

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

**AB-10014**

File: 48-411414; Reg: 23093145

P & T CANYON, INC.,  
dba Canyon Inn  
6821 Fairlynn Boulevard  
Yorba Linda, CA 92886,  
Appellant/Licensee,

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,  
Respondent

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

Appeals Board Hearing: May 9, 2025  
Sacramento, CA/Videoconference

**ISSUED MAY 15, 2025**

Appearances: Richard F. Ingle, as counsel for Appellant

Joseph P. Scoleri, as counsel for the Department of Alcoholic  
Beverage Control.

**OPINION**

**I. INTRODUCTION**

Appellant, doing business as Canyon Inn (appellant), appeals from a decision of the Department of Alcoholic Beverage Control (Department) revoking its on-sale general public premises license after finding that appellant permitted the entry and service of alcoholic beverages to multiple minors, including one who was later involved in a fatal motor vehicle collision. The Department adopted a proposed decision sustaining all twelve counts alleged in

the accusation and imposed a penalty of revocation, stayed for three years with conditions, including a 35-day suspension.<sup>1</sup>

## II. PROCEDURAL HISTORY

On April 26, 2023, the Department filed an accusation against appellant alleging twelve counts of misconduct, all arising from events on the evening of December 16, 2022. Count 1 alleged that appellant furnished alcohol to Noah Watson, a minor, in violation of Business and Professions Code section 25658, subdivisions (a) and (c)<sup>2</sup>, and that this violation proximately caused the death of Hunter Shekels. Counts 2 through 12 alleged that appellant permitted entry and/or service of alcoholic beverages to other minors, including Haley Fipps, Charles Mackie, Shannon Storer, and Casey Williams, in violation of section 25658, subdivision (a) (furnishing alcohol to a minor) and section 25665 (permitting a minor to remain in an on-sale general public premises).

An administrative hearing was held on May 22 and 23, 2024, before Administrative Law Judge (ALJ) Doris Huebel. The Department was represented by Alanna Ormiston. Appellant was represented by Richard Ingle. The Department presented testimony from Supervising Agent Daniel Plotnik of the Department of Alcoholic Beverage Control, and deputies Elliot Rubright, Kareem Elsemri, and Garrett Eggert of the Orange County Sheriff's Department.

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<sup>1</sup> The Department's decision, dated December 19, 2024, is set forth in the appendix.

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

Appellant called several witnesses, including owners Paul Ambrus and Teresa Glennan, bartender Haeley Cerda, and retired police officer Craig Hunter.

After the hearing, the ALJ issued a proposed decision sustaining all twelve counts. With respect to Count 1, the ALJ concluded that appellant's service of alcohol to Noah Watson was unlawful, and that Watson's resulting impairment was a proximate cause of the fatal collision. The ALJ emphasized that even partial consumption could support a finding of causation where the circumstances established a sufficient link between the licensee's conduct and the harm. On the remaining counts, the ALJ found that appellant failed to take adequate measures to prevent entry and service to other underage patrons, noting that staff often relied on familiarity and failed to verify identification.

On December 19, 2024, the Department adopted the proposed decision in full, and appellant filed a timely appeal.

### **III. STANDARD OF REVIEW**

The scope of the Board's review is defined by Business and Professions Code section 23084. The Board is not a trier of fact, and it does not reweigh evidence, evaluate witness credibility, or substitute its judgment for that of the Department.

The Board's review is limited to determining:

1. Whether the Department has proceeded without or in excess of its jurisdiction;
2. Whether the Department has proceeded in the manner required by law;
3. Whether the Department's decision is supported by its findings; and

4. Whether the findings are supported by substantial evidence in light of the whole record.

Substantial evidence is relevant evidence that 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.) The Board does not reweigh conflicting evidence but instead considers whether the Department's findings are supported by such evidence in light of the whole record. (*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 Board also considers whether any procedural error or evidentiary ruling prejudiced the appellant. Reversal is not warranted unless the appellant affirmatively demonstrates that an error resulted in prejudice. (Cal. Const., art. VI, § 13; Code Civ. Proc., § 475; *Reimel v. House* (1969) 268 Cal.App.2d 780, 787; *Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 308.) The burden is on the party seeking reversal to show that it is reasonably probable a more favorable result would have been reached without the alleged error. (*City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal.App.4th

29, 51–52; *Thornbrough v. Western Placer Unified School Dist.* (2013) 223 Cal.App.4th 169, 200.)

This standard imposes a high threshold. The Board may not overturn a decision simply because different inferences could be drawn from the evidence. The question is not whether the Board would have reached the same result, but whether the Department's findings are supported by substantial evidence and whether appellant has shown prejudicial error.

#### **IV. ANALYSIS**

##### **1. Count 1 – Proximate Cause of Death**

Appellant challenges the Department's finding that the service of alcohol to minor Noah Watson proximately caused the death of Hunter Shekels in a high-speed motor vehicle accident. Specifically, appellant argues that there was insufficient evidence to establish that Watson consumed more than a single sip of alcohol at appellant's premises, that he had been drinking elsewhere, and that there was inadequate evidence linking appellant's conduct to the fatality.

This issue presents a complex legal question. The record indicates that Watson entered appellant's premises using false identification, was served a distilled spirit by bartender Haeley Cerda, and took at least two sips of the drink while in the bar. He remained on the premises for 38 minutes and left shortly before the accident. Watson's blood alcohol content (BAC) was measured at 0.157 approximately an hour and a half after the crash. Law enforcement and

the coroner's office concluded that alcohol impairment contributed to the accident.

Appellant argues that the evidence does not establish that the drink served at appellant's premises was a substantial factor in Watson's intoxication or the accident. This argument has merit. Agent Plotnik testified that there was no definitive evidence of how much Watson consumed beyond two sips. The video footage does not show full consumption, and there is no expert toxicological evidence quantifying the contribution of the two sips to Watson's BAC.

Nevertheless, the Department was entitled to draw reasonable inferences from the circumstantial evidence presented, so long as those inferences were supported by the record and consistent with logic and experience. Watson was served alcohol in violation of the law, and he drove at a speed exceeding 100 miles per hour within minutes of leaving appellant's premises. The Department cited *Sagadin v. Ripper* (1985) 175 Cal.App.3d 1141, which held that a person who furnishes alcohol to a minor may be held liable for injuries or deaths resulting from that service, where it contributes to the minor's intoxication. In *Sagadin*, the court stated: "In order to violate section 25658, there must be some affirmative act of furnishing alcohol. 'The word "furnish" implies some type of affirmative action on the part of the furnisher. . . ." (*Id.* at p. 1157.) The court further explained that a jury may reasonably find that a person's unlawful service of alcohol to be a contributing cause of an accident, even where other individuals or establishments may have also furnished alcohol to the intoxicated minor. In such

cases, proximate cause does not require scientific certainty or exclusive fault, but only that the person's conduct was a substantial factor in bringing about the harm. (*Id.* at p. 1160-61.)

While the Board recognizes the complexity of this issue and the thoughtful arguments presented by appellant, we are not permitted to reweigh evidence or substitute our view of causation. The Department's finding is supported by evidence of service, partial consumption, and resulting impairment. That is sufficient under the applicable standard of review. In this case, the Department reasonably concluded that the unlawful service of alcohol to a minor contributed to the chain of events that led to a tragic and foreseeable result. The fact that other contributing causes may have existed does not absolve the licensee of liability where the licensee's conduct was a substantial factor in the harm.

## **2. Counts 2–12 – Service and Entry of Other Minors**

Appellant contends that it reasonably relied on fake identifications presented by the other minors and is entitled to the defense provided in section 25660. This statute provides a defense where a licensee is shown bona fide evidence of majority and acts in good faith and with due diligence. (Bus. & Prof. Code, § 25660, subd. (b).) California courts have clarified that the defense applies only when the identification appears bona fide, and the licensee inspects it with reasonable care. (*Masani v. Alcoholic Beverage Control Appeals Bd.* (2004) 118 Cal.App.4th 1429.)

The Department's findings are supported by substantial evidence. Surveillance video showed multiple minors entering the premises and being served alcoholic beverages without meaningful inquiry into their age. Several witnesses, including Department agents and law enforcement officers, testified that appellant's doorman, Chad Reed, frequently allowed individuals to enter based on prior familiarity rather than verifying their age on each occasion. Reed admitted that he did not consistently check identification for returning patrons, and other staff members confirmed that identification inspections, when performed, were cursory.

These findings fall short of the diligence required under *Masani*, where the court emphasized that the section 25660 defense requires more than passive acceptance of an identification. A licensee must inspect the identification with care, and a mere glance—or reliance on routine familiarity—is insufficient. In this case, appellant introduced no documentation of the identifications allegedly used and offered no testimony or exhibits to establish that the identifications appeared facially valid. The Department reasonably concluded that appellant failed to exercise the level of scrutiny required by law. Familiarity with a customer or reliance on prior entries is not a substitute for careful inspection.

Accordingly, the Department's findings on Counts 2 through 12 are supported by substantial evidence, and its decision regarding these violations is affirmed.

### **3. Mitigating Evidence and Penalty**

Appellant argues that the Department failed to give adequate weight to mitigating factors, including its 19-year history of compliance, employee training, and corrective measures taken after the incident, such as the installation of an identification scanner. Appellant asserts that these efforts should warrant a reduction in the penalty imposed by the Department.

The Department acknowledged these mitigating factors but determined that they did not outweigh the severity of the violations. In particular, the Department emphasized that the repeated service of alcohol to minors, coupled with the tragic outcome of a fatal accident, warranted significant discipline. The Department further noted that appellant's response to the incident was reactive, rather than preventative, and that appellant had demonstrated a history of insufficient supervision. The Department also found that appellant had previously been warned about issues involving the same bartender but failed to implement adequate oversight until after the initiation of disciplinary proceedings.

The Board is bound by the principles set forth in the Alcoholic Beverage Control Act, which grants the Department discretion in determining penalties. While mitigation is an important consideration, the law permits the imposition of severe penalties when violations are grave. Under California Code of Regulations, title 4, section 144, the Department may consider factors such as the seriousness of the violation and the licensee's disciplinary history in determining an appropriate penalty. Here, the Department properly considered the gravity of

the violation, which resulted in the tragic death of a minor, as a significant aggravating factor. The Board finds that the penalty imposed by the Department—revocation stayed with conditions, including a 35-day suspension—is within the Department's discretion and is not arbitrary or capricious.

## **V. CONCLUSION**

Appellant was afforded a full and fair opportunity to contest the charges at a properly conducted administrative hearing. The Department presented credible and substantial evidence that supported each sustained count, and appellant was represented by counsel and given an opportunity to present a defense.

Although the question of proximate cause in Count 1 presents a close and factually complex issue, the Department applied the correct legal standard and relied on evidence that a reasonable mind might accept as adequate. The remaining counts are supported by substantial evidence, and appellant's statutory defenses were properly rejected under settled law.

The Department's decision reflects a careful weighing of aggravating and mitigating factors and falls within the discretion afforded to it under the Alcoholic Beverage Control Act. The Board is not authorized to substitute its judgment for that of the Department where, as here, the findings are supported by substantial evidence and no prejudicial error is shown.

