

ADMINISTRATIVE HEARINGS DIVISION

July 20, 2023

STIPULATED SETTLEMENT AGREEMENTS - LIQUOR VIOLATION CASES

1. Shari's Management Corporation
Samuel Borgese, President/Dir
Daniel Smith, Secretary
Jim Balis, Director
Erik Hermann, Director
Wade Daniel, Director
Shari's Restaurant Group, Inc., Stkhldr
Samuel Borgese, Pres/Dir
Daniel Smith, Secretary
Jim Balis, Director
Erik Hermann, Director
Wade Daniel, Director
Shari's CP, LLC, Stockholder
dba SHARI'S OF SOUTH BEND (L)
61135 S Hwy 97
Bend, OR 97055

OAR 845-006-0335(1)(a)(b)(c) – On or about November 2, 2022, Licensee's employee, agent, or representative Andrea Fulkerson, failed to verify the age of a minor before allowing them to buy or be served an alcoholic beverage, when they reasonably appeared to be under 26 years of age.

(1st Level Category II(b))

Note: Licensee was charged with this violation by Notice dated May 30, 2023. The total proposed sanction was a 12-day suspension or a \$3,000.00 civil penalty. Licensee wishes to enter into this settlement agreement.

AGGRAVATION

Staff added two days of aggravation because the licensee failed to use Age Verification Equipment purchased as an offset to a previous penalty.

TERMS OF AGREEMENT

1. Licensee accepts responsibility for the violation as set out in the Notice. This was Licensee's first Category II(b) violation within two years. Any subsequent Category II(b) violation within the same two years will be charged at the second level. This violation will become a permanent part of each licensee's Commission file and may be considered in any future application for any license or permit by that licensee.
2. The standard sanction for this violation is a 10-day suspension or a \$2,500.00 civil penalty. Commission staff added two days of aggravation because the licensee failed to use Age Verification Equipment purchased as an offset to a previous penalty. The total proposed sanction was a 12-day suspension or a \$3,000.00 civil penalty.
3. The Commission will reduce the penalty by three days.
4. Licensee will pay a \$2,250.00 civil penalty before 5:00 PM on August 15, 2023 or serve an 9-day license suspension beginning at 7:00 AM on August 22, 2023 and ending at 7:00 AM on August 31, 2023.

(continue **SHARI'S OF SOUTH BEND**)

5. If a licensee's interest in the license expires or is transferred before the Commission issues a final order on this allegation, that licensee agrees to accept a Letter of Reprimand for this violation. This reprimand will become a permanent part of the licensee's Commission file and may be considered in any future application for any license or permit by that licensee.

6. This agreement is conditioned upon final approval of the Commission and will be reviewed by the Commissioners at their July 2023 Commission Meeting. If the agreement is not accepted and approved in its entirety by the Commission it is deemed null and void and Licensee's hearing rights, if any, will be restored. If the agreement is accepted and approved in its entirety by the Commission, Licensee waives any and all rights to a contested case hearing under the Administrative Procedures Act (ORS Chapter 183) and to judicial review, or to otherwise challenge this agreement and the final order.

2. MAG Group, LLC
Marco Gonzalez, Managing Mbr
dba **CAPITAL CANTINA (F-COM)**
1486 Hawthorne Ave NE
Salem, OR 97301

ORS 471.315(1)(c) – There is a history of serious and persistent problems involving disturbances, unlawful activities or noise either in the licensed premises at 1486 Hawthorne Ave NE, Salem, Oregon, or involving patrons of the establishment in the immediate vicinity of the premises. The problems occurred from January 5, 2021 to March 6, 2023.

(Category I)

OAR 845-006-0347(4)(a) - On or about July 10, 2021, Licensee and/or Licensee's employees, agents, or representatives failed to evict patron Nivardo Ramirez Monge from the premises for at least a 24-hour period, after he had been involved in a physical altercation with patron Delgado Gonzalez, which resulted in Ramirez Monge later shooting and killing two patrons in the premises restroom.

