

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

**AB-10009**

File: 47-623927; Reg: 21091652

Carla Jimenez, *et al.*  
Appellants/Protestants

v.

Bombera, LLC  
dba Bombera  
3459 Champion Street  
Oakland, CA,  
Respondent/Applicant

and

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,  
Respondent

Administrative Law Judge at the Department Hearing: Hon. Alberto Roldan

Appeals Board Hearing: April 11, 2025  
Sacramento, CA/Videoconference

**ISSUED APRIL 15, 2025**

**OPINION**

**I. INTRODUCTION**

This case arises from the Department of Alcoholic Beverage Control's (Department) recommendation to transfer a liquor license to Bombera, LLC (applicant).<sup>1</sup> Because of the Department's recommendation, several nearby residents (protestants) filed protests asserting that the operation of applicant's

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<sup>1</sup> The Department's decision, dated October 1, 2024, is set forth in the appendix.

licensed premises would create undue noise, interfere with the quiet enjoyment of their homes, and otherwise negatively impact public welfare and morals. In response, the Department imposed a series of conditions on the applicant's license. After an investigation, multiple hearings, and an extensive review of the evidence, the Department approved the transfer of the license but with several tailored conditions. This decision evaluates whether the Department complied with Rule 61.4 and Business and Professions Code section 23958,<sup>2</sup> whether the applicant met its burden of proof at the hearing, and whether the Department appropriately exercised its discretion. For the reasons stated below, the Department's decision is affirmed.

## **II. FACTUAL BACKGROUND**

Applicant operates a Mexican restaurant in Oakland, California. The premises includes an indoor dining space, a fixed bar, and two outdoor patios. The restaurant is in a repurposed firehouse that underwent substantial renovations to bring the property up to code and to modernize it for its intended purpose. The surrounding neighborhood is a mixed-use area that combines residential and commercial properties. Other nearby businesses include restaurants, a bank, an art gallery, and retail shops. There are two other licensed premises nearby. They are located 230 feet and 300 feet away from applicant's premises. The premises

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

is less than a block away from a major highway. Lastly, nine residences are within 100 feet of the premises.

The restaurant operates primarily during evening hours, and it is closed on Tuesdays and Sundays. During renovations, the applicant invested in soundproofing measures, including double-paned windows, reinforced walls, and an eight-foot wooden fence to reduce noise disturbance. Despite these efforts, neighboring residents raised concerns about crowd noise, patio disturbances, and amplified music, particularly during private events hosted at the restaurant.

Thus, this case presents the classic factual background for all cases of this nature. There is a business that is seeking a liquor license, and its neighbors claim that its operation will interfere with the quiet enjoyment of their homes.

### **III. PROCEDURAL HISTORY**

In early 2022, applicant asked the Department to transfer its liquor license to the newly renovated premises. To comply with statutory rules, applicant posted a notice on the outside of its premises. Initially, two nearby residents protested the transfer of the license, and a hearing was convened before Administrative Law Judge David Sakamoto on April 7, 2022. That hearing revealed procedural concerns with applicant's posting of the notice. As such, Judge Sakamoto continued the hearing so applicant could post the notice again. After the notice was reposted, four additional protests were filed. The protests primarily addressed noise interference, the potential over-concentration of licenses in the area, and that applicant violated several of the conditions placed upon the license.

To address the protests, a hearing was held on August 29–30, 2023, before Administrative Law Judge Alberto Roldan. During this hearing, the Department presented evidence that included site visits by Licensing Representative Risel Melodias, video recordings of events, and testimony from both the applicant and the protesting neighbors. While protesting neighbors' evidence detailed instances of open patio doors and amplified music, the applicant provided evidence of renovations and revised policies that it claimed would mitigate these disturbances.

At the conclusion of the hearing, Judge Roldan recommended transferring the license subject to several conditions designed to restrict external sound, control patio usage, and require active monitoring of the designated area. However, the Department's Director, pursuant to Government Code section 11517, subdivision (c)(2)(E), rejected Judge Roldan's recommendation, and he remanded the matter for an additional hearing.

With a focus on gathering further evidence regarding applicant's compliance with the conditions of its license, especially during special events, the matter returned to the trial court for a remand hearing on July 23, 2024. At that hearing, Judge Roldan reassessed the evidence, including later testimony and additional documentary evidence regarding applicant's revised operational policies. Afterward, Judge Roldan issued an updated proposed decision recommending the transfer of the license with modified conditions. On October

1, 2024, the Department's Director adopted the revised decision. Protestants then filed a timely appeal, which brings this matter before the Board for review.

#### **IV. ANALYSIS**

##### **A. Legal Standards and Level of Appellate Review**

Business and Professions Code section 23958 mandates that the Department conduct a comprehensive investigation into whether the issuance of a liquor license would interfere with public welfare, morals, or the quiet enjoyment of nearby residential properties. California Code of Regulations, Title 4, Section 61.4 supplements section 23958 by prohibiting licensing if a premises is within 100 feet of a residence. The license may be issued, however, if the applicant shows that the operation of its licensed premises would not interfere with those residents' quiet enjoyment of their property.

The applicant bears the burden of proving that the operation of its licensed premises will not interfere with the quiet enjoyment of nearby residents. On appeal, as established in *Kirby v. Alcoholic Beverage Control Appeals Bd.* (1970) 7 Cal.App.3d 126, the Board's review is limited to determining whether the Department's decision is supported by substantial evidence. Substantial evidence is defined in *Ofsevit v. Trustees of the California State University and Colleges* (1978) 21 Cal.3d 763, 773, fn. 9 as evidence of ponderable legal significance—evidence that a reasonable mind might accept as adequate, even if the Board might have weighed that evidence differently. In other words, the Board does not reweigh factual determinations or substitute its judgment for

that of the Department. Instead, it will confirm that the decision, as made, is one that a reasonable decision-maker could support.

B. Compliance with Business and Professions Code Section 23958 and Rule 61.4

Section 23958 requires that the Department determine whether issuing a license would, among other things, create a law enforcement problem or interfere with the quiet enjoyment of nearby residences. The Department's investigation into this matter included multiple site visits, review of noise complaints, and directed inquiries into condition compliance. The Department identified that nine residences within 100 feet of applicant's premises were subject to Rule 61.4. In accordance with the requirements of that rule, the Department sent notification letters to those residents. Following protests regarding the potential interference with quiet enjoyment, the Department gave the applicant the opportunity to submit a Petition for Conditional License to detail the measures it would implement to mitigate the identified concerns. The petition included eight specific conditions addressing issues such as: 1) restricting the hours of alcohol service on outdoor patios, 2) prohibiting the use of amplified music on the exterior of the premises, 3) requiring that the doors between the indoor dining area and the front patio remain closed barring normal ingress, emergencies, or deliveries, and 5) mandating active monitoring to prevent loitering and other disturbances.

