

**BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD
OF THE STATE OF CALIFORNIA**

AB-10005

File: 21-569379; Reg: 24094184

BLOOMINGTON WINE & SPIRIT, INC.,
dba Eastend Liquor
998 East Holt Avenue
Pomona, CA,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Hon. Doris Huebel

Appeals Board Hearing: January 17, 2025
Sacramento, CA/Videoconference

ISSUED JANUARY 22, 2025

Appearances: Appellant: Eliel Chemerinski, as counsel for Bloomington Wine & Spirit, Inc.

Respondent: Jennifer Casey, as counsel for the Department of Alcoholic Beverage Control.

OPINION

I. INTRODUCTION

Appellant operates a licensed premises called Eastend Liquor. The Department of Alcoholic Beverage Control ("the Department") filed a seven-count accusation against appellant for engaging in illegal gambling and for possessing drug paraphernalia. After an administrative hearing, the Administrative Law Judge issued a Proposed Decision that sustained all seven

counts. The Department adopted the Proposed Decision¹, and appellant appealed. For the reasons stated below, the Department's decision is affirmed.

II. FACTS

Sometime in the summer of 2023, the Claremont Police Department told the Department that illegal gambling may be occurring near appellant's premises. As a result, Agent Flores, while working undercover, visited appellant's premises. While inside, Agent Flores saw that appellant had glass pipes for sale. Based on Agent Flores's training and experience, the sale of glass pipes indicated that methamphetamine and cocaine pipes may also be for sale. Agent Flores also noted that appellant's premises was in an area where there were prostitutes, homeless people, and gang activity.

On August 8, 2023, Agent Flores, still working undercover, visited appellant's premises. Mr. Rajinder Adlakha was working behind the counter. As Agent Flores was approaching the counter, he heard another patron ask Mr. Adlakha to put \$10.00 on "Panda" for "Kilo123." Agent Flores believed the patron was asking to put funds into the online gambling platform called Panda Master. While at the counter, Agent Flores asked Mr. Adlakha to set up an account for him. Mr. Adlakha suggested a gambling platform named Fire Kirin. Agent Flores agreed, and Mr. Adlakha asked Agent Flores how much money he wanted to put in the account. Agent Flores said \$20.00, and he gave Mr.

¹ The Department's decision, dated August 29, 2024, is set forth in the appendix.

Adlakha the money. Mr. Adlakha retrieved a tablet from behind the counter, and he set up an account for Agent Flores. Mr. Adlakha wrote the account name and password on a brown paper bag. Mr. Adlakha gave Agent Flores the brown paper bag and a business card with instructions on how to access the account. Agent Flores, using his department issued cell phone, logged into his new account, and he confirmed the account had \$20.00. Agent Flores told Mr. Adlakha that he could log into the account, and Mr. Adlakha replied, "Good luck."

After leaving appellant's premises, Agent Flores used his department issued cell phone to log into his Fire Kirin account. Agent Flores confirmed he had \$20.00 of credits. Agent Flores played a shooting game that had sea creatures as targets. Agent Flores could shoot at the sea creatures by tapping the screen. Every time Agent Flores tapped the screen, his credits were reduced. When Agent Flores successfully shot a sea creature, his credits increased. After playing the game for a short time, Agent Flores could not determine how many times a sea creature had to be shot before he would earn credits. Agent Flores could also not determine how many credits he would receive for shooting a particular sea creature. After shooting a few sea creatures, Agent Flores's credits increased to \$22.42. When Agent Flores attempted to leave the game, he lost credits. His final credits were \$22.38.

On August 11, 2023, Agent Flores returned to appellant's premises to collect his winnings. A young woman and Mr. Adlakha were working behind the

counter. Agent Flores asked the young woman to confirm the amount of credits in his account. The young woman retrieved a tablet from behind the counter, and she logged into Agent Flores's account. She told Agent Flores that he had \$22.00. Agent Flores asked if he could cash out his account, and the young woman asked Mr. Adlakha, "Dad, how much do I give him?" The young woman told Mr. Adlakha the amount in Agent Flores's account, and Mr. Adlakha said Agent Flores should receive \$19.00. Agent Flores asked why he was receiving only \$19.00, and the young woman told him it was their "commissary." Agent Flores interpreted this to mean their commission. Agent Flores cashed out his account, and he received \$19.00.

On September 14, 2023, Agent Flores visited appellant's premises again. Agent Flores and Mr. Adlakha had a brief conversation about Agent Flores's Fire Kirin account. During the conversation, Agent Flores quit operating undercover, and he told Mr. Adlakha the Department was investigating appellant's premises. Afterwards, Agents Flores, Mejorado, and Mendez searched appellant's premises. Behind the counter, they found business cards for several gambling platforms. They also found drug paraphernalia. They found methamphetamine pipes in a storage room and behind the sales counter.

III. PROCEDURAL HISTORY

Appellant has an off-sale general-license. On April 8, 2024, the Department filed an amended seven-count accusation against appellant. Counts 1 through 6 alleged appellant violated Penal Code sections 330.1,

subdivision (a) and Penal Code section 337, subdivisions a(a)(3) and a(a)(5). These Penal Code sections prohibit illegal gambling. Count 7 alleged appellant violated Penal Code section 11364.7, subdivision (a)(1). This section prohibits the possession of drug paraphernalia. An administrative hearing was held on May 6 and June 4, 2024. Administrative Law Judge Doris Huebel presided. Agents Flores, Mendez, and Mejorado testified for the Department. Agent Flores testified about his extensive training and experience with the enforcement of California's drug and drug paraphernalia laws. He was also designated as an expert witness on drug paraphernalia. Appellant did not present any testimony. At the conclusion of the administrative hearing, Judge Huebel issued a Proposed Decision that sustained all seven counts and that recommended appellant's license be suspended for 45 days with 15 days stayed for two years. The Department adopted the Proposed Decision on August 29, 2024, and appellant appealed. Appellant's appeal raises three issues. As stated in appellant's opening brief, they are:

- 1) "Eastend Liquor did not violate Penal Code section 330.1(a)."
- 2) "Eastend Liquor did not violate Penal Code section 337a"
- 3) "The finding of paraphernalia in Eastend was the result of a warrantless search made in violation of the Fourth Amendment and the ALJ was wrong in denying the motion to suppress."

IV. DISCUSSION

A. STANDARD OF REVIEW

In reviewing the Department's decision in this case, the Board's role is to determine whether the Department has proceeded in the manner required by law; whether the decision is supported by the findings; and whether the findings are supported by substantial evidence. (Bus. & Prof. Code, § 23084, subds. (b)-(d).) Substantial evidence has been defined as that which a reasonable mind might accept as adequate to support a conclusion. (*County of San Diego v. Assessment Appeals Board No. 2* (1983) 148 Cal.App.3d 548, 555 quoting *Hosford v. State Personnel Board* (1977) 74 Cal.App.3d 302, 307.) It is evidence of "ponderable legal significance ... reasonable in nature, credible, and of solid value." (*County of San Diego v. Assessment Appeals Board No. 2, supra*, 148 Cal.App.3d at 555 quoting *Ofsevit v. Trustees of the California State University and Colleges* (1978) 23 Cal.3d 773, fn. 9.)

In determining whether the Department's decision is supported by substantial evidence, the Board may not independently reweigh the evidence. (*Kirby v. Alcoholic Beverage Control Appeals Bd.* (1970) 7 Cal.App.3d 126, 129; *Reimel v. Alcoholic Beverage Control Appeals Bd.* (1967) 255 Cal.App.2d 40, 43.) The function of the Board is "merely to determine whether the findings of the Department are supported by substantial evidence." (*Harris v. Alcoholic Beverage Control Appeals Bd.* (1963) 212 Cal.App.2d 106, 113.) Any conflicts in the evidence are to be resolved in favor of the Department's decision, and the

Board must accept all reasonable inferences from the evidence which support the Department's decision. (*Ibid.*) The Board may not disregard or overturn a finding of fact by the Department simply because the Board believes a different finding would have been more reasonable. (*Id.* at p. 114.)

