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In the Matter of: Night and Day Management, LLC t/a Fur Factory 10-17-2012

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DISTRICT OF COLUMBIA

ALCOHOLIC BEVERAGE CONTROL BOARD

MEETING

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IN THE MATTER OF: :
 :
Night and Day Management, LLC :
t/a Fur Factory :
33 Patterson Street, NE :
Retailer CN : Show Cause
License No. 60626 : Hearing
ANC 6C : (Status)
Case No. 10-251-00059 :
Interfered with an MPD :
Investigation; Violation of :
Volunteer Agreement; Failed to :
With Security Plan :
-----x

October 17, 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

FERNANDO RIVERO, OAG

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<p>1 PROCEEDINGS 2 10:00 a.m. 3 CHAIRPERSON MILLER: The next case on the 4 calendar is Case No. 10-251-00059, Fur Factory, located 5 at 33 Patterson Street, N.E., License No. 60626, in ANC 6 6C. 7 MR. MPRAS: Emanuel Mpras for Fur Factory. 8 MR. RIVERO: Good morning, Board members. 9 Fernando Rivero from the District of Columbia. 10 MR. REHMAN: Michael Romeo [sic] for Fur 11 Factory. 12 MR. SHAH: Ahmed Shah for Fur Factory. 13 CHAIRPERSON MILLER: Could you just identify 14 your positions with Fur Factory or could you, Mr. 15 Mpras, identify, you know, are they the owners, who's 16 who exactly? 17 MR. MPRAS: Mr. Shah is the -- it was 18 actually - - excuse me. Mr. Rehman is the authorized 19 representative. We have -- we provided a letter to the 20 government and I have a copy for the Board. 21 CHAIRPERSON MILLER: Okay. Ms. Walker, can 22 you?</p>	<p>1 government, working with the Licensee over a period of 2 months on the contents of the security plan that we 3 will provide, details of which we'll provide today, 4 that form a part of one of the terms of the offer in 5 compromise. 6 But we'll deal with the general terms, the 7 penalty terms, and then I'll go into some detail about 8 this new security plan, which was a product of 9 basically back and forth over months to address the 10 issues that were identified in this case and then some 11 others as well. So here it goes. Here are the general 12 terms of the offer in compromise. 13 The offer consists of a fine component of 14 \$3250 payable immediately. Those dollars are 15 distributed as follows: for Charge 2 of the instant 16 case, \$500; for Charge 3 of the instant case, \$2000; 17 and for Case No. 12- 18 CMP-00026 -- 19 MR. SILVERSTEIN: Triple zero -- 20 MR. RIVERO: -- Twenty-six, \$750. Now, the 21 case that I just mentioned has not been charged but we 22 are folding it into this particular offer in compromise</p>
3	5
<p>1 MR. MPRAS: And Mr. Shah is the general 2 manager/operations manager. 3 CHAIRPERSON MILLER: Okay. Thank you. So 4 are there any preliminary matters in this case? 5 MR. RIVERO: Yes, there are actually, Board 6 member. There are a number of preliminary matters. And 7 the government has provided some information in writing 8 to assist Board members in following along with our 9 offer in compromise that we present today. 10 First, just some background context 11 concerning this particular case. This case has been 12 around for a couple of years now. Frankly, it's been 13 around for a while. The case was initially slated for 14 status hearing. And at the time, the Licensee had 15 counsel, Mr. Osnos. Mr. Osnos, as maybe you are aware, 16 took ill. And the government did work with Mr. Osnos 17 to attempt some continuances. 18 But eventually, Mr. Osnos passed away. And 19 it was at that point that there was some movement in 20 getting new counsel. And so that help explains part of 21 the delay of why we're here at this juncture. And then 22 the rest of the explanation consists of myself, the</p>	<p>1 as part of the global offer in compromise. Case No. 2 12-CMP- 00026 concerns a noise violation, a violation 3 of a voluntary agreement on New Year's of this year. 4 But we've got \$500, \$2000, and \$750; a total of \$3250 5 payable immediately. That's the fine component. 6 Then there is a suspension component. The 7 license will be suspended for four days, all days 8 served, zero days stayed, November 22nd, 23rd, 24th, 9 and 25th of 2012, all days where the Licensee will be 10 open for that holiday. But we have the fine component. 11 We have the suspension component. We also have as part 12 of the offer in compromise the submission of a revised 13 operating agreement. 14 In the course of my work on this case, I 15 discovered an operating agreement that was not accurate 16 because it indicated that the owner managed the day-to- 17 day affairs of the establishment, which was not 18 accurate. So the establishment has revised its 19 operating agreement to show that they do have someone 20 to manage the day to -- the actual day-to-day 21 operations. And even though that - - this requirement 22 is part of this offer in compromise, I understand that</p>

