

Capital Reporting Company
In the Matter of: Island Cafe, Inc. 07-18-2012

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DISTRICT OF COLUMBIA

ALCOHOLIC BEVERAGE CONTROL BOARD

MEETING

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IN THE MATTER OF: :
 :
Island Cafe, Inc. :
t/a Island Cafe :
829 Upshur Street, NW :
Retailer CT : Show Cause
License No. 60578 : Hearing
ANC 4C :
Case No. 12-251-00104 :
Allowed the Establishment to be :
Used for an Unlawful or :
Disorderly Purpose, Failed to :
Comply With Security Plan :
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July 18, 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

ALSO PRESENT

AMY SCHMIDT, OAG

Capital Reporting Company
In the Matter of: Island Cafe, Inc. 07-18-2012

<p style="text-align: right;">6</p> <p>1 that order, which we must now take into consideration 2 as part of this OIC. The Board Order (inaudible) was 3 to pay a fine of \$4000 fully in 30 days of this Order. 4 Additionally, respondent shall receive a suspension of 5 four days, all four days stayed for one year, provided 6 respondent has not committed any additional ABC 7 violations. Oh, it's the second. 8 Third, respondent shall receive the 9 suspension of this four days -- all four days served. 10 The suspension days are after-dated from the four 11 stayed days imposed by the Board on May 23rd, 2010, in 12 Case No. 10- CC-0022. The served suspension day shall 13 run from Thursday, July 19th -- that's tomorrow -- 14 through Sunday, July 22nd. 15 So taking that into consideration, part of 16 this will -- recognizing the ten days are the 17 suspension for this incident in March 10, 2012, of 18 which were served, the \$8000 fine, and then the four 19 days of back-up time triggered by this past order day, 20 June 20th, would have to now be served. 21 So in essence, it's 14 days, four of them 22 he's now served. But those four are really triggered</p>	<p style="text-align: right;">8</p> <p>1 BOARD MEMBER: Maybe they ought to come back 2 to us. 3 BOARD MEMBER: Yeah, they're not ready. 4 MS. SCHMIDT: Okay. 5 CHAIRPERSON MILLER: Do you want to take a 6 break and talk about this in the back? 7 MR. FONSECA: Could you give us just five 8 minutes? 9 MS. SCHMIDT: Five minutes. 10 CHAIRPERSON MILLER: Sure. 11 MR. SILVERSTEIN: Why don't we come back at 12 2:30? 13 MR. JONES: Yeah, time to get ready. 14 CHAIRPERSON MILLER: How much time do you 15 need? 16 MS. SCHMIDT: 2:15. I was -- the officer's 17 here. That's why. 18 CHAIRPERSON MILLER: Okay. I don't want to 19 delay unnecessarily. 2:15 is fine. 20 So we're in recess until 2:15. 21 (WHEREUPON, at 1:57 p.m., the hearing went 22 off record until 2:15 p.m.)</p>
<p style="text-align: right;">7</p> <p>1 by this last Board Order. 2 CHAIRPERSON MILLER: What about the four days 3 from the other order? 4 MR. FONSECA: Those -- 5 CHAIRPERSON MILLER: The four days stayed, 6 you know, in Case No. -- 7 MR. FONSECA: That's what now has been 8 triggered -- 9 CHAIRPERSON MILLER: -- 00022? 10 MR. FONSECA: -- by this OIC because -- 11 MS. SCHMIDT: So it would be days -- 12 MR. FONSECA: -- there's now a new violation. 13 CHAIRPERSON MILLER: Eight days. 14 MS. SCHMIDT: It would be eight days. So at 15 this point it would be eight days served. 16 MR. FONSECA: No, there's just four days 17 remaining. 18 MS. SCHMIDT: No, no. The total. He's got 19 to serve -- oh, at least he did -- 20 MR. FONSECA: Yeah, the days were what he 21 served at once. 22 BOARD MEMBER: So now I'm confused.</p>	<p style="text-align: right;">9</p> <p>1 CHAIRPERSON MILLER: Okay. We're back on the 2 record. Okay. I'll start again. 3 MS. SCHMIDT: We apologize for the confusion. 4 CHAIRPERSON MILLER: Okay. 5 MS. SCHMIDT: All right. This -- the term of 6 this offer -- our Charge 2 will -- Charge 2 will be -- 7 will be dismissed. And the other two charges will be 8 the fine of \$4000 per charge, which will be \$8000 to be 9 payable in 90 days. And then, as far as time, there'll 10 be 14 days in this case. Ten days have already been 11 served as part of the summary suspension. And the 12 other four days, which are to be served, are triggered 13 by Case No. 00179, which was books and records. 14 Those four days will be served -- we're 15 asking those four days to be served after four days 16 have been -- that Mr. Bailey -- that the Licensee 17 already has to serve in that case. So it'll be eight 18 day -- so it'll be starting on July 19th and end July 19 26th. However, the eight days are -- there are two 20 different cases that are -- we just want to make them 21 consecutive. That's all. 22 The 14 days in this -- to be clear, 14 days</p>

Capital Reporting Company
In the Matter of: Island Cafe, Inc. 07-18-2012

10	<p>1 in this case, 10 days served as part of summary 2 suspension back in March, and 4 days, which was the 3 back-up time from the books and records case. 4 CHAIRPERSON MILLER: You said that he's going 5 to serve July 19th through 26th? 6 MS. SCHMIDT: Yes. Because July 19th -- he's 7 already serving four days in another case from July -- 8 CHAIRPERSON MILLER: Okay. So those four 9 days -- 10 MS. SCHMIDT: Yeah. 11 CHAIRPERSON MILLER: -- and another case 12 would be served July 19th? 13 MR. FONSECA: Four days for this would then 14 run from the 23rd through the 26th. 15 MS. SCHMIDT: 23rd, 24th -- 16 CHAIRPERSON MILLER: So the four days -- 17 MR. FONSECA: Four, then four. 18 CHAIRPERSON MILLER: I got the four and four. 19 So they're all from previous cases? 20 MS. SCHMIDT: Yes. But the back-up -- or the 21 back-up four days from the 23rd through the 26th are 22 triggered by the fact that he is -- he is offer-in-</p>	12	<p>1 served. 2 CHAIRPERSON MILLER: Right. Okay. That was 3 the total amount of time he was closed, correct? 4 MS. SCHMIDT: Yes. 5 CHAIRPERSON MILLER: Okay. Board members 6 have questions? 7 (No audible response.) 8 CHAIRPERSON MILLER: Do either of you want to 9 address any further -- 10 MR. JONES: Madam Chair? 11 CHAIRPERSON MILLER: Oh, yeah. 12 MR. JONES: I had a question. 13 CHAIRPERSON MILLER: Oh, I was in the middle 14 of a question. I'm sorry, but -- 15 MR. JONES: Oh, okay. You asked if -- I'm 16 sorry, I apologize. 17 CHAIRPERSON MILLER: Okay. So why -- go 18 ahead. You can go. 19 MS. SCHMIDT: No, that's fine. 20 CHAIRPERSON MILLER: Okay. I started to say 21 -- oh, is there anything further you -- either of you 22 want to say as to this offer in compromise?</p>
11	<p>1 compromising this case. 2 CHAIRPERSON MILLER: Correct, okay. 3 MS. SCHMIDT: It's not new time. It's old 4 time from another case. 5 CHAIRPERSON MILLER: Triggered. 6 MS. SCHMIDT: But only by four in this case. 7 CHAIRPERSON MILLER: Okay. Could you repeat 8 the case number that was triggered -- that these -- 9 those suspended days are being served from? 10 MS. SCHMIDT: Oh, yes. That was from Case 11 No. -- that was from Case No. 00022 -- 10-CC-0022. 12 CHAIRPERSON MILLER: Okay. 13 MS. SCHMIDT: That was triggered by the books 14 and record case. And now, this one -- this triggers 15 the books and rec. It's sort of a little of a domino 16 effect. 17 CHAIRPERSON MILLER: Okay. I got that. 18 Okay. And the ten days, could you just -- 19 MS. SCHMIDT: That's from this case. In 20 other words, when he was on there, this -- he's on the 21 summary suspension, he was closed for ten days. So 22 we're -- so any -- so that -- here can say that time's</p>	13	<p>1 MR. FONSECA: (Inaudible) just respond the 2 Board's questions. 3 CHAIRPERSON MILLER: Okay. Oh, I'm sorry. 4 Okay. Now, Mr. Jones, go ahead. 5 MR. JONES: Thank you, Madam Chair. So I 6 think I followed the magery of the age and service and 7 what have you. But if I'm going to be -- if I'm 8 honest, part of this OIC -- there are no new days, no 9 new stayed days, no new served days, no suspension days 10 at all as part of this OIC? He's already served the 11 ten as part of the initial closing, correct? And the 12 other four and four that we're speaking of are triggers 13 from previous cases that you want to serve 14 consecutively, correct? 15 MS. SCHMIDT: Yes. 16 MR. FONSECA: Yes. 17 MR. JONES: Okay. 18 MR. FONSECA: And as part of that, you'll 19 recall with the lifting of the summary suspension, a 20 number of things were done. And just last week we had 21 that status hearing that (inaudible) what was done so 22 all of those things were taken care of that are</p>