B. PENAL CODE SECTION 330.1

Appellant claims it did not violate Penal Code section 330.1, subdivision (a). This section makes it a misdemeanor to own a slot machine or device that gives something of value "as a result of any element of hazard or chance." According to appellant's opening brief, "The fishing game that Agent Flores played and described is not a game of chance, and therefore neither Agent Flores nor the Licensee violated Penal Code section 330.1(a)." At the administrative hearing, however, Judge Huebel considered this argument, and she rejected it. After hearing testimony from Agent Flores and watching a video of Agent Flores playing the game, Judge Huebel concluded the following:

The record established, both through Agent Flores' credible testimony and the video evidence, that no matter how many times Agent Flores shot at an object, there was no rhyme or reason as to whether he would hit the creature enough times to make it explode into coins/credits. Agent Flores earned credits, by chance, without any skill, because all he had to do was tap the screen and for some unknown reason the sea creatures on the screen either exploded into coins/credits or they did not.

Thus, appellant's argument must be rejected because the Board cannot reweigh the evidence. Judge Huebel clearly found, based upon substantial evidence, that the game Agent Flores played was a game of chance within the

meaning of Penal Code section 330.1, subdivision (a). Therefore, the Department's decision is affirmed.

C. PENAL CODE SECTION 337

Appellant claims it did not violate Penal Code section 337, subdivisions a(a)(3) and a(a)(5). These sections prohibit pool betting, bookmaking, and wagering. It also prohibits a person from using a premises to take bets or wagers. According to appellant's opening brief, appellant did not violate these Penal Code sections because there were no wagers or bets placed at appellant's premises. At the administrative hearing, however, Judge Huebel considered this argument, and she rejected it. The record shows that appellant's employees participated in a gambling scheme by setting up accounts on gambling applications, accepting funds, cashing out winnings, and keeping a commission. Based upon that evidence, Judge Huebel concluded that "[appellant's employees] permitted the Licensed Premises to be used for holding such thing of value/money to be staked or offered for the purpose of being staked, upon the result of chance in violation of Penal Code section 337a(a)(5)." Thus, appellant's argument must be rejected because the Board cannot reweigh the evidence. Judge Huebel clearly found, based upon substantial evidence, that appellant's employees were engaging in illegal bookmaking, and they were using appellant's premises to do so. Therefore, the Department's decision is affirmed.

D. WARRANTLESS SEARCH

Appellant claims Judge Huebel incorrectly denied its motion to suppress evidence. According to appellant, the drug paraphernalia found in appellant's premises was the result of a "warrantless search made in violation of the Fourth Amendment and the ALJ was wrong in denying the motion to suppress."

Whether a warrantless administrative search was proper is a question of law to be decided on the facts in the record. (*New York v. Burger* (1987) 482 U.S. 691.) The Board has the constitutional authority to decide whether the Department proceeded in the manner required by law. (Cal. Const., art. XX, § 22.) The Board reviews questions of law *de novo*. (*Rudd v. California Casualty Gen. Ins. Co.* (1990) 219 Cal.App.3d 948, 951-952; *Pueblos Del Rio South v. City of San Diego* (1989) 209 Cal.App.3d 893, 899.)

Business and Professions Code section 25753² provides that "The department may make any examination of the books and records of any licensee or other person and may visit and inspect the premises of any licensee it may deem necessary to perform its duties under this division." Section 25755 elaborates on the Department's authority. It states,

- (a) The director and the persons employed by the department for the administration and enforcement of this division are peace officers in the enforcement of the penal provisions of this division, the rules of the department adopted under the provisions of this division, and any other penal provisions of law of this state prohibiting or regulating the sale, exposing for sale, use, possession, giving away, adulteration, dilution, misbranding, or mislabeling of alcoholic beverages or

² All further statutory references are to the Business and Professions Code unless otherwise stated.

intoxicating liquors, and these person are authorized, while acting as peace officers, to enforce any penal provisions of law while in the course of their employment.

- (b) The director, the persons employed by the department for the administration and enforcement of this division, peace officers listed in Section 830.6 of the Penal Code, and those officers listed in Section 830.6 of the Penal Code while acting in the course and scope of their employment as peace officers may, in enforcing the provisions of this division, visit and inspect the premises of any licensee at any time during which the licensee is exercising the privileges authorized by his or her license of the premises.

Thus, the Department has statutory authority to conduct warrantless searches of licensed premises to enforce the Alcoholic Beverage Control Act and the Penal Code. Therefore, if this statutory authority does not violate the Fourth Amendment, then Judge's Huebel's denial of appellant's motion to suppress was correct.

The United States Supreme Court provided guidance on the interaction between the Fourth Amendment and administrative searches of commercial premises in the case *New York v. Burger, supra*, 482 U.S. 691. In this case, the Supreme Court held that the Fourth Amendment's prohibition on unreasonable searches and seizures applies to commercial premises as well as private homes. (*Id.* at p. 699.) But most importantly, the Supreme Court outlined a three-part test to determine whether a statute that authorizes warrantless searches of commercial premises is reasonable under the Fourth Amendment. Under the *Burger* test, a statute that authorizes warrantless searches must have 1) a substantial government interest that informs the regulatory scheme to which the inspection is made, 2) the warrantless inspection must be necessary to further

the regulatory scheme, and 3) the statute's inspection program must be necessary to further the regulatory scheme. (*Id.* at p. 702.)

In the case *People v. Paulson* (1990) 216 Cal.App.3d 1480, the California Court of Appeals applied the *Burger* test to sections 24200.5, 25753, and 25755. Section 24200.5 requires the mandatory revocation of license if a licensee sells drugs at a licensed premises. The Court in *Paulson* held that section 24200.5, 25753, and 25755 collectively passed the *Burger* test, and therefore a warrantless search of a licensed premises conducted pursuant to those sections did not violate the Fourth Amendment. (*Id.* at p. 1489-1490.)

To resolve appellant's contentions in this case, the Board must determine whether sections 24200.6, 25753, and 25755 pass the *Burger* test. And because this case deals with the same statutory scheme as in *People v. Paulsen*, the Board finds that it does. Section 24200.6 provides that the Department may revoke or suspend a license if the licensee violates any provision of Health and Safety Code section 11364.7. Health and Safety Code section 11364.7, subdivision (a)(1) prohibits the sale of drug paraphernalia such as methamphetamine pipes. Additionally, Health and Safety Code section 11364.7, subdivision (d) states that any violation of Health and Safety Code section 11364.7 by a holder of a liquor license shall be grounds for revocation of that license. In other words, under section 24200.6, the Department may revoke a license if drug paraphernalia is being sold at a licensed premises. This is the same as section 24200.5 which allows the Department to revoke a license if

drugs are being sold at a licensed premises. Therefore, since a warrantless search of a licensed premises under sections 24200.5, 25753, and 25755 passes the *Burger* test, then certainly a warrantless search under sections 24200.6, 25753, and 25755 does as well.

In this case, substantial evidence showed that Agent Flores's undercover investigation revealed appellant's employees were engaging in illegal gambling. Agent Flores also has extensive training and experience in enforcing California's drug and drug paraphernalia laws. Based upon that training and experience, Agent Flores thought appellant's employees may have been selling drug paraphernalia. On September 14, 2023, Agents Flores, Mendez, and Mejorado searched appellant's premises to find evidence of illegal gambling and the sale of drug paraphernalia. As explained above, the Penal Code prohibits both of those activities. Therefore, the record shows that the Department's agents searched appellant's licensed premises to enforce the Alcoholic Beverage Control Act and the Penal Code as they are allowed to do. Thus, the warrantless search of appellant's premises was proper, and Judge Huebel's denial of appellant's motion to suppress was correct. For that reason, the Department's decision is affirmed.

V. CONCLUSION

For the reasons stated above, the Department's decision is affirmed. Substantial evidence presented at the administrative hearing showed that appellant's employees violated Penal Code sections 330.1, subdivision (a) and

Penal Code section 337, subdivisions a(a)(3) and a(a)(5). And lastly, Judge Huebel's denial of appellant's motion to suppress was proper.

ORDER

Pursuant to Article XX, section 22 of the California Constitution, the Department's decision is affirmed.³

SUSAN A. BONILLA, CHAIR
MEGAN McGUINNESS, MEMBER
SHARLYNE PALACIO, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

³ This final order is filed in accordance with Business and Professions Code section 23088, and it shall become effective 30 days following the date of the filing of this order as provided by section 23090.7.