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<p style="text-align: right;">6</p> <p>1 the Licensee has already submitted that revised 2 operating agreement. I think it was done over the 3 summer. 4 And finally, the final component is the 5 submission of a revised security plan, designed to 6 address a number of areas. The first area concerns the 7 installation, operation and recording of video cameras 8 throughout the establishment, covering all blind spots, 9 entrances, exits, service areas, hallways, dance 10 floors, and the mezzanine level. Camera video tapes 11 must be maintained for no less than 30 days and the 12 video must be available upon request by members of ABRA 13 or the Metropolitan Police Department. 14 In addition, the security plan will require 15 employment of MPD reimbursable detail with a minimum of 16 four officers on Friday and Saturday nights. Security 17 staff will be increased to a number of between 20 and 18 42 security employees, the higher number obviously 19 during periods of heavy -- heavier occupancy. There 20 will be maintenance of a detailed incident log for 21 three years, available to any law enforcement entity or 22 ABRA upon request.</p>	<p style="text-align: right;">8</p> <p>1 entry. And the training that concerns the calling of 2 911 or the police department in the event of an 3 incident must involve training when there is an 4 incident inside the premises that results in either 5 patron eviction by security staff or when a crime is 6 observed or someone isn't obviously paying more 7 attention. 8 The establishment will be required to 9 maintain detailed personnel files for its employees and 10 this includes photocopies of their state-issued 11 licenses or identification cards. And this information 12 will be made available to any law enforcement entity or 13 to ABRA on request. And finally, the Licensee is to 14 have a representative available to meet periodically 15 with the MPD district commander or that person's 16 designee to review any issues concerning the Licensee 17 operations or the activity of security personnel if 18 such is warranted. 19 And I do have one last component and that is 20 that Charge 1 of the instant case would be dismissed. 21 Upon further work in this case, the government has 22 concluded that it does not have the evidence to sustain</p>
<p style="text-align: right;">7</p> <p>1 The security plan will also address detailed 2 procedures for addressing underage individuals who 3 attempt to gain entry -- ID checks. There will also be 4 detailed procedures for addressing violent altercations 5 that take place inside the establishment. Security 6 personnel will be required to have uniforms that 7 include the club insignia as visible. 8 There will be the institution and proof of 9 criminal background checks on all present and future 10 security staff. And by presence, I mean staff that 11 were employed as of August 1st of this year. Security 12 training will be provided to all present security staff 13 within 30 days of this particular agreement and to all 14 future security personnel within 60 days of hire, with 15 renewal training for all security staff on an annual 16 basis. So there will be updates. 17 And this security training will cover 18 specific areas when it does take place: conflict 19 resolution, procedures for handling violent incidents 20 and other emergencies, procedures for calling the 21 police, procedures for crowd control and preventing 22 overcrowding, and procedures for checking ID upon</p>	<p style="text-align: right;">9</p> <p>1 that charge and that is the reason for the dismissal. 2 And one last point concerning another case and that 3 case would be No. 12565. As part of the offer in 4 compromise today, the government would be dismissing 5 that case. Here's the particular history of what you 6 need to know about that particular case. 7 It arose out of an incident that took place 8 on February 23rd, 2008. Another attorney who was in 9 charge of the Fur cases at that time drafted a notice 10 to show cause. It was transmitted to the agency and 11 then there's some question as to what happened to that 12 notice at that point in time. When I learned of that 13 particular matter, it had been some time since the 14 actual incident. 15 In an attempt to move forward and clear the 16 record, because it's unclear whether there was service 17 to the establishment -- it could be that the persons 18 who accepted service are not even employed there at the 19 -- at this time. So there may be questions about that. 20 There's also question about whether the Licensee can 21 adequately defend (inaudible). 22 We are dismissing this case but perhaps not</p>

