

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

AB-10020

File: 23-568818; Reg: 24094514

Diego & Dante, LLC.
dba Chula Vista Brewery
294 3rd Ave
Chula Vista, CA, 91910
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Department Hearing: Honorable Doris Huebel

Appeals Board Hearing: August 8, 2025
Sacramento, CA/Videoconference

ISSUED AUGUST 13, 2025

Appearances: Clifford A. Dover, of the Law office of Clifford A. Dover, as
counsel for appellant;

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

OPINION

Diego & Dante LLC., doing business as Chula Vista Brewery, ("appellant")
appeals from an order of the Department of Alcoholic Beverage Control.¹
(hereinafter referred to as the "Department") suspending its license for 45 days
on the grounds that appellant failed to comply with conditions attached to its

¹ The Department's Decision, dated February 13, 2025, is set forth in the
appendix.

license, in violation of Business and Professions Code² section 23804. For the following reasons, the Department's decision is affirmed.

I. FACTUAL BACKGROUND & PROCEDURAL HISTORY

The Department issued a small beer manufacturer license to appellant on March 16, 2017. Pursuant to that license, appellant agreed to five conditions in its Petition for Conditional License ("PCL"). The pertinent portions of the conditions are as follows:

1. Live entertainment provided shall be permitted on the interior only. Live entertainment provided shall be permitted between the hours of 10:00 a.m. and 10:00 p.m. each day of the week. No noise from said entertainment shall be heard beyond the exterior of the premises in any direction.
2. There shall be no dancing allowed on the premises.
3. The doors and windows shall be kept closed during the times live entertainment is provided except in cases of emergency, normal ingress and egress of patrons and to permit deliveries. Said doors and windows not to consist solely of a screen or ventilated security door.

(Exhibit 4.)

Appellant's PCL also states that the licensed premises is located in an area that has significant law enforcement problems, and the conditions were imposed to mitigate against such problems. (Exh. 4.) At some point in 2023, Department Agent Shapiro was tasked to investigate an allegation of possible service to minors at the licensed premises. As part of that investigation, Agent Shapiro would determine whether the licensed premises was in compliance with

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

the ABC Act, including all code sections, regulations, and conditions on its license.

A. August 3, 2023

At approximately 6:00 p.m. on August 3, 2023, Agents Shapiro and Barabas arrived at the licensed premises in a plain clothes capacity. Agent Shapiro observed the licensed premises front door was open, as well as the two ceiling to floor roll-up windows adjacent to the front door, encompassing nearly the entirety of the front wall of the premises. Amplified music from two speakers inside the licensed premises was emanating outside, beyond the exterior of the licensed premises. The licensed premises was open and operating, and bartender "Julian" was the sole employee working.

The amplified music was live music from a male playing a guitar and singing. The guitarist was later identified as "Daniel." Agent Shapiro was standing approximately 20 feet from the licensed premises' front door while he heard the music. Agent Shapiro noticed that the front door was propped open with a mechanical device.

The agents walked through the front door and into the licensed premises. They walked to a fixed bar, where Agent Shapiro looked at the beer menu, which he took a photograph of with his Department-issued cell phone. (Exh. 6.) Agent Shapiro placed an order for a beer, which the bartender served him. Agent Shapiro took a photograph of the beer in the foreground, with the

background depicting Daniel playing a guitar while standing at a microphone.

(Ibid.)

Daniel continued to play music inside the licensed premises. Agent Shapiro observed a cord running from Daniel's guitar to an amplifying device. Agent Shapiro saw Daniel singing into a microphone with speakers on either side of him. Agent Shapiro walked out of the licensed premises and stood approximately 20 feet away while he recorded a video of Daniel playing his amplified music. Agent Shapiro then returned to the fixed bar inside the licensed premises, where he remained for approximately 30 minutes total. Throughout his time in the licensed premises, Agent Shapiro did not observe any deliveries being made to the licensed premises. The doors and windows remained opened while Daniel played and sang his amplified music.

B. October 21, 2023

Agents Shapiro and Barabas returned to the licensed premises on October 23, 2023, at approximately 7:00 p.m., once again in an undercover capacity. Agent Shapiro observed the front door propped open and the front windows fully open, as they were on his previous visit. Also as before, Agent Shapiro heard amplified music emanating from the licensed premises from his position outside, approximately 20 feet from the entrance. The music came from a disc jockey (DJ) who was playing music from inside the licensed premises. Agent Shapiro took a video of the sound coming from the licensed premises from his position outside. (Exh. 11.)

The agents proceeded inside the licensed premises through the front door, which once again, was propped open by a mechanical device. The agents walked to the fixed bar where Agent Shapiro placed an order with the bartender for a beer. The bartender served Agent Shapiro the beer and Agent Shapiro photographed it. (Exh. 10.) The agents remained inside the licensed premises for approximately 30 minutes. Throughout their stay, the doors and windows remained open while the DJ continued to play live, amplified music. There were no deliveries to the licensed premises during that time, and the Agents did not observe any employee attempting to close the door or windows, or limit the volume of the music in any way.

C. April 11, 2024

On April 11, 2024, agents Shapiro, Williams, and Palsson arrived outside the licensed premises in an undercover capacity. Just like the two prior visits, the front door was propped open with a mechanical device, and the two roll-up windows were fully open. Agent Shapiro saw a DJ inside the premises, and heard the DJ's loud, amplified music from his position outside.

Agent Shapiro went inside the licensed premises, sat at the bar, and ordered a beer. He was served a beer and took a picture of it. (Exh. 13.) Agent Shapiro also observed two individuals dancing to the DJ's music during his visit, and took photographs of the dancing. (Exhs. 15 and 16.) Agent Shapiro also took a video from outside the licensed premises, where music can be heard emanating from inside. (Exh. 14.)

D. Administrative Hearing and Procedure

The Department filed an accusation against appellant's license on June 21, 2024. 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 October 30, 2024.

On December 16, 2024, the administrative law judge (ALJ) issued a Proposed Decision sustaining the accusation and recommending a 45-day suspension. The Department adopted the Proposed Decision on February 5, 2025, and issued a certificate of decision on February 13, 2025.

Appellant filed a timely appeal with the Board contending that: 1) the Department's decision is not supported by substantial evidence; 2) appellant did not receive a fair hearing, and; 3) the penalty is excessive.

II. STANDARD OF REVIEW

The scope of the Board's review is defined by 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. 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. (*Martin v. Alcoholic Beverage Control Appeals Board* (1959) 52 Cal.2d 287, 291.)

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 absent 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.

III. ANALYSIS

Appellant makes three contentions in its opening brief: 1) the Department's decision is not supported by substantial evidence; 2) appellant did not receive a fair hearing, and; 3) the penalty was unreasonable.

A. Substantial Evidence

Appellant contends the Department failed to prove it violated license conditions because it “had its agents stand outside the door of the [licensed premises], claiming they heard ‘noise’ coming from the interior of the [licensed premises], without any proof of the level of noise, other than to claim that it was ‘loud.’ “ (AOB at p. 6.) In contrast, appellant “introduced evidence that [it] had installed a decibel reader inside the premises, and monitored the sound for going over a certain level.”³ (*Ibid.*)

As stated above, the standard is “substantial evidence.” The Board will defer to the Department's findings, so long as they are supported by substantial evidence. (*Martin, supra*, 52 Cal.2d at 291.) Here, the Department found that appellant violated conditions one, two, and three of its license. (Conclusions of Law ¶ 4.) Therefore, the Board will affirm the Department's decision if there is substantial evidence to support that finding.