Any party, before this final order becomes effective, may apply to the appropriate court of appeal, or the California Supreme Court, for a writ of review of this final order in accordance with Business and Professions Code section 23090 et seq. Service on the Board pursuant to California Rules of Court (Rule 8.25) should be directed to: 400 R Street, Ste. 320, Sacramento, CA 95811 and/or electronically to: abcboard@abcappeals.ca.gov.

**BEFORE THE
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF CALIFORNIA**

**IN THE MATTER OF THE ACCUSATION
AGAINST:**

BLOOMINGTON WINE & SPIRIT, INC.
EASTEND LIQUOR
998 EAST HOLT AVENUE
POMONA, CA 91767-5719

OFF-SALE GENERAL - LICENSE

Respondent(s)/Licensee(s)
Under the Alcoholic Beverage Control Act

SOU SOUTH DISTRICT OFFICE

File: 21-569379

Reg: 24094184

CERTIFICATE OF DECISION

It is hereby certified that, having reviewed the findings of fact, determination of issues, and recommendation in the attached proposed decision, the Department of Alcoholic Beverage Control adopted said proposed decision as its decision in the case on August 22, 2024. Pursuant to Government Code section 11519, this decision shall become effective 30 days after it is delivered or mailed.

Any party may petition for reconsideration of this decision. Pursuant to Government Code section 11521(a), the Department's power to order reconsideration expires 30 days after the delivery or mailing of this decision, or if an earlier effective date is stated above, upon such earlier effective date of the decision.

Any appeal of this decision must be made in accordance with Business and Professions Code sections 23080-23089. The appeal must be filed within 40 calendar days from the date of the decision, unless the decision states it is to be "effective immediately" in which case an appeal must be filed within 10 calendar days after the date of the decision. Mail your written appeal to the Alcoholic Beverage Control Appeals Board, 400 R St, Suite 320, Sacramento, CA 95811. For further information, and detailed instructions on filing an appeal with the Alcoholic Beverage Control Appeals Board, see: <https://abcab.ca.gov> or call the Alcoholic Beverage Control Appeals Board at (916) 445-4005.

On or after October 9, 2024, a representative of the Department will contact you to arrange to pick up the license certificate.



https://abcab.ca.gov/abcab_resources/

Sacramento, California

Dated: August 29, 2024

Matthew D. Botting
General Counsel

RECEIVED
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Alcoholic Beverage Control
Office of Legal Services

**BEFORE THE
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF CALIFORNIA**

IN THE MATTER OF THE ACCUSATION AGAINST:

Bloomington Wine & Spirit, Inc.
Dbas: Eastend Liquor
998 East Holt Avenue
Pomona, California 91767-5719

Respondent

} File: 21-569379

} Reg.: 24094184

} License Type: 21

} Word Counts: 36,273; 10,597

} Kennedy Court Reporters:

} Court Reporters: Jenn Vallejo (5/6/24)

} and Christina Rodriguez (6/4/24)

} Video Host: Alex Burke (5/6 & 6/4/24)

Off-Sale General License

PROPOSED DECISION

Administrative Law Judge D. Huebel, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter by video on May 6, 2024, and June 4, 2024.

Jennifer Casey, Attorney, represented the Department of Alcoholic Beverage Control (hereinafter the Department).

Eliel Chemerinski, Attorney, represented Respondent, Bloomington Wine & Spirit, Inc.

The Department seeks to discipline the Respondent's license on the grounds that¹:

- (1) On August 8, 2023, Respondent-Licensee's agent or employee, Rajinder Adlakha, utilized an electronic tablet to enter into an agreement to engage in illegal gambling where the player would be entitled to a thing of value, in violation of Penal Code section 330.1(a).
- (2) On August 8, 2023, Respondent-Licensee's agent or employee, Rajinder Adlakha, did hold a thing of value for the purposes of being bet, staked or wagered, upon the result of a contest or chance, in violation of Penal Code section 337a(a)(3).
- (3) On August 8, 2023, Respondent-Licensee's agent or employee, Rajinder Adlakha, permitted the licensed premises to be utilized for holding a thing of value to be bet, staked or wagered upon the result of a contest or chance, in violation of Penal Code section 337a(a)(5).

¹ The following numbers correspond to the counts in the amended accusation.

- (4) On August 11, 2023, Respondent-Licensee's agent or employee, an unidentified female employee, utilized an electronic tablet to enter into an agreement to engage in illegal gambling where the player would be entitled to a thing of value, in violation of Penal Code section 330.1(a).
- (5) On August 11, 2023, Respondent-Licensee's agent or employee, an unidentified female employee, did hold a thing of value for the purposes of being bet, staked or wagered, upon the result of a contest or chance, in violation of Penal Code section 337a(a)(3).
- (6) On August 11, 2023, Respondent-Licensee's agent or employee, an unidentified female employee, permitted the licensed premises to be utilized for holding a thing of value to be bet, staked or wagered upon the result of a contest or chance, in violation of Penal Code section 337a(a)(5).
- (7) On September 14, 2023, and while upon the licensed premises, Respondent-Licensee possessed with intent to deliver, furnish or transfer, drug paraphernalia, as defined in 11014.5, in violation of Health and Safety Code section 11364.7(a)(1); and it is further alleged that on the date of the above violation Respondent-Licensee held Alcoholic Beverage Control license number 569379 within the meaning of Health and Safety Code section 11364.7(d). (Exhibit 1.)

Oral evidence, documentary evidence, and evidence by oral stipulation on the record was received at the hearing. The matter was argued and submitted for decision June 4, 2024.

FINDINGS OF FACT

1. The Department filed the accusation on February 6, 2024, and a first amended accusation on April 8, 2024. On May 6, 2024, the first day of hearing, the Department moved to amend a number of counts by interlineation. The motion was granted and the amendments to the first amended accusation were permitted pursuant to Government Code Section 11507, without objection by Respondent. The amendments included the following: in counts 1 and 4 Penal Code section 330.1 was changed to 330.1(a); in counts 2 and 5, Penal Code section 337a(3) was changed to 337a(a)(3); in counts 3 and 6, Penal Code section 337a(5), was changed to 337a(a)(5).
2. The Department issued a type 21, off-sale general license to the Respondent for the above-described location on September 1, 2016 (the Licensed Premises).
3. The following is the record of prior Department discipline against the Respondent's license as established by official records introduced by the Department, which matter is final (Exhibit 2):

<u>Date of Violation</u>	<u>Reg. No.</u>	<u>Violation</u>	<u>Penalty</u>
December 16, 2021	22092304	BP §25658(a)	POIC in lieu of 15-day suspension

4. On May 11, 2016, the Respondent’s representative signed the ABC-203 form Acknowledgement of ABC Laws, Rules and/or Regulations, which was on file with the Department. By the said signature, the Respondent acknowledged receipt of copies of rules and laws listed on the form. Attached to the ABC-203 were additional documents including, but not limited to, an ABC-546 and ABC-546A. (Exhibit 14 – certified copy of ABC-203 with attachment.)

5. The ABC-546 form entitled, “Impact Drug Paraphernalia” was a notice to Respondent of Health and Safety Code section 11364.7, which defined the said law. It further specifically provided that under 11364.7(d) “The violation, or the causing or the permitting of a violation, of subdivision (a), (b), or (c) by a holder of a business or liquor license issued by a city, county, or city and county, or by the State of California, and in the course of the licensee’s business *shall be grounds for the revocation of that license.*” The form further included Health and Safety Code section 11364.5 describing what constitutes drug paraphernalia, including, but not limited to, “(12) Objects intended for use or designed for use in ingesting, inhaling, or otherwise introducing...into the human body, such as the following: (A) Metal, wooden, acrylic, *glass*, stone, plastic, or ceramic *pipes...*” (Exhibit 14.) (Emphasis added by italics.) The ABC-546-A form provided to the Respondent, includes a “Notice to Licensees Concerning Drug Paraphernalia Under Section 24200.6 Business & Professions Code.” Section 24200.6 provides that a licensee or their agent is deemed to have knowledge that certain items will be used as illegal drug paraphernalia if ABC or another law enforcement agency informs the licensee, in writing, that such items are, in fact, commonly sold or marketed for that purpose.