(1st Level Category IV)

Note: Licensee was charged with these violations by Amended Notice dated May 16, 2023. Staff originally proposed for these violations the standard sanction of license cancellation. Licensee requested a hearing and now wishes to enter into this settlement agreement.

AGGRAVATION

Staff proposed aggravating the penalty because Violations Number One and Number Two involved injury or death.

SYNOPSIS: OLCC began investigating a history of serious and persistent problems at the premises following a fatal shooting there in July 2021. The History violation included 39 incidents from January 2021 to March 2023. Nine incidents involved violence (fights, the shooting, and patrons threatening staff), thirteen involved intoxicated patrons and drug use (intoxicated patrons refusing to leave, paraphernalia in the bathroom, patrons under the influence of controlled substances), sixteen involved property damage, theft, and noise complaints, and one was a Governor's Order related incident. Many incidents took place in the premises' parking lot where the Licensee allows a food cart to operate. There have been no shootings since July 2021 and the Licensee is voluntarily changing the premises from a dance club environment to a pub or sports bar. The settlement proposes license restrictions regarding DPSST security required at the premises, monitoring of the parking lot, limitations on the hours of service, and requirements for the storage and provision of surveillance footage. The objective is that with implementation of the restrictions provided for in this settlement, this business can be both safe and successful.

TERMS OF AGREEMENT

1. Licensee accepts responsibility for the violations as set out in the Notice. Violation Number One was Licensee's first Category I violation. Violation Number Two was Licensee's first Category IV violation within two years. Any subsequent Category IV violation within the same two years will be charged at the second level. These violations will become a permanent part of each licensee's Commission file and may be considered in any future application for any license or permit by that licensee.
2. The standard sanction for the Category I violation is license cancellation. The standard sanction for a first-level Category IV violation is seven-day license suspension or \$1,155.00 civil penalty. Commission staff proposed aggravating the penalty because Violation Number One and Number Two involved injury or death.

(continue **CAPITAL CANTINA**)

3. Commission staff originally proposed for these violations the standard sanction of license cancellation.
4. The Commission will reduce the sanction for Violation Number One to a 32-day license suspension, with the option to pay a \$4,950.00 civil penalty in lieu of 30 days, and the remaining two days mandatory; plus the imposition of restrictions on this license as stated in paragraph 9, below.
5. The Commission will reduce the sanction for Violation Number Two by two days.
6. No later than 5:00 PM on August 10, 2023, Licensee will require that all premises employees and representatives engaged in the mixing, sale, or service of alcohol, or management of persons engaged in the mixing, sale, service of alcohol, participate in and complete an OLCC led training. Such training will be provided by OLCC at no cost to the Licensee or employees, at the licensed premises, at a mutually agreed-upon time not later than 5:00 PM on August 10, 2023. OLCC Inspectors may grant an excused absence upon a showing of illness or other good cause, subject to the option to require a later make-up session by the excused employee. By 5:00 PM on August 11, 2023, an OLCC Inspector shall certify whether or not Licensee and its employees and representatives have substantially complied with this training requirement.
7. In the event that OLCC's Inspector certifies substantial compliance with the training requirement in accordance with paragraph 6, Licensee will either pay a \$6,105.00 civil penalty before 5:00 PM on August 15, 2023 and serve a two-day license suspension from 7:00 AM on August 22, 2023 to 7:00 AM on August 24, 2023 **OR** serve a 39-day license suspension beginning at 7:00 AM on August 22, 2023 and ending at 7:00 AM on September 30, 2023.
8. In the event that OLCC's Inspector does not certify substantial compliance with the training requirement in accordance with paragraph 6, Licensee will serve a 39-day license suspension beginning at 7:00 AM on August 22, 2023 and ending at 7:00 AM on September 30, 2023.
9. The Commission will impose restrictions on the license which become effective on the effective date of the Final Order Incorporating Settlement Agreement, except that Restriction #10 becomes effective on the date stated in that restriction. Licensee accepts the imposition of the following license restrictions without conditions or reservations:
 - 1) Licensee will maintain at least the below-listed number of DPSST-certified security guards at the times and under the circumstances listed below. Those DPSST-certified security guards shall work solely in the role of security to verify identification, monitor patron entrances and exits, and control disorder inside and in the immediate vicinity of the premises. All on-duty DPSST-certified staff members must wear an outer garment that clearly displays the word "security" or "staff" in a readable size font on the person's chest and back. The persons in this role will not be allowed to mix, sell, or serve alcohol while on-duty as DPSST-certified staff. Security will evaluate each individual entering the premises for signs of intoxication and refuse entry to any person who is visibly intoxicated or disorderly. (Note: each night includes the following morning after 12:00 am until closing.)
 - (1)(a) On all nights the premises offers live entertainment (including without limitation bands, disc-jockeys, and singing): 5.
 - (1)(b) Otherwise, on Friday and Saturday nights: 4; on Sunday and Thursday nights: 3; on Monday, Tuesday, and Wednesday nights: 2.

