

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

AB-10022  
File: 41-646969; Reg: 24094990

Mazatlan Sin, Inc,  
dba La Cueva Del Peludo  
1714 El Camino Real  
Redwood City, CA 94063  
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,  
Respondent

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

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

**ISSUED OCTOBER 15, 2025**

Appearances: John Kevin Crowley, as counsel for Appellant;

Trisha Pal, as counsel for the Department of Alcoholic  
Beverage Control.

**OPINION**

Mazatlan Sin, Inc., dba La Cueva Del Peludo, ("appellant") appeals from an order of the Department of Alcoholic Beverage Control<sup>1</sup> (hereinafter referred to as the "Department") revoking its license because its employees possessed or sold controlled substances or dangerous drugs, to wit, cocaine, on March 22,

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<sup>1</sup> The Department's Decision, dated June 24, 2025, is set forth in the appendix.

2024, May 10, 2024, and May 23, 2024. For the following reasons, the Department's order is affirmed.

### **I. FACTUAL BACKGROUND & PROCEDURAL HISTORY**

The Department issued an on-sale beer and wine eating place license to appellant on May 25, 2023. There is no record of prior Department discipline against the license.

#### **A. March 22, 2024**

On March 22, 2024, officers of the Department and the Redwood City Police Department (RCPD) conducted an undercover investigation at the licensed premises. The officers were investigating complaints of suspected narcotics activity and human trafficking. The officers arrived at the licensed premises at approximately 9:00 p.m., and consisted of Department agents Valdez and Felix, as well as RCPD Detectives Contreras and Gonzalez. All officers had training and experience in narcotics investigations and were familiar with the appearances of common narcotics substances and the street vernacular used for those substances during transactions.

The agents and detectives arrived at the licensed premises and were seated at a table. The undercover officers ordered a bucket of beers for the group. One of the waitresses began to make small talk with Detective Gonzalez. The waitress identified herself as "Lina."

After developing a rapport with Lina, Detective Gonzalez asked Lina if she had "Perico," which is a slang term for cocaine in Spanish. Lina told Detective

Gonzalez that she could get it and that it would be \$120. Lina walked away from the undercover officers' table.

Lina returned approximately 30 minutes later and handed a baggie to Detective Gonzalez that contained a white, powdery substance. Gonzalez believed, based on years of training and experience in narcotics, that the white, powdery substance appeared to be cocaine.

During the course of the evening, Agent Felix walked outside and saw a man holding a clear baggie in front of the licensed premises. Based on Agent Felix' extensive training and experience in narcotics, he believed the baggie the man was holding contained cocaine. Agent Felix approached the man and asked him, "how much?" (Findings of Fact, ¶ 7.) The man told Agent Felix it would cost \$60, and advised him to get out a dollar bill to use as a container. Agent Felix paid the man \$60, and produced a \$10 bill, so that some of the contents of the baggie could be poured into it. After the man poured some of the baggie's contents into Agent Felix' \$10 bill, Agent Felix folded the bill to preserve the powder from being lost.

After the sale, the man entered the licensed premises. Agent Felix radioed the other undercover officers about the sale, but the officers lost track of the man inside the licensed premises, as it had become crowded during the evening.

Agent Felix re-entered the licensed premises and rejoined the other undercover officers. They remained in the licensed premises for another 15

minutes. The agents then departed on foot, and were picked up by the cover team. The officers went to the RCPD evidence room so the suspected narcotic substances could be documented and booked into evidence. The substances were later weighed and tested, and both substances came back as positive for cocaine.

B. May 10, 2024

On May 10, 2024, undercover officers Gonzales, Valdez, Contreras, and Martinez arrived at the licensed premises at approximately 9:30 p.m. The officers were seated and purchased alcoholic beverages. Gonzalez interacted with a waitress he recognized from the previous visit, named "Crystal." Gonzalez spoke with Crystal in Spanish.

After some small talk, Gonzalez asked Crystal for "Perico," and she asked him how much he wanted. Gonzalez replied that he wanted a gram. Crystal pointed to a man in the licensed premises, and walked over to talk to him. When she returned, she told Gonzalez that the man did not have any "Perico" to sell.

At the same time Gonzalez was interacting with Crystal, Valdes was speaking with two waitresses, Vivian and Steffany. Valdes asked Vivian for a "bolsita" of "polvo," which translates to a small baggie of "dust," which is another slang term in Spanish for cocaine.

Vivian told Valdes that she did not have drugs, but that Valdes could go to the bathroom to get some. Valdes later asked Steffany for "polvo," but she

seemed confused. Valdes then asked for "coca" which is the Spanish term for cocaine. Steffany asked Valdes if he wanted \$50 worth, and Valdes replied that he wanted to spend \$50-\$100. Steffany told him that she would find cocaine for him.

Valdes watched Steffany walk to the back of the bar area and enter a room. A short time later, Valdes watched her come out of the room and walk up to him. Steffany told Valdes she got his cocaine, and Valdes asked her the price. Steffany told him it was \$50, and Valdes paid her. Steffany handed him a baggie containing a white powdery substance. Valdes put the baggie in his pocket and asked Steffany if she wanted a drink. Steffany told him she wanted a "preparade" which he bought for her.

