11 20:18 28:3 29:5 Deli 33:13 34:13 35:1 demand 22:15 Dennis 18:4 deny 32:4,8,12 denying 32:4 determine 9:8 14:20 22:22 difference 23:4 different 18:8 23:19 differentiate 23:2 difficult 22:21 direction 39:7 disagree 22:3</p>	<p>24:12 discretion 18:21 19:13,15 discussing 37:14 discussion 17:14 dismissed 10:3 disregard 23:7,8 Distillers 31:19 Distributing 31:12,15 District 1:1 8:9 22:7 36:8 37:10 39:20 DJ 5:22 Doherty 31:22 Dollar 34:10 Don 11:4 DONALD 1:17 drink 26:9 27:13 Drive 31:18 driving 22:12 23:6 28:2 during 20:15 Dziewiecznski 12:19 <hr/> E <hr/> Eastern 32:1 Edwin 31:6 effect 19:14 23:8 egregious 17:13,22 18:1,13,17,21 19:10,12,14,16,2 2 20:9,17 23:3,9,14,18 24:1,19 25:12,15,17,20</p>	<p>26:2,3,10,21 28:3,17 egregiousness 29:6 electronic 37:5 38:12 eligible 21:10 Elk 30:6 employed 39:9,12 employee 39:11 endorsement 4:22 5:22 enforcement 20:14 ensure 22:16 entertainment 4:22 5:2,21 6:5,21 7:3,9 envelop 27:7 Eric 30:11 establishment 5:5 8:9 10:5 11:5 16:11,16 21:8 establishments 21:9 33:5 evidence 21:17 except 20:9 23:14 25:20 32:11 exception 20:1 23:19 24:18 25:21 exchange 22:14 excluding 18:13 expanded 18:1 expands 18:16 19:9,11 explain 25:16 extension 33:4</p>
---	---	--	---

Capital Reporting Company
 In the Matter of: A.B.R.A. Agenda 10-31-2012
 Page 6

<hr/> <p style="text-align: center;">F</p> <hr/> factor 21:11 facts 19:17 fail 18:17 28:17 failed 20:6 24:18 failing 23:7 failure 10:4 13:1,4 19:1 Fair 34:6 faith 23:12 fake 22:20 Family 34:16 favor 2:13 3:2,17 4:13 5:12 6:11 7:21 8:15 9:15 10:16 11:12 12:8 14:7 15:3 17:3 19:18,21 29:6 32:15 35:20 February 9:5 feel 17:18 filed 21:14 finally 35:11 financially 39:13 Findley 12:18 fine 24:9 31:1 fines 5:3 6:4 7:11 21:21 fines/citations 16:8 first 2:5,6 15:18 18:10 19:3,10 23:17,22 24:10 25:18 26:18 27:1,21 33:7 first-time 18:12,21	20:11 Fish 34:8 Fishing 3:12 4:3 five 10:3,9 folks 22:22 Food 33:10 34:10 foregoing 39:4,5 foregoing/ attached 40:7 free 17:18 Friday 7:8 16:1,6 front 15:12 Fulkoski 31:11 <hr/> <p style="text-align: center;">G</p> <hr/> Geoffrey 30:14 Georgia 33:10,11,14,16 getting 23:6 given 20:12 39:8 gives 19:15 giving 27:5 grant 9:7 10:7 granted 10:8 granting 22:14 Grape 31:20 Grasser 30:11 greater 22:18 Greene 31:7 Grocery 33:13 34:2 35:11 group 10:2,3 31:4 guess 28:1 <hr/> <p style="text-align: center;">H</p> <hr/>	happen 26:13 happened 26:12 hard 28:6 Harmohinder 30:19 haven't 25:3 hearing 1:13 9:3,4 10:5,10 15:14 17:20 18:3 25:5 28:6 37:4,14 38:12,17 39:4,10 hello 3:9 Henderson 30:8 hereby 38:8 39:4 40:3 hereto 39:12 HERMAN 1:18 Higgison 31:6 high 20:20 higher 21:16 Highway 32:7 history 20:4 Hoffman 30:14 Holbrook 30:6 hold 36:10 37:7,12 38:9 Homeowners 16:15 hotel 6:2 hours 4:3,7 5:2 6:5,19,20,21,22 7:3,5,9,15,16 15:19,22 16:3,17 33:3,4 35:16 Howard 34:11 Hush 11:5	Hyattsville 31:10 <hr/> <p style="text-align: center;">I</p> <hr/> ID 23:3,7 24:11,15 25:11 26:8,16 27:6,9,10,12 28:14,18 identification 18:3,18 19:1 20:6 21:7 identified 36:13 IDs 22:20,22 I'll 17:15 32:4 36:18 illegally 22:13 I'm 2:18 16:11 17:16,17 19:5,7,20 25:4 33:1,6 impact 21:20 impression 24:13 28:7 inaudible 24:1,2,3,4,5,10,1 4,16,17,18,19,20 ,21,22 25:1,6,8,9,11 Inc 31:4 34:6 include 18:2,17 Indiana 31:20 individual 25:11 individuals 10:9 28:12 inferences 24:8 initially 9:5 intended 21:22 27:7,19 intent 27:15
---	--	--	---