Capital Reporting Company
In the Matter of: Island Cafe, Inc. 07-18-2012

14	<p>1 required. So in essence, what -- and what occurs often 2 times is the summary suspension or the show cause on 3 the summary suspension because most (inaudible) most 4 time there's a fine and there are days. And typically 5 it's the days that were served (inaudible). 6 MR. JONES: Okay, okay. 7 MR. FONSECA: So it is consistent with that. 8 MR. JONES: Understood. So the part that I'm 9 struggling with a little but -- and I'm -- probably 10 could be swayed either way, but right now, in my -- 11 from my perspective, I'm looking at a -- feeling a 12 little lenient in terms how we're looking at the days 13 served. But I'm also seeing a lot of leniency in terms 14 of the fine, to be honest. Because we're at the 15 minimum range of what the fine would be for both 16 charges, if we was to be found guilty of those charges. 17 So we're charging in this OIC the minimum on 18 the fine range and no new days -- not even new stayed 19 days as part of this OIC for this operator. And I'm 20 having a little bit of trouble trying to understand the 21 rationale and the logic as to why you feel like that's 22 appropriate from the OAG standpoint.</p>	16	<p>1 - the way things -- because the date of adjudication 2 would be after the actual date -- after the date -- 3 after -- it would be after the date that it occurred. 4 In other words, the sequence of events is out of whack. 5 So we're trying to not penalize him for the 6 getting the cases out of -- out of sequence. 7 MR. FONSECA: If I -- if I could also explain 8 it from our perspective and, frankly, the prosecution, 9 we believe, is correct and the context of it is that 10 this is all progressive discipline. So there is -- the 11 Board decides to send a case that involved an incident 12 December 10 of 2010. This incident we're adjudicating 13 now is March of 2012 -- excuse me, is December of 2011. 14 And this is now March of 2012. 15 And to leave some stayed days now for an 16 incident after the fact and then to have punishment 17 imposed, it would register that it would be for conduct 18 that happened prior to that, before one would assume if 19 you had learned your behavior, you're entitled to 20 continued progressive discipline. Well, he's going to 21 get discipline because it's going to come after and the 22 Board's going to vote and so forth on this one, whether</p>
15	<p>1 MS. SCHMIDT: Oh, okay. Part of this is -- 2 I'll be -- I'll be -- because of that fact finding 3 hearing last week -- well, the problem with that fact 4 finding hearing last week -- I'm being quite candid -- 5 the fact that it was -- this -- that occurred before 6 these incidents. And so that -- so basically if there 7 were to be stayed days, they would -- they could be 8 subject for an incident that happened before this 9 incident. 10 In other words, if you bought -- because we 11 use -- typically stayed days are where you -- is any 12 event that happens -- in other words, we gave stayed 13 today's. They said, "I need to know what happens 14 afterwards." And if you go by the date of 15 adjudication, even though the event started beforehand 16 -- it was before -- it was in -- what month was that 17 in? 18 MR. FONSECA: It was December of '10. 19 MS. SCHMIDT: December and this happened in 20 March. And therefore, the government is concerned and 21 to be equitable that he should not be subject for 22 something that happened, you know, because of the way -</p>	17	<p>1 it's through an OIC or a finding or it'll be -- we'll 2 prevail if we defend. 3 So because these cases came so out of turn, 4 it was felt that the ten days frankly were enough and 5 the grounds for lifting the stay eliminated the 6 imminent danger. And we've really somewhat took care 7 of the punishment component because ten days is 8 significant. But I ask the Board consider that because 9 additional days in isolation -- not to the fact that 10 we're now here before you when you had something that 11 happened after -- because again, you still have the 12 proximity of the books and records. 13 So I understand the Board can't turn on and 14 off these things. But one would hope you -- to filter 15 it somewhat if you give it a context of what -- of what 16 -- 17 MR. JONES: Okay. So let me -- let me try 18 and be brief in my follow up. So I get that. I 19 totally comprehend the logic and interaction behind the 20 days. My question was more if you were geared towards 21 best -- to me, best providing some sense of relief for 22 your client in a sense of, we'll present this as an OIC</p>