Valdes later looked at the baggie Steffany gave him, and based on his extensive narcotics training and experience, he believed the substance to be cocaine. Later, Valdes also weighed and tested the substance using a chemical presumptive test with a small amount of the substance. The test indicated a presumptive positive that the substance was cocaine.

C. May 23, 2024

Multiple RCPD officers and Department agents converged on the licensed premises at approximately 9:00 p.m. on May 23, 2024 to perform a compliance check and inspection of the premises. Officers announced their presence upon entering and were identifiable as officers based on their gear

and clothing. Several of the officers wore chest cameras that captured the inspection.

Officer Bellotti was one of the first officers who entered the licensed premises and directed employees to turn on the lights and to turn off the music. As Officer Bellotti and other officers moved through the licensed premises conducting a safety sweep, they came across a locked door near the rear of the premises. The room behind the locked door was not depicted on the Licensed Premises Diagram that was filed by appellants in their license application. The door was also not present on a previous inspection on April 5, 2023. Officers knocked on the locked door and appellant's corporate officer, Arturo Quintero Castaneda (hereinafter "Quintero"), emerged from the locked door.

Department Agent E. Goerzan was part of the investigated team at the licensed premises on May 23, 2024. She searched the room behind the locked door that Quintero was in. A desk in the room had cash, several documents, and two partially consumed bottles of tequila. In the pile of documents, Agent Goerzan found an informal ledger. The informal ledger had names in it that corresponded to names affixed to bundles of cash that were folded together with a rubber band around it.

Agent Goerzan inspected the ledger further and discovered names, "hours" worked, and dollar amounts in corresponding rows. The names matched the names of waitresses law enforcement agents encountered during

their previous investigations at the licensed premises. In the same notebook, there was a page that appeared to be an ongoing drink tally, which included the names of waitresses and different columns for the types of drinks that they received.

Officer Bellotti interviewed one of the waitresses at the licensed premises named Luisa Crisostomoarias (hereinafter "Crisostomoarias"). Crisostomoarias consented to a search of the fanny pack she was wearing. Inside, Officer Bellotti found a small baggie containing what appeared to be cocaine in a zipped interior pocket. Officer Bellotti had extensive training and experience in narcotics investigations as a law enforcement officer. Based on Officer Bellotti's training and experience, he believed the substance to be cocaine. The suspected cocaine was turned over for further processing as evidence in the investigation.

RCPD Detective Mroz assisted with the investigation on May 23, 2024. Detective Mroz was informed by another officer that a female was observed trying to dispose of a suspected narcotic by hiding it in a napkin and placing it on the counter of the bar. Detective Mroz opened the napkin and saw a baggie that appeared to contain cocaine. Detective Mroz had extensive training and experience in narcotics investigations. Detective Mroz contacted the woman officers observed putting the suspected cocaine into the napkin. The woman, Dayanna Velasquez Vargas (hereafter "Velasquez") admitted to being aware that the suspected cocaine was in her purse and that she tried to

discard the baggie after the officers arrived. The suspected cocaine was turned over for further processing as evidence in the investigation.

Steffany, the waitress that sold cocaine to undercover officers on May 10, 2024, was present at the licensed premises. Agent Goerzan arrested Steffany on a warrant for the previous sale. She was interviewed after being booked and Steffany admitted to working at the licensed premises and admitted to selling cocaine on May 10, 2024.

Agent Ronner was also present at the licensed premises on May 23, 2024. Agent Ronner had extensive training and experience in narcotics investigations. Ronner contacted a security guard for the licensed premises later identified as Alvarez Cortez (hereinafter "Cortez"). While speaking with Cortez, Agent Ronner noticed that Cortez was sweating profusely and his pupils were dilated. Based on his training and experience, Agent Ronner believed Cortez to be under the influence of a central nervous system stimulant, like methamphetamine.

Agent Ronner asked Cortez for his identification, and Cortez produced his wallet. Inside Cortez' wallet, Agent Ronner noticed that a dollar bill was folded in a manner that was commonly used to hold narcotic substances. Cortez admitted that there was narcotics inside the folded bill, but claimed to have found it on the ground. Cortez admitted to ingesting some of the substance earlier in the day. Agent Ronner seized the dollar bill as evidence and turned it over for processing.

All of the suspected narcotic substances were given to Detective Contreras for booking. After leaving the licensed premises, Detective Contreras prepared the suspected narcotics and photographed them prior to booking. Detective Contreras also tested the substance obtained from Cortez using the TruNarc device, which Detective Contreras had been trained to use. The TruNarc device indicated that the substance received from Cortez contained methamphetamine. The substance, still inside the folded dollar bill, was booked into evidence.

Detective Contreras also tested the substances obtained from Crisostomoarias and Velasquez separately. Each test showed the substance to contain cocaine hydrochloride, more commonly known as powdered cocaine. Each substance was placed into a booking envelope and booked into evidence. Detective Contreras also prepared a supplemental report of his findings.

#### D. Administrative Hearing

The Department filed an eight-count accusation on November 26, 2024 based on the narcotic possession and/or sales at the licensed premises on March 22, 2024, May 10, 2024, and May 23, 2024. The accusation also included one count of possessing distilled spirits, for which a license had not been issued, in violation of Business and Professions Code<sup>2</sup> section 25607(a). An

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

administrative hearing was held before Administrative Law Judge (ALJ) Alberto Roldan via videoconference on February 11, 2025 through February 13, 2025.