Capital Reporting Company
 In the Matter of: A.B.R.A. Agenda 10-31-2012
 Page 7

<p>intentional 26:1,10 intentionally 26:2 interested 39:13 International 30:20 internet 22:20 interpret 23:12 investigations 37:15 investigative 5:4 6:4 7:11 16:7 25:2 37:18 invoices 8:8 involves 17:13 involving 22:5 issue 19:13 22:3,5,10,11 issuing 19:16 item 2:6 13:15 15:10,18 16:10 17:12 33:1 items 15:18 29:14 36:6 it's 4:3 5:4 6:1 7:12,13,14 13:3 20:8,21 21:15,19 24:15 26:10 27:4,16,22 28:7,10,17,19 I've 27:11</p> <hr/> <p style="text-align: center;">J</p> <p>James 12:17 18:4 Jason 31:3 Jed 31:19 Jeffrey 12:18 30:2</p>	<p>Jes 15:18 Joe 12:17 John 30:8 Johnson 2:20 JONES 1:18 Jr 31:14 35:7 Julius 15:18 June 17:22 JW 30:11,14</p> <hr/> <p style="text-align: center;">K</p> <p>Kane 12:17 Kenneth 31:17 King 35:7 King's 33:13 knowingly 26:2 known 26:20 Koroma 31:9</p> <hr/> <p style="text-align: center;">L</p> <p>LaMean 31:9 language 12:22 13:7 last 17:12 later 20:9 23:14 Laura 30:6 law 22:4 33:3 37:16 least 22:5 Lee 30:6 Leesburg 31:4 leeway 23:11 legal 11:7 22:17 23:1 33:4 36:12 37:17</p>	<p>Legends 30:17 legislation 20:1 Leopard 32:6,12 Liberty 30:7 license 2:9 5:6 6:2 7:14 8:10 10:6 12:1,20 15:21 29:16,18,21 33:8,11,14,17,19,21 34:1,3,5,7,9,11,14,17,20,22 35:2,5,8,10,12 licensee 15:19 18:2,22 20:6,10,12 22:8 23:15 26:2 32:2 licensees 7:16 21:21 24:17 28:12 29:19,21 35:16 Liff's 34:19 limit 23:5 line 7:15 liquor 22:12,13 23:8 Liquors 33:7 34:6,16 list 32:3 33:2,6 listed 32:2 little 17:14,15,18 live 5:1,22 LivingSocial 16:14 LLC 15:20 16:14 30:5 31:9,12,15,20 Lobby 34:21</p>	<p>located 9:6 10:6 11:5,22 12:20 15:20 33:11,12,13,14,18,22 34:5,6,8,11,14,16,17,18,20,21,22 35:1,2,5,6,8,10,11,12 location 8:8 Lounge 11:5 Ltd 30:18 Luna 31:18 Luther 35:7 Lux 30:19</p> <hr/> <p style="text-align: center;">M</p> <p>Mac 35:1 MacArthur 26:19 35:2 Madam 22:2 25:13 28:20 29:10 Madarang 31:14 majority 24:9 28:19 manager's 2:6,9 mandated 23:20 manner 37:6 38:14 Marino 12:18 Mark 12:18 Markell-Bani 30:22 Market 33:16,18 34:4,19 35:1,4,9 Mart 34:21</p>
---	---	--	--