Capital Reporting Company
In the Matter of: Island Cafe, Inc. 07-18-2012

18	<p>1 for those reasons that you stated, in terms of the 2 punitive nature of the days served, given the fact 3 finding, given what may occur, etc. 4 Those are possibilities -- hypotheticals that 5 could likely happen but aren't written in stone as it 6 stands today. Given those scenarios, the OAG decided 7 to buy into your side of the argument -- to buy into 8 your client's position on that. My concern then is if 9 there's a compromise that is met, the buy-in on the 10 days is one thing, but then why not -- why are we at 11 the lowest end of the range in terms of the fine -- 12 dollar amount of the fines associated with that? 13 If there's a -- because clearly, based on 14 what you described to me, there is an opportunity 15 there. And I just want to -- and you're -- I 16 understand -- I'm not inserting myself into 17 negotiations or as part of OIC. I just want to 18 understand the rationale because that would be the part 19 that I'd be struggling with. 20 MR. FONSECA: Yes. Well, it's not that 21 difficult to understand. He's going to pay \$4000 in 22 less than two days and another \$8000. And, I mean, you</p>	20	<p>1 MR. JONES: Okay. So you don't -- you don't 2 feel like the days not -- no new days being applied to 3 this OIC is part of the reward for compliance? 4 MS. SCHMIDT: It's not an matter of -- it's 5 not a matter of rewarding or not rewarding but 6 someone's -- 7 MR. JONES: Or taken into consideration? I 8 apologize. Whatever words you use. 9 MS. SCHMIDT: At this point, no, because he 10 did comply. 11 MR. JONES: Okay. 12 MS. SCHMIDT: Yeah. 13 MR. JONES: Thank you. Thank you, Madam 14 Chair. 15 CHAIRPERSON MILLER: Other questions? Yes, 16 Mr. Alberti? 17 MR. ALBERTI: Madam Chair, please don't hate 18 for me this but I'm going to go back to the days that 19 you're serving, which is eight days; am I correct -- 20 and how we come about those eight days because I'm not 21 sure -- 22 MS. SCHMIDT: Oh, sure.</p>
19	<p>1 know, other than putting this place out of business, 2 which might happen -- I don't know -- it's just -- you 3 know, the fines themselves are a significant sanction 4 on top of suspension. 5 MR. JONES: Okay. So that's your rationale. 6 I want to -- I want to hear from -- like, what's your -- 7 - because you're representing the other side of the 8 table, right? 9 MS. SCHMIDT: Well, I represent -- however, 10 the OAG -- the OAG is not here to put -- it's not to 11 put businesses out of business either, as long -- if 12 they're trying to correct their behavior. In this 13 case, it's showing me after summary suspension, there 14 was -- there was some of the -- he did comply with the 15 conditions of summary suspension. That's why -- if he 16 hadn't complied, then we would have been -- would have 17 been more punitive. 18 But since he did comply, he should get some 19 credit for complying. And given the financial -- given 20 the fact he's paying \$4000 in three days, we are 21 cognizant of the fact that it's, you know, there have 22 been cash --</p>	21	<p>1 MR. ALBERTI: -- I'm not sure I heard it 2 correctly. 3 MS. SCHMIDT: Oh, not a problem. 4 MR. ALBERTI: All right. So let me go over 5 what I understand. All right? Case No. 11-CMP-00179, 6 which was adjudicated on June 21st, 2012 -- all right - 7 - no, I'm sorry -- yeah, right -- June 21st, 2012 -- 8 all right -- that case triggered four days from a 9 previous case. That case was Case No. 10-CC-00022. So 10 that's four days. All right? 11 MS. SCHMIDT: Yes. 12 MR. ALBERTI: That would trigger from the 13 00022 case. Then there's an additional four days that 14 were applied from -- there are -- there are additional 15 four stayed days from the 00179 day that are triggered 16 by the current OIC? 17 MS. SCHMIDT: That's correct. 18 MR. FONSECA: That is correct. 19 MR. ALBERTI: Okay. Thank you. 20 MR. FONSECA: That's it exactly. 21 CHAIRPERSON MILLER: Another question? 22 (No audible response.)</p>

Capital Reporting Company
In the Matter of: Island Cafe, Inc. 07-18-2012

<p style="text-align: right;">22</p> <p>1 CHAIRPERSON MILLER: I think what the Board's 2 going to do is just recess for a few minutes and think 3 about what the parties have said with respect to 4 considering the offer in compromise and then return. 5 So I will read the instructions and make a motion with 6 respect to the Open Meeting Act for the closed meeting. 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 for the purpose of seeking legal advice 12 from our counsel on Case No. 12-251-00104, Island Cafe, 13 per Section 405(b)(4) of the Open Meetings Amendment 14 Act of 2010, and deliberating upon this case for the 15 reasons cited in Section 405(b)(13) of the Open 16 Meetings Act of 2010. 17 Is there a second? 18 MR. BROOKS: Second. 19 CHAIRPERSON MILLER: Now that the motion has 20 been seconded, I'll take a roll call on the motion. 21 Mr. Nophlin? 22 MR. NOPHLIN: I agree.</p>	<p style="text-align: right;">24</p> <p>1 MS. SCHMIDT: I think we need (inaudible) 2 accepting our offer or not. Then -- and then -- 3 CHAIRPERSON MILLER: Okay. 4 MS. SCHMIDT: -- we can proceed from there. 5 CHAIRPERSON MILLER: Okay. 6 MR. ALBERTI: There's been -- 7 MR. FONSECA: Let's be -- 8 MR. JONES: Is there an OIC? 9 MR. ALBERTI: There is. There is. 10 MR. FONSECA: -- (inaudible) offer. 11 MR. ALBERTI: Just one moment. Because I 12 just want to remind the parties that no motion has been 13 made on your previous discussion of an OIC. So 14 CHAIRPERSON MILLER: The -- 15 MR. ALBERTI: Does that OIC stand? 16 CHAIRPERSON MILLER: An offer in compromise 17 was presented to the Board and went to recess. And, 18 you know, we're prepared to go forward unless 19 anything's changed in the meantime and the parties want 20 to bring anything else to our attention before we 21 proceed. 22 MS. SCHMIDT: One second. Thank you so much.</p>
<p style="text-align: right;">23</p> <p>1 CHAIRPERSON MILLER: Mr. Brooks? 2 MR. BROOKS: I agree. 3 CHAIRPERSON MILLER: Mr. Alberti? 4 MR. ALBERTI: I agree. 5 CHAIRPERSON MILLER: Ms. Miller agrees. Mr. 6 Silverstein? 7 MR. SILVERSTEIN: I agree. 8 CHAIRPERSON MILLER: Mr. Jones? 9 MR. JONES: I agree. 10 CHAIRPERSON MILLER: The vote is 6-0-0 on the 11 motion and it passes. I hereby give notice that the 12 ABC Board will hold a closed meeting in the ABC Board 13 conference room to consider this. 14 Okay. So we'll recess and be back very 15 shortly. Thank you. 16 (WHEREUPON, at 2:30 p.m., the hearing went 17 off record until 3:06 p.m.) 18 CHAIRPERSON MILLER: Okay. We're back on the 19 record. We'll go -- we proceed. Is there any other 20 matter the parties want to bring to our attention? 21 MS. SCHMIDT: (Inaudible) -- 22 CHAIRPERSON MILLER: But --</p>	<p style="text-align: right;">25</p> <p>1 We our -- out OIC stands as until otherwise. At this 2 point, we're not changing our OIC until -- 3 MR. ALBERTI: Okay. 4 MS. SCHMIDT: -- until we get -- 5 CHAIRPERSON MILLER: Okay. Then an OIC was 6 presented for the following: to drop Charge 2, to have 7 the Licensee pay a penalty of \$8000, which would be 8 \$4000 for each of the violations, to serve -- the 9 license would be suspended from July 19th through 26th, 10 ten days the license would be suspended but considered 11 served from the suspension case. Does that -- did I 12 characterize that correctly? 13 MR. ALBERTI: Madam Chair -- 14 CHAIRPERSON MILLER: Yeah. 15 MR. ALBERTI: -- I'm having a little trouble 16 understanding the OIC. So can I state my understanding 17 of it? 18 CHAIRPERSON MILLER: Absolutely. 19 MR. ALBERTI: The OIC, as I understood it, 20 was correctly, according to the records that I have, 21 would be a total fine of \$4000, \$4000 for each case. 22 And then there were no days to be served?</p>