³ Appellant's arguments regarding the Department's failure to offer evidence as to why conditions were originally imposed on the license are irrelevant to the Department's decision and present appeal, and therefore, are not discussed herein.

The Department offered evidence that Agent Shapiro witnessed live amplified music on August 3, 2023, October 21, 2023, and April 11, 2024, which could be heard beyond the exterior of the licensed premises. (Findings of Fact ¶¶ 1, 2, 4-23.) Agent Shapiro also observed the front door and windows of the licensed premises opened while live music was provided, without any evidence of an emergency, normal ingress and egress of patrons, or for deliveries. (*Ibid.*) Finally, testimony by Agent Shapiro provided that patrons were dancing in the licensed premises during several songs played by the DJ on August 11, 2024. (*Ibid.*)

The record shows that the Department considered the conflicting testimony of appellant's agent, Mr. Parker. (Conclusions of Law, ¶¶ 6-9.) However, the Department resolved the conflicting testimony in favor of Agent Shapiro. (*Id.* at ¶¶ 15-16.) The Department, which is the trier of fact in an administrative hearing, "is vested with wide discretion in deciding relevancy, and its determination will not be disturbed on appeal unless there is a clear showing of abuse." (*McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1054 [228 Cal.Rptr. 567].)

After reviewing the record, the Board cannot say the Department abused its discretion in believing Agent Shapiro over Mr. Parker. Agent Shapiro testified to the condition violations on August 3, 2023, October 21, 2023, and April 11, 2024, and provided video evidence from the exterior of the licensed premises. (Findings of Fact ¶¶ 1, 2, 4-23.) The Department found his testimony credible.

Further, the Department found Mr. Parker's testimony not credible because of his "demeanor, evasive and conflicting testimony and bias in the presentation of his testimony" (Conclusions of Law ¶ 16.) The Board sees no error in the Department's determination of the evidence.

Based on the above, the Department's findings regarding the condition violations must stand. Agent Shapiro's testimony, along with photograph and video exhibits, support the Department's finding that appellant violated the condition of its licenses. Ultimately, appellant is asking this Board to second-guess the Department and reach a different result. Extensive legal authority prohibits this Board from doing so. (*Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (Southland)* (2002) 103 Cal.App.4th 1084, 1094 [127 Cal.Rptr.2d 652, 659].)

B. Due Process

Appellant contends its due process rights were violated because the ALJ was biased and favored the Department. (AOB at pp. 6-7.) Appellant maintains that a number of evidentiary rulings were made in the Department's favor which did not afford it an equal opportunity to present its case. (*Id.* at p. 7.) Appellant does not state what these evidentiary rulings are, but points the Board to the reporter's transcript. (*Ibid.*)

The Board has reviewed the record and particularly those sections of the transcript in which appellant alleges shows bias. The Board does not see any evidence of ALJ bias in favor of the Department. Further, the Board is not

required to make an independent search of the record for error not pointed out by appellant. It was appellant's duty to show the Board that some error existed.

The Board may treat unsupported and unasserted contentions as waived or forfeited. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852 [57 Cal.Rptr.3d 363, 377] ["When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived."]; *Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 52 [183 Cal.Rptr.3d 654] ["It is the responsibility of the appellant ... to support claims of error with meaningful argument and citation to authority. [Citations.] When legal argument with citation to authority is not furnished on a particular point, we may treat the point as forfeited and pass it without consideration. [Citations.] In addition, citing cases [or statutes] without any discussion of their application to the present case results in forfeiture".])

Appellant failed to provide evidence, argument, or citations to legal authority to support its assertion that the ALJ exhibited bias towards the Department. The Board reviewed the sections of the transcript appellant pointed to, but does not see any evidence of bias by the ALJ. This argument is rejected.

C. Technical Violations that Do Not Harm the Public

Appellant argues that its violation, if any, amounts to a technical violation, and not one that causes harm to the public. Appellant contends that the

Department failed to prove any of appellant's actions affected public welfare or morals.

Article XX, section 22 of the California Constitution authorizes the Department to take disciplinary action to protect the public:

The department shall have the power, in its discretion, to deny, suspend, or revoke any specific alcoholic beverage license if it shall determine for good cause that the granting or continuance of such license would be contrary to public welfare or morals.

This general authority, however, does not mean that every violation must be specifically proven to be contrary to public welfare or morals. The criteria for establishing good cause for discipline has been explained as follows:

In order to establish good cause for suspension or revocation of an alcoholic beverage license due to violations of law that do not involve moral turpitude, there must be a rational relationship between the offense and the operation of the licensed business in a manner consistent with public welfare and morals or there must be evidence that the offense had an actual effect on the conduct of the licensed business.

(H.D. Wallace & Associates, Inc. v. Dept. of Alcoholic Bev. Control (1969) 271 Cal.App.2d 589, 593-594 [76 Cal.Rptr. 749].)

In contrast to the position appellants would have us take, previous courts have found that specific findings need not be made on whether conduct charged in an accusation is deleterious to public welfare and morals. In

Schieffelin, the court found:

To the extent that Schieffelin argues that the Department failed to make a specific finding that its conduct was injurious to public welfare or morals, we note that **both the California Supreme Court and this court have held that a finding that a licensee has violated**

provisions of the Alcoholic Beverage Control Act is tantamount to a finding of injury to public welfare and morals. (*Martin v. Alcoholic Bev. etc. Appeals Bd.* (1959) 52 Cal.2d 287, 291 [341 P.2d 296]; *Mercurio v. Dept. Alcoholic etc. Control* (1956) 144 Cal. App. 2d 626, 631 [301 P.2d 474] (*Mercurio*).)

In *Mercurio*, this court held that a finding that licensees had violated a Department rule was in effect a finding that the licensees' acts were contrary to public welfare and morals because the rule itself was an articulation of acts which the Department found to be contrary to public welfare and morals. (*Ibid.*)

Similarly, the Legislature has already determined that the Alcoholic Beverage Control Act is intended "for the protection of the safety, welfare, health, peace, and morals of the people of the State" and that the act involves "in the highest degree" the "moral well-being" of the state and its people. (See Business and Professions Code Section 23001.)[fn.]

(*Dept. of Alcoholic Bev. Control v. Alcoholic Bev. Control Appeals Bd.* (2005), 128 Cal.App.4th 1195, 1217 [27 Cal.Rptr.3d 766] (*Schieffelin*), emphasis added.)

Here, by finding that appellant violated provisions of the Alcoholic Beverage Control Act, the Department found that appellant's acts were contrary to public welfare and morals. (*Martin, supra*, at p. 291; *Mercurio, supra*, at p. 631; *Schieffelin, supra*, at p. 1217.) There is no additional requirement that the Department show its discipline was necessary to protect the public, as that is already implied by finding there is an underlying violation.

D. Penalty

Appellant argues that the 45-day suspension is "disproportionate to the alleged violations, even if they are technically true." (AOB, at p. 7.) This Board may examine the issue of excessive penalty if it is raised by an appellant.