- (2) From 9:00 pm to closing on all nights, at least one DPSST-certified security person will patrol the areas adjacent to or outside the premises, including the parking areas, at least every 20 minutes to discourage loitering and illegal activity. This is an additional duty for DPSST-certified security, and does not add to the number of DPSST-certified security required by Restrictions No. 1. Licensee shall ensure that DPSST security personnel log each patrol required by this restriction in the premises' bar log.
 - (3) Licensee's other employees, agents, and representatives (including family members and friends) shall not interfere with or overrule any DPSST-certified security staff member's reasonable actions and decisions regarding controlling disorder, eviction of disorderly patrons, or refusal of entry to the premises to a visibly intoxicated or disorderly person.
 - (4) Patron entry and reentry is prohibited from 12:00 am to 7:00 am.
 - (5) The sale and service of alcohol is prohibited from 12:30 am to 7:00 am. Licensee will not allow any person to possess or consume alcohol at the premises from 1:00 am to 7:00 am.
 - (6) The premises must be closed to the public no later than from 1:00 am to 7:00 am on the succeeding calendar day. Licensee and premises security shall ensure that food service in the parking lot areas ceases, and the parking lot areas are cleared of patrons within 30 minutes after closing. Patrons may leave their vehicles in the parking lots.
 - (7) Staff shall not sell or serve to a patron, and a patron may not possess, more than one container of alcohol at one time, and each container of alcohol will contain no more than 16 ounces of malt beverage, 16 ounces of cider, six ounces of wine, or two ounces of distilled spirits.
 - (8) Licensee's alcohol servers will use a one-ounce jigger or one-ounce measured liquor bottle pourer to measure pours of distilled spirits.
 - (9) Licensee's employees, agents, or representatives will immediately report any violent or illegal activity observed within or outside the premises to law enforcement, and document the activity in the bar log within 12 hours of its occurrence.
 - (10) Effective as of September 7, 2023, Licensee will maintain a security video surveillance system with digital video recording capabilities sufficient to capture clear and specific images of all areas controlled by Licensee, including the outdoor areas adjacent to the licensed building, the licensed patio, and the parking lots. Licensee must keep all recordings for a minimum of 30 calendar days, with the date and time embedded on all surveillance recordings without significantly obscuring the picture. Licensee must make complete unaltered video surveillance footage available within 72 hours of any request, to an OLCC inspector or law enforcement officer.
10. Violation of a restriction is a Category I violation, subject to license cancellation. OAR 845-005-0355(5).
 11. Licensee withdraws the request for a hearing.