Capital Reporting Company
In the Matter of: Island Cafe, Inc. 07-18-2012

<p style="text-align: right;">26</p> <p>1 MS. SCHMIDT: A total fine of \$8000. 2 MR. ALBERTI: So a total fine of -- I'm 3 sorry, excuse me -- 4 MS. SCHMIDT: Yes, 8000. 5 MR. ALBERTI: -- 4000 -- \$8000, \$4000 for 6 each charge -- 7 CHAIRPERSON MILLER: Uh-huh. 8 MR. ALBERTI: -- and then no days to be 9 served and a payment made at -- when? 10 MS. SCHMIDT: In 90 days. 11 MR. ALBERTI: In 90 days. 12 MR. FONSECA: With the recognition that ten 13 days -- ten days have previously been served; no 14 additional days will be served. 15 MR. ALBERTI: Okay. Yes. With recognition 16 that ten days were served as part of the -- 17 MR. FONSECA: And then -- 18 MR. ALBERTI: -- summary suspension. 19 MR. FONSECA: But four days would be required 20 to be served -- 21 MR. ALBERTI: No. 22 MR. FONSECA: -- to resolve that case --</p>	<p style="text-align: right;">28</p> <p>1 CHAIRPERSON MILLER: Okay. Fine. Because 2 there was confusion with respect to what that OIC was. 3 MS. SCHMIDT: Okay. So we'll stop drop 4 Charge No. 2. And then for Charges 1 and 3, \$4000 for 5 each charge, a total of \$8000. And then a total of ten 6 days to be served, six days -- six days for this 7 violation -- I'm sorry, six day -- no -- just six days 8 for this violation. I'm sorry. Let's not -- let's not 9 get ten days -- six days for this violation. 10 MR. ALBERTI: Is this the old OIC? 11 CHAIRPERSON MILLER: No. 12 MS. SCHMIDT: This is the new OIC. 13 MR. ALBERTI: Or is this -- no. This is the 14 new OIC? 15 MS. SCHMIDT: Yes, it is. 16 MR. JONES: I'm totally confused. 17 CHAIRPERSON MILLER: Okay. I got it. Okay. 18 MR. ALBERTI: I just wanted to make sure. 19 For the record, I wanted to make sure, Ms. -- 20 MS. SCHMIDT: But this -- 21 MR. ALBERTI: Wait, wait, wait, wait. 22 MS. SCHMIDT: Based on --</p>
<p style="text-align: right;">27</p> <p>1 CHAIRPERSON MILLER: This is what the problem 2 was before. 3 MR. ALBERTI: No. Mr. Fonseca, the violation 4 that occurred, Case No. 11-CMP-00179 -- all right -- 5 that violation was adjudicated on June 21st, 2012, 6 correct? 7 MR. FONSECA: Correct. 8 MR. ALBERTI: This violation occurred prior 9 to that. So this violation, since it occurred prior to 10 the adjudication of Case No. 00179, those four days are 11 not triggered by this violation. You can only trigger 12 days after a case is -- after a case -- a violation 13 could only trigger stayed days from the date of 14 adjudication. That's why we say they stayed for one day 15 from the day of this OIC or the date of the order. 16 Is that clear? 17 MR. FONSECA: That is clear. 18 MR. ALBERTI: Thank you. 19 MS. SCHMIDT: Okay. So Mr. -- I'm sorry 20 (inaudible) Okay. Then -- okay. Then that's not the - 21 - I couldn't -- we'll make another OIC because that's 22 not the way I understood it.</p>	<p style="text-align: right;">29</p> <p>1 MR. ALBERTI: Wait, wait, wait. Let me -- 2 let me finish. Let me finish, Ms. Schmidt. For the 3 record, I want to make sure that we are not considering 4 the OIC that was stated before we went into recess. 5 And now, that has been withdrawn and we're considering 6 a new OIC? 7 MS. SCHMIDT: Yes. 8 MR. ALBERTI: Thank you very much. 9 MS. SCHMIDT: Okay. I'm sorry for -- again, 10 I apologize for the confusion. So this -- so this -- 11 in this case, there'll be ten -- it'll be a \$8000 fine 12 for two -- the two charges that remain. And then 13 there'll be a total of six days to be served on this -- 14 on this charge. 15 CHAIRPERSON MILLER: Okay. What -- when will 16 the \$8000 be paid? 17 MS. SCHMIDT: Within 90 days. 18 CHAIRPERSON MILLER: Ninety days. And when 19 will the six days be served? 20 MS. SCHMIDT: After the four days that have 21 been ordered by the Board in another case. 22 CHAIRPERSON MILLER: Do you have a date?</p>

Capital Reporting Company
In the Matter of: Island Cafe, Inc. 07-18-2012

<p style="text-align: right;">30</p> <p>1 MR. FONSECA: Yes. We mentioned July 23rd, 2 six consecutive days thereafter. I believe it would be 3 July -- the 28th of July. So the license would be 4 returned on the 29th of July. 5 CHAIRPERSON MILLER: Okay. So the OIC, as I 6 understand it, is to drop Charge 2, to assess fines of 7 -- in the amount of \$4000 each for Charges 1 and 3, 8 which would come to \$8000 total to be paid within 90 9 days, and for six days served from July 23 to July 28, 10 2012. 11 Mr. Fonseca, is that your understanding of 12 the OIC? 13 MR. FONSECA: That is my understanding. 14 CHAIRPERSON MILLER: And does your client 15 accept that? 16 MR. BAILEY: Yes. 17 CHAIRPERSON MILLER: And does he understand 18 that he waives his right to a hearing? He accepts it? 19 MR. BAILEY: Yes, Madam Chair. 20 CHAIRPERSON MILLER: Okay. Thank you. And I 21 had phrased it correctly, Ms. Schmidt? 22 MS. SCHMIDT: Yes.</p>	<p style="text-align: right;">32</p> <p>1 MR. NOPHLIN: I agree. 2 CHAIRPERSON MILLER: Mr. Brooks? 3 MR. BROOKS: I agree. 4 CHAIRPERSON MILLER: Mr. Alberti? 5 MR. ALBERTI: I disagree. I don't think the 6 monetary fine is high enough for this infraction. 7 CHAIRPERSON MILLER: Ms. Miller agrees. Mr. 8 Silverstein? 9 MR. SILVERSTEIN: I agree. 10 CHAIRPERSON MILLER: Mr. Jones? 11 MR. JONES: I disagree. 12 CHAIRPERSON MILLER: The motion passes by a 13 vote of 4-2-0. So the offer in compromise is accepted. 14 Thank you. 15 MR. BAILEY: Thank you. 16 CHAIRPERSON MILLER: Okay. The next one's at 17 3:30. 18 PARTICIPANT: So your next hearing's at 3:30? 19 CHAIRPERSON MILLER: Yeah, that's right. 20 PARTICIPANT: Listen, you want to take a 21 potty break? 22 CHAIRPERSON MILLER: Yeah, yeah. Okay. Our</p>
<p style="text-align: right;">31</p> <p>1 CHAIRPERSON MILLER: Okay. Now, are there 2 any Board questions? 3 (No audible response.) 4 CHAIRPERSON MILLER: Okay. We have an offer 5 in compromise before us to drop Charge 2, to assess 6 \$4000 penalty for violations 1 and 3 each, totaling 7 \$8000 to be paid within 90 days and to have six days of 8 the license suspended on days July 23 through July 28. 9 Those days would be served. Okay. 10 Do I have a second? 11 BOARD MEMBER: Second. 12 CHAIRPERSON MILLER: Final comments? 13 (No audible response.) 14 CHAIRPERSON MILLER: Okay. Then all those in 15 favor of the motion that's been seconded, say aye? 16 (Chorus of ayes.) 17 CHAIRPERSON MILLER: All those opposed? 18 (Chorus of nays.) 19 CHAIRPERSON MILLER: All those abstaining? 20 (No audible response.) 21 CHAIRPERSON MILLER: I'm going to take a roll 22 call. Mr. Nophlin?</p>	<p style="text-align: right;">33</p> <p>1 next case is scheduled for 3:30 and it's now 3:15. So 2 we're going to recess until 3:40. 3 (WHEREUPON, at 3:15 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</p>

Capital Reporting Company
In the Matter of: Island Cafe, Inc. 07-18-2012

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1 CERTIFICATE OF NOTARY PUBLIC

2
3 I, BRADLEY ANGLIN, the officer before whom the
4 foregoing hearing was taken, do hereby certify that the
5 testimony appearing in the foregoing transcript was
6 recorded by me and thereafter reduced to typewriting
7 under my direction; that said transcription is a true
8 record of the testimony given by said parties; that I
9 am neither counsel for, related to, nor employed by any
10 of the parties to the action in which this 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.