(*Joseph's of Cal. v. Alcoholic Bev. Control Appeals Bd.* (1971) 19 Cal.App.3d 785, 789 [97 Cal.Rptr. 183].) However, the Board will not disturb the Department's penalty order in the absence of an abuse of discretion. (*Martin v. Alcoholic Bev. Control Appeals Bd. & Haley* (1959) 52 Cal.2d 287, 291 [341 P.2d 296].) An administrative agency abuses its discretion when it "exceeds the bounds of reason." (*County of Santa Cruz v. Civil Service Commission of Santa Cruz* (2009) 171 Cal.App.4th 1577, 1582 [90 Cal.Rptr.3d 394, 397].) However, "[i]f reasonable minds might differ as to the propriety of the penalty imposed, this fact serves to fortify the conclusion that the Department acted within its discretion." (*Harris v. Alcoholic Bev. Control Appeals Bd.* (1965) 62 Cal.2d 589, 594 [43 Cal.Rptr. 633].)

In determining disciplinary action, the Department is required to consider the penalty guidelines incorporated in California Code of Regulations, title 4, section 144. The standard penalty for a first-time violation of section 23804 is 15 days, with five days stayed for a period of one year. (Cal. Code Regs., tit. 4, § 144.) Nevertheless, rule 144 allows the Department to deviate from the standard penalty when, "*in its sole discretion*[, it] determines that the facts of the particular case warrant such deviation — such as where facts in aggravation or mitigation exist." (*Ibid.*, emphasis added.)

Factors in aggravation include prior disciplinary history, prior warning letters, licensee involvement, premises located in high crime area, lack of cooperation by the licensee in investigation, appearance and actual age of minor, and continuing course or pattern of conduct. (Cal. Code Regs., tit. 4, §

144.) Factors in mitigation include the length of licensure at the subject premises without prior discipline or problems, positive action by the licensee to correct the problem, documented training of the licensee and the employees, and cooperation by the licensee in the investigation. However, neither list of factors is exhaustive; the Department may use its discretion to determine whether other aggravating or mitigating circumstances exist. (*Ibid.*)

The Department justified its 45-day suspension due to numerous aggravating factors. (Decision at pp. 16-18.) Most significantly, appellant was disciplined for the same violations on two prior occasions; a 15-day suspension received for violations in 2019 and 2020, and a 20-day suspension for violations in 2022. (*Id.* at p. 16.) The Department also cited Mr. Parker's direct involvement in the violations, the continuing course and pattern of conduct, as well as the premises' location in a high crime area. (*Id.* at pp. 17-18.) The Department also rejected appellant's mitigation evidence (e.g. the decibel reader and "No Dancing" sign) because they were inadequate to address the violations. (*Ibid.*)

Based on the above, the Board cannot say that the Department abused its discretion. As the Board has said many times over the years, the extent to which the Department considers mitigating or aggravating factors is a matter entirely within its discretion. Rule 144 allows the Department to exercise discretion to consider aggravation and mitigation. The Department's rejection of appellant's mitigation evidence was reasonable and not an abuse of discretion. Therefore, the penalty must stand.

IV. CONCLUSION

For the above reasons, the appeal is denied, and the Department's decision is affirmed.

ORDER

Pursuant to Business and Professions Code section 23085, the decision of the Department is affirmed.⁴

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

⁴ This final order is filed in accordance with Business and Professions Code section 23088, and it shall become effective 30 days following the date of the filing of this order as provided by section 23090.7.

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

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

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

DIEGO & DANTE, LLC
CHULA VISTA BREWERY
294 THIRD AVENUE
CHULA VISTA, CA 91910

SMALL BEER MANUFACTURER - LICENSE

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

SAN DIEGO DISTRICT OFFICE

File: 23-568818

Reg: 24094514

RECEIVED

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Alcoholic Beverage Control
Office of Legal Services

CERTIFICATE OF DECISION

It is hereby certified that, having reviewed the findings of fact, determination of issues, and recommendation in the attached proposed decision, the Department of Alcoholic Beverage Control adopted said proposed decision as its decision in the case on February 5, 2025. Pursuant to Government Code section 11519, this decision shall become effective 30 days after it is delivered or mailed.

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

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

On or after March 26, 2025, a representative of the Department will contact you to arrange to pick up the license certificate.



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

Sacramento, California

Dated: February 13, 2025

Matthew D. Botting
General Counsel

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

IN THE MATTER OF THE ACCUSATION AGAINST:

Diego & Dante LLC	}	File: 23-568818
Dbas: Chula Vista Brewery	}	
294 Third Avenue	}	Reg.: 24094514
Chula Vista, California 91910	}	
	}	License Type: 23
Respondent	}	
	}	Word Counts: 16,968; 34,704
	}	
	}	Kennedy Court Reporters (CR):
	}	Hanna Jenkin, CR (9/5/24)
	}	Kimberly Lopez, CR (10/30/24)
	}	Christopher Chain, Video Host
	}	
<u>Small Beer Manufacturer License</u>	}	<u>PROPOSED DECISION</u>

Administrative Law Judge D. Huebel, Administrative Hearing Office, Department of Alcoholic Beverage Control heard this matter on September 5, 2024, and October 30, 2024.

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

Donald Lancaster Jr., attorney, represented Respondent Diego & Dante LLC.

The Department seeks to discipline the Respondent's license on the grounds that, on August 3, 2023, October 21, 2023, and April 11, 2024, Respondent failed to comply with conditions attached to Respondent's license in violation of Business and Professions Code section 23804.¹ (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 October 30, 2024.

¹ All statutory references are to the Business and Professions Code unless otherwise noted.

FINDINGS OF FACT

1. The Department filed the accusation on June 21, 2024.
2. The Department issued a type 23, small beer manufacturer license to the Respondent on March 16, 2017, for the above-described location (the Licensed Premises).
3. The following is the record of prior Department discipline against the Respondent's license as established by official records introduced by the Department, which matters are final (Exhibits 2 and 3):

<u>Dates of Violation</u>	<u>Reg. No.</u>	<u>Violation</u>	<u>Penalty</u>
12/27/19, 1/2/20, 1/3/20, and 1/17/20	20090250	BP§23804	POIC in lieu of 15-day suspension
2/18/22, 2/25/22, and 3/4/22	22092413	BP§23804	20-day suspension

4. On October 25, 2016, the Respondent executed a Petition for Conditional License (PCL), agreeing to comply with five conditions upon its license. Condition numbers 1, 2 and 3 contained therein, provide that:
 1. Live entertainment provided shall be permitted on the interior only. Live entertainment provided shall be permitted between the hours of 10:00 a.m. and 10:00 p.m. each day of the week. No noise from said entertainment shall be heard beyond the exterior of the premises in any direction.
 2. There shall be no dancing allowed on the premises.
 3. The doors and windows shall be kept closed during the times live entertainment is provided except in cases of emergency, normal ingress and egress of patrons and to permit deliveries. Said doors and windows not to consist solely of a screen or ventilated security door.
5. The Petition for Conditional License states the Licensed Premises is located in an area that has significant law enforcement problems and the conditions were imposed to mitigate against such law enforcement problems, without said conditions would otherwise aggravate the existing law enforcement problems and be contrary to public welfare and morals thereby constituting grounds for the denial of the application.
6. The Petition for Conditional License further provides that, "petitioner(s) understand(s) that any violation of the foregoing condition(s) shall be grounds for the suspension or revocation of the license(s)." (Exhibit 4.)