6. Department Agent Flores appeared and testified at the hearing. Agent Flores was designated as an expert witness in drug paraphernalia. Agent Flores has worked as an agent for the Department for three and one-half years. He initially was assigned to the Department’s Field Training Office in Cerritos’ Southern Division Headquarters for approximately four months. From there he was assigned for 15 months to the Riverside District Office, which covers enforcement for all of Riverside and San Bernardino County. He is currently assigned to the Department’s Special Operations Unit (SOU) in Cerritos. Prior to working for the Department, he worked for the California Tax Board of Equalization initially as a sales and new tax auditor and was thereafter promoted to associate tax auditor and thereafter to business tax specialist. He also worked for the Employment Development Department as a payroll auditor. Agent Flores holds a master’s degree in business administration, a bachelor degree in accounting and an associate degree in criminal justice law enforcement.

7. Agent Flores attended the academy prior to being hired by the Department and was elected class president. At graduation he earned multiple awards including for top scenario, top academics, top overall award, and the California Associate Director's Award. In the academy, Agent Flores received extensive training including, but not limited to, a 12-hour controlled substance course, an 80-hour narcotics investigation course, and an enhanced identification course which was more hands-on. He learned about different drugs and drug paraphernalia, including identifying controlled substances, how they are used, packaged, ingested, and the types of items associated with them such as drug paraphernalia used with the different types of drugs, including foil, and Brillo brush (aka, chore boy) used as filters, as well as glass methamphetamine pipes.

8. In May of 2022, Agent Flores attended specialized training relating to drug and drug paraphernalia in San Diego with the Institute of Criminal Investigation (ICI), for which he received a certificate. He took an 80-hour, two-week narcotics investigation course and learned to identify different drugs, drug paraphernalia and their uses, as well as packaging and transportation thereof. Agent Flores took an additional enhanced drug identification course in 2022, which included hands-on-training with identifying different types of drugs and drug paraphernalia, as well as how they are used and their pricing. There were various drug paraphernalia including, but not limited to, pipes, foil and pill presses, with instruction on how to identify them and how they are used and packaged. Agent Flores' training and experience in drug and drug paraphernalia continued in his current position in the Department's Special Operations Unit.

9. During Agent Flores' field training work with the Department, he received drug paraphernalia training which consisted of working in the field for three to four months with a field training officer identifying different types of drugs and drug paraphernalia, whether it be undercover or conducting IMPACT² inspections at licensed premises. In field training he learned about different types of drugs, drug paraphernalia from other agents and his field training officer. During that time, he also had a case in which he was the undercover officer purchasing methamphetamine pipes. Since then, Agent Flores has been involved in many different drug and drug paraphernalia cases whether working as the primary agent, undercover agent or assisting other agents.

10. While working in the Riverside District Office Agent Flores conducted drug paraphernalia investigations, which included his directly being a part of the drug paraphernalia case and working as an undercover agent. Agent Flores was involved in 80 to 100 drug and drug paraphernalia related arrests. Based on his extensive training and experience Agent Flores is able to identify what a methamphetamine pipe is, what it is used for and the differences between methamphetamine pipes and marijuana pipes. This

² Informed Merchants Preventing Alcohol-Related Crime Tendencies (IMPACT) is a prevention and education program developed by the Department to deter crime.

matter was the first time he has been called to testify in a drug paraphernalia related case and to testify as an expert witness.

11. Agent Flores described an IMPACT inspection and said it requires he make contact with the licensee, manager or clerk of a premises, identify himself as a peace officer, and review various requirements of holding a license, including, but not limited to the license conditions and posted signs. The IMPACT inspection includes searching for drug paraphernalia, asking whether the premises possesses any type of glass pipes, other drug paraphernalia, and gambling machines. The IMPACT inspection is a low-level inspection aimed at correcting any mistakes or issues at a licensed premises to give the licensee an opportunity to ask questions and be informed of any issues or violations. An IMPACT form is filled out and if a violation is found the agents will follow-up within 30 to 60 days to make sure the violations are corrected. Agent Flores has conducted approximately 300 IMPACT inspections at various licensed premises.

12. The Claremont Police Department informed the Department there was gambling activity occurring within the area of the Licensed Premises, without specifying which location or licensed premises. As part of the Department's investigation therein it sent undercover agents to conduct investigations of the licensed premises in the area.

July 25, 2023

13. On July 25, 2023, Department Agent Flores, who was in an undercover capacity, went to the Licensed Premises to conduct a spot check to observe for any and all possible violations, including, but not limited to, Alcoholic Beverage Control (ABC) violations and potential gambling violations. Agent Flores entered the Licensed Premises, and his attention was immediately drawn to a glass case on the left side upon entry that had various glass pipes in it which would typically be used with cannabis. He did not visibly observe any glass pipes which could be used with crack cocaine or methamphetamines. However, based on his training and experience and prior investigations where violations were observed, while the public display cases of premises contained glass pipes typically used for marijuana, the premises had other glass pipes used for crack cocaine or methamphetamines which were not in public view, but were hidden behind the front counter or in a drawer. In those prior undercover operations, the agents usually had to specifically ask the clerks for glass pipes to be used with crack cocaine or methamphetamines. Agent Flores exited the Licensed Premises.

14. Agent Flores testified that during his inspection of the Licensed Premises he observed the surrounding neighborhood in which the Licensed Premises is located and described it as a high crime area. He said it was a "pretty rough area" where there "seemed to be a lot of crime going on in the area" and "seemed to be some gang activity"

hanging outside the back of the Licensed Premises with prostitutes seen multiple times walking up and down the street and entering the Licensed Premises. At one point, a prostitute attempted to solicit Agent Flores for a sex act. Agent Flores observed, next door to the Licensed Premises, another prostitute solicit an unknown person and get into that person's truck. Agent Flores observed a lot of homeless individuals directly around the Licensed Premises.

**August 8, 2023
(Counts 1 to 3)**

15. On August 8, 2023, in the late morning, Agents Flores and Torres returned to and entered the Licensed Premises to conduct an undercover investigation therein. The agents entered the Licensed Premises in a plain clothes capacity and saw a male employee working behind the counter, who was later identified as Rajinder Adlakha (hereinafter referred to as clerk Rajinder). The agents walked to the refrigerated coolers, where Agent Flores selected a three-pack of 25-ounce cans of Bud Light beer. Agent Flores took the three-pack of Bud Light beer to the sales counter where clerk Rajinder was assisting another customer. While Agent Flores waited to be assisted, he overheard a patron ask clerk Rajinder to put \$10 on Panda for kelo123. The customer handed \$10 to clerk Rajinder. Based on Agent Flores' training and experience he understood the patron was asking to put money on his gambling account which he set up with the Licensed Premises with his username "kelo123" on the illegal online website Panda Master. Thereafter that customer exited the premises.

16. Thereafter, Agent Flores approached the sales counter and placed on the counter the three-pack of Bud Light beer, for which he paid. (Exhibit 3 – color photo of Bud Light three-pack.) Agent Flores asked clerk Rajinder if he could set up an account. Clerk Rajinder suggested Fire Kirin, to which Agent Flores replied yes. Fire Kirin is another website used for illegal gambling. Clerk Rajinder asked Agent Flores how much he wanted to put on the account, to which the agent replied \$20. Agent Flores handed the clerk \$20, which clerk Rajinder took and placed in the cash register. Clerk Rajinder retrieved a black electronic tablet and asked for the agent's name, to which Agent Flores replied, "Camrin." Clerk Rajinder created and wrote a username of "Cam22222" and password thereunder of "2222222" on a brown paper bag, which he handed to Agent Flores. Clerk Rajinder explained it was the agent's username and password for the online Fire Kirin gambling account, clerk Rajinder created for the agent. While clerk Rajinder was setting up the gambling site account for the agent, Agent Flores asked if he had to download an APP or if he could play on an online website. Clerk Rajinder said he would give him a card with instructions, which he thereafter handed to the agent. The front of the Fire Kirin business card had different gambling games with the words at the top, "firekirin.xyz:8580/index.html Download Welcome to Download FIRE KIRIN APP."

The back of the card had what appeared to be a seascape image and read "LOGIN" with a space after the words "Username," and "Password." (Exhibit 4 – three color photos; top photo of brown paper bag with handwritten username and password thereon, bottom left and right photos of front and back side of Fire Kirin business card, respectively.)