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BRADLEY ANGLIN
Notary Public in and for
DISTRICT OF COLUMBIA

35

1 CERTIFICATE OF TRANSCRIPTION

2
3 I, MIRANDA PENNACHI, hereby certify that I am not
4 the Court Reporter who reported the following
5 proceeding and that I have typed the transcript of this
6 proceeding using the Court Reporter's notes and
7 recordings. The foregoing/attached transcript is a
8 true, correct and complete transcription of said
9 proceeding.

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Date MIRANDA PENNACHI
 Transcriptionist

Capital Reporting Company
 In the Matter of: Island Cafe, Inc. 07-18-2012

Page 1

<p><u> </u> \$ \$4000 4:4 6:3 9:8 18:21 19:20 25:8,21 26:5 28:4 30:7 31:6 \$8000 4:3 6:18 9:8 18:22 25:7 26:1,5 28:5 29:11,16 30:8 31:7 <u> </u> 0 00022 7:9 11:11 21:13 00179 9:13 21:15 27:10 <u> </u> 1 1 28:4 30:7 31:6 1:50 2:2 1:57 8:21 10 6:12,17 10:1 15:18 16:12 10-CC-00022 21:9 10-CC-0022 11:11 11-CMP-00179 5:13 21:5 27:4 12-251-00104 1:8 2:4 22:12 14 6:21 9:10,22 14th 1:14 18 1:12 19th 4:10 6:13 9:18 10:5,6,12 25:9 <u> </u> 2 2 4:2 9:6 25:6 28:4 30:6 31:5</p>	<p>2:15 8:16,19,20,22 2:30 2:8,16 8:12 23:16 2000 1:14 2010 4:13 6:11 16:12 22:10,14,16 2011 16:13 2012 1:12 6:17 16:13,14 21:6,7 27:5 30:10 20th 5:22 6:20 21st 4:9 21:6,7 27:5 22nd 6:14 23 30:9 31:8 23rd 6:11 10:14,15,21 30:1 24th 10:15 26th 9:19 10:5,14,21 25:9 28 30:9 31:8 28th 30:3 29th 30:4 <u> </u> 3 3 28:4 30:7 31:6 3:06 23:17 3:15 33:1,3 3:30 32:17,18 33:1 3:40 33:2 30 6:3 <u> </u> 4 4 10:2 4000 26:5</p>	<p>405 22:9 405(b)(13) 22:15 405(b)(4) 22:13 4-2-0 32:13 4C 1:8 2:6 <u> </u> 6 6-0-0 23:10 60578 1:7 2:5 <u> </u> 8 8000 26:4 829 1:6 2:5 <u> </u> 9 90 9:9 26:10,11 29:17 30:8 31:7 <u> </u> A ABC 6:6 22:10 23:12 able 2:11 Absolutely 25:18 abstaining 31:19 accept 30:15 accepted 32:13 accepting 24:2 accepts 30:18 accordance 22:9 according 25:20 Act 22:6,10,14,16 action 34:10,14 actual 16:2 added 5:9 additional 5:6,9 6:6 17:9</p>	<p>21:13,14 26:14 Additionally 6:4 address 12:9 adjudicated 21:6 27:5 adjudicating 16:12 adjudication 15:15 16:1 27:10,14 advice 22:11 after-dated 6:10 afternoon 3:15,16 afterwards 15:14 age 13:6 ahead 12:18 13:4 Alberti 1:17 20:16,17 21:1,4,12,19 23:3,4 24:6,9,11,15 25:3,13,15,19 26:2,5,8,11,15,1 8,21 27:3,8,18 28:10,13,18,21 29:1,8 32:4,5 Alcoholic 1:2,13,14 22:7 Allowed 1:9 already 4:6 9:10,17 10:7 13:10 am 20:19 34:9,11 35:3 Amendment 22:10,13 amount 12:3 18:12 30:7</p>
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Capital Reporting Company
 In the Matter of: Island Cafe, Inc. 07-18-2012

<p>Amy 1:20 3:10 ANC 1:8 2:6 ANGLIN 34:3,19 anything 12:21 24:20 anything's 24:19 apologize 5:11 9:3 12:16 20:8 29:10 appearing 34:5 applied 20:2 21:14 appropriate 14:22 aren't 18:5 argument 18:7 assess 30:6 31:5 assistant 3:10 associated 18:12 assume 16:18 attention 23:20 24:20 attorney 3:10 34:12 audible 12:7 21:22 31:3,13,20 aye 31:15 ayes 31:16</p> <hr/> <p style="text-align: center;">B</p> <hr/> <p>back-up 4:13,15,17 5:7 6:19 10:3,20,21 Bailey 3:14,16 4:8 9:16 30:16,19 32:15 based 18:13 28:22 basically 5:8 15:6 beforehand 15:15</p>	<p>behalf 3:11,12 behavior 16:19 19:12 behind 17:19 believe 16:9 30:2 best 17:21 Beverage 1:2,13,14 22:7 bigger 5:17 bit 14:20 Board 1:2,14 3:21 4:14 6:2,11 7:1,22 8:1,3 12:5 16:11 17:8,13 22:8,10 23:12 24:17 29:21 31:2,11 Board's 5:21 13:2 16:22 22:1 books 9:13 10:3 11:13,15 17:12 Bottom 5:3 bought 15:10 BRADLEY 34:3,19 break 5:17 8:6 32:21 brief 17:18 bring 23:20 24:20 Brooks 1:18 22:18 23:1,2 32:2,3 Building 1:14 business 19:1,11 businesses 19:11 buy 18:7 buy-in 18:9</p>	<hr/> <p style="text-align: center;">C</p> <hr/> <p>Cafe 1:5,6 2:4 22:12 calendar 2:4 CALVIN 1:19 candid 15:4 care 13:22 17:6 case 1:8 2:3,4 3:8 4:9,11,17,18,20, 22 5:7,13 6:12 7:6 9:10,13,17 10:1,3,7,11 11:1,4,6,8,10,11, 14,19 16:11 19:13 21:5,8,9,13 22:12,14 25:11,21 26:22 27:4,10,12 29:11,21 33:1 cases 4:14 9:20 10:19 13:13 16:6 17:3 cash 19:22 cause 1:7 3:17 14:2 CC-0022 6:12 CERTIFICATE 34:1 35:1 certify 34:4 35:3 Chair 12:10 13:5 20:14,17 25:13 30:19 Chairperson 1:15,17 2:3,9,13,17,21 3:1,4,7,15,17 5:12 7:2,5,9,13 8:5,10,14,18</p>	<p>9:1,4 10:4,8,11,16,18 11:2,5,7,12,17 12:2,5,8,11,13,1 7,20 13:3 20:15 21:21 22:1,7,19 23:1,3,5,8,10,18, 22 24:3,5,14,16 25:5,14,18 26:7 27:1 28:1,11,17 29:15,18,22 30:5,14,17,20 31:1,4,12,14,17, 19,21 32:2,4,7,10,12,1 6,19,22 changed 24:19 changing 25:2 characterize 25:12 charge 4:2 9:6,8 25:6 26:6 28:4,5 29:14 30:6 31:5 charges 4:3,4 9:7 14:16 28:4 29:12 30:7 charging 14:17 Chorus 31:16,18 cited 22:15 clear 9:22 27:16,17 clearly 18:13 client 17:22 30:14 client's 18:8 closed 11:21 12:3 22:6,11 23:12 closing 13:11 cognizant 19:21 Columbia 1:1 3:11 22:8 34:21</p>
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Capital Reporting Company
In the Matter of: Island Cafe, Inc. 07-18-2012