Judge Roldan issued a proposed decision on April 8, 2025 sustaining all counts in the accusation and recommended that appellant's license be revoked. The Department adopted the proposed decision on June 11, 2025, and issued a certificate of decision on June 24, 2024. Appellant filed a timely appeal, contending that: 1) appellant was denied due process because the Department failed to summon the waitresses who sold the undercover officers cocaine to testify; 2) the Department's decision is not supported by substantial evidence, and; 3) the Department abused its discretion by imposing an excessive penalty.

For the following reasons, the Board rejects appellant's arguments and affirms the Department's decision.

## **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

In its opening brief, appellant makes six (6) arguments: 1) the law enforcement officers' testimony was unreliable because they were affected by alcohol consumption; 2) its due process right to cross examine adverse witnesses was impermissibly denied; 3) the Department failed to establish appellant's intent to possess narcotics for sale; 4) the Department failed to establish a chain of custody for the narcotics obtained at the licensed premises; 5) Count 8 is not supported by the evidence; and; 6) the penalty is excessive.

#### A. Witness Credibility

Appellant argues that "the testimony of the Department [agents] falls far short of reliable and credible evidence." (Appellant's Opening Brief ("AOB"), at p. 27.) Appellant explains further, "[e]ach investigator from the department testified that he had consumed alcohol beverages [during the investigation, but only gave] estimates as to the amount consumed ... ." (*Ibid.*) "Yet they affirm the consumption, irrespective of the amount and frequency, did not affect their perception, reaction and/or memory of the events." (*Ibid.*)

In its Reply Brief, the Department argues substantial evidence supports the Department's finding that its law enforcement witnesses were credible and reliable. (Department's Reply Brief ("DRB"), at pp. 10-11.) The Department contended there is "zero evidence in the record to suggest any of the

undercover officers could not accurately remember the facts of their investigations.” (*Id.* at p. 10.) The Department points to the record and cites to the Decision which states, “[w]hen asked, none of the officers testified to their beer consumption impacting their ability to function or recollect.” (*Ibid.*)

It is the province of the ALJ, as trier of fact, to make determinations as to witness credibility. (*Lorimore v. State Personnel Bd.* (1965) 232 Cal.App.2d 183, 189 [42 Cal.Rptr. 640]; *Brice v. Dept. of Alcoholic Bev. Control* (1957) 153 Cal.App.2d 315, 323 [314 P.2d 807]; *People v. Burton* (1958) 162 Cal.App.2d 790, 792 [328 P.2d 492, 493] [“It was for the trier of the facts to pass upon the credibility of the witnesses and the weight to be accorded the evidence.”].) “The trier of fact . . . is the sole judge of the credibility of the witnesses [and] may disbelieve them even though they are uncontradicted if there is any rational ground for doing so . . .” (*Pescosolido v. Smith* (1983) 142 Cal.App.3d 964, 970-971 [191 Cal.Rptr. 415].) The Appeals Board may not interfere with an ALJ’s credibility determinations absent a clear showing of abuse of discretion.

Here, the record indicates that law enforcement officers consumed beers as part of their undercover investigation at the licensed premises. (Findings of Fact (“FF”) at ¶¶ 8, 11.) However, when cross-examined by appellant at the administrative hearing, “none of the officers indicated that their beer consumption impact[ed] their ability to function or recollect.” (*Ibid.*) Appellant seems to argue that the officers were *per se* unreliable because they consumed

alcohol, but did not testify to the frequency or amount. However, appellant does not cite any legal authority that stands for this proposition. Absent legal authority or evidence to the contrary, the Board cannot say the ALJ abused his discretion in finding the officers credible, even though they consumed alcohol during their investigation. The only evidence in this regard is the officers themselves testifying that the alcohol they consumed did not affect their ability to recollect the events of the investigation. The ALJ was reasonable in finding this testimony credible and affording weight to the officers' testimony. In short, the Board see no error.

B. Right to Examine Witnesses

Appellant asserts that it was denied a "full and fair hearing" because the waitress arrestees were unavailable to testify. (AOB, at pp. 7-11.) The appellant argues that the Department was in a better position "to find these witnesses and bring them forward ... ." (*Id.* at p. 8.) Appellant contends the testimony of the arrestees was "fundamental to [its] defense and the nature of the Department's investigation of the charges underlying the accusation." (*Id.* at p. 10.)

Appellant also points to the fact that the ALJ excluded appellant's witness, Maria Hernandez, who would have testified to appellant's "preventative measures and policies ... ." (Appellant's Closing Brief (ACB), at p. 5.)

The Department responded, arguing that "[a]ppellant has neither identified any error committed by the Department nor shown prejudice that would require reversal of the Department's decision." (DRB, at p. 6.) The

Department pointed out that it had the burden of proof at the administrative hearing, and that it did not designate the arrestees as its witnesses. Instead, the Department relied on testimony of Department agents and RCPD officers to prove its case in chief, and each of those witnesses were available for cross-examination. (*Ibid.*) Finally, the Department makes note of the fact that appellant failed to raise this issue at the administrative hearing and has done so for the first time on appeal. (*Ibid.*)

It is well-established that a party has the constitutional right to confront the prosecution's witnesses. (*People v. Herrera* (2010) 49 Cal.4th 613, 621, 110 Cal.Rptr.3d 729.) "The right of cross-examination in adversary proceedings in which evidence is produced is a fundamental proposition in our system of justice." (*People v. Hadley* (1967) 257 Cal. App. 2d Supp. 871, 876, 64 Cal. Rptr. 777.) However, appellant does not contend that it did not have the ability to cross-examine the Department's witnesses; rather, it argues that the Department was required to produce witnesses that did not testify. These are not the same thing.