These measures are consistent with the approach articulated in Cal. Dept. of ABC, *Naples SF, LLC*, Precedential Decision No. 19-01-L (Apr. 12, 2019), which

stressed that tailored license conditions can effectively mitigate disturbances in areas where residences and licensed premises coexist.

Furthermore, the evidence shows that notwithstanding isolated incidents, the applicant remedied earlier lapses through renovations to the premises and modifications to its operational procedures. As such, the Department's determination that the license can be issued—subject to conditions—is fully in line with requirements set forth in section 23958 and Rule 61.4.

### C. Applicant's Burden of Proof

Under governing case law, including *Coffin v. Alcoholic Beverage Control Appeals Bd.* (2006) 139 Cal.App.4th 471, 477, the applicant has the burden of proof to show that the operation of its licensed premises will not interfere with the quiet enjoyment of its neighbors. In this matter, the applicant met that burden through a combination of evidence. First, the applicant invested \$2.5 million to modernize an abandoned firehouse. Renovations included installing double-paned windows, additional insulation, and extra drywall to reduce noise. Second, the applicant limited its operating hours to reduce potential disturbances, and it revised its private event contracts. These revised contracts explicitly prohibit outside sound equipment and limit noise levels during events. In addition to physical renovations and operational changes, the applicant communicated openly with its neighbors, and it accepted feedback regarding its operations.

The cumulative effect of these measures is that the applicant presented sufficient evidence to satisfy its burden of proof. This conclusion is supported by

the extensive documentary and testimonial record, which a reasonable mind could accept as meeting the required standard.

#### D. Department's Exercise of Discretion

The Department's authority extends not only to denying applications if statutory requirements are unmet but also to imposing conditions that safeguard public welfare where potential disruptions exist. In *Boreta Enterprises, Inc. v. Dept. of Alcoholic Bev. Control* (1970) 2 Cal.3d 85, the Court recognized that the Department's decisions must be afforded substantial deference due to its expertise in balancing licensee's rights with community protection. In this case, the Department exercised its discretion appropriately by:

1) **Imposing Tailored Conditions:** The eight conditions imposed—including limitations on outdoor alcohol service and noise restrictions—were designed to address the specific concerns raised by the protestants. These conditions are like those used in prior decisions (Cf. *Naples SF, LLC*), and they ensure that the quiet enjoyment of nearby residents is not disturbed.

2) **Balancing Interests:** The Department gave due consideration to the economic and social benefits the applicant's operation offers—such as neighborhood revitalization, job creation, and community engagement—while also addressing the protestants' concerns.

3) **Monitoring and Enforcement:** Evidence of multiple site visits and continuous monitoring by Licensing Representative Risel Melodias further supports that the Department did not act arbitrarily. The Department's investigation

revealed that while occasional lapses occurred, they were promptly remediated and did not establish a pattern justifying license denial.

Thus, the Department's decision is well founded on substantial evidence and embedded within a framework of legal deference to its expertise. The Board acknowledges that while no decision is immune to all errors, any alleged errors must have resulted in prejudice to justify overturning the decision, and that standard has not been met in this case (See *Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 308).

#### E. Appellant's Unsupported Arguments

An appellant must show error by providing meaningful legal analysis supported by citations to both legal authority and facts in the record. Conclusory assertions without proper argument do not establish an error. As set forth in *City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239, fn. 16, and *In re Marriage of Nichols* (1994) 27 Cal.App.4th 661, 672-73, fn. 3, claims that lack this required analysis are deemed without foundation and do not warrant review. Similarly, as shown in *Atchley v. City of Fresno* (1984) 151 Cal.App.3d 635, 647, and *Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1117, points raised without supporting authority or detailed discussion require no further review.

In this case, the protestants assert that the outcome should have differed. Specifically, they contend that: (1) the Department assumed the applicant's burden of proof under California Code of Regulations, title 4, section 61.4 (Rule 61.4); (2) the applicant was required to submit a separate non-interference letter

addressing quiet enjoyment; (3) neither the Department nor the applicant provided timely notice to the protestants about the petition modification; and (4) evidence of specific scientifically sound data and expert testimony was required to demonstrate non-interference measures. In each instance, the protestants did not offer sufficient legal authority or analysis to link these claims to the facts of this case. Accordingly, the Board concludes that the protestants have not met the necessary burden of demonstrating error, and the Board will not review these claims.

#### F. Applicant's Motion to Strike

Applicant's brief moved to strike the documents the protestants attached to their Opening Brief. Section 23083 states, "The board shall not receive any evidence other than that contained in the record of the proceedings of the department." Thus, the Board never reviews evidence that is not properly before it. This is true for any evidence submitted by protestants, applicants, appellants, and the Department alike. Therefore, a ruling on applicant's motion is not required because the Board did not review the documents attached to the protestants' Opening Brief.

### **V. CONCLUSION**

For the foregoing reasons, this Board finds that the Department proceeded in full compliance with the requirements of section 23958 and Rule 61.4. Further, the applicant met its burden of proof by demonstrating through substantial evidence that its operations, enhanced by soundproofing, operational

adjustments, and revised event policies, will not unreasonably interfere with the quiet enjoyment of nearby residents. And lastly, the Department's exercise of its discretion—through the imposition of carefully tailored conditions—is entirely consistent with the relevant statutes and case law. Accordingly, the Department's decision is affirmed.

**ORDER**

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

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

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<sup>3</sup> 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](mailto:abcboard@abcappeals.ca.gov).

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

**IN THE MATTER OF THE PROTEST OF:**

CARLA JIMENEZ, ET AL

**AGAINST THE ISSUANCE OF A LICENSE TO:**

BOMBERA, LLC  
BOMBERA  
3459 CHAMPION STREET  
OAKLAND, CA 94602-2305

CONCORD DISTRICT OFFICE

File: 47-623927

Reg: 21091652

**CERTIFICATE OF DECISION**

ON-SALE GENERAL EATING PLACE - LICENSE

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

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 September 26, 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.



[https://abcab.ca.gov/abcab\\_resources/](https://abcab.ca.gov/abcab_resources/)

Sacramento, California

Dated: October 1, 2024

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**OCT 01 2024**

Alcoholic Beverage Control  
Office of Legal Services

Matthew D. Botting  
General Counsel

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

IN THE MATTER OF THE PROTESTS OF:

Carla Jimenez, et al.	}	File: 47-623927
	}	
AGAINST THE ISSUANCE OF AN ON-SALE GENERAL	}	Reg.: 21091652
EATING PLACE LICENSE TO:	}	
	}	License Type: 47
	}	
Bombera, LLC	}	
dba: Bombera	}	Word Count: 126,000 and 31,883
3459 Champion Street	}	
Oakland, CA 94602-2305	}	Reporters:
	}	Hanna Jenkins, Shelby Maaske, and
	}	Tatiana Martindale-Kennedy Reporters
	}	
<u>Under the Alcoholic Beverage Control Act</u>	}	<b><u>PROPOSED DECISION</u></b>
		<b><u>AFTER REMAND</u></b>

Administrative Law Judge Alberto Roldan, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter, via videoconference, on August 29, 2023, through August 31, 2023. The matter was remanded for the taking of additional evidence and an additional hearing was held before Administrative Law Judge Alberto Roldan on July 23, 2024.