<p>comments 31:12</p> <p>committed 6:6</p> <p>complete 35:8</p> <p>compliance 20:3</p> <p>complied 19:16</p> <p>comply 1:10 19:14,18 20:10</p> <p>complying 19:19</p> <p>component 17:7</p> <p>comprehend 17:19</p> <p>compromise 3:20,22 12:22 18:9 22:4 24:16 31:5 32:13</p> <p>compromising 11:1</p> <p>concern 18:8</p> <p>concerned 15:20</p> <p>concluded 33:4</p> <p>conditions 19:15</p> <p>conduct 16:17</p> <p>conference 23:13</p> <p>confused 7:22 28:16</p> <p>confusion 9:3 28:2 29:10</p> <p>consecutive 9:21 30:2</p> <p>consecutively 13:14</p> <p>consider 17:8 23:13</p> <p>consideration 6:1,15 20:7</p> <p>considered 25:10</p> <p>considering 22:4</p>	<p>29:3,5</p> <p>consistent 14:7</p> <p>context 16:9 17:15</p> <p>continue 5:5</p> <p>continued 16:20</p> <p>Control 1:2,13,14 22:8</p> <p>correct 11:2 12:3 13:11,14 16:9 19:12 20:19 21:17,18 27:6,7 35:8</p> <p>correctly 21:2 25:12,20 30:21</p> <p>counsel 22:12 34:9,12</p> <p>Court 35:4,6</p> <p>credit 19:19</p> <p>CT 1:7</p> <p>current 5:4 21:16</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>D.C 1:15</p> <p>danger 17:6</p> <p>date 15:14 16:1,2,3 27:13,15 29:22 35:16</p> <p>day 6:12,19 9:18 21:15 27:14,15 28:7</p> <p>days 4:5,6,12,14,15,1 7 5:6,9,10,18,19 6:3,5,9,10,11,16, 19,21 7:2,5,11,13,14,1 5,16,20 9:9,10,12,14,15,</p>	<p>19,22 10:1,2,7,9,13,16, 21 11:9,18,21 13:8,9 14:4,5,12,18,19 15:7,11 16:15 17:4,7,9,20 18:2,10,22 19:20 20:2,18,19,20 21:8,10,13,15 25:10,22 26:8,10,11,13,14 ,16,19 27:10,12,13 28:6,7,9 29:13,17,18,19,2 0 30:2,9 31:7,8,9</p> <p>December 15:18,19 16:12,13</p> <p>decided 4:14 18:6</p> <p>decides 16:11</p> <p>defend 17:2</p> <p>delay 8:19</p> <p>deliberating 22:14</p> <p>described 18:14</p> <p>different 9:20</p> <p>difficult 18:21</p> <p>direction 34:7</p> <p>directly 3:3</p> <p>disagree 32:5,11</p> <p>discipline 16:10,20,21</p> <p>discussion 24:13</p> <p>dismissed 9:7</p> <p>Disorderly 1:10</p> <p>District 1:1 3:11 22:8 34:21</p>	<p>dollar 18:12</p> <p>domino 11:15</p> <p>DONALD 1:18</p> <p>done 13:20,21</p> <p>drop 25:6 28:3 30:6 31:5</p> <p>dropped 4:2</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>effect 11:16</p> <p>eight 5:9 7:13,14,15 9:17,19 20:19,20</p> <p>either 12:8,21 14:10 19:11</p> <p>eliminated 17:5</p> <p>else 24:20</p> <p>employed 34:9,12</p> <p>employee 34:11</p> <p>entered 5:22</p> <p>entitled 5:17 16:19</p> <p>equitable 15:21</p> <p>essence 4:20 6:21 14:1</p> <p>Establishment 1:9</p> <p>event 15:12,15</p> <p>events 16:4</p> <p>exactly 21:20</p> <p>excuse 16:13 26:3</p> <p>explain 16:7</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>fact 10:22 15:2,3,5 16:16 17:9 18:2 19:20,21</p> <p>Failed 1:10</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Capital Reporting Company
In the Matter of: Island Cafe, Inc. 07-18-2012

<p>favor 31:15 feel 14:21 20:2 feeling 14:11 felt 17:4 file 4:19 filter 17:14 Final 31:12 financial 19:19 financially 34:13 finding 15:2,4 17:1 18:3 fine 4:3 6:3,18 8:19 9:8 12:19 14:4,14,15,18 18:11 25:21 26:1,2 28:1 29:11 32:6 fines 18:12 19:3 30:6 finish 29:2 five 8:7,9 Fonseca 2:8 3:12 4:10 5:2,13,16,21 7:4,7,10,12,16,2 0 8:7 10:13,17 13:1,16,18 14:7 15:18 16:7 18:20 21:18,20 24:7,10 26:12,17,19,22 27:3,7,17 30:1,11,13 foregoing 34:4,5 foregoing/ attached 35:7 forth 16:22 forward 24:18 frankly 16:8 17:4</p>	<p>fully 6:3 <hr/> G <hr/> geared 17:20 general 3:11 getting 16:6 given 18:2,3,6 19:19 34:8 government 15:20 government's 5:16 great 3:9 grounds 17:5 guilty 14:16 <hr/> H <hr/> happen 18:5 19:2 happened 15:8,19,22 16:18 17:11 happens 15:12,13 hate 20:17 having 14:20 25:15 hear 19:6 heard 21:1 hearing 1:7,14 2:20 3:18 8:21 13:21 15:3,4 23:16 30:18 33:3 34:4 hearing's 32:18 he'd 5:8 hereby 23:11 34:4 35:3 hereto 34:12 HERMAN 1:18 he's 5:15 6:22 7:18</p>	<p>10:4,6 11:20 13:10 16:20 18:21 19:20 high 32:6 hold 22:10 23:12 honest 13:8 14:14 hope 17:14 hypotheticals 18:4 <hr/> I <hr/> I'd 18:19 I'll 9:2 15:2 22:20 I'm 7:22 12:14,15 13:3,7 14:8,9,11,13,19 15:4 18:16 20:18,20 21:1,7 25:15 26:2 27:19 28:7,8,16 29:9 31:21 imminent 17:6 imposed 6:11 16:17 inaudible 2:19 4:11 5:1,3,11 6:2 13:1,21 14:3,5 23:21 24:1,10 27:20 Inc 1:5 incident 6:17 15:8,9 16:11,12,16 incidents 15:6 infraction 32:6 initial 13:11 inserting 18:16 instructions 22:5 interaction 17:19</p>	<p>interested 34:13 introduce 3:2,8 investigator 2:20 investigator's 2:15 involved 16:11 Island 1:5,6 2:4 22:12 isolation 17:9 it'd 5:18,19 it'll 9:17,18 17:1 29:11 it's 5:12,13 6:7,21 11:3,15 14:5 16:21 17:1 18:20 19:2,10,13,21 20:4 33:1 <hr/> J <hr/> Jones 1:18 8:13 12:10,12,15 13:4,5,17 14:6,8 17:17 19:5 20:1,7,11,13 23:8,9 24:8 28:16 32:10,11 July 1:12 4:9,10 6:13,14 9:18 10:5,6,7,12 25:9 30:1,3,4,9 31:8 June 5:22 6:20 21:6,7 27:5 <hr/> K <hr/> known 4:8 <hr/> L <hr/> last 5:7 7:1 13:20 15:3,4 learned 16:19</p>
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Capital Reporting Company
In the Matter of: Island Cafe, Inc. 07-18-2012