Appellant has not cited any authority requiring the Department to call witnesses for it to examine. Evidence Code section 412 states that "[i]f 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." However, appellant has not established that the agents' and officers' testimony was weaker and less satisfactory than

the arrestees' testimony, or that the Department had the power to produce the arrestees to testify at the administrative hearing.

The Department had the burden of proof at the administrative hearing. The witnesses it chose to call to testify in order to satisfy that burden of proof was within its own discretion. Appellant had the opportunity to cross-examine the Department's witnesses at the hearing. Appellant also had the opportunity to call its own witnesses to rebut the Department's case in chief. However, appellant has not shown that it had a constitutional right to require the Department to call witnesses on its behalf.

Further, the Department argued at oral argument that Maria Hernandez was properly excluded from testifying because she was not disclosed as a witness, she was not present at the licensed premises during the narcotics sales, and she was not going to testify to anything different from Quintero or any of appellant's other corporate officers. A review of the record shows that appellant called multiple witnesses to testify as to "preventative measures and policies enacted by La Cueva," which is exactly the testimony Maria Hernandez would have provided according to appellant's closing brief. (ACB, at p. 5.)

The Board does not find that the Department violated appellant's due process right to a full and fair hearing based upon the fact that it did not call the

arrestees to testify at the administrative hearing.<sup>3</sup> Further, the Board sees no error in the ALJ precluding Maria Hernandez from testifying where she was not disclosed, not present at the licensed premises during the undercover investigation, and would not have offered different or additional testimony.

### C. Substantial Evidence

Appellant argues that the Department's evidence was insufficient in the following ways: 1) failed to prove intent to possess narcotics for purpose of sale; 2) failed to establish a requisite chain of custody for the seized narcotics, and; 3) failed to show that appellant possessed distilled spirits for the purpose of providing or selling to the public. (AOB, at pp. 11-17, 26.)

#### 1. *Health and Safety Code Section 11352*

Health and Safety Code section 11352 makes it unlawful to sell narcotics. Appellant argues that some of the waitresses simply possessed narcotics and that the conduct and knowledge of the waitresses who sold to undercover officers are not imputable to it. (AOB, at pp. 13-14.) This argument fails to pass muster.

Both this Board and the courts have consistently found that a licensee may be held liable for the actions of his agents or employees. (See e.g., *Harris v.*

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<sup>3</sup> Because the Board does not find that the Department erred, it does not address whether appellant waived its argument by failing to object at the administrative hearing, or whether the Department's failure to summon the arrestee witnesses was prejudicial to the appellant.

*Alcoholic Beverage Control Appeals Board* (1961) 197 Cal.App.2d 172, 181 [17 Cal.Rptr. 315] [holding that the licensee had the responsibility to see that the license was not used in violation of law].) “The owner of a liquor license has the responsibility to see to it that the license is not used in violation of law and as a matter of general law the knowledge and acts of the employee or agent are imputable to the licensee. [Citation.]” (*Id.* at p. 180.) The *Laube* court noted:

A licensee has a general, affirmative duty to maintain a lawful establishment. Presumably this duty imposes upon the licensee the obligation to be diligent in anticipation of reasonably possible unlawful activity, and to instruct employees accordingly.

(*Laube v. Stroh* (1992) 2 Cal.App.4th 364, 367 [3 Cal.Rptr.2d 779].) Similarly, in *Reimel*, the court stated:

[A] licensee can draw no protection from his lack of knowledge of violations committed by his employees or from the fact that he has taken reasonable precautions to prevent such violations. There is no requirement . . . that the licensee have knowledge or notice of the facts constituting its violation. [Citations.]

(*Reimel v. Alcoholic Bev. Control Appeals Bd.* (1967) 252 Cal.App.2d 520, 522 [60 Cal.Rptr. 641], internal quotations omitted.)

Based on the legal authority above, appellant finds no safe harbor in claiming that these acts were done by employees and not imputable to the license, or that appellant had no knowledge of the narcotics sales. As stated in the Department's brief, section 25200.5 expressly provides that the Department will revoke a license if the licensee has permitted the illegal sale of controlled substances or dangerous drugs upon its licensed premises. Further, in section

24200.5(a), “[s]uccessive sales, or negotiations for sales, over any continuous period of time shall be evidence of permission.”

Here, the Department offered substantial evidence of successive sales at the licensed premises over two occasions, and a third occasion where narcotics were found on multiple employees. This evidence came in the form of testimony from the agents and officers who conducted the investigation. It was accompanied by reports, body camera video, and photographs, all entered into evidence as exhibits at the administrative hearing. To look at that evidence, and to reweigh it in order to reach a contrary result, is exactly what this Board is prohibited from doing. (*Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.* (2004) 118 Cal.App.4th 1429, 1437 [13 Cal.Rptr.3d 826, 837].) Therefore, the Department’s factual findings based on the evidence must be affirmed.