John Newton and Alanna Ormiston, Attorneys, represented the Department of Alcoholic Beverage Control (Department).

Gillian Garrett, Attorney, represented Bombera, LLC (Applicant).

Verified Protestants Dave Karoly, Carla Jimenez, and Elaine Wallace appeared and represented themselves (Protestants). The Protestants were allowed to appear and participate in the hearing as parties pursuant to Government Code section 11500(b).

Oral evidence, documentary evidence, and evidence by oral stipulation on the record was received at the hearing. The matter was initially argued and submitted for decision on August 31, 2023. On April 16, 2024, pursuant to Government Code section 11517(c), the matter was remanded for the taking of additional evidence and for the clarification of language in the previously issued proposed decision. The Department Director's remand order directed the taking of evidence to determine whether there had been violations of the interim conditional license, and if so, whether the additional evidence impacted the recommendation that the license should issue with the conditions identified. The Director also sought clarification regarding the wording of the condition requiring the Applicant to keep the door shut between the interior and the front patio. (Exhibit D-11) Further oral evidence, documentary evidence, and evidence by oral stipulation on the record was received at the hearing on July 23, 2024.

## ISSUES

The issues to be determined on the merits of the protests are whether issuance of the applied-for license would be contrary to public welfare or morals on the basis that:

The operation of Bombera at the applied-for premises located at 3459 Champion Street, Oakland, CA 94602-2305 (Premises):

- (1) would interfere with the quiet enjoyment of nearby residents by creating a public nuisance; specifically cited are concerns regarding noise from the operation of the premises, including patrons of the Premises engaging in loud behavior while utilizing an exterior patio;
- (2) issuance of the license will add to or cause an undue concentration of licenses in the census tract;
- (3) would interfere with the quiet enjoyment of nearby residents because the Applicant has already violated conditions of the Interim Operating Permit (IOP);
- (4) would interfere with the quiet enjoyment of nearby residents because of interference with parking; and
- (5) would interfere with the quiet enjoyment of nearby residents because of litter issues.  
(Exhibits D-1, D-4, D-5 and P-9)

## FINDINGS OF FACT

1. The Premises seeks a type 47 on-sale, general eating place license for the location of 3459 Champion Street, Oakland, CA 94602-2305 to be operated as Bombera. The license being sought was obtained via a person to person and premises to premises transfer of the type 47 license held by the Applicant at a prior business called Coheca. The Applicant previously did business as Coheca at 907 Washington Street, Oakland, CA 94607-4097. (Exhibits D-4 and D-5) During the years of operation of Coheca, the Applicant had no history of discipline against that license. The Applicant proposes to operate a full-service Mexican restaurant in a single-story building that was previously a fire station.
2. The interior of the Premises contains a full-service kitchen, dining area with tables, fixed bar and counter, and restrooms. The Premises also includes a front outdoor patio with seating that measures 15 feet in depth by 45 feet in width. This patio is adjacent to the front public sidewalk and is separated by a 3.5-foot metal railing. This patio is accessed through the front door of the Premises. The front patio has multiple tables with umbrellas. There is also a rear patio that is approximately 15 feet by 20 feet. This patio is separated from an adjacent apartment complex by an 8-foot-tall wooden fence that runs the length of the property line between the left side of the Premises and the right side of the apartment complex. (Exhibits A-4, D-6 and D-7)
3. The Premises location is zoned to allow commercial property usage according to the City of Oakland Planning Department. The same mixed-use block of the Premises contains a supermarket, an auto center, an art gallery, a bank, multiple restaurants and cafes, and multiple

Bombera, LLC  
dba: Bombera  
File: 47-623927  
Registration: 21091652  
Page 3

retail establishments that are accessible from Fruitvale Avenue and Champion Street. There are numerous parking lots servicing these business establishments that are accessible from Champion Street just to the south of the Premises. There is additional street parking along Champion Street, Lincoln Avenue and Palmetto Street which are the streets closest to the entrance of the Premises. The Premises faces Champion Street which empties onto MacArthur Boulevard, a major thoroughfare, less than a block away. The Premises is approximately one block away from an elevated section of Interstate 580, a major highway. The business complies with local zoning requirements and a conditional use permit (CUP) is not required. (Exhibits D-4, D-5, D-6, D-7, D-8 and A-4)

4. The Department notice of the license application was initially posted at the Premises in March 2021. (Exhibit D-4) The notice was posted in a location that was to become the front entrance of the Premises but because of concerns about the location of the notice, the Applicant was ordered to repost the notice on April 7, 2022. The application was reposted on April 20, 2022, and the Department re-notified Rule 61.4 residences on May 2, 2022. (Exhibit D-5) The Protestants in this matter resulted from the original posted notice and the subsequent notifications.

5. While the Premises itself is properly zoned commercial, the location of the Premises is in a mixed area of residential and commercial buildings that is part of a densely populated area in the City of Oakland. As noted above, the area is primarily dominated by businesses along Fruitvale Avenue and MacArthur Boulevard. There are residences across the street from and to the left of the front of the Premises along Champion Street. There is a two story, multiple unit apartment complex directly to the left of the Premises on the same side of the street. Witness Michael Fried, who was called by the Protestants, rents a unit on the second floor of this complex.

6. Protestant Elaine Wallace (Wallace) resides in proximity to the Premises in a single-family home. She lives 260 feet away from the front of the Premises along Palmetto Street. Protestants Dave Karoly (Karoly) and Carla Jimenez (Jimenez) also live on Palmetto Street in a single-family home and their property is approximately 150 feet away from the front of the Premises. Karoly also operates a printing business from the home.

7. In accordance with the count formula contained in Business and Professions Code section 23958.4<sup>1</sup>, three licensed on-sale businesses are permitted in Census Tract 4066.02 where the Premises is located. There are two current on-sale licenses in this census tract. Issuance of this license would result in 3 licenses in this census tract. With the issuance of this license, this census tract would not be statutorily over concentrated with Department issued on-sale licenses.

8. Section 23958 states, "The department...shall deny an application for a license if issuance of that license would tend to create a law enforcement problem, or if issuance would result or add to an undue concentration of licenses, except as provided in section 23958.4. While the investigation revealed no overconcentration would result from the issuance of the license, the Department was also required to determine if issuance would result in a law enforcement

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<sup>1</sup> All statutory references are to the Business and Professions Code unless otherwise noted.