17. Agent Flores, while still with clerk Rajinder in the Licensed Premises, used his Department-issued cell phone to log onto the account the clerk had created for him and confirmed that the account had 20 credits to reflect the \$20 he had given clerk Rajinder. (Exhibit 5 page 1 – color photo of cell phone screen reflecting 20.00 credits, the agent's online ID: 4416141 and the game options available.) Agent Flores told the clerk he was able to log in and clerk Rajinder replied, "Good luck." Later, Agent Flores booked into evidence at the Cerritos Southern Division Headquarters, the 3-pack of Bud Light beer, brown paper bag and Fire Kirin business card.

18. Later, while Agent Flores was in the district office of the Southern Division Cerritos Headquarters with agent Torres near him, Agent Flores, took out his Department-issued cell phone, logged into the online gambling account with the username and password clerk Rajinder provided him, and selected one of the games titled Fire Kirin and began playing.

19. Agent Flores used the recording option on his Department-issued cell phone to record what was depicted on that cell phone while he used the phone to log into the online gambling account to play the Fire Kirin gambling game. Agent Flores also took still images of the recording. (Exhibit 5 – color photo still images from the said cellphone recording; top left and bottom right images depict the various game options to be played; top right image depicts the screen while Agent Flores played Fire Kirin with his credits of 22.42, his ID and digital gun position at the bottom right of the screen, with three other unknown players located in the remaining corners; bottom right image is the log in page with the username "Cam22222" and password "222222" entered but reflected as bullet points.) (Exhibit 6 – video of said recording of cell phone screen and Fire Kirin gambling game Agent Flores played.)

20. At the beginning of the game there was an introductory screen which describes the different types of buttons, for example a laser weapon, lock target and auto fire button.³ The screen read, "YOU ARE HERE" with an arrow pointing to the bottom right of the screen to depict Agent Flores' position in the game.⁴ The other players were at the top

³ Time stamp 1:30.

⁴ Time stamp 1:32.

right, top left, and bottom left corners. Each player had a two digital guns or cannons.⁵ Agent Flores saw the other players shooting their guns from which emanated digital bullets, lasers or lightening striking the sea creatures moving across the screen which randomly resulted in an explosion of coins that represented the credits the other players were earning.⁶ Agent Flores tapped the screen with his finger and repeatedly shot from his gun trying to hit the sea creatures, but realized that he was losing credits (down to 19.15) because he was not able to explode the creatures despite his bullets appearing to strike the creatures.⁷ If Agent Flores did not shoot anything his credits remained the same. Agent Flores' credits decreased when a sea creature did not explode into coins. The negative and positive signs on either side of the gun are utilized to increase or decrease the amount of credits the player wants to gamble with each time he uses the digital bullets. Agent Flores kept shooting and finally a sea creature randomly exploded and he earned credits up to 19.48.⁸

21. In playing the game it was not clear, and Agent Flores did not know, how many times he had to touch the screen to make the object explode to earn credits. It was unknown how many credits an item was worth; there was nothing to identify an item as being worth more than another item. It was also not clear where he needed to touch the screen to earn credits. The only thing Agent Flores was sure of was that each time he touched the screen he would lose credits if an item did not explode. Agent Flores kept touching the screen hoping he would earn more credits, but did not, with his score declining to 17.75.⁹ Agent Flores just kept shooting at sea creatures. At one point an orange dragon randomly exploded, which caused Agent Flores to earn 4.50 credits, the equivalent of \$4.50, so his credits jumped up to \$22.42.¹⁰ Agent Flores tried to stop the game at that point. Agent Flores was not able to stop the game, he was not sure exactly where to tap the screen to get out so he tried clicking different parts of the screen to get out of the game, which caused his credits to decline.¹¹ Agent Flores then swiped up on the browser screen and swiped the APP away to close the browser and game and get back to his phone's home screen.¹² Agent Flores then logged back into the game to verify his

⁵ Agent Flores described them as guns initially and thereafter explained that the video screen depicted cannons. Because agent Flores continued to refer to them as guns, the undersigned will do so as well for the sake of consistency.

⁶ Time stamp 2:25 to 2:30.

⁷ Time stamp 2:30 to 2:45.

⁸ Time stamp 2:48.

⁹ Time stamp 2:50 to 4:04, the latter shows the final low score of 17.75.

¹⁰ Time stamp 4:06.

¹¹ Time stamp 4:06 to 4:49.

¹² Time stamp 4:50 to 4:53.

ID number (4416141) and final credit score was 22.38, which was an equivalent to \$22.38.¹³

22. Agent Flores stopped recording the game, burned the video onto a disc, which he booked into evidence. (Exhibit 6.)

August 11, 2023
(Counts 4 to 6)

23. On August 11, 2023, Agent Flores returned to the Licensed Premises with Agent Torres, both in a plain clothes capacity. Once inside the Licensed Premises the agents observed clerk Rajinder was working behind the sales counter with a woman, later identified as Humika Adlakha (hereinafter Humika), the daughter of clerk Rajinder. Agent Torres selected a beer and the agents walked to the sales counter where clerk Humika assisted them with the sales transaction and Agent Torres purchased the beer.

24. Agent Flores engaged in conversation with clerk Humika, telling her he wanted to see how much was on his account. Clerk Humika asked Agent Flores for his username, which he gave her (cam22222). Clerk Humika grabbed the black electronic tablet from behind the register, and manipulated the tablet to look up Agent Flores' account. Clerk Humika informed Agent Flores he had \$22 on his account.¹⁴ Agent Flores asked if he could cash out his account. Clerk Humika turned to clerk Rajinder and asked, "Dad, how much do I give him?" Clerk Rajinder asked her how much was on the agent's account, to which she replied, \$22. Clerk Rajinder told her \$19. Clerk Humika informed Agent Flores that he would receive \$19. Agent Flores asked her why he would only receive \$19, to which she said it was their "commissary," which Agent Flores understood to mean commission.¹⁵ Clerk Humika asked Agent Flores if he still wanted to cash out, and he replied that he did. Clerk Humika opened the cash register drawer and removed \$19, which she handed to Agent Flores. Agent Flores later booked the \$19 into evidence and completed an Evidence/Property Receipt/Report ABC-320 form, reflecting the \$19 in U.S. currency he received via a \$10 bill, a \$5 bill and four single dollar bills. (Exhibit 7.)

September 13, 2023

25. On September 13, 2023, Agent Flores entered the Licensed Premises in a plain clothes capacity. Agent Flores observed there was a different female clerk working

¹³ Time stamp 5:00 to 5:29.

¹⁴ Agent Flores had \$22.38 on his account, however, there was no evidence the clerk did acknowledge the 38 cents in change.

¹⁵ Based on the record, the commission totaled \$3.38 cents, given that Agent Flores' account held \$22.38 prior to deducting the Licensed Premises' commission therefrom.

behind the sales counter than on August 11, 2023. Agent Flores asked the female clerk for clerk Rajinder. She asked why he wanted to speak to clerk Rajinder. Agent Flores explained he was having issues with his account. The clerk said that Rajinder would be in the following day.

**September 14, 2023
(Count 7)**

26. On September 14, 2023, Agent Flores returned to the Licensed Premises with Agent Torres, both of whom entered in a plain clothes capacity. There was a take-down team of agents waiting outside the Licensed Premises.¹⁶ Agent Flores observed a different female clerk¹⁷ working in the Licensed Premises. Agent Flores asked if clerk Rajinder was in the store. The female clerk asked why he wanted to speak to Rajinder. Agent Flores said because he was having issues with his account. The female clerk said clerk Rajinder was not at the store. Agent Flores asked when he would be back at the Licensed Premises. The female clerk grabbed her cell phone, dialed and spoke to clerk Rajinder. After placing the call, the female clerk informed Agent Flores that clerk Rajinder would be in the store in approximately 15 minutes. Agents Flores and Torres exited the Licensed Premises, walked across the street to a gas station and waited.