## 2. Chain of Custody

Appellant argues that agents and officers failed to establish a chain of custody for the narcotics which were sold or seized, tested, and ultimately booked into evidence. (AOB, at pp. 14-17.) Appellant points out that officers and agents testified that they handed the narcotics to other agents who did not appear at the hearing and testify. (*Id.* at pp. 15-17.) Finally, appellant is critical of the “TruNarc” device used to test the narcotics and questioned whether law enforcement had any right to seize the drugs on May 23, 2024, since officers did not have a warrant. (*Ibid.*)

The Department argues that the chain of custody goes to the weight of the evidence, not its admissibility. (DRB, at p. 10.) The Department is correct.

To establish chain of custody:

The burden on the party offering the evidence is to show to the satisfaction of the trial court that, taking all the circumstances into account including the ease or difficulty with which the particular evidence could have been altered, it is reasonably certain that there was no alteration. The requirement of reasonable certainty is not met when some vital link in the chain of possession is not accounted for, because then it is as likely as not that the evidence analyzed was not the evidence originally received. Left to such speculation the court must exclude the evidence. [...] **Conversely, when it is the barest speculation that there was tampering, it is proper to admit the evidence and let what doubt remains go to its weight.**

(*People v. Riser* (1956) 47 Cal. 2d 566, 580–81, 305 P.2d 1, 10 (overruled on other grounds by *People v. Chapman* (1959) 52 Cal. 2d 95, 338 P.2d 428 and *People v. Morse* (1964) 60 Cal. 2d 631, 388 P.2d 33) [Emphasis added].)

Here, there is no evidence in the record that the substances obtained by law enforcement officers during their investigation were tampered with or altered. As such, the evidence was admitted and the failure by the Department to establish a chain of custody goes to the weight of the evidence, not its admissibility. Further, the testimony of the officers, photographs, and body camera video is substantial evidence that the substances sold to undercover officers, or seized by officers were narcotics.

Finally, the officers who used the TruNarc devices testified to their training and experience with the device and the Department, as the trier of fact, found that testimony credible and reliable. There is also no Fourth Amendment

violation by the officers seizing narcotics on May 23, 2024, as they searched the licensed premises pursuant to a compliance check, and there is substantial evidence to establish that each search was consented to or in plain view (e.g. substance discarded in a napkin and placed on the counter). Based on these facts, the Department's decision must stand.

3. *Business and Professions Code Section 25607(a)*

Section 25607(a) makes it unlawful for “any person or licensee to have upon the premises ... any alcoholic beverages other than the alcoholic beverages that the licensee is authorized to sell ... .” Appellant argues it did not violate section 25607(a) because “the office in which the distilled spirits were located is at least 30 feet from the bar, windowless and always locked ... .” (AOB, at p. 26.) Appellant's contention is rejected.

Section 25607 does not contemplate where in the licensed premises appellant's distilled spirits were located. Appellant does not have a license which allows for it to sell distilled spirits. Distilled spirits were found in the licensed premises. Therefore, appellant violated the plain language of section 25607.

D. Excessive Penalty

Appellant argues that its penalty constitutes an abuse of discretion and is not supported by the evidence. (AOB, at pp. 17-25.) Appellant cites to mitigation evidence in its brief, and argues that the record “supports a stayed revocation ... .” (*Id.* at p. 19.) Further, appellant contends the Department improperly “padded” charges against it in violation of *Walsh v. Kirby* (1974) 13

Cal.3d 95, 529 P.2d 33 (“Walsh”). (ACB, at pp. 5-7.) In other words, appellant believes its penalty is excessive.

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 narcotics transactions on the licensed premises is revocation, which is the penalty appellant received. (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, 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.*)

Here, appellant takes issue with the fact that the Department did not deviate from the standard penalty of revocation. (AOB, at pp. 19-20.) Specifically, appellant argues that the evidence showed “only its employees conducted unlawful transactions, without the licensee’s knowledge or participation, in direct contravention of [appellant’s] specific policy and directives prohibiting such conduct.” (*Id.* at p. 19.) The Department pointed out in its brief that “none [of the proposed security measures] had been implemented at the time of the hearing.” (DRB, at p. 13.) After a full review of the record, the Board cannot say that the Department abused its discretion.

Further, the Board rejects appellant’s argument that the Department “padded” counts in the accusation. In *Walsh*, the Department:

[A]ccumulated evidence of recurring sales of distilled spirits below established minimum retail prices, each sale constituting a different but essentially identical violation, before it filed its accusation charging the licensee with the whole series of violations and assessing concomitant cumulative penalties.

(*Walsh* (1974) 13 Cal. 3d at p. 98.) The Court found the Department abused its discretion in *Walsh*. (*Ibid.*)

The present appeal is not *Walsh*. Here, the Department did not assess “concomitant cumulative penalties” based on nearly identical violations. The Department assessed one penalty (revocation), based on all the violations established by narcotics sales involving different employees on different dates, any one of which could have warranted revocation on its own.

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 provides a standard penalty of revocation for narcotics sales at the licensed premises, which is what appellant received. Rule 144 also 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 Order is affirmed.