**ORDER**

Pursuant to Business and Professions Code section 23085, and based on the findings above, the decision of the Department 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 ACCUSATION  
AGAINST:**

P & T CANYON, INC.  
CANYON INN  
6821 FAIRLYNN BLVD  
YORBA LINDA, CA 92886

ON-SALE GENERAL PUBLIC PREMISES LICENSE

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

SANTA ANA DISTRICT OFFICE

File: 48-411414

Reg: 23093145

**CERTIFICATE OF DECISION**

**NOTICE CONCERNING PROPOSED DECISION**

To the parties in the above-entitled proceedings:

You are hereby advised that the Department considered, but did not adopt, the Proposed Decision in the above titled matter and that the Department will itself decide the case pursuant to the provisions of Section 11517(c)(2)(E). A copy of the Proposed Decision has previously been sent to all parties.

The Department has requested that a transcript of the hearing be prepared. A copy of the record will be made available to you. Upon receipt of the hearing transcript, the Department will notify you of the cost of a copy of the record. At that time, you all also be advised of the date by which written argument if any, is to be submitted.

Sacramento, California

Dated: August 29, 2024



Matthew D. Botting  
General Counsel

**RECEIVED**

**AUG 29 2024**

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:

P & T Canyon, Inc.	}	File: 48-411414
Dbas: Canyon Inn	}	
6821 Fairlynn Boulevard	}	Reg.: 23093145
Yorba Linda, California 92886	}	
	}	License Type: 48
Respondent	}	
	}	Word Counts: 28,888; 21,543
	}	
	}	Kennedy Court Reporters:
	}	Court Reporter: Dalauna Cardoza
	}	Video Host: Alex Burke
	}	
	}	
<u>On-Sale General Public Premises License</u>	}	<b><u>PROPOSED DECISION</u></b>

Administrative Law Judge D. Huebel, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter by video conference on May 22 and 23, 2024.

Alanna Ormiston, Attorney, represented the Department of Alcoholic Beverage Control (the Department).

Richard F. Ingle, Attorney, represented Respondent, P & T Canyon, Inc. Respondent's corporate president, Paul Ambrus, and vice president, Teresa Glennan, were present.

The Department seeks to discipline the Respondent's license on the grounds that, on or about December 16, 2022:

1. the Respondent-Licensee's agent or employee, Haeley Cerda, at said premises, violated Business and Professions Code sections 25658(a) and (c)<sup>1</sup> by furnishing, giving or giving away an alcoholic beverage, to-wit: distilled spirit, to Noah Watson, a person under the age of 21 years, after which Noah Watson consumed the alcoholic beverage and thereby proximately caused death to Hunter Shekels. (Count 1);
2. the Respondent-Licensee's agent or employee, Haeley Cerda, at said premises, sold, furnished, gave or caused to be sold, furnished or given, an alcoholic beverage, to-wit: distilled spirit, to Noah Watson, a person under the age of 21 years, in violation of section 25658(a). (Count 2);

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

3. the Respondent-Licensee's agent or employee, Cole Johnson, at said premises, sold, furnished, gave or caused to be sold, furnished or given, an alcoholic beverage, to-wit: White Claw Hard Seltzer to Haley Fipps, and beer to Shannon Storer, Charles Mackie and Casey Williams, individuals under the age of 21, in violation of section 25658(a). (Counts 3, 4, 5 and 6);
4. the Respondent-Licensee's agent or employee, Chad Reed, permitted Noah Watson, Hunter Shekels, Haley Fipps, Shannon Storer, Charles Mackie, and Casey Williams, individuals under the age of 21 years, to enter and remain in the licensed premises without lawful business therein, in violation of section 25665. (Counts 7, 8, 9, 10, 11 and 12.) (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 on May 23, 2024.

### FINDINGS OF FACT

1. The Department filed the accusation on April 26, 2023.
2. The Department issued a type 48, on-sale general public premises license to the Respondent for the above-described location on May 19, 2004 (the Licensed Premises).
3. The Respondent has been the subject of the following discipline:

<u>Date of Violation</u>	<u>Reg. No.</u>	<u>Violation</u>	<u>Penalty</u>
April 24, 2021	21091636	BP§§25631 and 25632	POIC in lieu of 15 day susp.

The foregoing disciplinary matter is final. (Exhibit 2.)

4. The Department received complaints that on December 16, 2022, minors were drinking at the Licensed Premises, and two minors were thereafter involved in a traffic collision involving a fatality. The Department's TRACE<sup>2</sup> unit investigates alcohol-related incidents involving minors where there is a fatality or great bodily injury resulting from the sale or service of alcohol at a licensed premises. The Department's Cerritos Enforcement Office Supervising Agent (SA) Plotnik was assigned to investigate the matter. As part of his investigation, SA Plotnik spoke with deputies of the Orange County Sheriff's Department (OCSD) and others relating to the said complaints,

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<sup>2</sup> TRACE is the acronym for Target Responsibility for Alcohol Connected Emergencies.

including, but not limited to, the details of the fatal traffic collision. SA Plotnik appeared and testified at the hearing regarding his investigation into the alleged violations.

5. On December 24, 2022, SA Plotnik visited the Licensed Premises and identified himself to the on-duty bartender, who contacted Paul Ambrus, corporate president for Respondent. Shortly thereafter Paul Ambrus met with SA Plotnik, who requested the video surveillance footage depicting the said minors in the Licensed Premises on December 16, 2022. The Respondent cooperated and produced to the Department said video footage at a later date, which footage SA Plotnik reviewed and testified to the contents thereof based on his investigation.<sup>3</sup>

6. The video surveillance for December 16, 2022, depicts a total of nine individuals entering the Licensed Premises, with seven initially entering at approximately 9:58 p.m., namely, Noah Watson, Hunter Shekels, Aaron Duncan, Christian Germany, Shannon Storer, Charles Mackie, and Zach Duncan. The video depicts Respondent's employee, Chad Reed, hand-gesturing/requesting to see identifications (IDs), and quickly looking at the IDs of the first seven persons, four of whom were minors.<sup>4</sup> Chad Reed did not make a diligent inspection of the IDs, looking at them for approximately one second and not appearing to compare them with the person holding the IDs.<sup>5</sup> Reed walked away and out of view. Thereafter, at approximately 9:59 p.m., the video depicts Casey Williams, another minor, walk in. At 10:02 p.m., the final minor, Haley Fipps, entered the Licensed Premises.<sup>6</sup> The video does not show that any type of ID scanning or black light device was used to check the minors' IDs on December 16, 2022. Of the six minors who entered that night, five minors, Noah, Hunter, Shannon, Charles, and Casey, were asked for and showed IDs.<sup>7</sup> Charles and Casey later admitted to SA Plotnik they showed fraudulent IDs.<sup>8</sup> SA Plotnik testified that he never saw the IDs used at the Licensed Premises on December 16, 2022, by minors Shannon, Charles, and Casey.<sup>9</sup>

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<sup>3</sup> Video exhibits 3A through 3I.

<sup>4</sup> Minors: Noah Watson, Hunter Shekels, Shannon Storer, and Charles Mackie.

<sup>5</sup> Exhibit 3A video time stamp 21:58:08 to 21:59:24.

<sup>6</sup> Hereinafter each of the minors will be referred to by their first names since two minors have the same last name.

<sup>7</sup> There is no evidence Haley was asked for or showed an ID. The video did not capture Casey's ID being examined, as Chad Reed had walked out of view of the video camera before Casey entered. Exhibit 5 – copy of Minor Affidavit ABC-312 form for Haley Fipps.

<sup>8</sup> Exhibit 4 – copy of Minor Affidavit ABC-312 form for Charles Mackie.

<sup>9</sup> Although SA Plotnik also testified he never saw any ID used by Haley Fipps on December 16, 2022, the evidence established that Haley was never asked for and did not show an ID in the Licensed Premises on December 16, 2022.

7. As to what IDs the minors showed Chad Reed or Respondent's staff to gain entry into the Licensed Premises on December 16, 2022, neither party produced any of the minor IDs that were used. There is no evidence as to the photograph and descriptive information, if any, listed on the IDs, fraudulent or otherwise.

8. At approximately 10:00 p.m., Christian walked up to and stood at the Licensed Premises' fixed bar. There were other patrons seated at the fixed bar to the left and right of Christian. At approximately 10:01 p.m. bartender Haeley Cerda (hereinafter referred to as bartender Cerda), who was behind the fixed bar, quickly walked over to and approached Christian. Bartender Cerda and Christian entered into a verbal exchange with Christian placing an order for two distilled spirit drinks. There was no evidence that Christian was a minor. Immediately thereafter, Noah walked up to the fixed bar and stood side-by-side, next to Christian with Noah's left arm around Christian. Bartender Cerda quickly poured two glasses of distilled spirits, during which, the video depicts bartender Cerda engaging verbally with Noah, while Christian's head is down. Bartender Cerda placed the alcoholic beverage drinks in front of Christian.<sup>10</sup> Christian handed bartender Cerda payment for the two alcoholic beverages, and bartender Cerda walked away, out of view to the left side of the bar. Noah raised his arms toward the ceiling and shook them vigorously in the air. Bartender Cerda turned around and walked to the right side of the bar, out of view of Christian and Noah. Thereafter, at approximately 10:02 p.m., Christian and Noah each took one of the glasses of distilled spirits. Christian drank from his glass. The video depicts Noah bending forward and taking a drink from the glass of distilled spirits he picked up while at the fixed bar.<sup>11</sup> The video depicts Noah turning around, bending forward and he appears to bring the glass to his mouth and take another drink of the alcoholic beverage.<sup>12</sup> There was no evidence presented that Noah drank any other alcoholic beverage than the distilled spirits. At various times, including after entering the Licensed Premises and prior to approaching the bar with Christian as well as thereafter, Noah is seen in the video dancing with his hands in the air in an unbridled manner.<sup>13</sup>

9. At approximately 10:03 p.m., Zach approached the fixed bar, whereupon bartender Cole Johnson (hereinafter referred to as bartender Johnson), who was behind the fixed bar, walked up to Zach, with Haley standing adjacent to Zach. Zach and bartender Johnson both leaned in toward each other to speak, with Zach placing a drink order for two alcoholic beverages. There was no evidence Zach was a minor. Bartender Johnson thereafter quickly walked to the coolers, selected a White Claw Hard Seltzer (an

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<sup>10</sup> While SA Plotnik testified that bartender Cerda placed the drinks in front of both Christian and Noah, the video surveillance footage shows the distilled spirits were placed in front of Christian.

<sup>11</sup> Exhibits 3A and 3C video time stamp 22:02:10.

<sup>12</sup> Exhibits 3A and 3C video time stamp 22:02:18.