Bombera, LLC  
dba: Bombera  
File: 47-623927  
Registration: 21091652  
Page 4

Police Department (OPD) and made it aware of the application. OPD did not object to the application and the information provided by OPD established that the district the Premises was located in did not meet the statutory definition of a high crime reporting district. (Exhibit D-4) As a result, the Department was not required to determine if public convenience or necessity would be served by issuance of the license pursuant to section 23958.4.

9. There are nine residences within 100 feet of the Premises pursuant to rule 61.4. In addition to the posting on the Premises, these nine residences were contacted by letter by the Department. None of the residents of these properties appeared as Protestants in this matter, but one of the residents of the apartment complex adjacent to the Premises, Michael Fried, testified as a witness in this matter and expressed opposition to the issuance of the license because of noise concerns. (Exhibit D-4) There are no consideration points within 600 feet of the Premises. (Exhibit D-4) Because of the close proximity of residences, the Applicant was required to prepare a letter of non-interference as part of the application.

10. Department Licensing Representative R. Melodias (Melodias) conducted the investigation in this matter. He prepared the initial investigative report in November 2021 (Exhibit D-3) and a supplemental report in December 2022 (Exhibit D-4) documenting his findings. His initial Department investigation determined that a license should issue, but that conditions would be required on the license to limit noise, loitering and litter resulting from the operation of the Premises beyond the steps identified by the Applicant in its letter of non-interference applying for the license. In the supplemental report, there was documentation that there was a modification of the Petition for Conditional License (PCL) from the ones in the original PCL. The Applicant agreed to the additional condition. (Exhibits D-3 and P-96)

11. On or about April 21, 2022, the Applicant executed a revised PCL that limits the Applicant's day-to-day business operations. (Exhibit D-3) In the PCL, the Applicant acknowledged that it was seeking to exercise privileges in outside patio space, the proximity of residences within 100 feet, the need for conditions to protect the quiet enjoyment of the nearby residents, and that issuance of an unrestricted license would be contrary to public welfare and morals. In recognition of the above, the Applicant agreed to the imposition of eight operating restrictions on the license.<sup>2</sup> (Exhibit D-3)

12. These conditions are:

1. Full and complete meals must be offered and made available at all times the premises is exercising the privileges of its alcoholic beverage license, with the exception of the last half hour of operation.

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<sup>2</sup> The Department, as required by law, investigated all issues arising from the application, not just those raised by the Protestants. Many of the conditions which will attach to the license (should it issue) relate to these other issues.

2. Sales, service and consumption of alcoholic beverages shall be permitted in or on the exterior patio area(s) only between the hours of 10:00 a.m. and 11:00 p.m. each day of the week.
3. Entertainment provided shall not be audible beyond the area under the control of the licensee(s) as depicted on the most recently certified ABC-257.
4. The use of any amplifying system or device is prohibited on the exterior patio areas, and the use of any such system or device inside the premises shall not be audible outside of the premises.
5. Petitioner(s) shall actively monitor the area under their control in an effort to prevent the loitering of persons on any property adjacent to the licensed premises as depicted on the most recently certified ABC-253.
6. When the said exterior patio area(s) of the premises is[are] being utilized for the sales, service, and consumption of alcoholic beverages, a premises employee shall be in attendance and maintain continuous supervision at all times of said area.
7. The exterior outdoor patio area(s) shall be equipped with lighting of sufficient power to illuminate and make easily discernible the appearance and conduct of persons on or about the exterior patio area(s). Additionally, the position of such lighting shall not disturb the normal privacy and use of any neighboring residences.
8. A sign shall be posted in a conspicuous place at the entrance/exit point of said exterior outdoor patio area, which shall state, "NO ALCOHOLIC BEVERAGES BEYOND THIS POINT". Said sign shall measure no less than seven inches by eleven inches (7"x11") and contain lettering no less than one (1) inch height. (Exhibit D-3)

13. **Domenica Rice Cisneros (Rice), Daniel Swafford (Swafford) and Carlos Solomon (Solomon) testified on behalf of the Applicant. Rice and Solomon are husband and wife and have an ownership interest in the Premises. Rice is particularly involved in the operation of the Premises since she is also the head chef and takes an active role in the day-to-day operations of the Premises and the supervision of staff. Through their testimony, numerous support letters for the Premises by patrons and business associations were received in evidence. (Exhibits A-9 and A-11) The Premises has received favorable coverage, reviews, and awards regarding their food and drinks. (Exhibits A-6, A-7, and A-14)**

14. **The Premises location was previously an unused firehouse owned by the City of Oakland. After winning the bidding process for the Premises location, the Applicant obtained construction permits and worked with a construction company to modernize the building and bring it up to code for its intended purpose as a restaurant. Because of the apartment building to the left of the Premises, the existing chain link fence was removed and an 8-foot-high solid wooden fence was erected to establish a better privacy barrier. A palm tree was removed by the construction company to allow the installation of the wooden fence. The Premises building appears to be new construction even though it is a remodel of an existing building. The series of photos of the exterior of the Premises show the surrounding businesses and the nature of that portion of Champion Street as a commercial business area. (Exhibit A-4) Directly across from the front of the Premises is a triangular green area with a small grove of mature trees. To the left of this grove are some residences. Residences on Palmetto Street are visible from the front of the**

Bombera, LLC  
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File: 47-623927  
Registration: 21091652  
Page 6

Premises through the grove and as you look to the right of the grove at the intersection where Champion Street intersects Palmetto Street and becomes Lincoln Avenue. (Exhibit D-8)

15. Rice and Solomon testified that they take the obligations in the conditional license seriously and are open to feedback from neighbors if there are concerns with the operation of the Premises having a negative impact on their quiet enjoyment. Rice is an on-site manager and is present to receive feedback from the community. Rice was familiar with the process of operating a premises with a license from the Department because of the license she previously held at Coheca. The Premises currently is open until 9 p.m. and it is closed on Sundays and Tuesdays.

16. Swafford previously held roles in the business associations that include the area where the Premises is located. This area is known as the Dimond and there is an active Dimond Improvement district. Swafford was involved in the Request for Proposal (RFP) that led to the City of Oakland seeking bids for the former firehouse property that became the Premises. The City of Oakland specifically sought restaurant projects in the bid RFP because surveys of the Dimond District's residents identified restaurants as a top priority for new businesses. The Premises was the successful bidder to pursue a project in a former fire station that had sat for several years unused, other than as a storage location, by the city of Oakland. The Applicant succeeded in a competitive bid process conducted for the property by the City of Oakland.