7. At some point in 2023, Department Agent Shapiro received an assignment to investigate an allegation of possible service to minors at the Licensed Premises, which assignment included general enforcement to ascertain whether the Licensed Premises was in compliance with the ABC Act, all code sections, regulations and conditions on its license. Agent Shapiro reviewed the Respondent's base file, which included the conditions on the Respondent's license.

**August 3, 2023
(Counts 1 and 2)**

8. On August 3, 2023, at approximately 6:00 p.m., Agents Shapiro and Barabas arrived outside of the Licensed Premises in a plain clothes capacity. Agent Shapiro observed the Licensed Premises' front door was open, with no one entering or exiting through the open door. The two ceiling to floor roll-up windows, adjacent to the right and left of the door and encompassing nearly the entirety of the front wall of the premises, were fully open as well. As such, there was no glass or barrier between the floor and ceiling at either side of the front door, causing amplified music from two speakers inside the Licensed Premises to emanate outside, beyond the exterior of the Licensed Premises through the open door and windows. The Licensed Premises was open and operating. Bartender Julian was the sole employee working.

9. While standing in the street outside the Licensed Premises, approximately 20 feet from the Respondent's front door, Agent Shapiro saw, through the Respondent's open door, a male playing a guitar and singing. The guitarist was later identified as Daniel. Agent Shapiro could also hear the same live entertainer's music emanating beyond the exterior of the Licensed Premises, through the open door and windows, to the position at which he stood, 20 feet from the Respondent's front door.

10. The agents walked through the Licensed Premises' opened door, which remained open after they entered the premises. The door was propped open by a mechanical means and was never closed while the agents were inside the Licensed Premises. The agents walked to the fixed bar, where Agent Shapiro looked at the beer menu and took a photograph thereof with his Department issued cell phone. (Exhibit 6 page one – color photo of menu.) Agent Shapiro placed an order with bartender Julian for a JAG Attitude American Pale IPA. The menu listed said beer as having 5% ABV (alcohol by volume). The bartender served the said alcoholic beer to Agent Shapiro, who took a photograph of the beer. (Exhibit 6 page two – color photo of glass of beer in foreground, with background depicting Daniel playing a guitar while standing at a microphone.)

11. Agent Shapiro observed and heard Daniel playing the same music inside the Licensed Premises as he had heard outside the exterior of the Licensed Premises. Agent

Shapiro saw a cord running from Daniel's guitar to an amplifying device and saw Daniel singing into a microphone with speakers on either side of him. (Exhibit 6 page two.)

12. Approximately 15 minutes later, Agent Shapiro walked out of the Licensed Premises through the front door, which was still open. He walked off the sidewalk and stood on the street approximately 20 feet from the front door. Agent Shapiro took a video with his Department issued cellular telephone of Daniel's live amplified music, which he heard emanating from the speakers within the Licensed Premises to his position beyond the exterior of the Licensed Premises, approximately 20 feet away from the front door. (Exhibit 8 – video.)² Agent Shapiro then walked and approached the Respondent's front door and stood approximately three feet outside the front door. From that position he took another video of Daniel playing music, which amplified music could be heard emanating from inside the Licensed Premises beyond the exterior of the Licensed Premises to where the agent stood. (Exhibit 7 – video.) Agent Shapiro walked back through the front door, which was still open, and re-entered the Licensed Premises.

13. The agents remained in the Licensed Premises for a total of approximately 30 minutes. Throughout that duration of time the front door and windows on both sides of the front door remained open, and the live entertainer sang and played amplified music. Throughout those 30 minutes there were no deliveries being made to the Licensed Premises and no one working for Respondent closed or attempted to close the front door and windows or stop the live entertainment. During those 30 minutes, there was no evidence that Respondent's employee or staff asked Daniel to lower the volume of the live music so that it would not be heard beyond the exterior of the Licensed Premises while the front door and windows were open.

**October 21, 2023
(Counts 3 and 4)**

14. On October 21, 2023, at approximately 7:00 p.m., Agents Shapiro and Barabas arrived outside the Licensed Premises in a plain clothes capacity. Agent Shapiro observed the Licensed Premises' front door was propped open, with no one entering or exiting through the open door. The two ceiling to floor roll-up windows, adjacent the door, were fully open. Agent Shapiro heard amplified music emanating from inside the Licensed Premises through the open door and windows of the Licensed Premises to his position approximately 20 feet beyond the exterior of the Licensed Premises. The Licensed Premises was open and operating. Bartender Julian was the sole employee working.

² Exhibit 9 - Google map Agent Shapiro created to depict the distance at which he stood.

15. While standing in the street outside the Licensed Premises, approximately 20 feet from the Respondent's front door, Agent Shapiro saw and heard, through the Licensed Premises' open windows, a disc jockey (DJ) playing amplified music. The DJ was later identified as William Irodistan. Agent Shapiro took a video with his Department issued cellular telephone of the DJ's amplified music, which he heard emanating from within the Licensed Premises to his position beyond the exterior of the Licensed Premises, approximately 20 feet away from the front door. (Exhibit 11 – video.) Agent Shapiro walked toward and approached the Respondent's front door where he stood just outside of the front door. From that position Agent Shapiro took another video of the DJ playing music, which amplified music could be heard emanating from inside the Licensed Premises beyond the exterior of the Licensed Premises to where Agent Shapiro stood. (Exhibit 12 – video.)

16. The agents walked through the Licensed Premises opened door, which remained open after they entered the premises. The door was propped open by a mechanical means. The agents walked to the fixed bar, where Agent Shapiro placed an order with bartender Julian for a JAG Attitude American Pale IPA, the same alcoholic beverage he had ordered on his prior visit. The bartender served the alcoholic beer to Agent Shapiro, who took a photograph of the beer. (Exhibit 10 – color photo of glass of beer in foreground, with background depicting the DJ wearing a read baseball cap on his head.) The DJ was still playing music.

17. The agents remained in the Licensed Premises for a total of approximately 30 minutes. Throughout that duration of time the front door and the windows on both sides of the front door remained open, and the live entertainer/DJ played amplified music. Throughout those 30 minutes there were no deliveries being made to the Licensed Premises and no one working for Respondent closed or attempted to close the doors and windows. During those 30 minutes, there was no evidence the Respondent's employee or staff attempted to either stop the DJ from playing music or get the DJ to lower the music volume while the front door and windows were open, so the music would not be heard beyond the exterior of the Licensed Premises.

April 11, 2024
(Counts 5, 6 and 7)

18. On April 11, 2024, at approximately 8:05 p.m., Agents Shapiro, Williams and Palsson arrived outside of the Licensed Premises in a plain clothes capacity. Agent Shapiro observed the Licensed Premises' front door was propped open, with no one entering or exiting through the open door. The two ceiling to floor roll-up windows, adjacent the door, were fully open. Agent Shapiro saw a DJ and heard the DJ's loud amplified music emanating from inside the Licensed Premises through the Respondent's

open door and windows to his position outside and beyond the exterior of the Licensed Premises. The DJ was later identified as William Irodistan. The Licensed Premises was open and operating. Mr. Parker was working alone that evening at the Licensed Premises, with no other employee working.