<sup>13</sup> Exhibits 3A and 3D, 3G.

alcoholic beverage) and placed it on the bar counter in front of Zach while Zach was interacting with Haley. Bartender Johnson then quickly grabbed a beer, took the cap off and placed it on the bar counter next to the White Claw Hard Seltzer with Zach handing payment to bartender Johnson for the alcoholic beverages.<sup>14</sup> Bartender Johnson quickly walked away to process the payment at the other end of the bar. Zach grabbed both the beer and the White Claw Hard Seltzer and handed the latter to Haley when bartender Cerda approached Zach. Haley took the White Claw Hard Seltzer and consumed some of the alcohol while still at the fixed bar, as bartender Johnson returned to place a card holder and receipt for Zach to sign.<sup>15</sup>

10. Haley later acknowledged on March 8, 2023, to SA Plotnik and signed under penalty of perjury in a Minor Affidavit, that she was not asked for an ID and did not present an ID prior to bartender Johnson serving the White Claw Hard Seltzer to Zach, who then handed it to Haley on December 16, 2022. Haley admitted she consumed approximately one-half of the White Claw Hard Seltzer. Haley further admitted that prior to December 16, 2022, she has been inside, purchased and consumed alcoholic beverages in the Licensed Premises. Haley also admitted to presenting a fake ID in the Licensed Premises prior to and after December 16, 2022,<sup>16</sup> and being permitted into the Licensed Premises on one occasion with an obviously fraudulent ID. In her experience the staff's ID checking at the Licensed Premises was poor.<sup>17</sup>

11. On December 16, 2022, at approximately 10:04 p.m., Aaron and Shannon stood at the Licensed Premises' fixed bar. Aaron ordered two beers from bartender Johnson. There was no evidence Aaron was a minor. Bartender Johnson retrieved two beer bottles from the refrigerated section below the bar counter and placed them on the counter in front of Aaron. Shannon handed bartender Johnson a credit card to pay for the alcohol. Bartender Johnson did not ask to see Shannon's ID. Bartender Johnson walked away to a cash register terminal to process the payment. Aaron retrieved the two beer bottles from the bar counter and handed one to Shannon. Aaron and Shannon both consumed the alcoholic beverages from their respective beer bottles while at the fixed bar. Bartender Johnson returned the credit card to Shannon in a card holder with a receipt for her

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<sup>14</sup> The payment appears to be some type of card payment as the video in exhibit 3A depicts Zach handing what appears to be a card to bartender Johnson, who walks to the cashier terminal and brings back to Zach a card holder; the video in exhibit 3F depicts Zach appearing to sign a receipt in a card holder and thereafter closing the card holder.

<sup>15</sup> Video exhibits 3A time stamp 22:03:10 to 22:03:58, 3E, 3F and Exhibit 5 – copy of Minor Affidavit ABC-312 form for Haley Fipps dated March 8, 2023.

<sup>16</sup> Exhibit 5 – copy of Minor Affidavit ABC-312 form for Haley Fipps dated March 8, 2023.

<sup>17</sup> Admissible as administrative hearsay to supplement and explain Paul Ambrus' direct testimony of the problem Respondent has had and continues to have with minors entering the Licensed Premises with fraudulent IDs.

signature, whereupon Shannon signed the receipt and placed the card holder on the bar counter.<sup>18</sup>

12. Later, at approximately 10:11p.m., Charles was standing at the Licensed Premises' fixed bar with Casey to his left. Charles got the attention of bartender Johnson and ordered two beers. Bartender Johnson did not ask Charles for his ID. Bartender Johnson served two bottles of beer to Charles, while Casey was standing adjacent to Charles. Charles paid for the alcoholic beverages and then gave one of the beer bottles to Casey. Casey and Charles clicked their beer bottles together in a cheer and simultaneously took a drink from their respective beer bottles while at the fixed bar.<sup>19</sup>

13. Charles' beer was a 12-ounce Coors Light, which he later acknowledged to SA Plotnik on March 3, 2023, and signed under penalty of perjury in a Minor Affidavit to having drank the entirety thereof.<sup>20</sup> Charles further admitted that when he was asked for ID, he presented a fake California ID to gain entrance into the Licensed Premises on December 16, 2022. Charles admitted showing a fake California ID in the Licensed Premises once a week over the course of a year and admitted to purchasing and consuming alcoholic beverages in the Licensed Premises prior to December 16, 2022.<sup>21</sup> Charles was very familiar with the Licensed Premises, and its staff, including the bouncers, doormen, and bartenders, specifically naming bouncer/doorman Chad Reed and bartender Haeley Cerda. Charles said that according to his experience with the staff's ID checking habits, in his gaining entry into the Licensed Premises, he found Chad Reed to be very lenient. There were times when Charles presented no ID and was permitted entry. On one occasion Charles helped three minor females gain entry into the Licensed Premises with a single fraudulent ID. Charles took the fraudulent ID used by the first female who was allowed into the premises, he exited through another door, handed the same ID to the second female and repeating this task for a third female. Charles was aware of many other minors who were admitted entry into the Licensed Premises, including Sarah Ward.<sup>22</sup>

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<sup>18</sup> Video exhibits 3F, 3G and 3A at time stamp 22:04:30 to 22:06:13; Exhibit 6 – copy of American Express credit card receipt on the right-hand side of the page reflects a total charge of \$17.50, including tip, with Shannon's signature and typed name under her signature of "Storer/Shannon N." SA Plotnik testified that the agents later determined the time was off on the credit card terminal, which explained why the credit card receipt was not synchronized with the video camera time stamp.

<sup>19</sup> Video exhibits 3A at time stamp 22:11:45 to 22:12:23, and 3H.

<sup>20</sup> Exhibit 4 – copy of Minor Affidavit ABC-312 form for Charles Mackie dated March 3, 2023.

<sup>21</sup> Exhibit 4 – copy of Minor Affidavit ABC-312 form for Charles Mackie dated March 3, 2023.

<sup>22</sup> Admissible as administrative hearsay to supplement and explain Paul Ambrus' direct testimony of the problem Respondent had been having with minors entering the Licensed Premises with fraudulent IDs.

14. Noah, Hunter, Christian, Charles, Zach, Haley and Casey exited the Licensed Premises about 10:40 p.m., with Aaron and Shannon leaving the premises at approximately 10:41 p.m.<sup>23</sup> The foregoing individuals were allowed to remain in the Licensed Premises for approximately 38, 41, 42 and 43 minutes, respectively.<sup>24</sup>

15. Noah Watson was born on February 28, 2003. (Exhibit 13 – Calif. DMV Image Record, page 2/bate stamp 78.) On December 16, 2022, he was 19 years old. Hunter Shekels was born on July 12, 2002. (Exhibit 13 – Calif. DMV Image Record, page 1/bate stamp 77.) On December 16, 2022, he was 20 years old. Haley Fipps was born on May 3, 2002. (Exhibit 13 – Calif. DMV Image Record, page 5/bate stamp 81.) On December 16, 2022, she was 20 years old. Shannon Storer was born on September 27, 2002. (Exhibit 13 – Calif. DMV Image Record, page 6/bate stamp 82.) On December 16, 2022, she was 20 years old. Charles Mackie was born on May 2, 2002. (Exhibit 13 – Calif. DMV Image Record, page 3/bate stamp 79.) On December 16, 2022, he was 20 years old. Casey Williams was born on February 19, 2003. (Exhibit 13 – Calif. DMV Image Record, page 4/bate stamp 80.) On December 16, 2022, he was 19 years old. The photographs in the IDs of each of the foregoing depicted youthful appearing individuals. There was no evidence that Christian Germany, Aaron Duncan and Zach Duncan were minors and not 21 years of age or older on December 16, 2022.

16. At some point after leaving the Licensed Premises, Noah and Hunter got into a Ford F350 truck, with Noah in the driver's seat and Hunter in the passenger seat. Approximately two miles from the Licensed Premises Noah, while driving at 100 mph while under the influence, struck and toppled a large Eucalyptus tree, causing injury to himself and resulting in the death of Hunter. At approximately 10:50 p.m., the Orange County Sheriff's Department dispatch received an emergency call reporting the accident. There was no evidence as to what time the accident occurred.

17. OCSD Deputy Rubright appeared and testified at the hearing. Deputy Rubright has worked for the OCSD for approximately seven years. For approximately two and one-half years he has been assigned to the Regional Traffic Bureau as a member of the Major Accident Reconstruction/Investigation Team (MART), which responds to fatal traffic collisions. He also is a member of the OCSD DUI Task Force and is responsible for reviewing traffic collision reports. Deputy Rubright was assigned to interview and

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<sup>23</sup> Video exhibit 3I time stamp 22:40:25 to 22:41:06.

<sup>24</sup> Noah, Hunter, Christian, Charles, and Zach entered at 9:58 p.m. and exited at 10:40 p.m., for a total of 42 minutes; Haley entered at 10:02 p.m. and exited at 10:40 p.m., for a total of 38 minutes; Shannon and Aaron entered at 9:58 p.m. and exited at 10:41 p.m., for a total of 43 minutes; Casey entered at 9:59 p.m. and exited at 10:40 p.m., for a total of 41 minutes.

conduct a drug recognition expert (DRE) evaluation upon Noah Watson. Deputy Rubright went to the Santa Ana Global Hospital to evaluate Noah Watson for impairment and arrived at 11:40 p.m. Noah Watson was in the emergency room on a gurney wearing a c-spine neck collar and being treated for his injuries related to the said traffic collision. Noah received sutures for a laceration above his right eye and treatment for a fractured right femur. Deputy Rubright observed Noah to display the objective signs and symptoms of intoxication consisting of bloodshot, watery eyes, slurred speech, and an odor of alcoholic beverage on his breath. Noah admitted to drinking alcohol. Deputy Rubright asked Noah where he was going when he crashed, to which Noah replied, "Here." Deputy Rubright asked if Noah meant he was driving to the hospital, to which Noah replied, "Yes, because the bar is here." Noah had difficulty explaining the events leading up to the collision.

18. Deputy Rubright conducted a Horizontal/Vertical Gaze Nystagmus test<sup>25</sup> upon Noah while he was seated on the gurney, which test resulted in a displayed lack of smooth pursuit, distinct and sustained nystagmus at maximum deviation, and an angle of onset of nystagmus prior to a 45-degree angle in both of his eyes. Deputy Rubright then conducted a Modified Romberg Balance test<sup>26</sup> with Noah displaying a slow internal clock by estimating 30 seconds as 40 seconds.

19. Deputy Rubright conducted on Noah multiple breath alcohol content tests using two devices, including a preliminary alcohol screening device and an evidential breath testing device. On December 17, 2022, for the first test, Deputy Rubright collected two samples at 12:31 a.m. and 12:34 a.m., with the tests returning a breath alcohol content (BAC) result of 0.154 and 0.155, respectively. After placing Noah under arrest, Deputy Rubright conducted two evidential breath tests upon Noah, collecting samples at 12:38 a.m. and 12:41 a.m., which resulted in a BAC of 0.157 for each test.

20. Based on Deputy Rubright's training and experience as a Drug Recognition Expert, the objective signs and symptoms displayed by Noah, Noah's performance on the drug

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<sup>25</sup> Deputy Rubright said this test is typically conducted with the subject standing up with their heels and toes touching, arms down at their sides, and Deputy Rubright holding a ball point pen or using his fingertip held approximately 12 to 15 inches away from the subject's face, slightly elevated, using timing and clues to check for impairment during the test. Due to Noah's broken femur the test was conducted while Noah sat on the gurney, which Deputy Rubright said would not drastically change the results.