Capital Reporting Company
 In the Matter of: A.B.R.A. Agenda 10-31-2012

<p>Martin 35:7</p> <p>Maryland 30:5,7,18,21 31:10 32:1,7</p> <p>MATTER 1:6</p> <p>matters 5:4 6:5 7:11 16:7 36:12 38:15</p> <p>Matthew 29:22 31:22</p> <p>may 12:21 18:20 19:4,13 20:9 23:14</p> <p>McNeill 30:5</p> <p>mean 26:22 27:22 28:8</p> <p>means 25:21</p> <p>meant 19:22</p> <p>meeting 1:3 2:4 29:16 36:11 37:8,13 38:10</p> <p>Meetings 36:9 37:3,11 38:10</p> <p>Member 1:17,18,19</p> <p>memory 26:14</p> <p>met 1:13</p> <p>Metropolitan 18:5 31:3</p> <p>Michael 32:6,12</p> <p>Midtown 11:21,22</p> <p>MIKE 1:19</p> <p>miles 23:5</p> <p>Mill 31:4</p> <p>Miller 1:14,16 2:3,10,12,15,17 3:1,4,6,8,16,20,2</p>	<p>2 4:2,10,13,16,18, 20 5:9,12,15,17,19 6:10,13,15,17 7:20 8:1,3,5,14,17,19, 21 9:12,15,18,20,22 10:12,15,18,20,2 2 11:11,14,16,18 12:5,7,10,12,14 13:10,14,16,18,2 0 14:2,5,10,12,14, 18 15:2,5,7,9 16:22 17:2,6,8,10 19:9,20 23:10 24:6,7 25:18 26:7 29:1,3,8,11,13 32:15,18,20,22 35:18 36:1,3,17,20 37:1,22 38:4,7</p> <p>mind 26:14 31:21</p> <p>Mini-Market 33:22</p> <p>Minnesota 35:12</p> <p>minor 15:11 17:13 18:3,13,14,17,22 19:1 20:12 21:5 22:4 24:11,15 26:3,7,8</p> <p>minority 28:8,10,11</p> <p>minors 19:11 21:6 22:9 25:7,22 26:20,22 27:18 28:21</p> <p>minor's 21:7</p>	<p>MIRANDA 40:3,14</p> <p>mischaracterize 17:19</p> <p>misconduct 37:16</p> <p>Mishawaka 31:20</p> <p>mistake 15:11</p> <p>modification 14:8,16</p> <p>modifications 13:13 14:1</p> <p>Monday 6:5 7:2,7</p> <p>Mondo 32:6</p> <p>Montgomery 21:17 22:6</p> <p>motion 2:7 3:2,9 4:20 5:19 6:11 7:21 8:15,21 9:8,13,22 10:13,22 11:3,12,18 12:8,14 13:21 14:5 17:10 29:4,9 32:10 35:19 36:3,18 37:1 38:1,7</p> <p>motion's 3:16 4:10 35:20</p> <p>Mount 30:7</p> <p>move 2:8,20 3:13 4:6 5:6 6:6 7:16 8:10 9:7 10:7 11:6 12:1 13:12,22 14:21 16:11,16 17:16 28:20 32:9 35:15 36:10 37:12</p> <p>Mulling 31:17</p> <p>music 5:1</p>	<p>musical 5:22</p> <hr/> <p>N</p> <p>N.E 11:6 31:13,16 33:21 34:5,14,17</p> <p>N.W 1:13 3:12 5:6 6:2 7:14 8:10 9:7 10:6 12:1,20 15:21 30:3 33:8,11,14,17,19 34:1,3,7,9 35:2</p> <p>Nam's 35:4</p> <p>National 31:12,15</p> <p>necessarily 26:19</p> <p>necessary 21:10</p> <p>neither 39:8</p> <p>NICK 1:17</p> <p>Nina 31:11</p> <p>Nogueira 30:4</p> <p>none 35:14</p> <p>non-payment 29:19</p> <p>NOPHLIN 1:18</p> <p>nor 39:9,13</p> <p>Northland 31:1</p> <p>Notary 39:1,19</p> <p>note 4:4</p> <p>notes 40:6</p> <p>notice 12:22 13:18 29:16 37:3 38:8,11</p> <p>November 36:11,13,14 37:13,18,19</p> <hr/> <p>O</p> <p>obey 22:3</p>
--	---	---	---