19. The agents walked through the propped open front door of the Licensed Premises, which door remained open after they entered the premises. Agent Shapiro heard the same DJ music playing inside the Licensed Premises as he heard while he stood outside the Licensed Premises. Agent Shapiro walked to the fixed bar, looked at the beer menu, ordered and was served an alcoholic beer called a Honey Lavender Golden Ale. Agent Shapiro took a photograph of the beer, which he was served. (Exhibit 13 page 2 – color photo of glass of beer.) Agent Shapiro also took a photo of the beer menu, which indicated the Honey Lavender Golden Ale beer had a 4.6% ABV. (Exhibit 13 page 1.)

20. At some point, the agents sat at a table and Agent Shapiro observed two patrons inside the Licensed Premises dancing to the music the DJ was playing. The patrons were dancing in an open space/area in front of the DJ. The patrons danced to several songs the DJ played. Agent Shapiro also observed the DJ dancing to the music he played. Agent Shapiro took two videos of the patrons dancing to two separate songs. (Exhibits 15 and 16.)

21. The agents remained in the Licensed Premises for approximately 30 minutes. Throughout that duration of time the front door and windows on either side of the front door remained open, and the live entertainer/DJ played amplified music at approximately the same volume. Throughout those 30 minutes there were no deliveries being made to the Licensed Premises and no employee or staff of Respondent's closed or attempted to close the doors and windows, or had the DJ turn down the music volume so that it could not be heard beyond the exterior of the Licensed Premises.

22. At approximately 8:35 p.m., all the agents walked outside the Licensed Premises through the front door, which was still propped open with no one else entering or exiting and no deliveries being made. While standing in the street outside the Licensed Premises, approximately 20 feet from the Respondent's front door, Agent Shapiro saw and heard, through the Licensed Premises' open windows and door, the DJ still playing amplified music. Agent Shapiro took a video with his Department issued cellular telephone of the DJ's amplified music which he heard emanating from within the Licensed Premises to his position beyond the exterior of the Licensed Premises, approximately 20 feet away from the front door. (Exhibit 14 – video.) Mr. Parker is seen in the said video behind the fixed bar. No agent is depicted in exhibit 14 and no agent was speaking with Mr. Parker in the video marked Exhibit 14, as all agents were already outside of the Licensed Premises.

23. On each of the three above investigative dates (August 3, 2023, October 21, 2023, and April 11, 2024) the agents did not observe any youthful appearing adults or minors inside the Licensed Premises and observed no section 25658 violations. The agents did observe violations of Respondent's conditions 1, 2 and 3. During the investigations on each said date the licensed premises next door to the Respondent had no open windows and Agent Shapiro heard no live entertainment emanating from inside that adjacent licensed premises beyond the exterior of that licensed premises. Also, there was no evidence on each said date of any emergency, normal ingress and egress of patrons or deliveries while the Respondent's front door and windows remained open during said investigations.

(Respondent's Witnesses)
(Tim Parker)

24. Tim Parker appeared and testified at the hearing. Mr. Parker said he is the managing member of Diego & Dante LLC, which is the first licensed premises he acquired. Mr. Parker said he has a second Department licensed premises, Chula Vista Brewery of Eastlake, located at 871 District Place in Chula Vista, California. Mr. Parker and his wife, Dalila, share in managing both premises. They will visit one of the premises at opening and closing, with Mr. Parker going to one premises and Mrs. Parker going to the other, to ensure they are opened and closed properly. When Mr. Parker is managing at the Licensed Premises, he said he is either working in his office not in the bar, or he is in and out of his office because he will leave the Licensed Premises to go check on his other licensed premises, Chula Vista Brewery of Eastlake. Mr. Parker said if the Licensed Premises gets crowded either he or Mrs. Parker will "help pour beer," when they are in the Licensed Premises.

25. Mr. Parker said the Licensed Premises has only one employee, a bartender named Julian, who Mr. Parker said is "responsible for everything that goes on in the brewery" including, but not limited to, ensuring the television settings are correct, the live entertainment is not too loud, and customers are safe. No food is served in the Licensed Premises. Beer made on the premises is served in the Licensed Premises.

26. Mr. Parker said the Licensed Premises' hours of operation are from 3:00 p.m. to 10:00 p.m. during the week. On the weekends they open at 12:00 p.m. and while closing time is traditionally 10:00 p.m., Mr. Parker said he will keep the Licensed Premises open past 10:00 p.m. if it is crowded, or what he referred to as a "big weekend." At closing time, he, his wife and the employee will not "kick" patrons out but will let the "crowd naturally die itself out" or allow patrons to filter out of the Licensed Premises. Mr. Parker explained they will not "go up to people forcing them out the door," but they will "let them quietly sense" and "get the hint on their own" that it is closing time. Mr. Parker

said if a sports game is on, like the Padres, then the Respondent will leave the game on the television and the Licensed Premises will remain open past 10:00 p.m.

27. The Licensed Premises has live entertainment, on Friday and Saturday evenings, and occasionally on Thursday evening, consisting of a DJ or an acoustic guitarist, who play between 7:00 p.m. and 10:00 p.m. Mr. Parker said the DJs and acoustic guitarist, Daniel, are considered independent contractors and not employees. The said entertainers hook their equipment up to the Respondent's speakers, so the Respondent's staff has control in turning down the music if it gets too loud. In 2018, the Respondent installed a decibel reader in the Licensed Premises. Depending on whoever is "working in the bar," including Mr. Parker, Mrs. Parker and/or the bartender Julian, Mr. Parker said they will on average keep the decibel reader level between 85 and 90 decibels and will not allow it to go over 100 decibels. Mr. Parker said by monitoring the decibel reader in such a fashion they can "ensure that the sound does not travel outside the brewery more than three to five feet," as depicted in Agent Shapiro's video exhibits.

28. Mr. Parker said the Respondent has had a "no Dancing" sign on the wall in the Licensed Premises since 2018 and put up a "No Twerking" sign probably six months later in 2018. (Exhibit A – the "no Dancing" sign appears to be a material grocery-type bag, with the "No Twerking" sign depicting a dancing stick figure with a red circle and line through the stick figure.) Mr. Parker said the Respondent does not provide a dance floor in any part of the Licensed Premises and presented a photograph and site plan/diagram of the interior of the Licensed Premises. (Exhibit B -diagram with the entry door depicted at the far right, and exhibit C – color photo of large walkway area between tables in the center of Licensed Premises.)

29. On April 11, 2024, Mr. Parker said he was present in the Licensed Premises, "making sure everything was good." Mr. Parker later testified that he was the only person working in the Licensed Premises that evening, along with the DJ, and that Mr. Parker could be seen in the Department's video exhibit 14 standing in the back (behind the fixed bar) wearing a hat. Mr. Parker admitted he observed the two female patrons start dancing, who are depicted in the Departments video exhibits 15 and 16. Mr. Parker claimed that at some point he asked the two females to stop dancing, and they immediately stopped dancing and sat down. There was no credible evidence as to why Mr. Parker could not have asked the two female patrons to stop dancing to prevent the condition 2 violation from occurring over several songs.

30. Mr. Parker said the sidewalk outside the Licensed Premises' front door is approximately 10 feet wide. (Exhibit B - diagram with a five-foot measurement of only a portion of the sidewalk, from the exterior wall of the Licensed Premises outward to a planter, with the remaining portion of the sidewalk extending from that five-foot mark to

the curb without any stated measurement but appearing to extend another eight to 10 feet with the curvature of the curb, if the diagram is to scale.) Mr. Parker said that if someone stood in the street beyond the sidewalk curb, they would be standing approximately 20 feet from Respondent's front door.