(continue **CAPITAL CANTINA**)

12. If a licensee's interest in the license expires or is transferred before the Commission issues a final order on these charges, the licensee agrees to accept a Letter of Reprimand for the violations charged in the Notice. This reprimand will become a permanent part of the licensee's Commission file and may be considered in any future application for any license by the licensee.
13. This agreement is conditioned upon final approval of the Commission and will be reviewed by the Commissioners at their July 2023 Commission Meeting. If the agreement is not accepted and approved in its entirety by the Commission it is deemed null and void and Licensee's hearing rights, if any, will be restored. If the agreement is accepted and approved in its entirety by the Commission, Licensee waives any and all rights to a contested case hearing under the Administrative Procedures Act (ORS Chapter 183) and to judicial review, or to otherwise challenge this agreement and the final order.

3. **JESIAH LOVE (SP #F0201R)**
(MULLIGAN'S PUB)

OAR 845-006-0345(13) – On or about January 1, 2023, Permittee permitted the use, consumption, ingestion, or inhalation of marijuana items on premises licensed to sell or serve alcoholic beverages, when Permittee became aware that a patron was smoking marijuana on the back patio area of the licensed premises at Mulligans Pub, and Permittee took no steps to prevent the patron from consuming marijuana, but instead simply instructed the patron to lower his marijuana pipe out of view of the surveillance cameras.

(1st Level Category III)

OAR 845-006-0347(4)(a) - On or about January 1, 2023, Permittee failed to evict a person known to Permittee to have engaged in unlawful activities on the premises, when Permittee became aware that a patron was smoking marijuana in a public area on the back patio of the licensed premises at Mulligans Pub, and Permittee did not evict the patron from the licensed premises.

(1st Level Category IV)

SYNOPSIS: In response to anonymous complaints of marijuana use at a premises licensed to sell alcohol, OLCC inspectors conducted an undercover investigation in the early morning hours of January 1, 2023. While seated in the licensed patio area, they observed a patron using a glass pipe to smoke marijuana. Permittee was the bartender on duty. Permittee clearly saw the patron smoking marijuana and instructed him to lower the pipe out of view of the cameras. Later, when confronted by the inspectors and asked why he didn't tell the patron to leave, Permittee responded that "everyone" smokes marijuana on the patio, and that he tells people not to do it but they do it anyway.

Note: Permittee was charged with these violations by Notice dated June 20, 2023. The total proposed penalty was a 19-day suspension or a \$475.00 civil penalty. Permittee wishes to enter into this settlement agreement.

AGGRAVATION

Staff added two days of aggravation to Violation Number One because, by his instructions to the patron, permittee attempted to conceal the violation.

TERMS OF AGREEMENT

1. Permittee accepts responsibility for the violations as set out in the Notice. These were Permittee's first Category III and Category IV violations within two years. Any subsequent Category III or Category IV violations within the same two years will be charged starting at the second level.
2. The standard sanction for Violation Number One is a 10-day suspension or a \$250.00 civil penalty. The standard sanction for Violation Number Two is a seven-day suspension or a \$175.00 civil penalty. Staff added two days of aggravation to Violation Number One because, by his instructions to the patron, permittee attempted to conceal the violation. The total proposed sanction was a 19-day suspension or a \$475.00 civil penalty.
3. The Commission will reduce the sanction by five days.

(continue **JESIAH LOVE (SP #F0201R)**)

4. Permittee shall pay a \$350.00 civil penalty before 5:00 PM on August 15, 2023, **OR** serve a 14-day suspension beginning at 7:00 AM on August 22, 2023 and ending at 7:00 AM on September 5, 2023.
5. If Permittee's interest in the permit expires before the Commission issues a final order on these charges, Permittee agrees to accept a Letter of Reprimand for the violations. This reprimand will become a permanent part of Permittee's Commission file and may be considered in any future application for any license or permit by the Permittee.
6. This agreement is conditioned upon final approval of the Commission and will be reviewed by the Commissioners at their July 2023 Commission Meeting. If the agreement is not accepted and approved in its entirety by the Commission it is deemed null and void and Permittee's hearing rights, if any, will be restored. If the agreement is accepted and approved in its entirety by the Commission, Permittee waives any and all rights to a contested case hearing under the Administrative Procedures Act (ORS Chapter 183) and to judicial review, or to otherwise challenge this agreement and the final order.