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<p style="text-align: right;">10</p> <p>1 technically served, which is legally speaking, probably 2 a better thing to do than to, quote, decline the case, 3 which will -- what happens is when we get cases, we 4 don't think that there's enough evidence. We decline 5 them and nothing gets transmitted to ABRA. But because 6 we have a record of transmittal here, we think the more 7 appropriate legal step to take is actual dismissal as 8 opposed to declining something. I hope that particular 9 point is clear. 10 It -- the facts of the case concerned a 11 verbal altercation inside the establishment that 12 increased or escalated into an actual physical 13 altercation right up to the point of exit. Apparently 14 the parties were exiting. But as I said, for the 15 reasons stated, the dismissal of this case is also part 16 of this global offer in compromise that I am presenting 17 to the Board today. 18 And I think that concludes my presentation 19 and the government's obviously available for questions. 20 CHAIRPERSON MILLER: Thank you. Thank you. 21 That's very comprehensive. And it is all on this offer 22 in compromise that's in writing. Everything that you</p>	<p style="text-align: right;">12</p> <p>1 CHAIRPERSON MILLER: -- whether they got 2 notice, whether they read it, whether they understand 3 it, what they -- 4 MR. MPRAS: Yes, ma'am. We did. 5 CHAIRPERSON MILLER: We did this? Okay. So 6 would -- we have before us this typed up offer in 7 compromise between Fur Factory and the government. Is 8 -- do you have that before you? 9 MR. MPRAS: Yes, ma'am. 10 CHAIRPERSON MILLER: Okay. Now, would you 11 say that that represents the offer in compromise that 12 your client agrees to? 13 MR. MPRAS: Yes, it does. 14 CHAIRPERSON MILLER: Okay. And do you have 15 any other comments on it? 16 MR. MPRAS: No, ma'am. Simply that we've 17 worked long and hard with Mr. Rivero to reach this 18 agreement and hopefully, we'll make it livable. 19 CHAIRPERSON MILLER: Okay. Do Board members 20 have questions on this offer in compromise? Yes, Mr. 21 Alberti. 22 MR. ALBERTI: First of all, Mr. Rivero, I</p>
<p style="text-align: right;">11</p> <p>1 said is -- 2 MR. RIVERO: It is. 3 CHAIRPERSON MILLER: -- it is covered on that 4 sheet -- 5 MR. RIVERO: Yes. 6 CHAIRPERSON MILLER: -- correct? 7 MR. RIVERO: That is correct. It's a two- 8 page document and it's all there. 9 CHAIRPERSON MILLER: Okay. 10 MR. RIVERO: It's all kind of typed single 11 spaced but it's all there. 12 CHAIRPERSON MILLER: Okay. So allow me to 13 just -- Mr. Mpras, first of all -- I can't remember now 14 -- did I ask you whether your clients got notice of 15 this show cause hearing -- status hearing? 16 MR. MPRAS: Yes, ma'am. Excuse me. Yes. 17 CHAIRPERSON MILLER: Did we go through that? 18 I'm not sure we did. 19 MR. MPRAS: The show cause hearing? 20 CHAIRPERSON MILLER: The show cause status 21 hearing -- 22 MR. MPRAS: Definitely.</p>	<p style="text-align: right;">13</p> <p>1 want to thank you for your efforts of trying to pull 2 everything together and clear the slate and working 3 constructively with the License. I -- we really very 4 much appreciate that. And I also want to thank you for 5 your presentation. It was very understandable -- long 6 but very understandable. Thank you. It was very 7 clear. 8 To the Licensee, when would reimbursable -- 9 assuming that the Board agrees to this offer in 10 compromise, when would reimbursable detail begin? 11 MR. MPRAS: Immediately. 12 MR. ALBERTI: Immediately. So for -- 13 MR. MPRAS: It's already in place. 14 MR. ALBERTI: So for this weekend, we would 15 see if it if this Board accepted this offer in 16 compromise? 17 MR. MPRAS: Yes, you would. 18 MR. ALBERTI: Okay. What days of the week 19 are you open -- normally operate? 20 MR. REHMAN: Friday and Saturday -- only 21 Fridays and Saturdays. 22 MR. ALBERTI: I mean, we've seen other days</p>