**ORDER**

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

MEGAN McGUINNESS, CHAIRPERSON  
HON. FRANK C. DAMRELL JR. (Ret.),  
MEMBER  
ALCOHOLIC BEVERAGE CONTROL  
APPEALS BOARD

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<sup>4</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:**

MAZATLAN SIN, INC.  
LA CUEVA DEL PELUDO  
1714 EL CAMINO REAL  
REDWOOD CITY, CA 94063

ON-SALE BEER AND WINE EATING PLACE -  
LICENSE

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

SAN JOSE DISTRICT OFFICE

File: 41-646969

Reg: 24094990

**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 June 11, 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 August 4, 2025, a representative of the Department will contact you to arrange to pick up the license certificate.



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

Sacramento, California

Dated: June 24, 2025



Frank Robles  
Acting Director

**RECEIVED**

**JUN 24 2025**

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:

Mazatlan Sin, Inc.  
dba: La Cueva Del Peludo  
1714 El Camino Real  
Redwood City, California 94063

Respondent

} File: 41-646969

} Reg.: 24094990

} License Type: 41

} Word Count: 97,927

} Reporter:

} Dalauna Cardoza

} Kennedy Court Reporters

On-Sale General Eating Place License

**PROPOSED DECISION**

Administrative Law Judge Alberto Roldan, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter, via videoconference, on February 11, 2025, through February 13, 2025.

Trisha Pal and Bryan Rouse, Attorneys, represented the Department of Alcoholic Beverage Control (Department).

John K. Crowley, Attorney, represented Respondent Mazatlan Sin, Inc. (Respondent or respondent-licensee(s)).

The Department seeks to discipline Respondent's license pursuant to eight allegations in the Accusation on the grounds that:

- (1) on or about and between March 22, 2024, and May 10, 2024, respondent-licensee(s) knowingly permitted the illegal sale, or negotiations for sales, of controlled substances or dangerous drugs upon the licensed premises, in violation of Business and Professions Code section 24200.5(a);
- (2) on or about March 22, 2024, respondent-licensee(s) agent or employee, "Lina", sold, furnished or offered to sell or furnish, within the licensed premises, a controlled substance, to-wit: cocaine, in violation of California Health and Safety Code section 11352;
- (3) on or about May 10, 2024, respondent-licensee(s) agent or employee, Nury Steffany Montenegro Mendoza aka "Steffany", sold, furnished or offered to sell or furnish, within the licensed premises, a controlled substance, to-wit: cocaine, in violation of California Health and Safety Code section 11352;
- (4) on or about May 10, 2024, respondent-licensee(s) agent or employee, "Crystal", sold, furnished or offered to sell or furnish, within the licensed premises, a controlled

- substance, to-wit: cocaine, in violation of California Health and Safety Code section 11352;
- (5) on or about May 23, 2024, the respondent-licensee(s) agent or employee, Luisa Crisostomao Arias, possessed, within the licensed premises, a controlled substance, to wit: cocaine upon the licensed premises in violation of California Health and Safety Code section 11350;
  - (6) on or about May 23, 2024, the respondent-licensee(s) agent or employee, Karoll Dayanna Velasquez Vargas, possessed, within the licensed premises, a controlled substance, to wit: cocaine upon the licensed premises in violation of California Health and Safety Code section 11350;
  - (7) on or about May 23, 2024, the respondent-licensee(s) agent or employee, Celso Alvarez Cortez, possessed, within the licensed premises, a controlled substance, to wit: methamphetamine upon the licensed premises in violation of California Health and Safety Code section 11377; and
  - (8) on or about May 23, 2024, the respondent-licensee(s) possessed upon the licensed premises, distilled spirits, for which a license had not been issued, in violation of Business and Professions Code section 25607(a).

In each of the above eight allegations in the Accusation, the Department further alleged that there is cause for suspension or revocation of the license of the respondent-licensee(s) in accordance with section 24200 and sections 24200(a) and (b) of the Business and Professions Code. The Department further alleged that the continuance of the license of the Respondent would be contrary to public welfare and/or morals as set forth in Article XX, Section 22 of the California State Constitution and sections 24200(a) and (b) of the Business and Professions Code. (Exhibit D-1)

Oral evidence, documentary evidence, and evidence by oral stipulation on the record was received at the hearing. The matter was orally argued and submitted for decision on February 13, 2025, by the Department. The Respondent elected to submit its closing argument in writing. The written closing argument was submitted on February 25, 2025. (Exhibit L-4) The Department declined the option of submitting a rebuttal argument in writing on February 26, 2025. The record in this matter was closed on February 26, 2025.

#### **FINDINGS OF FACT**

1. The Department filed the Accusation on November 26, 2024.
2. The Department issued a type 41, on-sale beer and wine eating place license to the Respondent at the above-described location on May 25, 2023 (the Licensed Premises). There is no record of prior departmental discipline against the Respondent's license.