31. Mr. Parker said the Respondent's standard practice with regard to closing the front door and windows, is that "once the music starts, we begin to close the doors, but like I said we're human and we may not get to that right away." The front door has a feature/mechanism which causes it to remain open once opened and requires someone to physically close it. Mr. Parker testified that at some point on August 3, 2023, he was at the Licensed Premises, and at some point, the door and windows were closed. Mr. Parker acknowledged that on October 21, 2023, he was not present at the Licensed Premises the entire time the DJ was playing music. There was no evidence that Mr. Parker was in the Licensed Premises prior to 7:00 p.m., when the DJ began to play music, or for 30 minutes thereafter, while the agents were at the Licensed Premises on October 21, 2023. Mr. Parker claimed that on October 21, 2023, once the doors and windows were discovered to be open, he closed them. There was no evidence as to how long after the agents exited the Licensed Premises at approximately 7:30 p.m. that the front door and windows were eventually closed.

32. Mr. Parker testified to claimed mitigation efforts after the violation of 2019, of making sure all doors and windows are closed when live entertainment is beginning, checking the decibel reader to make sure the music stays below a certain decibel range so that with the doors and windows closed the music is not going beyond that point, ensuring music stops after 10:00 p.m., putting up "no Dancing" signs, sound-proofing the ceiling, closing early, and training Julian quarterly regarding compliance with Respondent's conditions, including how to ask patrons to stop dancing and advise that dancing is not allowed.

33. Mr. Parker testified that the mitigation efforts he instituted after the violation of 2022, was to start video recording Department agents and minor decoys when they entered the Licensed Premises to have evidence of Respondent's compliance with its conditions. At some point on April 11, 2024, Mr. Parker took a video of the Department agents seated at their table inside the Licensed Premises. (Exhibit D.)

(William Irodistan)

34. William Irodistan appeared and testified at the hearing. Mr. Irodistan was a patron at the Licensed Premises prior to Respondent's manager, Chris, hiring him as an independent contractor, in 2021 to work as a DJ on a Saturday, as test to see how he performed. On that Saturday evening after Mr. Irodistan arrived to work at the Licensed

Premises, manager Chris, instructed Mr. Irodistan not to allow the music's volume to go over 100 decibels on the decibel reader. After Mr. Irodistan worked that first Saturday DJ gig, the Respondent had Mr. Irodistan fill-in for Respondent's regular DJ's, Bethel Perez and JC, on Friday or Saturday evening when Perez and JC could not DJ. Dalila Parker would contact Mr. Irodistan when Respondent needed Mr. Irodistan to fill-in for Perez or JC. In 2023, Mr. Irodistan DJ'd at the Licensed Premises only about one or two times that year. Mr. Irodistan worked as the DJ at the Licensed Premises on Saturday, October 21, 2023, which he believed was at Dalila Parker's request. (Exhibit 11 video – depicting Mr. Irodistan DJ'ing.) Mr. Irodistan also believed it was Dalila Parker who was managing the Licensed Premises while he DJ'd that Saturday evening. Mr. Irodistan said he did not see Tim Parker at the Licensed Premises when he was DJ'ing on October 21, 2023. In early 2024, the Respondent had Mr. Irodistan DJ'ing on Thursday evenings as well as filling in for the other two DJs on Friday and Saturday when needed. Mr. Irodistan worked as a DJ at the Licensed Premises on Thursday, April 11, 2024. (Exhibit 15 video – depicting Mr. Irodistan DJ'ing and patrons dancing in the foreground of the video.) Mr. Irodistan had a clear recollection of one of the patrons who was dancing that evening because of the sweater the patron wore. Exhibit 15 depicts the decibel reader range from 87.5 to 90.3.

35. Sometime in mid-summer 2024, the Respondent no longer required Mr. Irodistan's services, and he thereafter stopped working as a DJ for the Respondent at the Licensed Premises. Mr. Irodistan was paid through Venmo by the Respondent, as an independent contractor, for his DJ'ing services at \$250 per session, with each session lasting three hours, from 7:00 p.m. to 10:00 p.m. Mr. Irodistan brought his own DJ equipment to the Licensed Premises.

36. The only instruction Mr. Irodistan received while he worked as a DJ at the Licensed Premises was manager Chris' instruction not to allow the DJ music to go over 100 decibels on the decibel reader. Some time on or after November 7, 2022, the Respondent was served a 20-day suspension for violating Respondent's conditions 1, 2 and 3 on multiple dates in 2022. Thereafter, Mr. Irodistan decided on his own accord not to allow the decibel reader to go over 90 decibels because he did not want the Respondent to be "shut down" or receive "another noise complaint." It was not Mr. Irodistan's duty to (and he did not) monitor guests who danced in the Licensed Premises or close the front door when it was open. His only responsibility was to play music as the DJ at the Licensed Premises, and he made sure the music was "not too loud because [he] didn't want them to get shut down like they did before." Mr. Irodistan recalls the Respondent's decibel reader being in the Licensed Premises when he first visited the Licensed Premises as a patron, well before he started working as a DJ for Respondent in 2021. Mr. Irodistan said the "No Twerking" sign has been on the wall in the Licensed Premises for years. (Exhibit A – "No Twerking" sign.) He did not recall seeing the "no Dancing" bag sign.

Mr. Irodistan said that while working as a DJ for Respondent and if Tim Parker is in the Licensed Premises and sees an individual dancing Mr. Parker will ask the patron to stop dancing.

37. Mr. Irodistan said that a manager was always at the Licensed Premises when he worked there, either Chris, Tim Parker or Dalila Parker. At some point when Chris no longer worked for the Respondent, Mr. Irodistan said it was either Tim Parker or Dalila Parker who were at the Licensed Premises managing while Mr. Irodistan was serving as a DJ.

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 23804 provides that the violation of a condition placed upon a license constitutes the exercise of a privilege or the performing of an act for which a license is required without the authority thereof and constitutes grounds for the suspension or revocation of the license.

4. 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) for the violations of section 23804 alleged in counts 1 through 7. Specifically, on August 3, 2023, October 21, 2023, and April 11, 2024, the Respondent-Licensee (a) provided live entertainment in the form of a musician (Daniel) singing and playing a guitar through speakers on August 3, 2023, and a live DJ (William Irodistan) playing amplified music on October 21, 2023, and April 11, 2024, all of which was heard beyond the exterior of the Licensed Premises, and (b) kept the front door and windows open when said live entertainment was being provided, with no evidence of any emergency, normal ingress and egress of patrons or deliveries while the front door and windows remained open during said investigations. Agent Shapiro provided credible testimony that the foregoing violations occurred for at least 30 minutes on each date, while the agents were at the Licensed Premises. Furthermore, on August 11, 2024, the Respondent-Licensee allowed patrons to dance in the Licensed Premises for a duration of several songs played by the DJ. The foregoing were violations of condition numbers 1, 2 and 3, endorsed upon Respondent's license. (Findings of Fact ¶¶ 1, 2, 4-23.)

5. In determining the credibility of a witness, as provided in section 780 of the Evidence Code, the administrative law judge may consider any matter that has any tendency in reason to prove or disprove the truthfulness of the testimony at the hearing, including the manner in which the witness testifies, the extent of the capacity of the witness to perceive, to recollect, or to communicate any matter about which the witness testifies, a statement by the witness that is inconsistent with any part of the witness's testimony at the hearing, the extent of the opportunity of the witness to perceive any matter about which the witness testifies, the existence or nonexistence of any fact testified to by the witness, and the existence or nonexistence of a bias, interest, or other motive.