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<p style="text-align: right;">14</p> <p>1 of the week, I think. 2 MR. REHMAN: Consistently open Fridays and 3 Saturdays. 4 MR. ALBERTI: And when we see other days, 5 what's -- 6 MR. REHMAN: Thursdays or Sundays. 7 MR. ALBERTI: All right. Is -- are those 8 special events? Are those periodic or sporadic? 9 MR. REHMAN: Sometimes special events. 10 MR. ALBERTI: Explain to me why you -- you 11 know, I understand Fridays and Saturdays it's standard. 12 What's happening on the other days that makes you open? 13 MR. REHMAN: We're not open a lot of nights. 14 The venue's pretty big actually. It takes a lot to 15 open the place up. 16 MR. ALBERTI: Right. 17 MR. REHMAN: So if we don't have at least 18 200 -- 19 MR. ALBERTI: Uh-huh. 20 MR. REHMAN: -- people, it's not even worth 21 opening up. So when we have special events, sometimes 22 we open up an off night or sometimes we'll open a</p>	<p style="text-align: right;">16</p> <p>1 Some Saturdays we have the club open. 2 MR. ALBERTI: Okay. Thank you very much. I 3 have no further questions. 4 CHAIRPERSON MILLER: Mr. Jones, did you have 5 some questions? 6 MR. JONES: Yes, thank you. First I'd like 7 to echo Board Member Alberti's comments to Mr. Rivero. 8 Very thorough. We greatly appreciate the detail. But 9 I did have a few questions and it probably annoys. But 10 that's how I am so I'll ask regardless. 11 MR. RIVERO: That's what I'm here for, to 12 answer the questions. 13 MR. JONES: I appreciate that, sir. For Item 14 A under -- Item 2A and you note in here that the video 15 must be available immediately upon request. 16 MR. RIVERO: Right. 17 MR. JONES: Just immediately, is that within 18 24 hours, within 48 hours, or is it at that moment, 19 when I'm in the establishment and I say, "I want the 20 video now?" 21 MR. RIVERO: It's supposed to be when someone 22 comes in and asks for the video.</p>
<p style="text-align: right;">15</p> <p>1 smaller room up for a smaller event. 2 MR. ALBERTI: And how often does that happen? 3 MR. REHMAN: Usually every holiday weekend. 4 Yeah. Like -- 5 MR. ALBERTI: Every what? 6 MR. REHMAN: -- Memorial weekend, Fourth of 7 July -- 8 MR. ALBERTI: Okay. 9 MR. REHMAN: -- Thanksgiving, like, all the 10 holiday weekend, we open like Thursday, Friday, 11 Saturday, Sunday. 12 MR. ALBERTI: Okay. But other times it's 13 not -- 14 MR. REHMAN: No. It's usually Friday and 15 Saturday night. 16 MR. ALBERTI: -- it's typical that you -- 17 it's not typical that you would open up unless you have -- 18 MR. REHMAN: No. Typically Fridays and 19 Saturdays. 20 MR. ALBERTI: Okay. 21 MR. REHMAN: Fridays, you have half the club 22 open. On some Saturdays you have the whole club open.</p>	<p style="text-align: right;">17</p> <p>1 MR. JONES: Okay. 2 MR. RIVERO: It should be producible. 3 MR. JONES: Okay. 4 MR. RIVERO: What often happens -- what often 5 happens is, you know, so and so -- Mr. So and So is a 6 person who has a technical knowledge and that person 7 isn't here today. 8 MR. JONES: Right. 9 MR. RIVERO: We'll get back to you in two or 10 three days when that person comes back. And the point 11 of this is to have an individual with the technical 12 know-how there when the club is open such that when 13 there's an incident that takes place, at the end of the 14 night, if an ABRA investigator shows up and requests 15 video that there'll be somebody there that can, you 16 know, pull that out -- 17 MR. JONES: Okay. 18 MR. RIVERO: -- pursuant to an investigation. 19 MR. JONES: Okay. And that is -- that is the 20 understanding that we should walk away with as we 21 consider this offer in compromise. And if we choose to 22 accept it, then from an enforceability standpoint, then</p>

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<p style="text-align: right;">18</p> <p>1 that would be our expectation is -- 2 MR. RIVERO: Right. 3 MR. JONES: Okay. 4 MR. RIVERO: I mean, there has to be somebody 5 there whenever the club is open that has the technical 6 know-how to be able to download the information that is 7 being requested. 8 MR. JONES: Okay. 9 MR. RIVERO: Now, often of course it may be 10 that by the time MPD interviews people to understand 11 what the time frame is involved, it may be a couple of 12 days. In practice, that may happen. But even so, I 13 wanted to have someone from the get-go available. In - 14 - although, in practice, it may be that two days later 15 the actual request from MPD or ABRA takes place. 16 MR. JONES: Got it. Fair enough. Okay. 17 MR. RIVERO: But because the term includes 18 saving video for 30 days -- 19 MR. JONES: Uh-huh. 20 MR. RIVERO: -- you know, over this 21 hypothetical two or three days when the request is 22 made, nothing would be done to the footage. It would</p>	<p style="text-align: right;">20</p> <p>1 MR. RIVERO: So typically speaking, you've 2 got an incident log being made, for example, at the end 3 of the night that the incident took place. 4 MR. JONES: Correct. 5 MR. RIVERO: And, you know, one could 6 envision some instances where one might not -- the 7 establishment might not get around to that for a day or 8 two. But the point is that once the incident log is 9 recorded -- 10 MR. JONES: Right. 11 MR. RIVERO: -- that it is at that point to 12 be made available to law enforcement, you know, 13 following some investigation if there is. 14 MR. JONES: Okay. So -- 15 MR. RIVERO: That's D. 16 MR. JONES: D, right. And a similar question 17 for the photocopies of employee -- detailed employee 18 records made available to any law enforcement entity or 19 ABRA upon request. 20 MR. RIVERO: Right. So -- 21 MR. JONES: Similar? 22 MR. RIVERO: Yeah.</p>
<p style="text-align: right;">19</p> <p>1 be maintained. 2 MR. JONES: Understood. Thank you. Similar 3 question for Item 2D and 2L. You mentioned here 4 regarding the availability of either documents or items 5 related to the incident log, etc. Is this also -- 6 should I -- should this be interpreted as immediate, or 7 if not, what time frame did you have in mind as you 8 were thinking through this being available or just at 9 any point in time? 10 MR. RIVERO: Okay. Item D -- 11 MR. JONES: Yeah. 12 MR. RIVERO: -- speaks to the request by law 13 enforcement -- 14 MR. JONES: Right. 15 MR. RIVERO: -- for this particular 16 information, which is the incident log of a particular 17 date, for example. 18 MR. JONES: All right. 19 MR. RIVERO: The intent of this language is 20 when the request is made, the incident log will be made 21 available. 22 MR. JONES: Okay. Without delay?</p>	<p style="text-align: right;">21</p> <p>1 MR. JONES: Okay. 2 MR. RIVERO: We've got -- and I worked -- I 3 worked with another establishment a couple years ago on 4 this sort of issue. And it turned out I want to apply 5 it here as a kind of prophylactic measure. 6 MR. JONES: Uh-huh. 7 MR. RIVERO: We don't have facts in this case 8 or in any of the cases, for instance, that an employee 9 was aggressive towards patrons. This particular 10 condition or information stems from my own past 11 experience where you've got employees who are 12 aggressive. And you want to be able to know that they 13 have, you know, a history. If these people suddenly 14 disappear, which may happen, we want to be able to 15 track them if they are accused of some kind of wrongful 16 conduct -- 17 MR. JONES: Uh-huh. 18 MR. RIVERO: -- with respect to patrons. And 19 hence, the requirement of maintaining a file so these 20 folks, if they are wanted by -- for whatever reason, 21 there's some ability to locate them. 22 MR. JONES: Makes sense. And for both D and</p>