<p>least 7:19 leave 16:15 legal 22:11 leniency 14:13 lenient 14:12 less 18:22 let's 24:7 28:8 license 1:7 2:5 25:9,10 30:3 31:8 Licensee 3:13 9:16 25:7 lifting 13:19 17:5 likely 18:5 line 5:3 Listen 32:20 little 11:15 14:9,12,20 25:15 located 2:5 logic 14:21 17:19 long 19:11 lot 14:13 lowest 18:11</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>Madam 12:10 13:5 20:13,17 25:13 30:19 magery 13:6 March 6:17 10:2 15:20 16:13,14 matter 1:4 2:11 3:5 20:4,5 23:20 matters 3:18 may 6:11 18:3 Maybe 8:1</p>	<p>mean 18:22 meantime 24:19 meeting 1:3 22:6,11 23:12 Meetings 22:9,13,16 Member 1:17,18,19 7:22 8:1,3 31:11 members 12:5 mentioned 30:1 met 1:14 18:9 Michael 3:12 middle 12:13 MIKE 1:19 Miller 1:15,17 2:3,9,13,17,21 3:1,4,7,15,17 5:12 7:2,5,9,13 8:5,10,14,18 9:1,4 10:4,8,11,16,18 11:2,5,7,12,17 12:2,5,8,11,13,1 7,20 13:3 20:15 21:21 22:1,19 23:1,3,5,8,10,18, 22 24:3,5,14,16 25:5,14,18 26:7 27:1 28:1,11,17 29:15,18,22 30:5,14,17,20 31:1,4,12,14,17, 19,21 32:2,4,7,10,12,1 6,19,22 minimum 14:15,17 minor 4:13</p>	<p>minute 2:7 minutes 8:8,9 22:2 MIRANDA 35:3,16 moment 24:11 monetary 32:6 month 15:16 motion 22:5,19,20 23:11 24:12 31:15 32:12 move 22:10 myself 18:16</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>N.W 1:14 2:5 nature 18:2 nays 31:18 negotiations 18:17 neither 34:9 Nevaldo 3:13 NICK 1:17 Ninety 29:18 Nophlin 1:19 22:21,22 31:22 32:1 nor 34:9,13 Notary 34:1,20 notes 35:6 notice 23:11 NW 1:6</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>OAG 1:20 14:22 18:6 19:10 occur 18:3 occurred 15:5</p>	<p>16:3 27:4,8,9 occurs 14:1 offer 3:20,22 4:1 9:6 12:22 22:4 24:2,10,16 31:4 32:13 offer-in 10:22 office 3:22 officer 34:3 officer's 8:16 oh 2:9 3:4 6:7 7:19 11:10 12:11,13,15,21 13:3 15:1 20:22 21:3 OIC 5:8 6:2 7:10 13:8,10 14:17,19 17:1,22 18:17 20:3 21:16 24:8,13,15 25:1,2,5,16,19 27:15,21 28:2,10,12,14 29:4,6 30:5,12 old 11:3 28:10 one's 32:16 Open 22:6,9,13,15 operator 14:19 opportunity 18:14 opposed 31:17 order 5:21 6:1,2,3,19 7:1,3 27:15 ordered 29:21 otherwise 25:1 34:13 ought 8:1 ourselves 3:3</p>
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Capital Reporting Company
In the Matter of: Island Cafe, Inc. 07-18-2012

<p>outcome 34:13</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>p.m 2:2 8:21,22 23:16,17 33:3</p> <p>paid 29:16 30:8 31:7</p> <p>PARTICIPANT 32:18,20</p> <p>parties 22:3 23:20 24:12,19 34:8,10,12</p> <p>passes 23:11 32:12</p> <p>past 6:19</p> <p>pay 6:3 18:21 25:7</p> <p>payable 9:9</p> <p>paying 19:20</p> <p>payment 26:9</p> <p>penalize 16:5</p> <p>penalty 25:7 31:6</p> <p>PENNACHI 35:3,16</p> <p>per 9:8 22:13</p> <p>perspective 14:11 16:8</p> <p>phrased 30:21</p> <p>Plan 1:10</p> <p>please 20:17</p> <p>point 7:15 20:9 25:2</p> <p>position 18:8</p> <p>possibilities 18:4</p> <p>potty 32:21</p> <p>preliminary 2:11,19 3:5,18,19</p>	<p>prepared 24:18</p> <p>present 1:16,20 3:21 17:22</p> <p>presented 24:17 25:6</p> <p>presiding 1:15</p> <p>prevail 17:2</p> <p>previous 4:9 10:19 13:13 21:9 24:13</p> <p>previously 26:13</p> <p>principal 3:13</p> <p>prior 16:18 27:8,9</p> <p>probably 14:9</p> <p>problem 15:3 21:3 27:1</p> <p>proceed 23:19 24:4,21</p> <p>proceeding 35:5,6,9</p> <p>progressive 16:10,20</p> <p>proposing 5:5</p> <p>prosecution 16:8</p> <p>provided 6:5</p> <p>providing 17:21</p> <p>proximity 17:12</p> <p>Public 34:1,20</p> <p>punishment 16:16 17:7</p> <p>punitive 18:2 19:17</p> <p>purpose 1:10 22:11</p> <p>purposes 4:1</p> <p>putting 19:1</p>	<hr/> <p style="text-align: center;">Q</p> <hr/> <p>question 12:12,14 17:20 21:21</p> <p>questions 12:6 13:2 20:15 31:2</p> <p>quite 15:4</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>range 14:15,18 18:11</p> <p>rationale 14:21 18:18 19:5</p> <p>ready 3:4,8 8:3,13</p> <p>really 4:12 6:22 17:6</p> <p>reasons 18:1 22:15</p> <p>rec 11:15</p> <p>recall 13:19</p> <p>receive 6:4,8</p> <p>recess 8:20 22:2 23:14 24:17 29:4 33:2</p> <p>recognition 26:12,15</p> <p>recognizing 6:16</p> <p>record 8:22 9:2 11:14 23:17,19 28:19 29:3 34:8</p> <p>recorded 34:6</p> <p>recordings 35:7</p> <p>records 4:11 9:13 10:3 17:12 25:20</p> <p>reduced 34:6</p> <p>Reeves 1:14</p> <p>register 16:17</p> <p>related 34:9</p>	<p>relative 34:11</p> <p>relief 17:21</p> <p>remain 29:12</p> <p>remaining 4:3 7:17</p> <p>remind 24:12</p> <p>repeat 11:7</p> <p>reported 35:4</p> <p>Reporter 35:4</p> <p>Reporter's 35:6</p> <p>represent 19:9</p> <p>representing 19:7</p> <p>require 4:15</p> <p>required 14:1 26:19</p> <p>resolve 2:12 26:22</p> <p>respect 22:3,6 28:2</p> <p>respond 13:1</p> <p>respondent 6:4,6,8</p> <p>response 12:7 21:22 31:3,13,20</p> <p>Retailer 1:7</p> <p>return 22:4</p> <p>returned 30:4</p> <p>reward 20:3</p> <p>rewarding 20:5</p> <p>roll 22:20 31:21</p> <p>room 1:14 23:13</p> <p>run 6:13 10:14</p> <p>Ruthanne 1:15,17</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>sale 4:13</p> <p>sanction 19:3</p>
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Capital Reporting Company
 In the Matter of: Island Cafe, Inc. 07-18-2012
 Page 7