Capital Reporting Company
In the Matter of: A.B.R.A. Agenda 10-31-2012

<p>obviously 28:13,16</p> <p>October 1:11 2:5 8:7 9:1 10:2 11:4,21 12:17 29:17 32:5 36:6 38:16</p> <p>offense 27:22</p> <p>officer 39:3</p> <p>offsite 8:8</p> <p>Oh 3:9</p> <p>Ohio 31:2</p> <p>okay 9:12 10:12,15 13:10,14,20 14:2,3,5,16,17,1 8 15:2,15 16:22 17:12 19:20 25:18 26:3 29:3,11,15,17 32:9 33:1 36:3,5,6</p> <p>old 24:4 30:20</p> <p>ongoing 37:14</p> <p>Open 36:9 37:2,11 38:10</p> <p>operation 6:20,22 7:5</p> <p>opportunity 12:22</p> <p>opposed 2:15 3:4,20 4:16 5:15 6:13 8:1,17 9:18 10:18 11:14 12:10 14:10 15:5 17:6 18:5 29:8,9 32:18 36:1</p> <p>opposing 19:4</p> <p>opposition 11:3,7</p> <p>order 10:4 13:2 22:10</p>	<p>originally 17:20</p> <p>otherwise 39:13</p> <p>outcome 39:13</p> <p>outstanding 5:3 7:11 16:8</p> <p>Oyster 31:6</p> <p>Ozak 31:9</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>p.m 2:2 5:2 6:6 7:4,10 16:1,5 38:17</p> <p>Padou 11:4</p> <p>pages 39:5</p> <p>paid 32:8</p> <p>Paragraph 14:2,8</p> <p>Park 31:18 33:7</p> <p>parties 39:8,10,12</p> <p>Pascal 9:2</p> <p>passed 37:2 38:8</p> <p>passes 3:8,9 4:21 5:19 8:21 9:22 10:22 11:18 12:14 17:10 29:9 36:3</p> <p>past 22:19</p> <p>pattern 26:21</p> <p>Patti 12:18,19</p> <p>Paul 9:2</p> <p>payment 29:20 32:5</p> <p>peace 22:10</p> <p>penalty 15:13,14</p> <p>pending 5:3 6:4 7:10 16:7</p> <p>PENNACHI</p>	<p>40:3,14</p> <p>people 22:12 27:5 28:12</p> <p>percent 20:22 21:1,2 25:6</p> <p>performances 6:1</p> <p>perhaps 25:16</p> <p>person 24:3</p> <p>Pharmacy 9:3,6</p> <p>Pikesville 30:20</p> <p>placed 37:5 38:12</p> <p>planned 37:15</p> <p>plans 14:20</p> <p>Plaza 6:1</p> <p>plus 21:19 34:10</p> <p>point 21:4 25:19</p> <p>police 22:6</p> <p>policy 21:11</p> <p>posted 37:4 38:11</p> <p>postpone 14:21</p> <p>postponed 11:8</p> <p>practical 37:7 38:14</p> <p>preceding 20:15</p> <p>PRESENT 1:16</p> <p>presiding 1:14</p> <p>previous 18:19</p> <p>privilege 22:14,15,16</p> <p>problem 26:4</p> <p>proceeding 20:14 40:4,5</p> <p>proceedings 40:8</p> <p>produce 26:8 27:9</p>	<p>proposed 5:1 7:5,9 15:13 16:3 17:14,17,20 18:1,8 19:3 28:21 29:5</p> <p>protest 9:3,4</p> <p>protestant's 11:2</p> <p>providing 20:21</p> <p>provision 18:18,20</p> <p>public 22:11 39:1,19</p> <p>published 36:14 37:6,19 38:13</p> <p>Pulaski 32:7</p> <p>purpose 36:11 37:13</p> <p>Pursuant 37:2 38:10</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>Quality 35:6</p> <p>question 23:1,18 28:1</p> <p>quiet 22:11</p> <p>quote 18:2</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>Race 31:4</p> <p>Randall 35:11</p> <p>Rapheal 2:19</p> <p>rate 20:20 21:1,2,16</p> <p>reaching 20:7</p> <p>reads 18:12</p> <p>really 26:4 27:12</p> <p>receive 21:10</p> <p>received 20:13</p>
---	--	--	--