27. At some point, Agent Flores observed a vehicle pull into the small back parking lot area behind the Licensed Premises. Agent Flores approached the vehicle and saw it was clerk Rajinder. Agent Flores made contact with clerk Rajinder and told him he was having issues with his account. Clerk Rajinder asked what the problem was. Agent Flores said he was having trouble logging in. Clerk Rajinder told the agent to go inside and just have the clerk inside reset his account. Agent Flores asked if clerk Rajinder could help figure out the issue, to which clerk Rajinder agreed. Clerk Rajinder retrieved his cell phone and asked the agent for his username. Agent Flores said he could not remember the username, in an effort to buy some time for the cover team to make contact.

28. Eventually, Agent Flores surrendered his undercover status, identified himself as a police officer to clerk Rajinder and advised clerk Rajinder he was being contacted in regards to illegal gambling activity occurring at the Licensed Premises.

¹⁶ Before Agent Flores entered the Licensed Premises a briefing occurred during which Agent Flores instructed Agents Mendez and Mejorado to conduct a search of the Licensed Premises during the takedown operation. Agent Torres explained to the agents that they would probably see some of the business cards with the different gambling websites, to be on the lookout for those as well as for any type of meth or crack pipes.

¹⁷ The female clerk was different from the prior two female clerks Agent Flores had observed in the Licensed Premises on August 11, 2023, and September 13, 2023.

29. Later, Agent Flores re-entered the Licensed Premises with the specials operations unit takedown team including Agents Mendez and Mejorado, who conducted a search of the premises. Agent Flores was present during the inspection.

30. Inside the Licensed Premises was a locked storage room, that was narrow, containing shelving running top to bottom and the length of the left and right walls of the room. During the course of the inspection, Agents Mendez and Mejorado located, on a shelf in the storage room, multiple clear plastic cylindrical tubs wrapped in opaque black plastic bags. The tubs contained glass methamphetamine (meth) pipes with bulbous ends that had a small hole. (Exhibit 8 – two color photos, top photo: opaque black bag-wrapped clear cylindrical tubs with red tops, which tubs contained meth pipes; bottom photo: close-up photo of clear cylindrical tub through which meth pipes can be seen.)

31. On the employee side of the sales counter, a few feet away from the cash register, Agent Mejorado located a cylindrical plastic tub, lined in an opaque black bag, inside of which were meth pipes. (Exhibit 9 – two color photos, left photo: depicts the top view of the tub with the opaque plastic around the outside and lined inside of the tub, which tub contained 15 glass bulbous meth pipes; right photo: close-up photo of a glass meth pipe that Agent Mejorado held in his left hand, which pipe he removed from the said plastic tub found on the counter.) Based on Agent Flores training and experience with drug paraphernalia he recognized the glass pipes as meth pipes because the pipes were glass, about three to four inches in length, and had a bulbous end that had a small hole (the circumference of a pen tip) from which to smoke meth. The pipes found in the Licensed Premises matched that description. The said glass pipes could not be used for smoking marijuana.¹⁸ Further based on his training and experience with drug paraphernalia found at licensed premises, Agent Flores recognized the placement of the opaque wrapped and lined tub behind the sales counter for convenient access for the staff to make quick sales when a patron requests a meth pipe; rather than having to walk back to the storage room to retrieve a meth pipe.

32. Based on Agent Flores' training and experience with drugs and drug paraphernalia, the purpose for wrapping the tubs in an opaque black plastic bag is because the licensees

¹⁸ Agent Flores testified at length, based on his training and experience, how he is able to easily identify a marijuana pipe as opposed to a meth pipe with their different designs and specific uses. With marijuana pipes the glass tubing is bigger and they have a flat, crater-like casing, upon which one places the marijuana nugget and applies a flame directly to the marijuana nugget and inhales from the other end of the glass pipe. Based on Respondent counsel's hypotheticals, Agent Flores testified that if one forced a marijuana nugget down a glass meth pipe to the bulbous end it would break the glass. Similarly, if one crushed a marijuana nugget into the meth pipe the marijuana would fall out the hole.

and their staff, who know the pipes are illicit, will try to hide the contents of the tub from detection during a quick law enforcement inspection.

33. The agents seized eight tubs containing numerous meth pipes, and filled out an Evidence/Property Receipt/ Report ABC-320 form. (Exhibit 10.) Based on Agent Flores' training and experience regarding drug and drug paraphernalia, the amount of tubs filled with meth pipes found inside the Licensed Premises' storage room with other stocked items, in addition to one small tub with a few meth pipes on the employee side of the sales counter within feet from the cash register for ease of access, indicates that the Licensee has been making consistent sales of the meth pipes.

34. Agent Mendez found and seized, from inside the sales counter drawer, and listed on the ABC-320 form, various online gambling business cards including: 92 Vegas-X.org, five (5) GameVault999.com, 24 Firekirin.xyz and 28 Pandamaster.vip business cards. (Exhibit 10 and Exhibit 12- two color photos, left photo: close-up of gambling business cards; right photo: top view of partially opened sales counter drawer and sales counter.) Agents Mendez and Mejorado recognized, based on their training and experience, the business cards as advertisements for online gambling websites. The business cards listed the URL or website addresses for online gambling and the image of a cell phone, indicating that the customer would use a cell phone to play the game.

35. Agents Mejorado and Mendez found hanging from a ceiling hook above the front register, on the employee side of the sales counter, a black plastic grocery bag containing two brown paper bags. The black, plastic grocery bag appeared significant to Agent Mendez because the meth pipes located in the Licensed Premises were also in the black, opaque grocery bags. The brown paper bags each contained a two-to-three-inch length glass pipe with a blue, plastic rose inside of it, and a chore boy (a small round copper wire ball or Brillo brush), both of which together are commonly referred to as a "kit." (Exhibit 11 – two color photos, right photo: close-up photo of glass tube pipe containing a blue plastic rose with a chore boy to the left of the glass pipe, in Agent Mendez' gloved hand¹⁹; left photo: a glass pipe with rose and chore boy, aka "kit," inside one of the brown paper bags.) All the meth pipes seized inside the Licensed Premises were new and unused.

36. Based on Agent Flores' training and experience relating to drugs and drug paraphernalia: (1) The glass tube pipes seized at the Licensed Premises are used to smoke crack cocaine by individuals, who place the chore boy in the end of the glass pipe use it as a filter, and then place the crack cocaine behind the chore boy, after which they apply

¹⁹ Agent Mendez testified that this photo depicted the contents of one of the brown paper bags, and that the second brown paper bag had the same contents, a glass pipe with blue plastic rose therein, and a chore boy.

heat with a lighter or match, and once the crack cocaine heats up it creates a vapor which the individual will inhale by placing their lips on either end of the pipe and inhaling the vapor. (2) The purpose of the brown paper bags is to hide the illicit contents of the "kits." Agent Flores said "kits" are used by individuals who smoke crack cocaine, once they purchase the kit all they need is the flame and crack cocaine. (3) The placement of the "kit" in one brown paper bag indicates the seller knows exactly for what purpose they are selling the kits, as drug paraphernalia for the purpose of smoking crack cocaine because there is no other reason to sell a glass pipe with a chore boy other than to smoke crack cocaine. The drug paraphernalia found and seized in the Licensed Premises fit the description as listed in the ABC-546 and ABC-546A forms the Respondent/Licensee received on May 11, 2016. (Exhibit 14.)

37. The agents seized the items found at the front cash register, including the two brown paper bags containing the "kits," along with the plastic container lined with the opaque black bag filled with 15 glass meth pipes, and filled out an Evidence/Property Receipt/Report ABC-320 form. (Exhibit 13.)

CONCLUSIONS OF LAW

1. Article XX, section 22 of the California Constitution and section 24200(a) provide that a license to sell alcoholic beverages may be suspended or revoked if continuation of the license would be contrary to public welfare or morals.
2. Section 24200(b) provides that a licensee's violation, or causing or permitting of a violation, of any penal provision of California law prohibiting or regulating the sale of alcoholic beverages is also a basis for the suspension or revocation of the license.
3. Penal Code section 330.1(a) provides that, "Every person who manufactures, owns, stores, keeps, possesses, sells, rents, leases, lets on shares, lends or gives away, transports, or exposes for sale or lease, or offers to sell, rent, lease, let on shares, lend or give away or who permits the operation of or permits to be placed, maintained, used, or kept in any room, space, or building owned, leased, or occupied by him or her or under his or her management or control, any slot machine or device as hereinafter defined, and every person who makes or permits to be made with any person any agreement with reference to any slot machine or device as hereinafter defined, pursuant to which agreement the user thereof, as a result of any element of hazard or chance, may become entitled to receive anything of value or additional chance or right to use that slot machine or device, or to receive any check, slug, token, or memorandum, whether of value or otherwise, entitling the holder to receive anything of value, is guilty of a misdemeanor."