<p>scenarios 18:6</p> <p>scheduled 33:1</p> <p>Schmidt 1:20 2:7,10,14,19,22 3:2,5,10,19 4:22 5:11,14,18 7:11,14,18 8:4,9,16 9:3,5 10:6,10,15,20 11:3,6,10,13,19 12:4,19 13:15 15:1,19 19:9 20:4,9,12,22 21:3,11,17 23:21 24:1,4,22 25:4 26:1,4,10 27:19 28:3,12,15,20,22 29:2,7,9,17,20 30:21,22</p> <p>second 6:7 22:17,18 24:22 31:10,11</p> <p>seconded 22:20 31:15</p> <p>Section 22:9,13,15</p> <p>Security 1:10</p> <p>seeing 14:13</p> <p>seeking 22:11</p> <p>send 16:11</p> <p>sense 17:21,22</p> <p>sequence 16:4,6</p> <p>serve 7:19 9:17 10:5 13:13 25:8</p> <p>served 4:6,16 5:10 6:9,12,18,20,22 7:15,21 9:11,12,14,15 10:1,12 11:9 12:1 13:9,10 14:5,13 18:2</p>	<p>25:11,22 26:9,13,14,16,20 28:6 29:13,19 30:9 31:9</p> <p>service 13:6</p> <p>serving 4:8,12 5:3,8 10:7 20:19</p> <p>shortly 23:15</p> <p>showing 19:13</p> <p>significant 17:8 19:3</p> <p>Silverstein 1:19 8:11 23:6,7 32:8,9</p> <p>six 28:6,7,9 29:13,19 30:2,9 31:7</p> <p>smaller 4:19</p> <p>someone's 20:6</p> <p>somewhat 17:6,15</p> <p>sorry 2:9 12:14,16 13:3 21:7 26:3 27:19 28:7,8 29:9</p> <p>sort 11:15</p> <p>speaking 13:12</p> <p>stand 24:15</p> <p>standpoint 14:22</p> <p>stands 18:6 25:1</p> <p>start 2:8 9:2</p> <p>started 12:20 15:15</p> <p>starting 4:9,10 5:4 9:18</p> <p>state 25:16</p> <p>stated 18:1 29:4</p> <p>status 13:21</p>	<p>stay 17:5</p> <p>stayed 6:5,11 7:5 13:9 14:18 15:7,11,12 16:15 21:15 27:13,14</p> <p>stone 18:5</p> <p>stop 28:3</p> <p>straight 5:8</p> <p>Street 1:6,14 2:5</p> <p>struggling 14:9 18:19</p> <p>subject 15:8,21</p> <p>summary 4:7,16 9:11 10:1 11:21 13:19 14:2,3 19:13,15 26:18</p> <p>Sunday 6:14</p> <p>supposed 2:8</p> <p>sure 3:7 8:10 20:21,22 21:1 28:18,19 29:3</p> <p>suspended 11:9 25:9,10 31:8</p> <p>suspension 4:7,8,16 5:4 6:4,9,10,12,17 9:11 10:2 11:21 13:9,19 14:2,3 19:4,13,15 25:11 26:18</p> <p>swayed 14:10</p> <hr style="width: 100%;"/> <p style="text-align: center;">T</p> <hr style="width: 100%;"/> <p>t/a 1:6</p> <p>table 19:8</p> <p>taking 6:15</p> <p>talk 8:6</p> <p>ten 4:5,6,16 5:10</p>	<p>6:16 9:10 11:18,21 13:11 17:4,7 25:10 26:12,13,16 28:5,9 29:11</p> <p>term 9:5</p> <p>terminating 5:4</p> <p>terms 3:21 4:1 14:12,13 18:1,11</p> <p>testimony 34:5,8</p> <p>Thank 13:5 20:13 21:19 23:15 24:22 27:18 29:8 30:20 32:14,15</p> <p>that'll 2:22</p> <p>that's 6:13 7:7 8:17 9:21 11:19 12:19 14:21 19:5,15 21:10,17,20 27:14,20,21 31:15 32:19</p> <p>themselves 19:3</p> <p>thereafter 30:2 34:6</p> <p>therefore 4:2 15:20</p> <p>there'll 4:2 9:9 29:11,13</p> <p>there's 7:12,16 14:4 18:9,13 21:13 24:6</p> <p>they're 8:3 10:19 19:12</p> <p>Third 6:8</p> <p>Thursday 5:5 6:13</p> <p>time's 11:22</p> <p>today 18:6</p>
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Capital Reporting Company
 In the Matter of: Island Cafe, Inc. 07-18-2012

<p>today's 15:13 tomorrow 4:10 5:4 6:13 top 19:4 total 7:18 12:3 25:21 26:1,2 28:5 29:13 30:8 totaling 31:6 totally 17:19 28:16 towards 17:20 transcript 34:5 35:5,7 transcription 34:7 35:1,8 Transcriptionist 35:17 trigger 21:12 27:11,13 triggered 6:19,22 7:8 9:12 10:22 11:5,8,13 21:8,15 27:11 triggers 11:14 13:12 trouble 14:20 25:15 true 34:7 35:8 try 17:17 trying 5:16 14:20 16:5 19:12 turn 17:3,13 typed 35:5 typewriting 34:6 typically 14:4 15:11</p> <hr/> <p style="text-align: center;">U</p> <hr/>	<p>Uh-huh 26:7 understand 14:20 17:13 18:16,18,21 21:5 30:6,17 understanding 25:16 30:11,13 understood 14:8 25:19 27:22 Unlawful 1:9 unless 24:18 unnecessarily 8:19 upon 22:14 Upshur 1:6 2:5</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>violation 7:12 27:3,5,8,9,11,12 28:7,8,9 violations 6:7 25:8 31:6 vote 16:22 23:10 32:13</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>wait 2:7,10 28:21 29:1 waives 30:18 Washington 1:15 we'd 3:20 week 13:20 15:3,4 we'll 17:1,22 23:14,19 27:21 28:3 we're 5:17 8:20 9:1,14 11:22 13:12 14:12,14,17</p>	<p>16:5,12 17:10 23:18 24:18 25:2 29:5 33:2 we've 4:2 17:6 whack 16:4 Whatever 20:8 whenever 3:8 WHEREUPON 8:21 23:16 33:3 whether 16:22 whom 34:3 withdrawn 29:5 written 4:17 18:5</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>yet 2:16 you'll 13:18 yourselves 3:9</p>	
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