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<p style="text-align: right;">22</p> <p>1 L I took from your explanation that available upon 2 request -- so it doesn't necessarily mean the day of or 3 -- but if I ask as a law enforcement person -- I ask 4 for that, I should reasonably expect to receive that 5 upon my request? 6 MR. RIVERO: Right. I mean -- 7 MR. JONES: Okay. 8 MR. RIVERO: -- all -- 9 MR. JONES: It shouldn't be a week, 48 hours 10 that I'm waiting to get this document after my request 11 or is it your sense -- is it your feel when you entered 12 into this with the Licensee -- 13 MR. RIVERO: Uh-huh. 14 MR. JONES: -- that a reasonable time frame 15 could be expected? And if so, how would you define 16 reasonable? 17 MR. RIVERO: Yes. There is to be a 18 reasonable meaning applied to -- 19 MR. JONES: Okay. 20 MR. RIVERO: -- this entire document. So, 21 for instance, if an MPD officer at 11:00 p.m. or at 22 1:00 p.m.</p>	<p style="text-align: right;">24</p> <p>1 that request. 2 So again, it's just about a reasonable 3 reading of this -- of the language. 4 MR. JONES: Fair enough. For that detailed 5 information. For Items E, F, and G, would these items 6 been included as part of the security plan? 7 MR. RIVERO: Yes. 8 MR. JONES: Okay. 9 MR. RIVERO: And -- 10 MR. JONES: Cool. 11 MR. RIVERO: -- in fact, they are. 12 MR. JONES: Okay. 13 MR. RIVERO: It's -- I have the document -- 14 MR. JONES: Okay. Cool. 15 MR. RIVERO: -- with us. So 16 MR. JONES: And then lastly, in terms of 17 Items I, J and K related to training -- 18 MR. RIVERO: Yeah. 19 MR. JONES: -- is this an -- is there any 20 requirements associated with how this training is to be 21 conducted, i.e., is there a third party that should be 22 conducting this training? Is it okay for them to come</p>
<p style="text-align: right;">23</p> <p>1 sent an email to maybe Mr. Shah or someone 2 making a request and the -- and the club happens to be 3 closed at that time or -- 4 MR. JONES: Right. 5 MR. RIVERO: -- office was closed, then 6 evidently, you know, it would be the next day or when 7 the email is received and read by the individual that 8 then the person is -- who reads it would be to respond 9 to it. So there are situations in which we can envision 10 that a reasonable period of time doesn't necessarily 11 mean immediately. 12 MR. JONES: Fair enough. 13 MR. RIVERO: So it would all be read 14 reasonably under the particular circumstances. 15 MR. JONES: Fair enough. 16 MR. RIVERO: So I would think if somebody 17 walks in during business hours and asks for the manager 18 and says, "I'd like to go into our office and look at a 19 file for employee, Mr. Smith," that that would happen 20 then, unless, of course, the manager's in the middle of 21 quelling some emergency and, you know, would have to 22 please wait, and then, after the emergency, engage in</p>	<p style="text-align: right;">25</p> <p>1 up with their own internal training program and enforce 2 it internally? What is our thought process in terms of 3 that mechanism? 4 MR. RIVERO: Well, the language does not 5 prevent the Licensee from providing the training in any 6 way that actually accomplishes the goal. The 7 understanding is with the government that the Licensee 8 already engages in the practice of having a third party -- 9 MR. JONES: Okay. 10 MR. RIVERO: -- provide that training. So it 11 is our expectation that that current practice will 12 continue and not change. 13 MR. JONES: Thank you. Thank you for that. 14 Thank you, Madam Chair. 15 CHAIRPERSON MILLER: Thank you. Others? I 16 have a follow-up question on that training issue. 17 MR. RIVERO: Sure. 18 CHAIRPERSON MILLER: So third-party training, 19 is there some kind of proof that the training has 20 actually occurred and what it's encompassed, such as, 21 you know, certificates -- 22 MR. RIVERO: Yes.</p>