17. The Premises has been operating with a Department issued interim operating permit allowing type 47 privileges since approximately August 2021. On August 9, 2021, Karoly sent an email to Melodias at the Department stating that Fried had filed a noise complaint with the City of Oakland against the Premises. Karoly indicated that the Premises had allowed an event to occur with amplified music. (Exhibit P-73) On December 9, 2021, and December 10, 2021, Karoly recorded two short videos from directly in front of the Premises. In both of these videos you can hear amplified music coming from the Premises. (Exhibits P-45 and P-46) On March 25, 2022, Department agents investigated at the Premises and found that the Applicant was not in compliance with its duty to post a "NO ALCOHOLIC BEVERAGES BEYOND THIS POINT" sign. The agents also found that the Premises was playing amplified music in the interior. (Exhibit D-9) On March 25, 2022, a previous PCL was applicable to the Premises. (Exhibit P-96) On June 1, 2021, the Applicant had signed this PCL and it was the one that was operative at the time. Condition 4 of the PCL read "There shall be no amplified music or other entertainment permitted in or on the premises at any time. For purposes of this condition, "amplified" shall mean the use of any electric, electronic, or other powered device that may be used or manipulated to control the volume of music or other entertainment." (Exhibit P-96) The Applicant was issued a warning for these violations on March 25, 2022. (Exhibit D-9) The Applicant immediately turned off the amplified music in the interior and subsequently installed the required signage. The Applicant sought a modification of this condition in order to be allowed to play music in the interior of the Premises. This is what led to the April 21, 2022, revised PCL that is currently operative. (Exhibit D-3)

18. The Premises has since operated on a series of renewed interim operating permits and has been continuously in operation through the initial hearing in this matter completed on August 31,

2023. There have been no additional Department warnings or sustained discipline against the Applicant during this period. However, evidence has been received that substantiated noise complaints have been filed with the Department during this period. During his investigation, Melodias visited the Premises on multiple occasions during operating hours to assess its impact on the surrounding community. Melodias visited subsequent to complaints from the Protestants about noise and odors emanating from the Premises. Melodias visited the Premises on Friday, September 9, 2022, at approximately 8 p.m. and on Wednesday, October 19, 2022, at approximately 7 p.m. Melodias noted that the Premises was busy and bustling on both occasions. He could hear ambient noise from the business that was primarily the conversations of people on the patio. None of the noise was amplified, loud, or bothersome during these visits. Melodias did not hear any amplified music emanating from the interior. On both occasions, Melodias could also hear traffic noises from Interstate 580, MacArthur Boulevard and Fruitvale Avenue. Melodias did not note any irritating odors from the Premises during these visits. Deborah Mann (Mann) testified about her experience with the Premises. Mann lives at 2435 Palmetto Street which is approximately 600 feet from the Premises. Mann testified that she has not experienced issues with noise emanating from the Premises and that its operation has not impacted her quiet enjoyment of her residence. Mann lives almost directly across the street from Protestant Wallace. (Exhibit D-8)

19. Karoly, Jimenez and Wallace each testified that the operation of the Premises has interfered with the quiet enjoyment of their residences. The Protestants also presented evidence regarding specific incidents that they believed showed the Applicant would disregard its obligations pursuant to a type 47 license and the current conditions if it were to issue. A number of these incidents involved actions during the construction of the Premises or prior to the opening of the Premises.

20. Protestants presented evidence regarding a street closure and event that occurred in front of the Premises on October 12, 2019. The evidence is that the Applicant obtained a street closure permit to facilitate a celebration of their daughter's 15<sup>th</sup> birthday after a celebration mass. In Latino and Chicano cultures these celebrations are commonly known as quinceañeras. The evidence established that the street closure and event that day was noticed to the city by the Applicant and occurred after city required permits had been sought by the Applicant and issued by the City of Oakland. (Exhibit P-56) Other than the location, the event did not involve the operation of the Premises or the use of an interim type 47 license. There is a dispute as to whether the permits allowing the street closure should have issued. The Protestants challenged the Applicant's representation on the application that the event was a "church blessing" and that it was done in coordination with St. Jarlath Catholic Church. A witness for the City of Oakland testified that they likely would not have issued the permits if they understood better from the filed paperwork by Rice that the celebration was a private event. Protestant Wallace filmed part of the event and it depicted the street closure. (Exhibit P-15) Wallace also wrote a letter to Melodias complaining about the incident and how it reflected on the Applicant's lack of veracity. (Exhibits P-18 and P-19) In response to the accusation that she had fabricated the connection of the event to the St. Jarlath Catholic Church, Rice testified that there was a mass prior to the street party and that the Monsignor who presided over the mass was present at the street closure event.

21. Evidence was also presented by the Protestants that construction on the Premises during its remodel occurred prior to allowable hours and in violation of noise ordinances. (Exhibits P-50, P-51, and P-52) The Protestants also presented evidence that construction occurred at the Premises in violation of the Pandemic response Alameda County shelter in place order on at least one occasion. (Exhibits P-25, P-26, and P-27) Protestants and witness Fried also asserted that the palm tree that was removed between the apartment complex was removed improperly and without notice. A complaint was lodged with the City of Oakland about the tree removal. (Exhibit P-22) The construction company obtained a permit for the removal of the tree from the City of Oakland. (Exhibit A-15)

22. On October 8, 2022, Jimenez recorded three short videos that captured noise emanating from the Premises. One video taken from the sidewalk directly in front of the Premises showed the front door and windows open so that music playing on the interior speakers can be heard outside. The video appears to depict a special event rather than typical restaurant activity. (Exhibit P-70) An additional video is taken from the direct left side of the Premises front patio. It shows the front door propped open and you can hear music from the interior outside. The voices of two people standing in front of the door carrying on a conversation are louder than the interior music because they are closer to the filming. (Exhibit P-71) A third video is taken from the exterior back porch of the home of Jimenez and Karoly. You can see parts of the front of the Premises although much of the front is obscured by the grove of trees between the Premises and their home. The distance between the Premises and their home is approximately 150 feet. In this video, you can faintly hear music emanating from the open front door of the Premises. More prominent is the sound of people cheering. In addition to the faint music and the sound of people cheering, the video captures the sound of vehicles driving on Lincoln Avenue and along Champion Street. (Exhibit P-72) Jimenez filed a complaint about what she had documented with the Department. (P-67 and P-68) On June 19, 2023, Jimenez observed the front door of the Premises propped open at approximately 6:30 p.m. Jimenez documented this. (Exhibit P-79) She again saw the front door of the Premises propped open on June 21, 2023, at approximately 7:30 p.m. Jimenez again documented this. (Exhibit P-80) Jimenez has observed the door propped open on other occasions. On May 9, 2023, a day the Premises is normally closed, Jimenez was able to hear a special event that was taking place at the Premises. She could hear cheering and music. On August 19, 2023, from her home, Jimenez was able to hear someone on the front patio using a microphone introduce the father of the bride at a wedding reception being held at the Premises.

23. Jimenez documented three incidents in May 2022 and March 2023 where recycling was overflowing onto the ground out of the recycle cans provided by the city of Oakland to the Premises. (P-75, P-76, P-77) Jimenez also testified about observing multiple incidents where the Applicant had placed their trash and recycle cans out earlier than local ordinances allowed. In response to this information, the Applicant testified that the Premises had increased the number of containers from the City of Oakland to better match the output of the Premises.