4. Penal Code section 330.1(f) provides that, “(f) A slot machine or device within the meaning of Sections 330.1 to 330.5, inclusive, of this code is one that is, or may be, used or operated in such a way that, as a result of the insertion of any piece of money or coin or other object the machine or device is caused to operate or may be operated or played, mechanically, electrically, automatically, or manually, and by reason of any element of hazard or chance, the user may receive or become entitled to receive anything of value or any check, slug, token, or memorandum, whether of value or otherwise, which may be given in trade, or the user may secure additional chances or rights to use such machine or device, irrespective of whether it may, apart from any element of hazard or chance, also sell, deliver, or present some merchandise, indication of weight, entertainment, or other thing of value.”

5. Penal Code sections 337a(a)(3) and 337a(a)(5) provide that,

"(a) Except as provided in Section 336.9, every person who engages in one of the following offenses, shall be punished for a first offense by imprisonment in a county jail for a period of not more than one year or in the state prison, or by a fine not to exceed five thousand dollars (\$5,000), or by both imprisonment and fine:

...

(3) Whether for gain, hire, reward, or gratuitously, or otherwise, receives, holds, or forwards, or purports or pretends to receive, hold, or forward, in any manner whatsoever, any money, thing or consideration of value, or the equivalent or memorandum thereof, staked, pledged, bet or wagered, or to be staked, pledged, bet or wagered, or offered for the purpose of being staked, pledged, bet or wagered, upon the result, or purported result, of any trial, or purported trial, or contest, or purported contest, of skill, speed or power of endurance of person or animal, or between persons, animals, or mechanical apparatus, or upon the result, or purported result, of any lot, chance, casualty, unknown or contingent event whatsoever.

...

(5) Being the owner, lessee or occupant of any room, shed, tenement, tent, booth, building, float, vessel, place, stand, enclosure or grounds, or any part thereof, whether for gain, hire, reward, or gratuitously, or otherwise, permits that space to be used or occupied for any purpose, or in any manner prohibited by paragraph (1), (2), (3), or (4).

6. Cause for suspension or revocation of the Respondent's license exists for the violations of Penal Code sections 330.1(a), 337a(a)(3) and 337a(a)(5) alleged in counts 1, 2, 3, 4, 5, and 6 of the amended accusation. (Findings of Fact ¶¶ 1, 2, 6-7, 11-13, 15-29, 34.)

7. Respondent argues that there was no violation of section 330.1(a) because there was no slot machine or device physically located in the Licensed Premises, and that Agent Flores had to use his own Department issued cell phone in the Department district office to play the Fire Kirin game. The Respondent argued it does not own any slot machine or device and there was no evidence of anyone gambling or playing inside the Licensed Premises. Respondent also argued it is not taking any wages or bets, but merely taking money like Venmo and paying back the money left in the account, and therefore there is no violation of section 337a(a)(3). Respondent further argued there is no violation of section 337a(a)(5) because there was nothing to suggest Respondent permitted bookmaking to occur in the Licensed Premises, it did not occur therein. These arguments are rejected.

8. The Department argued that gone are the days of clunky slot machines in licensed premises, instead there are accounts licensees create online, uploaded on the Cloud for customers to play the illicit games anywhere - on a cell phone, tablet or computer. The Department is correct, that the legislature incorporated language in the statute to include the scenario of the facts set forth in the current matter.

9. Pursuant to the definition of device in Penal Code section 330.1(f), the device here was the online gambling account. On August 8, 2023, and August 11, 2023, in the Licensed Premises, Respondent-Licensee's employees, clerk Rajinder and clerk Humika, permitted Agent Flores the operation of an online gambling account, which clerk Rajinder set up for Agent Flores. On August 8, 2023, clerk Rajinder used an electronic tablet to make and enter into an agreement with Agent Flores (with reference to said device), and pursuant to said agreement, to set up an online gambling account for Agent Flores to engage in illegal gambling on the Fire Kirin website. On August 11, 2023, clerk Humika, further permitted such agreement with Agent Flores with reference to the online gambling account. Pursuant to such agreement Agent Flores used or operated the device (the online gambling account) in such a way that, as a result of inserting an object, here, the username and password provided by clerk Rajinder, the device (the online gambling account) was caused to be operated and was operated and played by Agent Flores electrically via his cell phone, and by reason of an element of chance, Agent Flores became entitled to and did receive a thing of value/money, all in violation of Penal Code section 330.1(a). (Counts 1 and 4.)

10. On August 8, 2023, inside the Licensed Premises, after clerk Rajinder entered into said agreement and set up an illegal online gambling account for Agent Flores, the agent gave clerk Rajinder \$20, a thing of value/money, which clerk Rajinder placed in the Licensed Premises' cash register. On August 8, 2023, and August 11, 2023, both clerk Rajinder and clerk Humika held such thing of value/money to be staked or offered for the purpose of being staked, upon the result of chance in violation of Penal Code section 337a(a)(3). (Counts 2 and 5.) On August 8, 2023, and August 11, 2023, both clerks Rajinder and Humika permitted the Licensed Premises to be used for holding such thing of value/money to be staked or offered for the purpose of being staked, upon the result of chance in violation of Penal Code section 337a(a)(5). When Respondent's clerks, took a commission of \$3.38 for holding Agent Flores' \$20, such thing of value, and permitted the Licensed Premises to be used for holding such thing of value they did so for Respondent's gain. (Counts 3 and 6.)

11. An employee's on-premises acts and knowledge are imputed to the Respondents. (See *Yu v. Alcoholic Bev. etc. Appeals Bd.* (1992) 3 Cal.App.4th 286, 295; *Laube v. Stroh* (1992) 2 Cal.App.4th 364, 377; *Kirby v. Alcoholic Bev. Etc. Appeals Bd.* (1973) 33 Cal.App.3d 732, 737.) Respondent's clerks had full knowledge of the illegal gambling account agreements they set up for customers in the Licensed Premises using the black electronic tablet. They provided customers access to the online gambling account by means of a username, password and instructional business card listing the gambling site address; the latter of which the clerks kept readily available in a drawer behind the sales counter. The clerks were available to help customer, Agent Flores if there were any problems with the illicit account. When Agent Flores asked clerk Humika to cash out his account, clerk Humika knew about the online account and knew there was a commission to be taken therefrom. Clerk Humika immediately asked her father, clerk Rajinder, how much money from the online gambling account to give Agent Flores. Clerk Rajinder instructed his daughter, to take a commission for the Licensed Premises of approximately \$3.38 from the account winnings of \$22.38 and she did so, giving Agent Flores only \$19 back from his originally staked \$20.

12. Respondent further argued the Fire Kirin game was not a game of chance or hazard, and that based on Agent Flores' own skill in playing the game "if he could aim and shoot at the different sea creatures, he could get more money." This argument is rejected as without merit. The record established, both through Agent Flores' credible testimony and the video evidence, that no matter how many times Agent Flores shot at an object, there was no rhyme or reason as to whether he would hit the creature enough times to make it explode into coins/credits. Agent Flores earned credits, by chance, without any skill, because all he had to do was tap the screen and for some unknown reason the sea creatures on the screen either exploded into coins/credits or they did not. The coin value of the sea creatures was also unknown. Agent Flores received credits in the form of

money above and beyond his originally staked \$20. In fact, his credits went up to a value of \$22.38 by the end of the game.

13. Health and Safety Code section 11364.7(a) provides, in part, that “any person who delivers, furnishes, or transfers, possesses with intent to deliver, furnish, or transfer, or manufactures with the intent to deliver, furnish, or transfer, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance . . . in violation of this division, is guilty of a misdemeanor.”

14. Health and Safety Code section 11364.7(d) provides that “[t]he violation, or the causing or the permitting of a violation, of subdivision (a), (b), or (c) by a holder of a business or liquor license issued by a city, county, or city and county, or by the State of California, and in the course of the licensee’s business shall be grounds for the revocation of that license.”