Capital Reporting Company
 In the Matter of: A.B.R.A. Agenda 10-31-2012
 Page 10

<p>reckless 23:7,8 recommendation 13:7 19:8 record 2:3 39:7 recorded 39:5 recordings 40:6 records 8:8 reduced 39:6 Reeves 1:13 refer 11:7 regarding 13:1 29:5 33:4 regards 19:15 Register 36:14 37:6,19 38:14 regulation 18:19 25:14,22 26:5 regulations 37:16 reinstatement 10:2,8 related 16:10 39:9 relates 33:3 relative 39:11 repeat 25:4 28:5 report 21:14 reported 40:4 Reporter 40:4 Reporter's 40:6 reports 25:2 28:9 37:14 Republic 31:15 Republican 31:11 request 8:7 10:1,7 15:18 17:4 requested 29:18</p>	<p>requesting 9:2 requests 33:3 requirement 14:20 reschedule 9:3,8 respectfully 22:2 response 2:16 3:5,7,21 4:1,12,17,19 5:11,16,18 6:14,16 8:2,4,18,20 9:14,19,21 10:14,19,21 11:15,17 12:6,11,13 13:9 14:11,13 15:6,8 17:1,7,9 29:2 32:19,21 36:2 responsibility 22:15 responsive 18:9 Restaurant 7:13 11:5 18:5 19:2 result 13:4 21:7 review 3:10 5:21 10:1 11:2,21 14:19 16:13 Ricardo 30:4 Richmond 30:1 RICK 39:3,18 Road 7:14 30:1,5,7,18,20 31:13,16,20 34:11 35:9 Robert 2:7,9 roll 10:5 36:18 38:1 room 1:13 37:4</p>	<p>38:12 Rosedale 32:7 Ross 31:19 rule 17:14 18:1,8 19:3 20:1,3 24:21 rulemaking 14:19,21 15:11,13 17:13,17,21 18:4,9 19:6,9,11,14,19, 21 20:10 23:12,15 28:6,21 29:5 rules 17:22 Run 30:6 Ruthanne 1:14,16 <hr style="width: 20%; margin: 10px auto;"/> <p style="text-align: center;">S</p> <hr style="width: 20%; margin: 10px auto;"/> S.E 34:11,20 35:4,7,10,12 S.W 34:22 safety 14:20 22:11 sale 15:11 17:12 18:13,22 19:10 20:12 21:5 22:13 25:6,22 26:1 28:21 sales 22:4,17 sales/service 6:21 15:20 sales/services 7:1,6 15:22 16:4 SANBORN 39:3,18 Saturday 7:2,4,8 16:2,6</p>	<p>scheduled 9:4,6,9 Schlifftman 30:17 Sean 30:22 seats 3:11 second 2:10,11,21,22 3:14,15 4:8,9 5:8 6:8,9 7:18,19 8:12,13 9:10,11 10:11 11:9,10 12:3,4 14:3,4,22 15:1 16:13,19,20,21 18:16 24:2 28:22 29:20 32:13,14 33:10 35:17 36:15,16 37:20,21 seconded 3:17 4:11 6:10 7:20 8:15 9:13 10:13 11:12 14:6 29:4 35:19,20 36:17 37:22 seconds 2:12 3:1 5:9 Section 20:8,11 36:9 37:11 seeing 24:13,16 25:9 seeking 13:2 36:12 37:17 seems 23:18 seen 20:4 sell 26:20 27:18 selling 21:6 22:8 23:8 26:22 sells 26:3 Seminole</p>
--	--	---	--