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<p style="text-align: right;">26</p> <p>1 CHAIRPERSON MILLER: -- that then would be in 2 the record? 3 MR. RIVERO: After each training, the 4 employees who receive the training would receive a 5 certificate. And a -- at least a copy of that 6 certificate -- and we've discussed this with the 7 Licensee -- will be made part of the file. And so one 8 would understand by looking at the person's file that 9 there is proof of the training that took place. 10 CHAIRPERSON MILLER: The ABRA file? 11 MR. RIVERO: No. 12 CHAIRPERSON MILLER: Your -- his own personal 13 file? 14 MR. RIVERO: The file that is on the employee 15 that is at the premises. 16 CHAIRPERSON MILLER: At the premises. Right. 17 MR. RIVERO: This file that was the subject 18 of Section L. 19 CHAIRPERSON MILLER: Okay. And what's the 20 status of the security plan at this point? Is it -- it 21 says here it would be submitted within 14 days. 22 MR. RIVERO: Correct.</p>	<p style="text-align: right;">28</p> <p>1 understanding as well? 2 MR. MPRAS: It does. 3 MR. JONES: It does. Okay. Thank you. 4 CHAIRPERSON MILLER: Any other questions? 5 Well, let me ask you this, Mr. Rivero and Mr. Mpras. I 6 mean, it seems like -- I mean, this is a -- quite a 7 comprehensive OIC and I -- and I commend you for it. 8 But it seems like our approval of it would be 9 contingent upon submission of this security plan, which 10 we don't have at this point. So I think I have two 11 options. One would be to make a motion to approve it 12 contingent upon that but there would be no signed Order 13 until we got the security plan and it met with our 14 approval or we could wait for the security plan -- 15 MR. RIVERO: Right. 16 CHAIRPERSON MILLER: -- and then -- 17 MR. RIVERO: Court's indulgence, if I may? 18 All right. The Licensee can file that plan tomorrow 19 but that just gives me the opportunity to make sure 20 that all the T's are crossed and the I's dotted. 21 MR. ALBERTI: Yeah. 22 CHAIRPERSON MILLER: Okay.</p>
<p style="text-align: right;">27</p> <p>1 CHAIRPERSON MILLER: Okay. 2 MR. RIVERO: It's basically ready. 3 CHAIRPERSON MILLER: Okay. 4 MR. RIVERO: I wanted to do a one -- a last 5 once over and it should be submitted within 14 days of 6 the OIC agreement. 7 CHAIRPERSON MILLER: Okay. And how about the 8 revised operating agreement? That's a submission of -- 9 MR. RIVERO: My understanding, it's already 10 been submitted. 11 CHAIRPERSON MILLER: Oh, it's been submitted? 12 MR. RIVERO: Yep. 13 CHAIRPERSON MILLER: Okay. Good. 14 MR. RIVERO: And I have a copy of that. 15 CHAIRPERSON MILLER: Oh, yeah. Mr. Jones, go 16 ahead. 17 MR. JONES: I'm sorry. I did have one -- 18 CHAIRPERSON MILLER: Go ahead. 19 MR. JONES: Thank you very much. I had one 20 quick follow-up for the Licensee. Based on the 21 questions that I asked Mr. Rivero and his responses to 22 those questions is -- does that comport with your</p>	<p style="text-align: right;">29</p> <p>1 MR. ALBERTI: Ms. Miller, my understanding 2 that -- 3 CHAIRPERSON MILLER: Yeah, go ahead. 4 MR. ALBERTI: I understand that if we accept 5 the OIC, it really becomes a Board Order. And if they 6 fail to submit the plan, then they're in violation of 7 the Order. So that's the hook here for them to submit 8 the plan. So I'm not concerned -- as concerned about 9 the 14 days. I'll just put that out there. 10 CHAIRPERSON MILLER: Well, but I think it's 11 more than just submitting it because we'd want to look 12 at it and make sure it complies with the 13 representations here, that it addresses all these 14 points, I think, before I want to -- 15 MR. ALBERTI: All right. And that's one -- I 16 think that -- and that's part of the Order. 17 MR. JONES: It's part of the Order. If it 18 doesn't -- 19 MR. ALBERTI: It's part of the Order. 20 MR. JONES: -- meet with that, then -- 21 MR. ALBERTI: It's important -- 22 MR. JONES: -- they're in violation of the</p>