#### **March 22, 2024, Investigation**

3. On March 22, 2024, law enforcement officers from the Department and the Redwood City Police Department (RCPD) conducted an on-site, undercover investigation at the Licensed

Premises. The law enforcement officers were on an assignment investigating complaints of suspected narcotics activity and human trafficking at the Licensed Premises that had been communicated to the RCPD. A decision was made to utilize undercover officers to investigate these allegations and to determine whether the Licensed Premises was generally in compliance with state law. The law enforcement officers were undercover when they arrived at the Licensed Premises at approximately 9:00 p.m. The undercover team that evening consisted of Department Agents E. Valdez (Valdez) and D. Felix (Felix), and RCPD Detective D. Contreras (Contreras) and RCPD Detective J. Gonzalez (Gonzalez). Both the agents and RCPD detectives had experience from their law enforcement academies, field training, subsequent training and in field investigations regarding narcotics investigations. Because the agents and officers had prior training and investigative experience in narcotics cases, they were familiar with the varying appearances of common narcotics substances and the street vernacular used for common narcotics substances during transactions.

4. After arriving at the Licensed Premises, the officers entered after being patted down by security at the entrance. The four law enforcement officers were seated at a table by one of the female waitresses. The waitresses in the Licensed Premises were easily identifiable because they wore similar outfits that consisted of miniskirts and mini t-shirts with similar patterns used on a particular night. These female waitresses were also observed seating customers, taking drink orders and bussing tables throughout the evening. After being seated, one of the female waitresses began to make small talk with the undercover officers.

5. This female waitress identified herself as "Lina" (Lina). Gonzalez started talking with her after Felix paid \$40 for a bucket of beers for the four law enforcement officers at the table. Lina retrieved the order from the bartender and remained at the table with Gonzalez and the other officers. Gonzalez continued to talk with Lina after she returned. Their conversation throughout the evening was in Spanish. Gonzalez is a native speaker of Spanish and is certified by the State of California as a Spanish language interpreter. Lina said she was from Colombia and that she had been working at the Licensed Premises for two months. Lina would leave the table, from time to time, and she would be observed servicing other tables. She also cleared their table of bottles regularly. Gonzalez developed a rapport with Lina with continued small talk throughout the evening. At a later point in their conversation, Gonzalez asked Lina if she had "Perico," which is a slang term for cocaine in the Spanish language. Lina appeared to understand his request. She responded that she could get it and that it would be \$120. Lina then remarked that it would be coming from San Jose. She also told Gonzalez that it would cost \$120 and that the price was firm. Gonzalez gave \$120 cash to Lina and she walked away from where they were seated towards the back of the Licensed Premises.

6. Lina returned to Gonzalez approximately 30 minutes later and she handed a baggie to Gonzalez. Gonzalez put the baggie away on his person and continued to talk with Lina for several more minutes. During this conversation, Lina gave Gonzalez an Instagram handle and a phone number. Prior to booking the substance at the RCPD with the assistance of RCPD Detective A. Bellotti, Gonzalez looked at the substance received from Lina more closely. Gonzalez had initial police academy training that covered basic narcotics investigations. He also had in depth narcotics investigation experience from his over nine years as a police officer with

the Oakland Police Department and RCPD. Gonzalez had training in several subsequent narcotics training modules in his law enforcement career. Gonzalez had been involved in several hundred narcotics investigations prior to March 22, 2024, because of specific assignments in street crime teams focused on narcotics investigations. From this training and experience, he was able to recognize and distinguish common narcotic substances based on their appearance. Gonzalez' observation was that the baggie Lina sold him contained a white, powdery substance that appeared to be cocaine.

7. During the course of the evening, Felix left the table to step outside. He exited through the same doors they had entered by. At one point while on the sidewalk directly in front of the Licensed Premises, Felix saw a male holding a clear baggie. Felix had a total of seven years law enforcement experience with the Department, and as an officer with the Fresno and Huntington Police Departments, in addition to time as a probation officer. Felix had been trained in the Fresno police academy and he had narcotics experience from his time as a patrol officer and as a member of the Santa Clara County Narcotics Task Force. Felix had been involved in several dozen narcotics investigations prior to March 22, 2024. From this training and experience he was able to recognize various common narcotic substances and their differing appearances. Felix believed that the baggie the man was holding with a white, powdery substance contained cocaine. Felix approached the man in an undercover capacity and asked him, "How much?" The man told him \$60 and he advised Felix to get out a dollar bill so he could pour some of the bag's contents into the bill as a container. Felix paid the man the \$60 that was requested. Felix then folded a \$10 bill so that some of the bag's contents could be poured into it. After the man poured some of the powder into the \$10 bill, Felix folded it further to preserve the powder from being lost. After the sale, the man entered the Licensed Premises. Felix radioed the cover team about the sale, but the law enforcement officers lost track of the male after he entered the Licensed Premises, which had become busy and crowded during the evening. Felix did not detain or arrest the male after the transaction because he did not want to blow his cover or the cover of the officers who were inside.

8. Felix later reentered the Licensed Premises and rejoined Gonzalez and the other officers. They remained in the Licensed Premises for approximately 15 more minutes. During the course of the evening, the law enforcement officers each consumed beers as part of their cover. When asked, none of the officers indicated that their beer consumption impacting their ability to function or recollect. They then departed on foot and had the cover team pick them up. The law enforcement officers went to the RCPD evidence room so that the suspected narcotic substances received by Felix and Gonzalez could be documented and booked as evidence. The substance received by Felix was weighed and photographed. The weight of the \$10 bill and the substance was a total of 1.7 grams<sup>1</sup>. (Exhibit D-5) The approximately one gram \$10 bill and the approximately .7 grams of suspected cocaine were booked into evidence. On March 27, 2024, the suspected cocaine that was booked into evidence was sent by the investigating agencies to the California Department of Justice Bureau of Forensic Services (DOJBFS) for analysis. Senior

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<sup>1</sup> This court took judicial notice of information from the United States Treasury that modern U.S. currency paper bank notes of all denominations, including \$10 bills, weigh approximately one gram.