6. Mr. Parker's contentions (a) or implication that at some point while the agents were in the Licensed Premises on said investigative dates the door and windows were closed, (b) the DJ's and guitarist are responsible for stopping patrons from dancing in the Licensed Premises and were trained with respect to compliance with the conditions³, (c) on April 11, 2024 the two female patrons were only dancing for less than a minute, from the time they started and the time Mr. Parker allegedly stopped them from dancing, (d) on April 11, 2024, a Department agent was "running distraction" as allegedly depicted in exhibit 15, and that the agent and/or his questions prevented or impeded Mr. Parker from asking the two female patrons to stop dancing and also prevented Mr. Parker from closing the front door and windows after the live entertainment started, and that the Department was targeting Mr. Parker and the Respondent, (e) more than two "no dancing" signs were put up, are disbelieved for the following reasons. Mr. Parker exhibited a bias in the presentation of his testimony as the managing member of the Licensed Premises subject to revocation. He also presented evasive and conflicting testimony.

7. "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."⁴ Yet, Mr. Parker admitted on direct

³ Mr. Parker's testimony appeared to include, in the term "staff," the live entertainers (the DJ's and Daniel the guitar player), when asked about staff and staff members, and when he testified that the staff were trained and specifically claimed the DJs are trained to stop patrons from dancing. Mr. Parker acknowledged the Respondent had only one employee, the bartender named Julian, and was adamant to point out that he and his wife are not employees but managers. As such, it is unclear why Mr. Parker would not have simply said that Julian was trained, rather than incorporating the term staff, which could be understood to mean more than one individual.

⁴ *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

examination that Respondent's standard practice with regard to closing the front door and windows, is that "once the music starts, we begin to close the doors, but like I said we're human and we may not get to that right away." It is incredulous, in the face of multiple prior discipline for the same condition violations, that Respondent would choose to wait until *after* the live entertainment starts to close the door and windows. Mr. Parker acknowledged repeatedly that live entertainment starts at 7:00 p.m. Given Mr. Parker's knowledge thereof, the standard practice should then be to close the front door and windows *prior* to 7:00 p.m., *prior* to the live entertainment beginning. Perhaps this task could be given to the live entertainers before they begin playing music, since the Respondent has proven with repeated violations that its standard practice is contributing to violating conditions on its license.

8. It is disbelieved that the doors and windows were closed at some point while the agents were in the Licensed Premises. Agent Shapiro's credible testimony maintained that the live entertainment continued with the door and windows open for the duration of his 30-minute visit at the Licensed Premises on each of said investigative dates. Mr. Parker testified in the current matter that the front door has a feature/mechanism which causes it to remain open once opened. During the hearing before the undersigned on October 13, 2020, for the same condition violations in 2019, (exhibit 2), Mr. Parker testified then that the front door has a safety feature/mechanism which causes the door to remain open when the door is pushed open to its full extent, which requires someone "to physically come push it back closed." Given Mr. Parker's prior knowledge of this feature, and the prior repeated violations of condition 3, it is incredulous that he would not have found some means to ensure the door remained closed during live entertainment, either by way of having an employee close the door, and/or at least placing a large sign on the door asking patrons to close the door upon their entering and leaving.

9. Mr. Parker's contention that the DJs and guitarist are responsible for stopping patron dancing and were trained with respect to compliance with the conditions is further disbelieved. Mr. Irodistan credibly maintained his only duties as a DJ are to play music and make sure it's not too loud, by making sure the decibel reader does not go over 100. Upon re-direct examination, Mr. Irodistan credibly maintained that his duties do not include monitoring guest dancing and he is not responsible for asking patrons not to dance. Mr. Irodistan further credibly maintained that the only instruction he ever received was when he was first hired, and manager Chris instructed him to make sure the decibel reader does not go over 100 decibels. Mr. Irodistan credibly testified that after Respondent's 2022 violations he took it upon himself to make sure the decibel reader

Cal.App.2d 432, 438; *Mercurio v. Department of Alcoholic Beverage Control*, *supra*, 144 Cal.App.2d 626, 630; *Cooper v. State Board of Equalization* (1955) 137 Cal.App.2d 672, 678 [290 P.2d 914]; *Endo v. State Board of Equalization* (1956) 143 Cal.App.2d 395, 401-402 [300 P.2d 366].

does not go over 90. Respondent counsel's closing further confirmed that Mr. Irodistan, as a DJ, is not responsible for enforcing Respondent's conditions, but is contracted simply to serve as a DJ.

10. If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust. (Evidence Code, section 412.)⁵

11. There was no credible evidence of documented training. It was within the Respondent's power to produce its employee Julian and the other DJs or guitarist to testify to the training they allegedly received. In weighing the factors of Evidence Code sections 412 and 780, and in light of Mr. Parker's conflicting and evasive testimony and Mr. Irodistan's credible testimony that he received no other training, the evidence offered by Mr. Parker and Respondent regarding additional training to its "staff" as mitigation is viewed with distrust.

12. Rather than taking responsibility, Mr. Parker alleged that an agent distracted him and was the cause for his failure to immediately stop patrons from dancing on April 11, 2024, but that Mr. Parker allegedly did so within a minute of their beginning to dance. Exhibits 15 and 16 clearly show the two females were dancing to two separate songs, which could be heard playing in each of the separate videos. Agent Shapiro presented credible testimony that the two patrons danced for several songs and were not asked to stop dancing. Several songs is more than the "less than one minute" Mr. Parker claimed the patrons were dancing before he allegedly stopped them. The video evidence is consistent with Agent Shapiro's testimony. Mr. Parker's testimony is incredulous and inconsistent with the evidence and record. It is more likely than not, that because Mr. Parker was, on April 11, 2024, the sole person working in the Licensed Premises, pouring beer from behind the bar, serving patrons, and "responsible for everything" in the Licensed Premises, Mr. Parker put himself in the position to fail to comply with the conditions on the license. Similarly, having a sole employee "responsible for everything" on the other nights in question, makes it impossible for that employee to ensure that all conditions are complied with.

13. With Mr. Parker as the sole person working at the Licensed Premises on

⁵ Although a defendant is not under duty to produce testimony adverse to himself, if he fails to produce evidence that would naturally have been produced, he must take the risk that the trier of facts will infer that if the evidence had been produced it would have been adverse. *Breland v. Traylor Engineering & Manufacturing Co.* (App. 1 Dist. 1942) 52 Cal.App.2d 415, 126 P.2d 455. Where defendant, refuses to produce evidence which would overthrow case made against him if not founded on fact, presumption arises that evidence, if produced would operate to defendant's prejudice. *Dahl v. Spotts* (App. 1932) 128 Cal.App. 133, 16 P.2d 774.

April 11, 2024, and given that the Respondent only has one employee, bartender Julian, who, as Mr. Parker testified, is “responsible for everything” in the Licensed Premises, one option would be to ask the live entertainers to ask patrons not to dance, since they have the use of the Respondent’s microphone and speakers and are in a better position to immediately see and stop any patron from dancing. The Respondent might also consider larger, more visible signs, placed in more conspicuous locations. The material bag with the “no Dancing” words thereon and the “No Twerking” sign are inconspicuous, amidst the large televisions, the various stickers, plants and other objects surrounding them. Even Mr. Irodistan, who has been working as a DJ at the Licensed Premises since 2021, could not recall and did not even know the “no Dancing” bag sign was on the wall.