<sup>26</sup> Deputy Rubright testified that this test is typically conducted by having the subject stand up with heels and toes touching and arms down at their side, with an instruction to the subject to tilt their head back, close their eyes and then wait for the passage of 30 seconds, once 30 seconds elapses the subject is to tilt their head forward, open their eyes and say stop. Due to Noah's broken femur, Deputy Rubright conducted the test with Noah seated on the hospital gurney.

evaluation, Noah's statements and test results, it was Deputy Rubright's opinion Noah Watson was under the influence of alcohol and unable to operate a motor vehicle safely. Deputy Rubright prepared a report of his investigation, which report was admitted into evidence as exhibit 9.

21. Deputy Rubright testified that he did not review any of the video footage from the Licensed Premises of December 16, 2022, related to the report he generated as part of his investigation. He said that several months after the collision in question he watched the Licensed Premises' video surveillance footage of December 16, 2022. During that viewing, Deputy Rubright did not observe any evidence in the video surveillance footage that he reviewed of Noah consuming alcohol that would have raised Noah's blood alcohol content to 0.157. There was no evidence which video footage Deputy Rubright viewed, if he watched all the video clips or only portions thereof.<sup>27</sup>

22. OCSD Deputy Elsemri appeared and testified at the hearing. Deputy Elsemri has been assigned to the OCSD's Regional Traffic Bureau since 2016 and has been with the OCSD since 2007. Deputy Elsemri said his current duties with the OCSD Regional Traffic Bureau include handling all matters traffic-related, reviewing collision reports generated in the field, running DUI check points and DUI saturation patrols, as well as being a member of the MART. Deputy Elsemri's experience with accident reconstruction includes over 700 hours of training related to traffic collision investigation, traffic enforcement and DUI investigation. For approximately two years he was a motor deputy in the City of Lake Forest where he responded to traffic collisions as part of his regular assignment. Deputy Elsemri has been a part of the MART since 2015 and since then he has been assigned as case agent for more than 30 cases. He is accredited by ACTAR (Accreditation Commission of Traffic Accident Reconstruction), which is an accrediting body for both public and private sector reconstructionist.

23. Deputy Elsemri investigated the said traffic collision on December 16, 2022, as the lead investigator. He was dispatched to the scene at 10:51 p.m. Upon arrival Deputy Elsemri observed the Ford F350 had uprooted the Eucalyptus tree and split it in half, with the tree still on top of the truck. (Exhibit 8 – copy of pages 12 through 15 only of 42 pages, of Deputy Elsemri's report with photographs.) There was debris from the collision throughout the scene, including several empty Coors Light beer cans. There was a critical speed yaw tire mark on the roadway and a furor with the mark leading up to the tree. The Ford truck sustained major damage to the cab, which was dislodged from the frame and no longer in line with either the frame or bed of the truck. There was major damage to the front passenger area of the truck where the truck collided into the tree, where Hunter Shekels had been sitting but was partially ejected. The Orange

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<sup>27</sup> Upon cross-examination Deputy Rubright was asked if he "ever reviewed *any* of the footage," to which he replied "yes."

County Fire Authority had to extricate Hunter from the vehicle and deputies attempted lifesaving efforts. Deputy Elsemri took photographs at the collision scene (exhibit 8) and prepared reports as part of his investigation, which were admitted as exhibits 7 and 10.<sup>28</sup> Deputy Elsemri noted Noah Watson as the driver, with severe injuries, including a fractured right femur and lacerations requiring suture above his right eye. Deputy Elsemri noted Hunter Shekels as the passenger with fatal injuries, including multiple blunt force traumatic injuries. By the time Deputy Elsemri arrived at the collision site Hunter Shekels had already been declared deceased at the scene. Deputy Elsemri used an unmanned aircraft/drone and took additional digital photographs of the scene, which were then processed through Pix4D, a photogrammetry software that created an overhead Orthomosaic as well as a 3D point cloud. The 3D point cloud was used to measure the incline in the roadway and the Orthomosaic was used to create diagrams with a scale of the scene and evidence that was located on the scene. (Exhibit 7.)

24. Deputy Elsemri prepared a speed analysis of the Ford F350 at the time of the collision. (Exhibit 10.) Deputy Elsemri used the measurements of the yaw mark found in the roadway and specific formulas to calculate the approximate speed of the vehicle at the time of the collision. Based on Deputy Elsemri's training and experience, the yaw mark calculations, the damage to the Ford truck, and uprooting and breaking a tree of that size, he determined it was reasonable to conclude the vehicle was traveling at approximately 100 mph<sup>29</sup> at the time of the collision. Deputy Elsemri further determined, based on the details of the investigation, that Noah Watson caused the collision while driving under the influence of alcohol with an associated factor of unsafe speed.

25. OCSO Deputy Eggert appeared and testified at the hearing. Deputy Eggert has been working for the OCSO since 2011. He is assigned to the Regional Traffic Bureau as a member of the MART. On December 20, 2022, Deputy Eggert attended the autopsy of Hunter Shekels, which was performed by Dr. Yong-son Kim, a forensic pathologist with the Orange County Sheriff-Coroner's Office. Dr. Kim prepared an autopsy report which was admitted as exhibit 15. Dr. Kim determined Hunter Shekel's cause of death to be multiple blunt force traumatic injuries, consistent with a high-speed vehicular collision. The specific injuries noted in the autopsy report include, but were not limited to, a torn aorta, rib and arm fractures, lacerations to the lung and spleen, and a swollen brain. (Exhibit 15.)

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<sup>28</sup> Exhibit 7 is a copy of pages 1 through 7 only of 42 pages relating to Deputy Elsemri's Traffic Collision Report. Exhibit 10 is a copy of pages 37 through 42 relating to Deputy Elsemri's Speed Analysis.

<sup>29</sup> Deputy Elsemri testified that to make the yaw mark on a flat road service the vehicle would have to travel approximately 100 mph (with a conservative coefficient of friction of 0.70), and due to the incline of the road the vehicle would have to travel at 107 mph (with a coefficient of friction of 0.82, which includes the grade of the road).

26. SA Plotnik interviewed Casey Williams as part of his investigation. Casey admitted that on December 16, 2022, when he was asked for ID, he showed a fake ID in the Licensed Premises. Casey was familiar with the Licensed Premises. Casey admitted to being in the Licensed Premises prior to December 16, 2022, and using a fake ID to gain entry on at least 10 prior occasions. The fraudulent ID had the photograph of someone, whom he said did not resemble him. Casey's experience with the Respondent staff's ID checking was that they were just going through the motions and were not really checking IDs.<sup>30</sup>

27. SA Plotnik interviewed Sarah Ward as part of his investigation. Sara was born on May 5, 2003. (Exhibit 13 – Calif. DMV Image Record, page 7/bate stamp 83.) Sarah was very familiar with the Licensed Premises. She began going to that premises when she was 17 years old and used a fraudulent ID to gain entry, which ID had the photograph of someone whom she said did not resemble her. Sarah's experience was that Chad Reed was extremely lenient with his ID checking procedure and Sarah took advantage of it. Each time Sarah was inside the Licensed Premises she was with other minors.<sup>31</sup>

28. SA Plotnik requested to interview Shannon Storer as part of his investigation. Ms. Storer's attorney declined to permit her to be interviewed.

29. SA Plotnik interviewed Chad Reed as part of his investigation. Mr. Reed admitted that on December 16, 2022, he did not know any of the said minors/persons that entered the Licensed Premises other than Noah Watson. Mr. Reed estimated that Noah Watson was at the Licensed Premises every week. Mr. Reed's impression of Noah Watson was that he was an annoying, spoiled kid.<sup>32</sup> Mr. Reed claimed to have checked Noah Watson's ID on dates prior to December 16, 2022, and claimed to believe it to be genuine.<sup>33</sup> Criminal charges were filed against Chad Reed, for allowing minors to enter

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<sup>30</sup> Admissible as administrative hearsay to supplement and explain Paul Ambrus' direct testimony of the problem Respondent had been having with minors entering the Licensed Premises with fraudulent IDs.

<sup>31</sup> Admissible as administrative hearsay to supplement and explain Paul Ambrus' direct testimony of the problem Respondent had been having with minors entering the Licensed Premises with fraudulent IDs.

<sup>32</sup> Admissible under Evidence Code section 1224, authorized admission, and/or vicarious admission. Also admissible as administrative hearsay to supplement and explain Paul Ambrus' direct testimony of the problem Respondent had been having with minors entering the Licensed Premises with fraudulent IDs.

<sup>33</sup> Admitted as administrative hearsay, which supplements and explains Paul Ambrus' direct testimony of the problem Respondent had with minors gaining access to the Licensed Premises with fraudulent IDs.

and remain in a public premises and for causing to be furnished alcoholic beverages to a minor, to which Mr. Reed pled guilty.

30. SA Plotnik interviewed Haeley Cerda as part of his investigation. Haeley Cerda admitted the alcoholic beverage she served to Noah Watson on December 16, 2022, was some sort of distilled spirit.

31. SA Plotnik testified that Paul Ambrus, Teresa Glennan, Haeley Cerda, Cole Johnson and Chad Reed were all cooperative when he spoke with them during his investigation. SA Plotnik testified that Paul Ambrus, the corporate officer of the Respondent/Licensee, is currently suing some of the minors who were present in the Licensed Premises on December 16, 2022, for fraudulent conduct. Criminal charges were filed against Noah Watson, who was convicted of vehicular manslaughter while intoxicated, which is a felony.

32. SA Plotnick testified to his training and experience. He said that in addition to on-the-job training and dealing with persons under the influence of drugs and alcohol, he has gone through drug recognition expert training, where he passed and was certified as a drug recognition expert (DRE). As a DRE he can identify symptomology with regards to stimulants, alcohol, hallucinogens, narcotics, and opiates. As a DRE he also understands the biology and metabolism of alcohol related to blood alcohol content. SA Plotnik said the manner in which a person's body processes alcohol varies with each person's body metabolism and the presence of food. He explained the biology of food in the stomach, which opens the pyloric valve and allows alcohol to be processed.

33. SA Plotnik testified that as to the empty Coors Light beer cans that were found at the collision scene there was no evidence from the investigation regarding who consumed the beer from the Coors Light cans or when they were consumed.

**(Respondent's Witnesses)**

34. Paul Ambrus appeared and testified at the hearing. Mr. Ambrus testified that he is the president and CEO of Respondent P & T Canyon, Inc., which he described as a sports bar and grill. He said his duties include overseeing day-to-day operations, hiring and firing employees, bartending, and "there's nothing I pay somebody to do that I don't do myself, so basically everything." Mr. Ambrus said that over the last 19 years he has never knowingly permitted any person under the age of 21 to enter the Licensed Premises. With the exception to the present matter, since 2004, the Respondent has not received any warning, citation or disciplinary action for allowing persons under the age of 21 into the Licensed Premises, sale to minor violations or for allowing minors to consume alcoholic beverages inside the Licensed Premises.