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In the Matter of: Night and Day Management, LLC t/a Fur Factory 10-17-2012

<p style="text-align: right;">30</p> <p>1 Order. So I don't necessarily think we have to wait. 2 CHAIRPERSON MILLER: Okay. 3 MR. RIVERO: Oh, I do want to clarify one -- 4 CHAIRPERSON MILLER: Okay. 5 MR. RIVERO: -- last point because this is 6 not obvious from the content of the security plan. It 7 does comply with DC Official Code 25-403, I think -- 8 CHAIRPERSON MILLER: Okay. 9 MR. RIVERO: -- which is the code section 10 that contains the minimum legal requirements that a 11 security plan must rate. 12 CHAIRPERSON MILLER: Okay. 13 MR. RIVERO: It is -- it is contained in the 14 DC Code Title 25, Chapter 400 -- off the top of my 15 head, it might be 403. And that indicates that at a 16 minimum, a security plan must do X. And this does X 17 plus. 18 CHAIRPERSON MILLER: Okay. So it's already 19 written to such a degree that you can make that 20 representation? 21 MR. RIVERO: Correct. 22 CHAIRPERSON MILLER: Okay.</p>	<p style="text-align: right;">32</p> <p>1 (No audible response.) 2 CHAIRPERSON MILLER: Okay. Not hearing any, 3 all those in favor of this offer in compromise, say 4 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 vote is 6-0-0 11 to accept this offer in compromise. And we'll look 12 forward to the submission of the security agreement -- 13 the security plan. 14 MR. RIVERO: Thank you, Board members. I do 15 want to indicate that the document is intended to be a 16 signed document. So we're going to have a signed 17 version presented to the Board -- 18 CHAIRPERSON MILLER: Okay. 19 MR. RIVERO: -- for the government and the 20 establishment and counsel will sign that for the Board 21 to submit. 22 CHAIRPERSON MILLER: Okay. And we'll expect</p>
<p style="text-align: right;">31</p> <p>1 MR. RIVERO: I can make a representation that 2 it does in fact comply with the current minimum legal -- 3 CHAIRPERSON MILLER: Uh-huh. 4 MR. RIVERO: -- requirement. 5 CHAIRPERSON MILLER: Okay. 6 MR. RIVERO: That was relevant information 7 that I think is responding to this question. 8 CHAIRPERSON MILLER: All right. Any other 9 question? Okay. Then my understanding is that the 10 Board would be ready to consider a motion approving 11 this offer in compromise. So I would propose that we 12 accept this offer in compromise that's stated quite 13 fully on two pages typed that's been presented to us as 14 the offer in compromise. I don't think I need to read 15 this report for the record, unless others, you know, 16 feel differently because this is quite comprehensive. 17 So that would be a motion to accept the offer 18 in compromise as it's been presented. Do I have a 19 second? 20 MR. SILVERSTEIN: Second. 21 CHAIRPERSON MILLER: Mr. Silverstein has 22 seconded. Any other comments?</p>	<p style="text-align: right;">33</p> <p>1 the security plan -- when did you say? I know within 2 14 days is what the agreement says. 3 MR. RIVERO: But no (inaudible) -- 4 CHAIRPERSON MILLER: Right. 5 MR. RIVERO: Even (inaudible) -- 6 CHAIRPERSON MILLER: And the reimbursable 7 detail's going to be in place for the weekend, correct? 8 MR. MPRAS: Yes, the detail's already in 9 place, ma'am. 10 CHAIRPERSON MILLER: Okay. Great. Great. 11 Perfect. Thank you. Thank you for your excellent work 12 on this. 13 MR. RIVERO: Yeah, thank you. 14 MR. MPRAS: Thank you. 15 CHAIRPERSON MILLER: Okay. 16 (WHEREUPON, at 10:33 a.m., the hearing was 17 concluded.) 18 19 20 21 22</p>

Capital Reporting Company

In the Matter of: Night and Day Management, LLC t/a Fur Factory 10-17-2012

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1 CERTIFICATE OF NOTARY PUBLIC

2
3 I, ERICK McNAIR, 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
19 _____
20 ERICK McNAIR
21 Notary Public in and for the
22 District of Columbia
My commission expires: July 14, 2016