24. On August 19, 2023, Protestant Karoly documented his observation that, during a special event at the Premises, the front door was open and the amplified music could clearly be heard outside of the Premises. Karoly took a series of four videos from various distances where you can hear dance music emanating from the building and see patrons in the Premises dancing to this music. (Exhibits P-100-P-104) Karoly submitted a complaint to the Department documenting his observations and pointing out that special events at the Premises are often when these violations occur. (Exhibits P-99 and P-104) Fried also submitted a complaint to the Department about the same incident and that it continued well past 10 p.m. at night and kept him from being able to go to sleep. (Exhibit P-114 and P-115) On May 5, 2023, Fried made a noise complaint in response to a special event occurring at the Premises on that date. (Exhibit P-108)

### **FINDINGS OF FACT FROM HEARING AFTER REMAND ORDER**

25. Beginning in July 2023, the Applicant began negotiating a contract with a wedding party to host a private event at the Premises. The Applicant and the wedding party ultimately entered into a contract to host the event on Saturday, April 6, 2024. (Exhibit A-17) The Premises was closed to regular customers for the event. (Exhibit P-118) The event was a wedding reception where the family contracting for the use of the Premises had arranged for its own emcee, deejay, supplemental lighting, and indoor pyrotechnics for the wedding reception.

26. The event went forward at the Premises on April 6, 2024, beginning in the early evening. There was extensive documentation that amplified dance music and emcee announcements could be heard for several hours a significant distance beyond the Premises. The doors from the interior that opened onto the front patio were propped open for extended periods which allowed the amplified sounds and crowd noise from the reception to carry into the surrounding neighborhood. The music, amplified announcements, and crowd noise could be heard inside of the homes of the Protestants. (Exhibits P-120, P-121, P-123, P-124, P-125, P-126, P-127, P-128 and P-129) Lisa Sidorsky (Sidorsky) and Mike Fried (Fried), two additional individuals who were neighbors to the Premises on April 6, 2024, both filed reports with law enforcement and the Department because of the disturbance caused by the event. (Exhibits P-122 and P-119) Fried testified again at the July 23, 2024, hearing and he stated that he moved from his apartment next to the Premises, in part because of ongoing noise issues.

27. Applicant Rice was present during the event. During her testimony, she conceded that the evening had gotten out of control and that later in the evening, she and other employees tried to intervene to quiet the celebration. This effort had limited success given that audio and video evidence showed that excessive noise from the Premises and loud, unruly crowds in front of the Premises remained an ongoing issue until well past 11 p.m. on April 6, 2024. (P-123, P-124, P-125, P-126, P-127, P-128 and P-129)

28. On April 6, 2024, the Applicant was operating with an interim operating permit and was subject to the conditions of the PCL they had previously signed. The conduct that occurred at the Premises on April 6, 2024, was in violation of three of the explicit conditions in the PCL:

9. "Entertainment provided shall not be audible beyond the area under the control of the licensee(s) as depicted on the most recently certified ABC-257.
10. The use of any amplifying system or device is prohibited on the exterior patio areas, and the use of any such system or device inside the premises shall not be audible outside of the premises.
11. Petitioner(s) shall actively monitor the area under their control in an effort to prevent the loitering of persons on any property adjacent to the licensed premises as depicted on the most recently certified ABC-253." (Exhibit D-3)

29. Rice and Solomon, during their testimony, both acknowledged that the wedding reception event that occurred on April 6, 2024, was disruptive to the neighbors surrounding the Premises. Rice, who was present that evening, testified that she felt she lost control of the situation because the deejay and emcee were not her employees. Subsequent to the April 6, 2024, incident, the Applicant initiated changes to its special event procedures. The Applicant no longer allows outside sound equipment and it maintains control of the interior sound system. In its recent contracts, the Applicant has included language to notify parties contracting to have an event at the Premises that there are noise restrictions.

30. The Applicant presented evidence of a recent contract presented to a party seeking to use the Premises for an event in October 2024. This example was presented as evidence of the language used in all new contracts. The contract was presented by the Applicant to the party on June 10, 2024, and it included the following language regarding sound:

"We have a streaming music system but there can be no amplified music, live or recorded, allowed outside of the restaurant due to neighbors. The couple will be given access to the existing sound system at the restaurant for streaming music during dinner. Dance floor music must be at a level that is not audible on the street outside of Bombera." (Exhibit A-19)

Since the April 6, 2024, event, the Applicant also no longer allows third party emcees or deejays to run the sound system in the Premises. If a party wishes to have the services of an emcee or deejay, they must contract for one provided by the Applicant. The most recent template used by the Applicant for contracts also explicitly restricts party guests from using the patio after 10 p.m. (Exhibit A-21)

31. The Applicant called a witness, Kevin Whittinghill (Whittinghill) as evidence that the ordinary operations of the Premises are not disruptive to surrounding neighbors. Whittinghill has lived at 3432 Champion Street with his family since 2019. Their home is a similar distance from the Premises as the Protestants. Whittinghill can see the Premises from his home since it is across the street and diagonal from the front of Whittinghill's home. Whittinghill usually can hear ambient noise from the front patio of the Premises but it just blends into the ambient noise coming from other surrounding businesses. Whittinghill has not experienced any disruptions from the Premises other than the April 6, 2024, incident. That incident was disruptive and led him to call law enforcement to address the disturbance.

32. The Department did not present additional evidence at the hearing after the remand order but it did argue that a modification of the conditions in the PCL was needed to address the legitimate additional concerns raised by the Protestants, and to address the question of the Department Director regarding the patio door. Specifically, the Department proposed the following language be included in the PCL:

“There shall be no amplified music or other entertainment permitted in or on the premises at any time. For purposes of this condition, “amplified” shall mean the use of any electric, electronic, or other powered device that may be used or manipulated to control the volume of music or other entertainment.<sup>3</sup>

The doors between the interior and front open-air patio shall be kept closed at all times during the operation of the premises except for any of the following reasons: normal ingress or egress, emergencies, or during deliveries. Said doors shall not consist solely of a screen or ventilated security door and shall not be propped open.”