35. Mr. Ambrus said that after the COVID-19 Pandemic restrictions were lifted and the Licensed Premises reopened, he noticed the customer base, which generally were persons in their thirties and forties, had changed with an influx of younger persons entering the Licensed Premises. He said there was a problem with minors using fake IDs to gain entry to the Licensed Premises. He said parents called him advising him that their minor children's phone-tracking Apps showed they were at the Licensed Premises. Mr. Ambrus told the parents the minors most likely had good fake IDs if they were in the Licensed Premises. Mr. Ambrus asked the parents to send photographs of their children to give to Respondent's doormen to prevent them from entering. None of the parents provided their children's photographs. Mr. Ambrus said a consistent problem arose when Respondent's staff refused entrance to "kids" who either did not have IDs or whose fake IDs were confiscated, resulting in those "kids" hanging out and drinking in the Licensed Premises' parking lot.

36. In September of 2020, Mr. Ambrus said he added two security guards to prevent the problem of minors entering the Licensed Premises and consuming alcoholic beverages. Prior to and after December 16, 2022, Mr. Ambrus said he made twelve calls to the OC Sheriff's Department requesting assistance in keeping minors out of the Licensed Premises and its parking lot. (Exhibit A – copy of list of calls made; 10 calls before and two calls after December 16, 2022.) Mr. Ambrus said he asked the OCSD to send a patrol vehicle between 1:00 a.m. and 2:00 a.m. to drive around the parking lot to dissuade the minors from gathering in the parking lot.

37. Mr. Ambrus said Department agents conducted a routine inspection at the Licensed Premises in October of 2022, which resulted in no warning, citation or disciplinary action, but positive accolades. The inspection revealed that Respondent's staff were using black light scanners to check customers' IDs. Mr. Ambrus spoke to Department agents and informed them of the problem with minors attempting to enter the Licensed Premises with fake IDs.

38. Mr. Ambrus said that since 2004 he has caught approximately a handful of minors per year attempting to gain entrance into the Licensed Premises, all of whom he has turned away. Mr. Ambrus testified that he instructs all of his employees, who are responsible for checking IDs, to ensure they check IDs and turn away anyone under the age of 21. Mr. Ambrus said he informs employees that, "Nobody can enter without an ID. [sic] - The house policy is, if you think they're 30 or under, check just to make sure they have an ID." Mr. Ambrus and some of Respondent's staff have taken the Department's LEAD<sup>34</sup> training.

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<sup>34</sup> Acronym for Licensee Education on Alcohol and Drugs.

39. Mr. Ambrus said that after the said collision of December 16, 2022, the problem of minors hanging around in the Licensed Premises' parking lot stopped, but the problem with minors trying to enter the Licensed Premises with fake IDs continued. He said some of Respondent's staff began confiscating fraudulent IDs. Paul Ambrus and Teresa Glennan received conflicting instructions from the Department and OSCD as to what to do with the fake IDs they confiscated. Paul and Teresa created a policy for keeping business logs of receipts for the fraudulent IDs Respondent's staff confiscated. At one point the Department posted notice on its website to turn confiscated fake IDs into local law enforcement within 24 hours. Teresa Glennan thereafter drove to the OCSD substation and turned in, within 24 hours, all fake IDs confiscated at the Licensed Premises. (Exhibit D.)

40. After December 16, 2022, the Respondent took the following steps to prevent underaged persons from entering and consuming alcoholic beverages inside the Licensed Premises: (1) On March 20, 2023, Respondent purchased two electronic ID scanning devices to check the validity of customers' IDs (Exhibit C – picture of scanner and invoice for \$2,545.25), (2) Respondent retrained employees on their ID checking policy and instructed its employees to retake the LEAD course with the Department. Some of Respondent's employees and one corporate officer took the Department LEAD course (Exhibit B – copies of LEAD certificates for bartender Haeley Cerda on March 15, 2023, bartender Alicia Casillas, Christopher Dray on March 16, 2023, security doorman William Jones and Respondent's vice present and secretary Teresa Glennan on March 19, 2023), (3) bartender Haeley Cerda completed the Department's Responsible Beverage Server Training Certificate on March 16, 2023, and bartender Alicia Casillas received a certificate for Certified Alcohol Training from Jerry R. Jolly & Associates awarded on March 17, 2023 with expiration date March 16, 2026, certificate number 1679028265 (Exhibit B), (4) Paul Ambrus and some of Respondent's staff confiscated fraudulent IDs from minors attempting to enter the Licensed Premises and as part of Respondent's business records kept a log of receipts along with photocopies of the confiscated fraudulent IDs, which were turned into the OCSD by Teresa Glennan (Exhibit D<sup>35</sup>), (5) Paul Ambrus continued to keep in contact with the OCSD and Department in seeking assistance with keeping minors out of the Licensed Premises.

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<sup>35</sup> The fake IDs photocopied and confiscated had the following names and dates of birth listed thereon: Haley Kristine Fipps with date of birth 5/03/2000, California Driver License confiscated on 4/22/23; Bryton Don Hickok date of birth 4/18/2000, California Driver License confiscated 5/26/23; Hannah C. Luskey with date of birth 1/26/1995, Connecticut Driver License confiscated 5/27/23; Mason James Mahony with date of birth 7/5/1999, California Driver License confiscated 5/26/23; Charles Alexander Pawsatt with date of birth 6/6/2001, Oregon Driver License confiscated on 5/27/23. There was no photocopy of the fake ID with name thereon of Alexander Moroz and date of birth 12/18/2000, which receipt indicates was confiscated.

41. Teresa Glennan appeared and testified at the hearing. Mrs. Glennan described herself as a 50-50 partner and co-owner and operator with Paul Ambrus of the Licensed Premises since 2004. She said she holds the titles of vice president and secretary of P & T Canyon, Inc. Her duties at the Licensed Premises include cooking and bartending on the weekend, serving breakfast on the weekend as well as lunch and dinner seven days a week, ordering food, picking up supplies, payroll, managing and training employees, and sharing in the duties with Paul Ambrus of hiring and firing employees. Mrs. Glennan said she shares basically all of the duties with Paul Ambrus. Part of her duties also include checking IDs and preventing underage persons from entering the Licensed Premises.

42. Mrs. Glennan said that over the last 19 years she has never knowingly permitted any person under the age of 21 to enter the Licensed Premises. She instructs employees on the importance of not allowing any person under the age of 21 into the Licensed Premises for any reason and has never instructed any employee to allow any minor into the Licensed Premises. She said the Respondent's policy is that if anyone looks under the age of 30 their ID must be checked and if they are under 21 or do not have an ID they are refused entrance into the Licensed Premises.

43. Prior to December 16, 2022, Respondent purchased black lights to check for fake IDs and annually acquired ID checking guidebooks, which are kept behind the bar, that show sample IDs for the 50 states. She was not sure whether those guides also included depictions of passports for other countries.

44. After December 16, 2022, Mrs. Glennan instructed employees on how to use the two new ID checking scanners purchased March 20, 2023. Mrs. Glennan acknowledged driving to the OCSD substation on Yorba Linda Boulevard several times to turn in fraudulent IDs that had been confiscated by Respondent's staff at the Licensed Premises. Mrs. Glennan said that deputies gave her conflicting instructions as to what to do with the IDs. She recalled one such incident on June 16, 2023, when she had Paul Ambrus on speakerphone while she drove to the OCSD substation and walked up to a deputy in his patrol vehicle and asked if he would take a fake ID they confiscated the night before, which he at first did not take. She showed the deputy the Department's website instruction to turn in within 24 hours confiscated IDs to local law enforcement. The deputy, who identified himself as, Deputy M. Kobel, thereafter took the ID and gave her his business card. (Exhibit D pages 9 and 10.)

45. Haeley Cerda appeared and testified at the hearing. Mrs. Cerda started working in bars 15 years ago and has been working as a bartender for the Respondent since 2015. She said no owner, corporate officer or employee of the Respondent/Licensee has ever told her to allow persons into the Licensed Premises who are under 21 years of age. In

fact, she said her supervisors, Paul Ambrus and Teresa Glennan, instructed her not to allow anyone under the age of 21 into the bar. Mrs. Cerda said she has always complied with Respondent's ID checking policy and has caught and prevented minors from attempting to enter the Licensed Premises with fraudulent IDs. Prior to December 16, 2022, Mrs. Cerda did not collect minors' fake IDs, but thereafter she followed Respondent's policy to confiscate minors' fake IDs, prepare a receipt thereof, hand one receipt to the minor and the other along with the fake ID to Paul Ambrus and/or Teresa Glennan. Mrs. Cerda confirmed the additional LEAD training she received after December 16, 2022. (Exhibits B and D.)

46. Craig Hunter appeared and testified at the hearing. Mr. Hunter has served in law enforcement for approximately 40 years with a couple of different agencies. For 32 years he served with the Anaheim Police Department in a variety of assignments, and conducted many investigations including, but not limited to drug, alcohol and employment investigations at Department licensed premises. He retired from the Anaheim Police Department as Deputy Chief of Police in 2012. He served as Chief of Bureau Investigations for the Orange County District Attorney's Office (OC DA) for approximately five years and left that position in 2018. Mr. Hunter has thereafter been consulting and providing expert testimony on police practice. Mr. Hunter has never been employed as a consultant for Respondent and was not being paid as a consultant to appear at the hearing in the matter at hand.

47. Mr. Hunter's law enforcement training began at the police academy where he learned about Alcoholic Beverage Control (ABC) laws and violations, including minors attempting to access bars in the community. Thereafter his training and experience included his involvement in operations, whether working in conjunction with the Department or independently with the police department, conducting inspections of bars for underaged drinking, overserving of alcoholic beverages, as well as labor and narcotic violations. Mr. Hunter provided training either independently with the police department or with the ABC to bar owners and operators, their employees and staff teaching them about the ABC rules and regulations.

48. Mr. Hunter knows Paul Ambrus and is familiar with the Licensed Premises, both professionally and personally. He said the Licensed Premises is across the border from the City of Anaheim, in an unincorporated area of Yorba Linda, so on occasion, if the OCSD was unavailable, Mr. Hunter, in his capacity as a police officer, would respond to calls for service relating to matters outside of the Licensed Premises or at other nearby businesses. Mr. Hunter has resided in Yorba Linda for almost 20 years. He says the Licensed Premises is "kind of the only real bar in Yorba Linda," where Mr. Hunter, his friends and neighbors visit to watch football and get a snack. Mr. Hunter has been a customer of the Licensed Premises for over 20 years. During that time, he estimates

being inside the Licensed Premises well over 100 times. Based on Mr. Hunter's training and experience, when he was in the Licensed Premises, he did not recall a time when he looked at someone and thought they should not be in the Licensed Premises. Mr. Hunter had observed Respondent's staff turn away at the Licensed Premises' door persons who were under 21 years of age and attempting to gain entrance. There was no evidence as to when these observations were made. Based on Mr. Hunter's training and experience he has never heard or learned that the Licensed Premises had a reputation for being a place for underaged persons to enter and consume alcoholic beverages.