15. Health and Safety Code section 11014.5(a) contains a broad definition of drug paraphernalia as “all equipment, products and materials of any kind which are designed for use or marketed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this division.” A non-exclusive list of items is set forth immediately after the definition.

16. Health and Safety Code section 11014.5(b) provides that “the phrase ‘marketed for use’ means advertising, distributing, offering for sale, displaying for sale, or selling in a manner which promotes the use of equipment, products, or materials with controlled substances.”

17. Health and Safety Code section 11014.5(c) provides that, “[i]n determining whether an object is drug paraphernalia, a court or other authority may consider, in addition to all other logically relevant factors, the following: (1) Statements by an owner or by anyone in control of the object concerning its use. (2) Instructions, oral or written, provided with the object concerning its use for ingesting, inhaling, or otherwise introducing a controlled substance into the human body. (3) Descriptive materials accompanying the object which explain or depict its use. (4) National and local advertising concerning its use. (5) The manner in which the object is displayed for sale. (6) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community,

such as a licensed distributor or dealer of tobacco products. (7) Expert testimony concerning its use.

18. Section 24200.6 of the Business and Professions Code states, “The department may revoke or suspend any license if the licensee or the agent or employee of the licensee violates any provision of Section 11364.7 of the Health and Safety Code. For purposes of this provision, a licensee, or the agent or employee of the licensee, is deemed to have knowledge that the item or items delivered, furnished, transferred, or possessed will be used to plant, propagate, cultivate, grow, harvest, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance, if the department or any other state or local law enforcement agency notifies the licensee in writing that the items, individually or in combination, are commonly sold or marketed for that purpose.”

19. Cause for suspension or revocation of the Respondent’s license exists for the violation of section 11364.7(a)(1) as alleged in count 7 of the amended accusation. (Findings of Fact ¶¶ 1, 2, 4- 13, 26-33, and 35-37.)

20. The preponderance of the evidence established Respondent’s possession with intent to deliver, furnish, or transfer drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to ingest, inhale, or otherwise introduce into the human body a controlled substance, by the following: (1) on May 11, 2016, Respondent’s representative signed the ABC-203 form acknowledging receipt of the ABC-546 and ABC-546A notice forms, both of which, detailed and provided exact language from the Health and Safety Code section statutes with an exhaustive list of what is considered drug paraphernalia. These documents placed the Respondent-Licensee on notice thereof. Respondent’s negligence in failing to abide by the noticed documents shows its lack of due diligence in its affirmative duty to ensure the Licensed Premises is not used in violation of the law.²⁰ (2) the Respondent and its employees took steps to conceal its illicit activity by intentionally placing black plastic bags around the cylindrical containers of meth pipes in the storage room and at the front counter in the black plastic

²⁰ *Morell v. Department of Alcoholic Beverage Control* (1962) 204 Cal. App. 2d 504, 514, [22 Cal. Rptr. 405, 411]; *Munro v. Alcoholic Beverage Control Appeals Board* (1960) 181 Cal.App.2d 162, 164 [5 Cal.Rptr. 527]; *Givens v. Department of Alcoholic Beverage Control, supra*, 176 Cal.App.2d 529, 534; *Fromberg v. Department of Alcoholic Beverage Control* (1959) 169 Cal.App.2d 230, 234 [337 P.2d 123]; *Mantzoros v. State Board of Equalization* (1948) 87 Cal.App.2d 140, 144 [196 P.2d 657]; *Swegle v. State Board of Equalization, supra*, 125 Cal.App.2d 432, 438; *Mercurio v. Department of Alcoholic Beverage Control, supra*, 144 Cal.App.2d 626, 630; *Cooper v. State Board of Equalization* (1955) 137 Cal.App.2d 672, 678 [290 P.2d 914]; *Endo v. State Board of Equalization* (1956) 143 Cal.App.2d 395, 401-402 [300 P.2d 366].

bag hanging from the ceiling above the cash register. Respondent and its employees did so to conceal the illicit meth pipes and two brown paper bags containing cocaine pipe and chore boy kits. (3) the Respondent stored eight containers of meth pipes with the small container on the counter and two kits hanging at the register for the purpose of being readily available to sell said pipes and kits to customers looking for meth pipes and kits. (4) Expert testimony by Agent Flores who testified at length to Respondent's purpose of concealment, intent and that the pipes and kits are drug paraphernalia. Agent Flores explained in great detail how one uses the pipes and chore boys to ingest a controlled substance and that they are not for any other purpose. As such, continuance of the license without imposition of discipline would be contrary to public welfare and morals.

21. Except as set forth in this decision, all other allegations in the accusation and all other contentions of the parties' lack merit.

PENALTY

The Department requested the Respondent's license be suspended for 45 days, with 15 days thereof stayed for two years, based on the following aggravating factors:

(1) Respondent's prior disciplinary action involving a sale-to-minor violation in 2021, (2) lack of licensee cooperation, (3) the premises is located in a high crime area, (4) continuing course or pattern of conduct, given the sheer number gambling cards at the front sales counter, all four of the employees with whom Agent Flores came in contact while undercover asking about his account at the Licensed Premise were well aware of the illegal gambling activity occurring therein, not one employee said they did not know what Agent Flores was talking about, but immediately offered and provided him help regarding the illegal online gambling account clerk Rajinder set up for him on the first day. (5) Respondent and its staff's concealment of the vast amount of drug paraphernalia inside the Licensed Premises, after getting notice of said drug paraphernalia in 2016 with the ABC-203 form and attachments ABC-546 and ABC-546A.

The Respondent argued for a 15-day suspension based on the following mitigation: during Respondent's nine²¹ years of licensure it has only had one violation in 2021 unrelated to the matter at hand, which it argued was a fairly light history of discipline.

In assessing an appropriate measure of discipline, the Department's penalty guidelines are in California Code of Regulations, Title 4, Division 1, Article 22, section 144,

²¹ It is unclear how Respondent came up with nine years. From issuance of its license on 9/1/2016 to the second day of hearing on 6/4/2024 it was 7 years 9 months, and 3 days. From the date of issuance to the first violation on 12/16/2021, it is 5 years, 3 months, and 15 days. From the first violation date of 12/16/2021 to the next date of violation 8/8/2023 it is 1 year, 7 months and 23 days.

commonly referred to as rule 144. Rule 144 provides for a 30-day suspension, with 15 days stayed for two years for Penal Code section 330 gambling violations involving electronic/video with payoffs. Rule 144 provides for revocation stayed for three years and a 20-day suspension for Health and Safety Code section violations involving drug paraphernalia, and possession for sale. Rule 144 also permits imposition of a revised penalty based on the presence of aggravating or mitigating factors.

There is no evidence of mitigation. Mitigation is not warranted for Respondent's length of licensure, as argued. While it is true that the sale to minor violation in 2021 does not relate to the current violations at hand, it is evidence of disciplinary history. After five years of issuance of its license Respondent had its first violation in 2021. Just a little over one year and seven months later the Respondent incurred its second line of violations beginning on August 8, 2023. There was no evidence of any positive action taken by the licensee to correct the problems at hand, no documented training of licensee's corporate officers and employees and no evidence of cooperation by the licensee during the investigation. Aggravation is warranted as argued by the Department. The penalty recommended herein complies with rule 144.

ORDER

Counts 1, 2, 3, 4, 5, 6, and 7 are sustained. As to each count, the Respondent's off-sale general license is hereby suspended for 45 days, with 15 days stayed for a period of two years from the effective date of this decision, upon the condition that no subsequent final determination is made, after hearing or upon stipulation and waiver, that cause for disciplinary action occurred within the period of the stay. Should such a determination be made, the Director of the Department of Alcoholic Beverage Control may, in the Director's discretion and without further hearing, vacate this stay order and revoke Respondent's license, and should no such determination be made, the stay shall become permanent. All penalties as to each count are to run concurrently so that the effective total suspension is 45 days, with 15 days stayed for a period of two years.

Dated: July 15, 2024



D. Huebel
Administrative Law Judge

<input checked="" type="checkbox"/> Adopt
<input type="checkbox"/> Non-Adopt: _____
By: <u>J. McCallister</u>
Date: <u>08/22/24</u>