35

1 CERTIFICATE OF TRANSCRIPTION

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

9
10
11
12 _____
13 Date MIRANDA PENNACHI
14 Transcriptionist
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<p>_____</p> <p style="text-align: center;">\$</p> <hr/> <p>\$2000 4:16 5:4</p> <p>\$3250 4:14 5:4</p> <p>\$500 4:16 5:4</p> <p>\$750 4:20 5:4</p> <p>_____</p> <p style="text-align: center;">0</p> <hr/> <p>00026 5:2</p> <p>_____</p> <p style="text-align: center;">1</p> <hr/> <p>1 8:20</p> <p>1:00 22:22</p> <p>10:00 2:2</p> <p>10:33 33:16</p> <p>10-251-00059 1:8 2:4</p> <p>11:00 22:21</p> <p>12 4:17</p> <p>12565 9:3</p> <p>12-CMP 5:2</p> <p>14 26:21 27:5 29:9 33:2 34:22</p> <p>14th 1:14</p> <p>17 1:12</p> <p>1st 7:11</p> <p>_____</p> <p style="text-align: center;">2</p> <hr/> <p>2 4:15</p> <p>20 6:17</p> <p>200 14:18</p> <p>2000 1:14</p> <p>2008 9:8</p> <p>2012 1:12 5:9</p> <p>2016 34:22</p> <p>22nd 5:8</p>	<p>23rd 5:8 9:8</p> <p>24 16:18</p> <p>24th 5:8</p> <p>25 30:14</p> <p>25-403 30:7</p> <p>25th 5:9</p> <p>2A 16:14</p> <p>2D 19:3</p> <p>2L 19:3</p> <p>_____</p> <p style="text-align: center;">3</p> <hr/> <p>3 4:16</p> <p>30 6:11 7:13 18:18</p> <p>33 1:6 2:5</p> <p>_____</p> <p style="text-align: center;">4</p> <hr/> <p>400 30:14</p> <p>403 30:15</p> <p>42 6:18</p> <p>48 16:18 22:9</p> <p>_____</p> <p style="text-align: center;">6</p> <hr/> <p>60 7:14</p> <p>6-0-0 32:10</p> <p>60626 1:7 2:5</p> <p>6C 1:8 2:6</p> <p>_____</p> <p style="text-align: center;">9</p> <hr/> <p>911 8:2</p> <p>_____</p> <p style="text-align: center;">A</p> <hr/> <p>a.m 2:2 33:16</p> <p>ability 21:21</p> <p>able 18:6 21:12,14</p> <p>ABRA 6:12,22 8:13 10:5 17:14 18:15 20:19</p>	<p>26:10</p> <p>abstaining 32:8</p> <p>accept 17:22 29:4 31:12,17 32:11</p> <p>accepted 9:18 13:15</p> <p>accomplishes 25:6</p> <p>accurate 5:15,18</p> <p>accused 21:15</p> <p>action 34:10,14</p> <p>activity 8:17</p> <p>actual 5:20 9:14 10:7,12 18:15</p> <p>actually 2:18 3:5 14:14 25:6,20</p> <p>addition 6:14</p> <p>address 4:9 6:6 7:1</p> <p>addresses 29:13</p> <p>addressing 7:2,4</p> <p>adequately 9:21</p> <p>affairs 5:17</p> <p>agency 9:10</p> <p>aggressive 21:9,12</p> <p>ago 21:3</p> <p>agreement 1:10 5:3,13,15,19 6:2 7:13 12:18 27:6,8 32:12 33:2</p> <p>ahead 27:16,18 29:3</p> <p>Ahmed 2:12</p> <p>Alberti 1:18 12:21,22 13:12,14,18,22 14:4,7,10,16,19</p>	<p>15:2,5,8,12,16,2 0 16:2 28:21 29:1,4,15,19,21</p> <p>Alberti's 16:7</p> <p>Alcoholic 1:2,13,14</p> <p>allow 11:12</p> <p>already 6:1 13:13 25:8 27:9 30:18 33:8</p> <p>altercation 10:11,13</p> <p>altercations 7:4</p> <p>am 10:16 16:10 34:8,11 35:3</p> <p>ANC 1:8 2:5</p> <p>annoy 16:9</p> <p>annual 7:15</p> <p>answer 16:12</p> <p>Apparently 10:13</p> <p>appearing 34:5</p> <p>applied 22:18</p> <p>apply 21:4</p> <p>appreciate 13:4 16:8,13</p> <p>appropriate 10:7</p> <p>approval 28:8,14</p> <p>approve 28:11</p> <p>approving 31:10</p> <p>area 6:6</p> <p>areas 6:6,9 7:18</p> <p>arose 9:7</p> <p>assist 3:8</p> <p>associated 24:20</p> <p>assuming 13:9</p> <p>attempt 3:17 7:3</p>
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