### **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. Section 25658(a) provides that every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor.
4. Section 25658(c) provides that any person who violates subdivision (a) by purchasing any alcoholic beverage for, or furnishing, giving, or giving away any alcoholic beverage to, a person under 21 years of age, and the person under 21 years of age thereafter consumes the alcohol and thereby proximately causes great bodily injury or death to themselves or any other person, is guilty of a misdemeanor.
5. Section 25665 provides that: Any licensee under an on-sale license issued for public premises, as defined in Section 23039, who permits a person under the age of 21 years to enter and remain in the licensed premises without lawful business therein is guilty of a misdemeanor. Any person under the age of 21 years who enters and remains in the licensed public premises without lawful business therein is guilty of a misdemeanor and shall be punished by a fine of not less than two hundred dollars (\$200), no part of which shall be suspended.
6. Section 25660 provides that:
  - (a) Bona fide evidence of majority and identity of the person is any of the following:

(1) A document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a valid motor vehicle operator's license, that contains the name, date of birth, description, and picture of the person.

(2) A valid passport issued by the United States or by a foreign government.

(3) A valid identification card issued to a member of the Armed Forces that includes a date of birth and a picture of the person.

(b) Proof that the defendant-licensee, or his or her employee or agent, demanded, was shown, and acted in reliance upon bona fide evidence in any transaction, employment, use, or permission forbidden by Section 25658, 25663, or 25665 shall be a defense to any criminal prosecution therefor or to any proceedings for the suspension or revocation of any license based thereon.

7. Cause for suspension or revocation of the Respondent's license exists under Article XX, section 22 of the California State Constitution and sections 24200(a) and (b) on the basis that on December 16, 2022, Respondent's employees, bartenders Haeley Cerda and Cole Johnson, inside the Licensed Premises, sold, furnished, gave or caused to be sold furnished or given alcoholic beverages to persons under the age of 21, in violation of Business and Professions Code section 25658(a). (Counts 2, 3, 4, 5 and 6.) (Findings of Fact ¶¶ 2, 4-15, and 30.)

8. Haeley Cerda caused to be furnished or given distilled spirits to Noah Watson when she poured two glasses of distilled spirits and placed the alcoholic beverage drinks in front of Christian Germany with Noah Watson at his side, allowing Christian to be the intermediary, thereby causing alcohol to be furnished to Noah. Cole Johnson caused to be furnished or given a White Claw Hard Seltzer to Haley Fipps when Cole Johnson sold and furnished two alcoholic beverages (a beer and a White Claw Hard Seltzer) to Zach while Zach interacted with Haley who was standing next to Zach at the fixed bar and Zach thereafter handed the White Claw Hard Seltzer to Haley Fipps. Cole Johnson sold, furnished and caused to be furnished or given a beer to Shannon Storer; Cole Johnson sold, furnished and gave two beers to Charles Mackie with Casey Williams standing at his side, thereafter Charles Mackie handed one of the beers to Casey Williams. As such, Cole Johnson caused to be furnished or given a beer to Casey Williams. (Findings of Fact ¶¶ 8-9, 11-12, and 30.)

9. As to the "furnishing" of alcohol to minors Noah, Haley and Casey, bartenders Cerda and Johnson caused alcoholic beverages to be furnished to said minors. The court in

*Sagadin v. Ripper*<sup>36</sup> analyzed section 25658 and whether liability can be established when the furnishing is *indirect*. *Sagadin* held, that “In order to violate section 25658, there must be some affirmative act of furnishing alcohol. ‘The word ‘furnish’ implies some type of affirmative action on the part of the furnisher . . .’ (Citing *Bennett v. Letterly* (1977) 74 Cal.App.3d 901, 905.) Among other things, it means to supply, to give, or to provide. (*Id.* at 904-905.)”<sup>37</sup>

10. In *Sagadin* a father allowed his son to host a party where alcohol was served to minors from the father’s stocked built-in beer dispenser. After the party some of the minors were injured in a drunk-driving accident. The hosts’ father was deemed to have tacitly authorized or given tacit permission to his son to furnish beer to the partygoers, who included minors, when the father told his son that “any beer his friends drank would have to be replaced.” (*Id.* at 1158.) *Sagadin* further held, “In order to furnish an alcoholic beverage the offender need not pour the drink; it is sufficient if, *having control* of the alcohol, the defendant takes some affirmative step to supply it to the drinker. By authorizing his son to supply beer to the underage partygoers, [the father’s] act was one of misfeasance rather than nonfeasance; his affirmative conduct created the risk. [The father] may then be said to have furnished beer.” (*Id.*; Emphasis added by italics.) Thus, the father took the affirmative step authorizing beer to be furnished to minors despite being aware of the totality of the circumstances. In other words, the father furnished beer to minors through an intermediary, his son, who hosted the party, despite the father knowing minors would be present at the party in his home where alcohol would be served from his beer dispenser.

11. Similarly, here, bartenders Cerda and Johnson took the affirmative step authorizing alcohol to be furnished to minors Noah, Haley, Shannon and Casey, respectively, despite being aware of the totality of the circumstances. Bartender Cerda gave tacit permission to Christian to act as an intermediary in furnishing the distilled spirits to Noah, by completing the transaction with Christian, despite bartender Cerda’s awareness of Noah’s presence and connection to Christian and the transaction, and bartender Cerda’s interactions with Noah while preparing Christians’ order of two glasses of distilled spirits. The same application applies to bartender Johnson’s tacit permission to Zach, Aaron and Charles to act as intermediaries in furnishing alcohol to Haley, Shannon and Casey, respectively, by providing the alcoholic beverages to Zach, Aaron and Charles and by completing the transactions with Zach, Shannon and Charles, despite bartender Johnson being aware of Haley, Shannon and Casey’s presence and connection to the transaction, and the Licensed Premises’ prior problems with minors attempting to enter

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<sup>36</sup> *Sagadin v Ripper* (1985) 175 Cal.App.3d 1141.

<sup>37</sup> *Id.* at 1157.

and entering therein since the COVID-19 Pandemic.<sup>38</sup> The preponderance of the evidence established that bartenders Cerda and Johnson were on notice, and knew or should have known, that Christian, Zach and Charles were purchasing alcoholic beverages for Noah, Haley and Casey, respectively, and that Shannon was purchasing one of the two beers for herself. Both bartenders were in control of the transactions and cannot ignore circumstances which would raise questions in the mind of a reasonably prudent person. Since the transactions appeared to be group purchases of two alcoholic beverages for the two persons present together at the fixed bar, bartenders Cerda and Johnson should have requested to see the IDs of the minors and made diligent inspections thereof. They failed to do so despite the fact the minors were obviously together with those who placed the two alcoholic drink orders (Christian, Zach, Aaron and Charles), which could reasonably be foreseen that one of those drinks was for Noah, Haley, Shannon and Casey. In fact, bartender Johnson allowed two minors to purchase the alcohol, Shannon and Charles, without checking their IDs.

12. Cause for suspension or revocation of the Respondent's license exists under Article XX, section 22 of the California State Constitution and sections 24200(a) and (b) on the basis that on December 16, 2022, Respondent's employee, Haeley Cerda, at said premises, violated sections 25658(a) and (c), by furnishing an alcoholic beverage, to wit: distilled spirit, to Noah Watson, a person under the age of 21 years, after which Noah Watson consumed the alcoholic beverage and thereby proximately caused death to Hunter Shekels. (Count 1.) (Findings of Fact ¶¶ 2, 4-8, 14-20, 22-25, 30, and 33.)

13. Cause for suspension or revocation of the Respondent's license exists under Article XX, section 22 of the California State Constitution and sections 24200(a) and (b) on the basis that on December 16, 2022, Respondent's agent or employee, Chad Reed, permitted Noah Watson, Hunter Shekels, Haley Fipps, Shannon Storer, Charles Mackie and Casey Williams, all persons under the age of 21 years, to enter and remain in the Licensed Premises without lawful business therein from 38 minutes to 43 minutes, respectively, in violation of section 25665. (Counts 7, 8, 9, 10, 11 and 12.) (Findings of Fact ¶¶ 2-15.)

14. Section 25660 provides a defense to any person who was shown and acted in reliance upon bona fide evidence of majority in permitting a minor to enter and remain in a public premises in contravention of section 25665, in making a sale forbidden by section 25658(a), or in permitting a minor to consume in an on-sale premises in contravention of section 25658(b).

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<sup>38</sup> Paul Ambrus testified that it was a persistent problem for the Licensed Premises that minors were attempting to get into the Licensed Premises and consume alcoholic beverages. Given that testimony it is more probable than not that all staff, including bartender Cole Johnson, should be aware of such problem.

15. The defense offered by this section is an affirmative defense. As such, the licensee has the burden of establishing all of its elements, namely, that evidence of majority and identity was demanded, shown, and acted on as prescribed.<sup>39</sup> To provide a defense, reliance on the document must be reasonable, that is, the result of an exercise of due diligence. This section applies to identifications actually issued by government agencies as well as those which purport to be.<sup>40</sup> A licensee or his or her employee is not entitled to rely upon an identification if it does not appear to be a bona fide government-issued identification or if the personal appearance of the holder of the identification demonstrates above mere suspicion that the holder is not the legal owner of the identification.<sup>41</sup> The defense offered by section 25660 is not established if the appearance of the minor does not match the description on the identification.<sup>42</sup> Thus, reasonable reliance cannot be established unless the appearance of the person presenting identification indicates that he or she could be 21 years of age and the seller makes a reasonable inspection of the identification offered.

16. The Respondent argued that licensees are protected from the fraud of minors presenting fake IDs, while acknowledging that it requires licensees do their due diligence, citing *Keane v. Reilly*.<sup>43</sup> The Respondent said it is wrong to hold it responsible for the fraud of the minors, who presented fake IDs to enter the Licensed Premises. Respondent further argued the Department failed to present the fake IDs into evidence and failed to show “how good or bad” the fraudulent IDs were which the minors used on December 16, 2022.

17. The Respondents arguments are rejected. The section 25660 defense is an affirmative defense, which means the burden of proof is on the licensee to establish all of its elements.<sup>44</sup> The Respondent failed to meet its burden of proof in establishing pertinent elements of the affirmative defense. There was no evidence Chad Reed reasonably relied upon bona fide evidence of majority in permitting the minors to enter and remain in the Licensed Premises on December 16, 2022, in contravention of section

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<sup>39</sup> *Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control*, 261 Cal. App. 2d 181, 189, 67 Cal. Rptr. 734, 739 (1968); 27 Ops. Atty. Gen. 233, 236 (1956).

<sup>40</sup> *Dept. of Alcoholic Beverage Control v. Alcoholic Control Appeals Bd. (Masani)*, 118 Cal. App. 4th 1429, 1444-45, 13 Cal. Rptr. 3d 826, 837-38 (2004).

<sup>41</sup> *Masani* (2004) 118 Cal. App. 4th at 1445-46, 13 Cal. Rptr. 3d at 838; *5501 Hollywood, Inc. v. Department of Alcoholic Beverage Control*, 155 Cal. App. 2d 748, 753, 318 P.2d 820, 823-24 (1957); *Keane v. Reilly*, 130 Cal. App. 2d 407, 411-12, 279 P.2d 152, 155 (1955); *Conti v. State Board of Equalization*, 113 Cal. App. 2d 465, 466-67, 248 P.2d 31, 32 (1952).