Capital Reporting Company
 In the Matter of: A.B.R.A. Agenda 10-31-2012
 Page 11

<p>30:8,12,15 separated 26:11 September 16:14 serious 22:5,6 27:22 serve 27:9,13 served 26:15 Sheriff 31:12,16 shown 20:20 shows 18:22 sic 30:11,14 31:12,17 33:22 sidewalk 3:10 Sieg 30:11,14 Silver 30:5 Silverstein 1:19 2:11,12,22 3:1,15,17 4:9,11 5:8,9 8:13,14 9:11,12 10:11,12 11:10,11 13:12,22 14:17 15:1 16:21 22:1,2 23:22 25:13 26:6 29:10 35:17,18 36:21,22 38:5,6 similar 23:4 situation 26:18 six 24:2,4 small 27:14 solicitor's 2:19 someone 23:5,6 28:16 speak 19:6,8,21 25:15 speed 23:5</p>	<p>Spring 30:5 staff 9:8 stake 22:8 standing 10:9 start 17:15 statement 18:11 Station 30:9,12,15 statistics 20:20 status 10:10 statute 18:15 20:8 23:13 25:19 26:4 steps 22:16 Stewart 12:19 store 8:8 34:10 35:6 Street 1:13 5:5 6:2 8:10 10:6 12:20 15:21 30:3 31:7 33:20 34:1,2,7,9,14,17, 22 35:4 submitted 16:9 19:2 substantial 28:10,11 suggesting 19:7 Suite 31:1,7 Sunday 6:6 7:1,6,10 15:22 16:4 Supermarket 33:20 34:13 supplemental 15:17 support 4:5 33:5 supported 18:4</p>	<p>supporting 19:3 sure 33:2 surrounding 7:16 swallows 20:3 system 20:2 21:9,15,18 27:19</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>technology 22:19 Tenley 33:18 Terrace 31:4 testified 21:3 testimony 39:5,8 Thank 15:15 23:10 26:6 29:10,11,12 that's 14:3,6 16:15 18:15 25:12,21 26:1,3,9,14 27:3 28:16 29:4 32:2 thereafter 39:6 there's 5:3 6:3 14:5 15:11 16:7,8 17:19 28:11 29:3 32:2 they're 24:17,20 28:13 third 18:18 Thursday 5:2 7:3,7,9 16:1,5 ticket 23:6 til 16:2,5 24:2 timely 37:6 38:14 Timothy 30:17 today 15:15 22:18 Trading 30:20</p>	<p>Trail 30:9,12,15 transcript 40:5,7 transcription 39:7 40:1,8 Transcriptionist 40:15 troubling 28:20 true 39:7 40:7 Tuesday 16:4 turn 19:5 typed 40:5 typewriting 39:6</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>understand 13:11 27:15 understanding 7:15 13:3 Uneda 33:16 Unit 31:18 universe 25:22 27:14 unless 20:12 23:16 USA 31:7</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>vast 24:8 Ventana 16:15 via 10:3 view 20:4 34:4 Vineyards 30:7 Vino 32:6 violate 20:19 violation 19:10 20:9,11,14,15 23:14,16</p>
--	---	--	---

Capital Reporting Company
 In the Matter of: A.B.R.A. Agenda 10-31-2012

<p>25:12,17,20</p> <p>violations 18:13,14,22 19:14,16 20:4,5 21:5 24:10,20 25:15 37:16</p> <p>Virginia 30:1,9,13,16 31:5,18</p> <p>Virtuoso 31:19</p> <p>voluntary 4:6 5:4 6:3 7:12 11:20 12:16 13:5,6,8 14:7,15 16:9,17 35:14</p> <p>vote 2:18 3:8 4:21 5:20 6:17 8:5 11:1,19 12:15 14:14 15:9 17:11 29:9 32:22 36:4 37:2 38:1,8</p> <p>VSLS 15:20 16:14</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>warning 20:13 21:8,11,18 23:16,21 26:17 27:2,5,17,21</p> <p>warnings 18:12,21 19:13,16 20:2 21:10 24:15</p> <p>Washburn 31:22</p> <p>Washington 1:14 18:6 31:13,16</p> <p>Wauer 31:3</p> <p>website 37:5 38:13</p> <p>Wednesday 2:5 16:5</p> <p>week 14:21</p>	<p>weeks 11:8</p> <p>we'll 24:11 32:8</p> <p>we're 2:3 15:14 24:13,16,21</p> <p>Weyburn 29:22</p> <p>Wheeler 35:9</p> <p>WHEREUPON 38:17</p> <p>whether 21:15 27:3</p> <p>whole 25:21 27:7</p> <p>whom 39:3</p> <p>Wine 31:4 32:1</p> <p>Wines 29:22 30:5,12,15 31:1,7</p> <p>Wisconsin 33:19</p> <p>withdraw 11:3</p> <p>work 27:19</p> <p>working 21:15</p> <p>world 27:7</p> <p>written 20:13 25:19,22</p> <p>wrong 27:13</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>Yellow 30:18</p> <p>Yisrael 30:22</p> <p>York 11:6 31:7,8</p> <p>young 22:11 26:15</p> <p>younger 28:13,17</p>		
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