### CONCLUSIONS OF LAW

1. Article XX, section 22 of the California Constitution delegates the exclusive power to license the sale of alcoholic beverages in this state to the Department of Alcoholic Beverage Control.
2. Business and Professions Code section 23958 requires that the Department conduct a thorough investigation to determine, among other things, if the Applicant and the Premises qualify for a license, if the provisions of the Alcoholic Beverage Control Act have been complied with, and if there are any matters connected with the application which may affect public welfare or morals. It provides, in part, that the Department shall deny an application for a license if the applicant or the Premises do not qualify for a license under the Act.
3. California Code of Regulations, Title 4, Division 1, Article 11, section 61.4 (commonly referred to as Rule 61.4) provides that in cases involving an application for an original retail license or the premises-to-premises transfer of a retail license, no such license shall be issued if the premises or its parking lot is located within 100 feet of a residence. However, if the applicant establishes that operation of the business, if licensed, would not interfere with those residents’ quiet enjoyment of their property, a license may be granted.
4. In a protest matter, the Applicant bears the burden of establishing that he or she is entitled to a liquor license from the start of the application process until the Department makes a final

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<sup>3</sup> The Department’s proposal appears to be meant as a replacement for condition 4 of the PCL which currently reads, “[t]he use of any amplifying system or device is prohibited on the exterior patio areas, and the use of any such system or device inside the premises shall not be audible outside of the premises.”

determination.<sup>4</sup> The Protestants alleged that granting the license in any form would interfere with the quiet enjoyment of nearby residents by creating a public nuisance through noise and parking issues, cause an undue concentration of licenses in the census tract. The Protestants have also alleged that the Applicant has repeatedly violated the interim license and that other actions by the Applicant suggest that the Applicant will not comply with its obligations pursuant to the license sought.

5. Before getting to the merits of the application and the conditions identified by the Department, the issue Protestants raised regarding overconcentration can be addressed quickly. This challenge is unsupported by the record. Section 23958.4 sets forth a two-prong test for determining whether an area has an over-concentration of licenses. The first prong relates to the number of reported crimes in the relevant reporting district, while the second relates to the number of licenses within the relevant census tract. An area is over-concentrated if either prong is met. In this matter the record established that the Premises is not in a high crime area. (Findings of Fact ¶ 8)

6. The second prong of section 23958.4 provides that, with respect to on-sale retail licenses, a census tract is over-concentrated if the ratio of on-sale retail licenses to population in the census tract in which the applied-for premises is located exceeds the ratio of on-sale retail licenses to population in the county in which the applied-for premises is located. At the time the application was filed, the Premises was located in census tract 4066.02. Three licenses are permitted in this census tract, and two currently exist. Accordingly, the area in which the Premises is located does not have an over-concentration of licenses based on license count. (Findings of Fact ¶ 7)

7. Alternately, and without regard to census tracts, an excess number of licenses in a given area can also be grounds for denying an application. Unlike the statutory definition of over-concentration, there is no set formula for determining what constitutes an excess number of licenses; rather, the overall impact of the license, should it issue, must be examined. The two over-concentration issues overlap to some degree and, although legally separate, are factually intertwined. The location of the Premises is consistent with Oakland and the Dimond District's larger effort to revitalize a core urban area. The Premises is properly zoned for its intended use and is in a heavy density, primarily commercial area. The survey conducted prior to the RFP established that a restaurant at the location of the Premises would meet an unsatisfied need. There are few other licenses in the immediate area and none of them are restaurants like the Applicant's. The evidence establishes that there are not an excess number of licenses in this census tract. (Findings of Fact ¶¶ 1-15)

8. Protestants also raised the issue of the impact of the Premises on parking in the area. This is generally not a subject of the Department's investigation because these are local considerations to be dealt with by city and county municipalities. To the extent that the Protestants are asserting that the operation of the Premises is creating a quiet enjoyment concern from the standpoint of parking, this argument is rejected. As noted above, the Premises is properly zoned for the area.

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<sup>4</sup> *Coffin v. Alcoholic Beverage Control Appeals Board* (2006) 139 Cal. App. 4th 471.

Bombera, LLC  
dba: Bombera  
File: 47-623927  
Registration: 21091652  
Page 13

There is extensive evidence of street and parking lot parking in the immediate area of the Premises. The scale of the operation of the Premises is smaller than many of the surrounding businesses. This location is in a dense, urban environment adjacent to two major arteries in the City of Oakland. It has not been established that any parking challenges in the area are the result of the operation of the Premises, so much as part and parcel of an urban environment in a major city. The argument that the Premises would interfere with the quiet enjoyment of nearby residents because of interference with parking is rejected. (Findings of Fact ¶¶ 1-15)

9. Protestants also raised the issue of the impact of the Premises on quiet enjoyment because of litter. Protestants did establish multiple instances of improper trash disposal that was tantamount to litter. This litter was caused by the actions of the Applicant's agents and employees. Rice conceded in her testimony that the Premises had to expand the number of trash and recycle containers to match the output of the Premises' operation. There was testimony that the Premises was putting out cans earlier than the allowed time for containers which occasionally led to the containers being rifled through. The evidence was overwhelming that the Applicant maintained a clean, attractive business for patrons, but it is also responsible for the proper storage and disposal of refuse. This is a matter of concern for the surrounding community and is a matter to be considered in establishing conditions for the issuance of a type 47 license. The intermittent violations that occurred did not appear to be intentional, and do not rise to a level that would support the outright denial of a type 47 license. The Applicant credibly testified that additional capacity was added to deal with this concern. It appears that adding an explicit, enforceable condition to the license would not be unduly burdensome to the Applicant and would allow for enforcement and consequences if there are repeated violations in the future. (Findings of Fact ¶¶ 1-24)

10. The Protestants presented evidence regarding actions taken by the construction company the Applicant contracted with to remodel the firehouse into the Premises. The Protestants presented evidence about the removal of a tree and they presented evidence that the construction company workers had violated noise ordinances by starting work too early in the morning and that the construction company had continued work during a Pandemic response shelter in place order. The Protestants presented this evidence to establish that the Applicant would not comply with the conditions of the license. This evidence is given little weight in assessing the Applicant's suitability for the license sought. These were the actions of the construction company and it is unclear whether the Applicant was even aware of these supposed transgressions. Similarly, the street permit issue is an isolated incident where it is unclear if the Applicant intentionally made misrepresentations in the application. The event, because of its unique nature of being conducted on the street well beyond the normal boundaries of the Premises, is not a helpful rubric in understanding how the typical functioning of the Premises impacts the surrounding community. (Findings of Fact ¶¶ 18-21)

11. The Department licensing representative made several visits to the Premises and found no issues that would support denying the license sought with the eight conditions set out in the most recent PCL. The Department's investigation took into consideration the Rule 61.4 residents. Melodias recognized the need for established conditions to protect the quiet enjoyment of the

neighbors surrounding the Premises, including the Protestants and other nearby Rule 61.4 residential neighbors. The Applicant would be subject to additional conditions set forth in the PCL, which will give the Department and local law enforcement greater control over the Applicant's operation of the business should the operation of the Premises become a concern. (Findings of Fact ¶¶ 8-32)