<sup>42</sup> *5501 Hollywood*, 155 Cal. App. 2d at 751-54, 318 P.2d at 822-24; *Keane*, 130 Cal. App. 2d at 411-12, 279 P.2d at 155 (construing section 61.2(b), the predecessor to section 25660).

<sup>43</sup> *Keane v. Reilly*, 130 Cal. App. 2d 407 (1955).

<sup>44</sup> *Farah v. Alcoholic Beverage Control Appeals Board*, 159 Cal.App.2d 335, at 338 (1958).

25665. There was no evidence bartenders Cerda or Johnson demanded evidence of majority and identity of any of the minors to whom they sold, furnished, gave or caused to be sold furnished or given an alcoholic beverage on December 16, 2022.

18. Part of the Respondent's burden of proof is establishing that the fraudulent IDs in question appear to be bona fide government-issued identifications or stated another way, qualify as bona fide government-issued identifications. There was no such evidence presented, for example, whether the fraudulent IDs had a photograph of the minor and listed physical descriptors, which matched the person presenting the ID. None of the said IDs the minors presented to Chad Reed or Respondent's staff on December 16, 2022, were produced and entered into evidence. Without such information, it is impossible to determine if any of the fraudulent IDs were a perfect rendering of whichever state ID was presented, or if it bore no resemblance whatsoever. Chad Reed's alleged statement that he had seen an ID (or IDs) in the past and the ID(s) he saw appeared genuine is insufficient to support a defense under section 25660. There was no testimony describing the fake IDs, much less providing the kind of detail required to establish a defense under section 25660.

19. Furthermore, there was no evidence Chad Reed made a due diligent inspection on December 16, 2022, of the minors' fraudulent IDs, as required under section 25660. The video surveillance clearly shows Chad Reed's quick rhythm in looking at the minor's IDs as they walked by him, looking at the IDs for only a second. He failed to make a reasonable, due diligent inspection of the IDs offered. More importantly, he failed to look at the alleged owners of the IDs and compare them to the IDs.

20. The Court in *Masani*<sup>45</sup> analyzed the issue of "whether the statutory defense [of section 25660] is limited to ID's actually issued by the government or may include documents which purport to be issued by the government but are fake –albeit credible forgeries." (*Id.* at 1442.) The Court said that "a reasonable interpretation of the statute would include a fake ID purporting to be issued by a government agency. To rule otherwise leads to an unreasonable and illogical result." The Court therefore stated, "the licensee should not be penalized for accepting a credible fake *that has been reasonably examined for authenticity and compared with the person depicted.*" (Emphasis added by italics.) While the Court held that a fake ID can support a defense under section 25660, it held the ultimate analysis relied not upon the quality of the fake ID, but upon whether the fake ID was "*reasonably examined for authenticity and compared with the person depicted.*" (*Id.* at 1444 – 1445.) As stated, in the matter at hand, Chad Reed failed to do either, a reasonable examination of the IDs or comparison of the IDs with the minors. In

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<sup>45</sup> *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.*, 118 Cal.App.4th 1429 [Real party in interest, Aiyaz Masani]. The undersigned will refer to this as the *Masani* case.

fact, there was no evidence of any request for and inspection on December 16, 2022, of Haley Fipps' ID.

21. The Respondent claims that the reason Chad Reed only briefly looked at Noah Watson's ID was because he had seen Noah's fraudulent ID in the past. This argument is rejected. Chad Reed's alleged claim is insufficient to establish a defense under section 25660, as described above. There was no evidence Chad Reed reasonably relied upon bona fide evidence of majority on prior inspections of Noah's ID, since there was no evidence Chad Reed exercised due diligence when making any prior inspections of the said IDs, as required under section 25660. There was no testimony describing the past inspections, including, but not limited to, describing the details of the IDs presented or interaction that occurred between Chad Reed and the minor.

**(Proximate Cause)**

22. The Respondent further argued that Noah did not become intoxicated from the single sip of alcohol the video clip shows he consumed in the Licensed Premises but from consuming Coors Light beer after leaving the Licensed Premises. Respondent argues there was no evidence presented that Noah Watson consumed anything more than a single sip from a single glass of alcohol at the Licensed Premises and therefore, the Department failed to present evidence to show that providing alcohol to Noah proximately caused anyone's death or caused the accident that occurred on December 16, 2022.

23. These arguments are rejected. The preponderance of the evidence established that the Respondent's employee, bartender Haeley Cerda, furnished alcohol, distilled spirits, to Noah Watson at 10:01 p.m. At approximately 10:02 p.m., Noah began drinking from that glass of distilled spirits, not just once, but twice on video, and he did not leave the Licensed Premises for another 39 minutes. Respondent speculated that Noah possibly drank from some of the Coors Light beer cans which were found at the fatal traffic collision scene because he had approximately nine minutes to drive only two miles (from the Licensed Premises to the collision scene). This argument was based on speculation and conjecture. There was no credible evidence presented in the record that Noah consumed any other alcoholic beverages after leaving the Licensed Premises at 10:41 p.m. and before getting in the tragic traffic accident that took his friend's life. The evidence established that the OCSD dispatch received its first emergency call reporting the collision at 10:50 p.m. There is no evidence when the collision occurred and how soon thereafter that first call was made.

24. Let us assume, for the sake of argument, Noah had consumed the alcohol from some of the Coors Light beer cans after leaving the Licensed Premises.

25. CALJIC No. 17.19.5 (2023 rev.) defines a proximate cause of great bodily injury or death as “an act or omission that sets in motion a chain of events that produces as a direct, natural and probable consequence of the act or omission the great bodily injury or death and without which the great bodily injury or death would not have occurred.”

26. In *Sagadin*, the plaintiffs showed that the Boals social host defendant furnished an unspecified quantity of alcohol in their home and the plaintiffs thereafter consumed beer from other sources. The defendant argued the jury could not have determined how much beer the driver drank from which source (from the Boals’ home or thereafter) and therefore the plaintiffs failed to prove the Boals’ breach of duty of care was the proximate cause of the accident. The *Sagadin* court states, “[w]hile the last beer may have been the one that resulted in a level of intoxication unsafe for driving, all the beers previously consumed were obviously equally necessary to achieve the cumulative effect. Given this evidence, it is well within the jury’s province to determine that both the Boal beer and the beer from the other sources were causes in fact of the accident.”<sup>46</sup> The court then said that once it was established the defendant’s conduct was a cause in fact of the injury, the question remained whether it was also the proximate cause.

27. The *Sagadin* court points out, “there may be more than one negligent act which contributes concurrently as the proximate cause of an injury. (See BAJI No. 3.77 (6th ed. 1977); 4 Witkin, Summary of Cal. Law, *supra.*, Torts, § 624, p. 2906.)”<sup>47</sup> “Whether the act of a third person is a superseding cause depends in part on whether it was reasonably foreseeable. ( *Powell v. Standard Brands Paint Co.* (1985) 166 Cal.App.3d 357, 364 [212 Cal.Rptr. 395].)”<sup>48</sup>

28. In analyzing the case, the *Sagadin* court states, “Ordinary human experience would anticipate that a partying group of young drinkers will continue to drink elsewhere if one source is cut off. The jury could conclude that this was within the scope of the original risk, and hence would not supersede the defendants’ responsibility.” The *Sagadin* court concluded that “there was sufficient evidence for the jury to find that the furnishing of alcohol by the Boals was a proximate cause of the accident.”<sup>49</sup>

29. Similarly, here, while the last Coors Light beer may have been the one that resulted in a level of intoxication unsafe for driving, the distilled spirits previously consumed in the Licensed Premises were equally necessary to achieve the cumulative effect of Noah’s BAC level of 0.157. Respondent’s contention, that the later consumed Coors Light beer was a superseding cause that terminated their liability, is also mistaken. If Noah did

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<sup>46</sup> *Sagadin v Ripper* (1985) 175 Cal.App.3d 1141, at 1160.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 1161.

<sup>49</sup> *Id.*

consume the Coors Light beer, that was within the scope of the original risk, and hence would not supersede Respondent's responsibility.

30. Further speculation could be made that Noah was already intoxicated by the time he arrived at the Licensed Premises on December 16, 2022. Only about two hours after leaving the Licensed Premises Deputy Rubright determined Noah's BAC level was 0.157. That is approximately twice the legal BAC limit for adults and over 15 times higher than the legal limit for minors.<sup>50</sup> At the time of the accident Noah's BAC was most likely higher than 0.157. Deputy Rubright testified he did not observe any evidence in the video surveillance footage that he reviewed of Noah consuming alcohol that would have raised Noah's blood alcohol content to 0.157. So, the question becomes, did he drink before or after the Licensed Premises. There was not enough time between leaving the Licensed Premises and the collision for Noah to consume enough Coors Light beer for his BAC to reach such high levels. It could be said that Noah was already exhibiting signs of intoxication upon arriving at the Licensed Premises. Soon after entering the Licensed Premises Noah, prior to being furnished distilled spirits and after, is seen multiple times in the video dancing with his hands in the air in an unbridled fashion. Bartender Cerda was able to observe and speak to Noah at the fixed bar prior to serving the two distilled spirit drinks. Bartender Cerda should not have furnished Noah with distilled spirits, not only because he was a minor, but if he was obviously intoxicated. Whether Noah was obviously intoxicated, however, is not the issue before the undersigned today, and as stated, the foregoing is also speculation. However, if Noah did consume alcohol prior, it is more likely than not that the distilled spirits he consumed at the Licensed Premises pushed Noah's BAC levels to higher limits, resulting in a level of intoxication unsafe for driving. In other words, the distilled spirits Noah consumed thereafter were necessary to achieve the BAC level of 0.157.

31. Nonetheless, whether Noah consumed alcohol prior to or after the Licensed Premises, the preponderance of the evidence established that bartender Cerda furnished distilled spirits to Noah, who thereafter consumed that alcohol, and thereby proximately caused the death of Hunter Shekels. Bartender Cerda's act of furnishing distilled spirits to Noah set in motion a chain of events that produced as a direct, natural and probable consequence of the act, great bodily injury and death and without which the great bodily injury or death would not have occurred.

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<sup>50</sup> California's under-21 zero-tolerance law provides that it is against the law to drive with any blood alcohol content (0.01% or higher) if you are under 21 years old per Vehicle Code 23136. Non-commercial adult drivers 21 years or older are considered driving under the influence (DUI) with a BAC of 0.08% or higher pursuant to Vehicle Code section 21352(b), and drivers under 21 are considered underage DUI with a BAC of 0.05% or higher pursuant to Vehicle Code section 23140.