14. Mr. Parker alleged that the Department’s video exhibit 14 depicted the moment when an agent was allegedly distracting/impeding and asking Mr. Parker questions, which allegedly prevented Mr. Parker from ensuring Respondent’s conditions were not violated. There is no credible evidence any agent was distracting or impeding Mr. Parker from complying with Respondent’s conditions. There is no credible evidence that any agent was speaking with Mr. Parker while Agent Shapiro was recording the said video marked and admitted as exhibit 14. On cross-examination, after repeated viewing of exhibit 14, Agent Shapiro credibly maintained that he could not see anyone, let alone anyone speaking, with Mr. Parker in said video exhibit and that, in fact, there was no agent in the video. During Agent Shapiro’s testimony on September 5, 2024, he credibly maintained that all of the agents had already exited the Licensed Premises by the time he took the said video (exhibit 14). Agent Shapiro credibly testified that on April 11, 2024, he did not observe any of his colleagues speaking to Mr. Parker in the Licensed Premises.

15. Agent Shapiro further credibly maintained that he was the lead investigator for the operation at the Licensed Premises and that there was (1) no plan to delay or obstruct any employee of the Licensed Premises from performing their duties in complying with the conditions on Respondent’s license, (2) no plan to distract or target Mr. Parker, and (3) no plan to target the Licensed Premises/Respondent. There is no credible evidence any of the Department agents targeted the Respondent or Licensed Premises or that the agents planned, attempted to or did thwart, or distract Mr. Parker or any employee from doing their due diligence in complying with Respondent’s conditions while in the Licensed Premises.

16. Finally, Mr. Parker’s contention that the Licensed Premises has more “no dancing” signs in the Licensed Premises than the two signs depicted in Respondent’s exhibit A, is disbelieved. On direct examination, Mr. Parker acknowledged that exhibit A was an “accurate depiction of the *signages*” in the Licensed Premises. There was no other credible evidence of any additional signs in the Licensed Premises other than those which the Respondent chose to produce. The Respondent had within its power to produce

additional exhibits depicting the alleged additional signs, which Mr. Parker claimed to exist. Based on Mr. Parker's demeanor, evasive and conflicting testimony and bias in the presentation of his testimony, his claim is viewed with distrust and disbelieved.

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

PENALTY

The Department requested the Respondent's license be suspended for a period of 45 days, based on the following aggravating factors: (1) prior disciplinary history, with two priors, including violations of the exact same conditions on the license, (2) licensee involvement, as Mr. Parker testified that either himself or his wife, who both manage the Licensed Premises, were present on each of the three said violation dates and permitted the violations to occur, (3) the Licensed Premises is located in a high crime area, (4) continuing course or pattern of conduct, in that the Licensee has been repeatedly violating the same three conditions since 2019. The Department points out that the Respondent's conditions are not optional and cannot be substantially complied with but must be complied with to the letter of the law.

The Respondent did not recommend a penalty should the accusation be sustained in whole or in part. The Respondent argued for the following mitigating factors, including that Respondent had: (1) a decibel reader installed, had it calibrated yearly, and ensured a certain decibel range when music is playing, (2) staff trained regarding complying with the conditions, (3) sufficient "no dancing" signs up, and (4) stopped violations upon discovery.

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-time condition violation under section 23804 is a 15-day license suspension with five days stayed for one year. Rule 144 also permits imposition of a revised penalty based on the presence of aggravating or mitigating factors.

Respondent's argued-for mitigation either failed to correct the problems or were not positive action imposed after the violations at hand. While it is commendable the Respondent had a decibel reader installed in 2018, such measures have proven inadequate to comply with condition 1 upon Respondent's license. Mr. Parker's testimony acknowledged their standard practice in maintaining a certain decibel level range allows for the music from live entertainment to be heard "three to five feet" "beyond the exterior of the Licensed Premises. Mr. Parker admitted that

they keep the decibel level between 85 and 90 decibels to “ensure that the sound does not travel outside the brewery more than three to five feet.” By keeping this standard of practice, the Respondent is thus ensuring that condition number 1 will continue to be violated, at least by “three to five feet.” Condition 1 merely requires the Licensee to step outside, beyond the Licensed Premises’ exterior in any direction, to listen whether noise from live entertainment can be “heard beyond the exterior of the premises in any direction.”

The “no dancing” and no twerking signs Respondent put on the wall in 2018 are inadequate to address the problem as discussed above.

The record established Respondent’s employee and Mr. and Mrs. Parker either fail to stop violations or are late in stopping violations from occurring. The record was clear that Respondent’s standard of practice of waiting until live entertainment has already begun before closing the front door and rolled-up windows, and Mr. Parker’s acknowledgement they “may not get to that right away,” has ensured violations of condition number 3. Mr. and Mrs. Parker’s standard of practice is to check on each of their two licensed premises at opening and closing hours. Mr. Parker acknowledged that when he is at the Licensed Premises, he is either in his office, or in and out of his office because he leaves the Licensed Premises to check on his other licensed premises. On August 3, 2023, October 21, 23, and April 11, 2024, there was a sole employee working, with Mr. Parker the sole employee working on April 11, 2024. While either Julian, Mr. or Mrs. Parker will try to stop violations upon discovery, having one employee working and “responsible for everything that goes on in the [Licensed Premises]” is a practice that appears to have resulted in the repeated violations. Although Mr. and Mrs. Parker may, at times when it is crowded and they are at the Licensed Premises, step in to help pour and serve beer, it is clear that the bartender and either Mr. and Mrs. Parker, who happen to be there, are more likely than not preoccupied with customers at the bar, and will not be in a position to always pay attention to whether patrons are dancing or the door and windows are closed. Having the live entertainers also monitor patron dancing and the closing of the door and windows would be helpful, and a positive step in addressing these violations and trying to prevent them from recurring.

Aggravation is warranted for the reasons argued by the Department, except that there was no evidence the Licensed Premises is located in a high crime area.⁶ It is of grave concern that Mr. Parker was more concerned with placing blame on others rather than taking responsibility for his affirmative duty to ensure that the

⁶ The PCL established that at the time of the application for Respondent’s type-23 license the Licensed Premises “is located in an area that has a significant law enforcement problem,” which was one of the reasons for imposition of conditions and without which the license would not have issued. (Exhibit 4.)

Licensed Premises is in compliance with its conditions. Having an alcohol licensed premises is a privilege and not a right. Respondent's license was issued only in part because the Respondent agreed to have the conditions placed on its type-23 license, and without such conditions the license would not have issued. It behooves Respondent to take more seriously its privilege and responsibility as a licensee in finding solutions which will result in compliance with its license conditions.

The penalty recommended herein complies with rule 144.

ORDER

The Respondent's type-23, small beer manufacturer license is hereby suspended for a period of 45 days.

Dated: December 16, 2024



D. Huebel
Administrative Law Judge

<input checked="" type="checkbox"/> Adopt
<input type="checkbox"/> Non-Adopt: _____
By: <u>J. McCallister</u>
Date: <u>02/05/25</u>