12. The evidence presented by the Protestants has established shortcomings in the Department's investigation. All of Melodias' on-site investigations occurred when the Premises was operating as a typical restaurant. None of his site checks coincided with the Premises being used for a special event. The evidence established that there were often different dynamics at play during special events. Both the Applicant and the Protestants presented evidence that the Premises will host special events intermittently. The Protestants established with audiovisual evidence a common thread in the most serious noise incidents. These documented occurrences were all connected with special events, like weddings and parties. The Protestant witnesses testified that special events were often the most problematic times connected with the operation of the Premises. A further concern established by documented evidence from the Protestants is that the Premises repeatedly operated with the interior doors leading to the front patio propped open for extended periods of time. This was an issue even during typical operation of the Premises as a restaurant. As a result, amplified entertainment could be heard a substantial distance from the Premises despite two explicit conditions on the PCL that prohibit amplified entertainment from being heard beyond the interior of the Premises. (Findings of Fact ¶¶ 1-28)

13. The hearing after remand established that special event management continued to be a concern that the Applicant was not managing with significant control. The April 6, 2024, event violated several of the PCL conditions that the Applicant had agreed to. The violations occurred after the hearing in this matter where the Protestants had presented significant evidence that special event operations were, at times, particularly disruptive. While the effort was belated, it is noted that the Applicant did make additional significant changes to prevent future issues. These changes occurred prior to the remand hearing and they were not in response to an enforcement action by the Department. The Applicant is now in control of deejays and emcees that are used to support an event. Parties entering into a contract are explicitly put on notice that there are sound restrictions in response to neighbor concerns. Patio use during events now end an hour earlier than before. (Findings of Fact ¶¶ 1-32)

14. The Applicant, in its history of operating the Premises and a prior licensed business, appears to have made efforts to ensure the Premises is a good neighbor. The current Premises has been well received by various entities. How quiet enjoyment is defined is dictated, in part, by the nature of the community at issue. The Premises is located in a block of major businesses. Champion Street, which the Premises faces, is a bustling street in a busy Oakland neighborhood that itself is adjacent to two major surface streets and a busy interstate. People, cars, buses, and motorcycles (and their accompanying noises) are part of the fabric of a neighborhood of this nature. The Applicant has established that the Premises is an appropriate venue for the type 47 license sought. The Department recognized that the nature of the surrounding community, including multiple residences nearby, warranted conditions. Adherence to established conditions

and enforcement of those conditions are the appropriate avenues for addressing the legitimate concerns that were raised in these protests. Protestants and witness Fried raised very real concerns about amplified music emanating from the Premises on multiple occasions. The present conditional license includes an affirmative duty to not allow noise to emanate from the Premises. This condition, and any others that are imposed, will be permanent and enforceable parts of the license. (Findings of Fact ¶¶ 1-32)

15. The Protestants sought outright denial of the license. Outright denial is not warranted. Protestants argued that Department Precedential Decision 19-01-L (2019) supported outright denial of the license in this matter because of the Premise's impact on Rule 61.4 resident Fried, and the broader impact on the named Protestants. Precedential Decision 19-01-L does not support that conclusion. It is noted that the Precedential Decision resulted in an outcome where a license was issued, with terms and conditions. Precedential Decision 19-01-L ultimately concluded that terms and conditions were not sufficient to address the impact of privileges on a back deck in immediate proximity of that protestant's window. The Department Director ultimately concluded that removing the deck from the area where privileges could be exercised was the most appropriate remedy. "While it may be that "a no noise audible" condition is sufficient to establish non-interference in an appropriate situation (either alone, or when coupled with other separation or non-interference factors), in a case such as this where the existing separation factors have failed to prevent, and continue to fail to prevent, interference with nearby residents, this condition is not adequate." Department Precedential Decision 19-01-L (2019) at page 11.

16. The evidence from the initial hearing and the hearing after remand does support that imposition of additional terms and conditions on the license to better control noise and litter concerns can establish the non-interference required in this matter. Here, unlike in Department Precedential Decision 19-01-L, the additional measures would be effective with adherence to all of the conditions in the PCL and enforcement when issues arise. The burden of the Applicant has been met in this matter and the evidence presented by the Protestants has not rebutted the findings relied on by the Department in recommending the issuance of a license with conditions, including additional modifications to the conditions that were identified during the remand hearing.

17. The evidence establishes that the present conditions are inadequate to protect the quiet enjoyment of the residences surrounding the Premises. In addition to the conditions identified by the Department in the current PCL, additional conditions related to litter, further limiting the hours that privileges can be exercised, and keeping doors closed between the interior and the front patio are necessary. The Department's proposed language regarding the patio door effectively addresses the concerns raised by the Director in his remand order. The Department's proposal to eliminate any amplified music, even in the interior, is found to be too broad of a remedy. There is current language in the PCL that prohibits exterior amplification. The current language in the PCL also establishes a clear and enforceable volume criteria for interior amplified sounds. The Applicant knows what they must abide by and law enforcement has clear

Bombera, LLC  
dba: Bombera  
File: 47-623927  
Registration: 21091652  
Page 16

parameters to determine if there is a failure to comply with the terms of the conditional license.  
(Findings of Fact ¶¶ 1-32)

18. It is noted that the Applicant should consistently review the terms and conditions of the most current applicable PCL with its employees and agents. The Applicant is responsible for violations committed by them. The Applicant has presented evidence that it is also informing parties who contract for event use about noise requirements. In situations where the Premises is hosting a special event, the actions of participants may also lead to violations. Their actions as agents of the Applicant will be attributable to the operation of the Premises. It will be no excuse that they are not formal employees, and their violations of the applicable terms and conditions of the PCL could lead to a suspension or revocation of the Applicant's license.

19. Except as set forth in this decision, all other allegations in the protest and all other contentions of the parties lack merit.

Bombera, LLC  
dba: Bombera  
File: 47-623927  
Registration: 21091652  
Page 17

### ORDER

The protests in this matter seeking outright denial of the issuance of a type 47 license are overruled. The protests have established that additional conditions are required before issuance of a conditional type 47 license. The application of Bombera, LLC is denied unless, within 30 days following the decision in this matter becoming final, the Applicant executes a new Petition for Conditional License consistent with this Decision and Order.

The new Petition for Conditional License shall modify existing Condition Two to read:

“Sales, service and consumption of alcoholic beverages shall be permitted in or on the exterior patio area(s) only between the hours of 10:00 a.m. and 10:00 p.m. each day of the week.”

The new Petition for Conditional License shall add the following conditions:

“The petitioner(s) shall be responsible for maintaining free of litter the area adjacent to the premises over which they have control, as depicted on the most recent ABC-257.”

“The doors between the interior and front open-air patio shall be kept closed at all times during the operation of the premises except for any of the following reasons: normal ingress or egress, emergencies, or during deliveries. Said doors shall not consist solely of a screen or ventilated security door and shall not be propped open.”

Dated: August 7, 2024



Alberto Roldan  
Administrative Law Judge

<input checked="" type="checkbox"/> Adopt
<input type="checkbox"/> Non-Adopt: _____
By: <u>J. McCullough</u>
Date: <u>09/26/24</u>