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

### **PENALTY**

1. The Department requested outright revocation of Respondent's license arguing the licensee has shown it cannot continue to operate safely and in legal compliance with the law, citing the following aggravating factors: (1) prior disciplinary action in 2021 involving two violations and in the next year the number of violations spiraled into 12, (2) aggravation is compounded by the fact that bartender Haeley Cerda was involved in both the 2021 and 2022 violations, (3) the number of minors, six, at this premises leads to a startling continuing course and pattern of conduct in that the ID checks were so lenient minors knew the Licensed Premises was the place to go, (4) the legislature expanded disciplinary factors to include substantial death or great bodily injury under section 24200.8, which states in part that in determining the level of discipline for a violation of section 25658 the Department may consider as a factor whether there is subsequent death or great bodily injury to the person who is sold, served, furnished, or given the alcoholic beverage, to any other person, or to both. The Department points out that both death and great bodily injury are present in this matter. The Department argues that the legislature left the statutory language of section 24200.8 open to capture a violation of either section 25658(a) or (c) to independently warrant aggravating the penalty, with no proximate cause requirement, to send a resounding message to keep alcohol out of the hands of minors due to the high likelihood of disastrous results. The Department did not provide a breakdown of the penalty among the counts.

2. The Respondent did not recommend a penalty in the event the accusation was sustained in whole or in part. The Respondent argued for a mitigated penalty based on the following factors: (1) except for the matter at hand, in the Respondent's over 19 years of licensure it has had no prior disciplinary history involving sections 25658 or 25665 violations, with the prior discipline in 2021 involving an unrelated single incident of sale and consumption of alcoholic beverage to a patron between the hours of 2:00 a.m. and 6:00 a.m., on April 24, 2021, (2) the Department conducted an inspection at the Licensed Premises in October of 2022, and found no violations, (3) there was no licensee involvement, (4) documented training of licensee(s) and employees, (5) cooperation by licensee(s) and staff during the investigation, and (6) positive action taken by licensee after December 16, 2022, to correct the problem including retraining and recertifying staff, creating a policy of confiscating fraudulent IDs with receipt logs as part of Respondent's business records, and purchasing two electronic ID scanning devices. The Respondent argued that it should not be held accountable for the fraud of the minors, the lack of diligence by the Department, the OCSD and the parents of the minors.

3. 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, commonly referred to as rule 144. Under rule 144, the presumptive penalty for a first violation of selling or furnishing an alcoholic beverage to a minor in violation of section 25658 is a 15-day license suspension. Rule 144 recommends a 10-day suspension for a violation of section 25665. Rule 144 also permits imposition of a revised penalty based on the presence of aggravating or mitigating factors. Rule 144 provides that the term "'revocation' includes a period of stayed revocation as well as outright revocation of the license.

4. Section 24200.8 provides, "In determining the level of discipline for a violation of Section 25602 or 25658, the department may consider as a factor whether there is subsequent death or great bodily injury to the person who is sold, served, furnished, or given the alcoholic beverage, to any other person, or to both."

5. Regarding Respondent's mitigation, after December 16, 2022, the Respondent retrained its employees, had its employees and corporate officers take the Department's LEAD training. Bartender Cerda completed her LEAD training and Responsible Beverage Server training. Respondent purchased additional electronic ID scanning equipment to detect fraudulent IDs, trained its employees on ID checking, and began confiscating minors' fake IDs to prevent them from using them again whether at the Licensed Premises or any other premises. Respondent instituted a policy of keeping a business record log of receipts for confiscated IDs and turned them into local law enforcement within 24 hours. Respondent's corporate officers and staff were cooperative during the investigation and continue to be so. Paul Ambrus continues to contact the Department and OCSA in seeking their assistance with keeping minors out of the Licensed Premises.

6. The Respondent has had no history of disciplinary action or warnings related to section 25658 for 18 years and six months until the current violations on December 16, 2022. The evidence has shown that for a little over 17 years and nine months Respondent's policy, training and steps in attempting to prevent minors from entering the Licensed Premises and gaining access to alcoholic beverages were successful until, at least on or about, March 3, 2022, through December 16, 2022.<sup>51</sup> It is of grave

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<sup>51</sup> The date range is based on the following: On *March 3, 2023*, Charles Mackie admitted showing a fake California ID in the Licensed Premises once a week *over the course of a year* and admitted he purchased and consumed alcoholic beverages in the Licensed Premises prior to December 16, 2022. On *March 8, 2023*, Haley admitted that prior to December 16, 2022, she has been in, purchased and consumed alcoholic beverages in the Licensed Premises. Casey admitted to being in the Licensed Premises prior to December 16, 2022, and using a fake ID to gain entry on at least 10 prior occasions.

concern that for at least nine months minors were gaining entry into the Licensed Premises and access to alcoholic beverages, including Charles who was going weekly over the course of a year to the Licensed Premises, Sarah going there since she was 17, and Noah who Chad Reed admitted was at the Licensed Premises every week prior to December 16, 2022. It is unfortunate it took the fatal collision and death of Hunter Shekels for the Respondent to step-up its policy in preventing minors from entering the Licensed Premises. While the foregoing steps represent vast mitigation, that mitigation is overshadowed by the following aggravating factors.

7. One of the problems of December 16, 2022, which the Respondent did not address was Chad Reed's failure to do his due diligence in executing his duties as the doorman/bouncer that evening and his carelessly allowing six minors to enter and remain in the Licensed Premises without a lawful purpose therein. There was no evidence presented whether after December 16, 2022, Chad Reed was still employed with the Respondent and, if so, whether he received any additional training, discipline or warning thereafter. Similarly, there was no evidence whether Cole Johnson received additional training, and whether Cole Johnson and Haeley Cerda received any discipline or warning after the said violations of December 16, 2022.

8. While the Respondent's 2021 prior discipline involved an unrelated violation, aggravation is warranted given that it was only one year prior to the violations at hand and bartender Cerda was involved in both the 2021 and current 2022 violations. Aggravation is further compounded pursuant to section 24200.8 for Hunter's subsequent death and Noah's great bodily injury.

9. Further aggravation exists given the circumstances of the violation. First, the number of minors permitted to enter and remain in the Licensed Premises without lawful purpose on December 16, 2022, nearly all of whom were sold, furnished and/or consumed alcoholic beverages. Second, the speed with which not only Chad Reed checked the said IDs, but the speed with which bartenders Cerda and Johnson readily completed the multiple, double alcoholic beverage drink orders (at approximately 10:01 p.m., 10:03 p.m., 10:04 p.m. and 10:11 p.m.) without requesting to see ID from: (i) minors Shannon and Charles who paid for the alcohol and (ii) the youthful appearing minors standing next to those who each placed two alcoholic beverage orders at a time.

10. Mr. Ambrus acknowledged the problem the Respondent had been having with minors attempting to enter and those entering the Licensed Premises since it reopened after the COVID-19 lockdowns were lifted and which continued past December 16, 2022. The minors' statements to SA Plotnik, including, but not limited to, that they were able to gain entry into the Licensed Premises and the ease with which they were able to do so

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using fraudulent IDs from at least March 3, 2022, to December 16, 2022, and thereafter, supplement and explain Mr. Ambrus' direct testimony regarding the problem Respondent has been having with minors entering the Licensed Premises with fake IDs. The minors' statements about their experience with Respondent's staff's, in particular Chad Reed's, lenient ID checking policy further supplements and explains Paul Ambrus' testimony regarding the problem Respondent had with minors entering the Licensed Premises. It is more likely than not that Chad Reed had a habit of failing to diligently inspect youthful appearing minors' IDs. Paul Ambrus testified that he informs employees that "Nobody can enter without an ID. [*sic*] - The house policy is, if you think they're 30 or under, check just to make sure they have an ID." But the problem with that instruction is that by just checking they have an ID is not sufficient. Such advice to Chad Reed, may be part of the reason he did not diligently inspect youthful appearing persons' IDs, but instead let them in merely because they had IDs.

11. The court in *Lacabanne Properties, Inc. vs. Department of Alcoholic Beverage Control*,<sup>52</sup> held, "There is an affirmative duty on the licensee to maintain and operate his premises in accordance with law, and failure to discharge this duty may amount to permitting any prohibited conduct to occur."<sup>53</sup> Unfortunately, the Respondent failed to address Chad Reed's utter disregard for his duty to keep minors out of the Licensed Premises and instead permitted the prohibited conduct to occur over several months. Aggravation is thusly further compounded with the record establishing a continuing course and pattern of conduct given the lax checking of IDs, so much so that minors knew the Licensed Premises was the place to go and get alcoholic beverages.

12. Finally, it is of grave concern, that the Licensee attempts to pass the blame on to everyone else (the OCSD, the Department, the minors and their parents), avoiding its own affirmative duty rather than accepting responsibility for its failure to maintain the Licensed Premises in compliance with the law. "The holder of a liquor license has the affirmative duty to make sure that the licensed premises are not used in violation of the law and the knowledge and acts of his employees are imputable to the licensee."<sup>54</sup> The

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<sup>52</sup> *Lacabanne Properties Inc. v Department of Alcoholic Beverage Control* (1968) 261 Cal.App.181.

<sup>53</sup> *Id.* at page 188.

<sup>54</sup> *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

preponderance of evidence clearly established that for, at least, nine months up to the time of the tragic and fatal accident, the Licensee had allowed its operation to become so lax (in the checking of IDs) that minors knew it was the place they could get into, which created devastating and reverberating results. Notwithstanding, the Licensee has shown it has made and is making stringent efforts since December 16, 2022, to ensure that minors are not permitted to enter the Licensed Premises again and that these types of violations do not occur in the future.

13. The Respondent may want to also consider changing its policy to require that not only the doormen/bouncers check patron IDs, but bartenders and servers also check customer IDs, especially the youthful appearing customers, given its awareness of the long-standing problem it has had with minors trying to gain entry into the Licensed Premises to consume alcoholic beverages. That policy should include instructions to staff to thoroughly check an ID, compare the physical descriptors, compare the photo on the ID with the presenter, ask questions about the ID, and feel the ID to determine its authenticity. As the Department points out, it only takes a little time to engage small imperative efforts to thoroughly check an ID to make a big impact in avoiding said disastrous results.

14. In carefully weighing the foregoing, the penalty recommended herein complies with rule 144.

### **ORDER**

Counts 1 and 2 are sustained. With respect to each count the Respondent's on-sale general public premises license is hereby revoked, with the revocation stayed for a period of three 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. In addition, the license is suspended for 35 consecutive days. These penalties are to be served concurrently.

Counts 3, 4, 5, and 6 are sustained. With respect to each count the Respondent's on-sale general public premises license is hereby suspended for a period of 20 days, with all penalties as to those counts to be served concurrently with one another, in other words for a total of 20 days.

Counts 7, 8, 9, 10, 11, and 12 are sustained. With respect to each count the Respondent's on-sale general public premises license is hereby suspended for a period of 15 days, with all penalties as to those counts to be served concurrently with one another, in other words for a total of 15 days.

The 20-day concurrent suspension served as to counts 3, 4, 5, and 6 shall be served consecutively to the 15-day concurrent suspension served as to counts 7, 8, 9, 10, 11 and 12. In other words, Respondent's on-sale general public premises license is hereby suspended for a total of 35 days as to those counts.

The 35-day aggregate penalty for counts 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, shall be served concurrently with the penalty for counts 1 and 2.

Dated: July 9, 2024



D. Huebel  
Administrative Law Judge

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