Criminalist Vincent Keokot (Keokot) of the DOJBFS weighed and analyzed the substance that was received in the \$10 bill by Felix on March 22, 2024. Keokot determined that the white, powdery substance contained cocaine and that the substance, separate from the bill it was packaged in, weighed .677 grams. (Department Exhibit D-6)

9. The substance received by Gonzalez was weighed by him before it was booked. Gonzalez determined it to weigh .9 grams, including the baggie it was contained in. It was then booked into the RCPD evidence room by RCPD Detective A. Bellotti (Bellotti) on March 22, 2024, for later analysis. On February 4, 2025, RCPD Property and Evidence Clerk Agnes Samonte (Samonte) retrieved the evidence that had been booked by Bellotti on March 22, 2024, for analysis. Samonte used a Thermo Fisher Scientific TruNarc Handheld Narcotics Analyzer (TruNarc) device to conduct the analysis. The TruNarc device is a self-contained unit that uses Raman spectroscopy to analyze a substance to determine its chemical properties.<sup>2</sup> Samonte is not a trained criminalist, but she had been continuously certified to use the TruNarc device since July 12, 2022. Prior to February 4, 2025, she had used the TruNarc device on at least 40 occasions. The TruNarc device shines a light into the substance being tested and compares the resulting readings to known samples that have been pre-programmed into the TruNarc device by the manufacturer, Thermo Fisher Scientific. The training Samonte received was on how to document the use of the device, perform a self-check of the device prior to conducting an actual test, and then conduct an actual test after the self-test shows the device is functioning normally. Part of the training she received was to ensure the device and sample to be tested were clean and free of debris that might interfere with the analysis of an intended substance. This was the protocol she followed on February 4, 2025. Samonte was trained that the testing can be conducted with the substance still in a clear baggie. Samonte wiped down the baggie and the testing cone prior to operating the device. After following the steps in her training, Samonte received a reading that the substance tested positive for cocaine HCL<sup>3</sup>. Samonte photographed the reading output over the substance that had just been tested. (Exhibit D-9)

#### **May 10, 2024, Investigation**

10. On May 10, 2024, at approximately 9:30 p.m., Gonzales, Valdez and Contreras returned to the Licensed Premises in an undercover capacity. They were accompanied by Department Agent Martinez (Martinez) who was also undercover. Their entrance was similar to what occurred on March 22, 2024. After entering, they were greeted and brought to a place to sit by a waitress. The female waitresses were dressed in the same type of outfits the law enforcement officers had observed on March 22, 2024. The outfits this evening were pink. Gonzalez recognized three of the waitresses he had seen on March 22, 2024. After the officers were seated, Valdes bought the first round of drinks. Gonzalez interacted with a waitress he knew as "Crystal" (Crystal). Gonzalez would talk with her, in Spanish, when she came to their table. After she would leave,

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<sup>2</sup> Raman spectroscopy is commonly used in chemistry to provide a structural fingerprint by which molecules can be identified. A spectroscope is an instrument used to measure properties of light over a specific portion of the electromagnetic spectrum, typically used in spectroscopic analysis to identify materials.

<sup>3</sup> Cocaine HCL or cocaine hydrochloride are scientific names for the powdered form of cocaine.

he watched her service other tables and interact with other patrons before coming back to where the law enforcement officers were sitting. Gonzalez later asked her for "Perico" to which she responded by asking him how much. Gonzalez said he wanted a gram. Crystal pointed to a man in the Licensed Premises. She then walked over to him and appeared to have a short conversation. Crystal returned after talking with him and said that he didn't have any to sell. Because Gonzalez was maintaining an undercover identity, he was unable to take steps to determine who the male was.

11. While Gonzalez was interacting with Crystal, Valdes was talking with two waitresses, one who went by "Vivian" (Vivian) and one who went by "Steffany" (Steffany). Valdes' interactions with both were in Spanish, which is a language he is fluent in. He was making small talk with Vivian when he asked her for a "bolsita" of "polvo." A "bolsita" is a small baggie and "polvo" is dust, but is also a slang term for cocaine in Spanish. Vivian responded that she didn't have drugs but that he could go to the bathroom to obtain some. Valdes later spoke with Steffany and asked her for "polvo". She seemed confused by that request so he then asked her for "coca" which is the Spanish language term for cocaine. Steffany responded to this by asking "\$50?" in response. Valdes told her he wanted \$50-\$100 worth. Steffany responded that she could find something. Steffany walked to the back of the bar area of the Licensed Premises. She entered a room at the back of the bar. Valdes watched her come back from the room and stand by him. Valdes asked, is it done? In response, Steffany nodded. Valdes asked the cost and she responded \$50. Valdes gave her three \$20 dollar bills. Steffany put the \$20 dollar bills in her fanny pack, then gave Valdes a baggie containing a white, powdery substance and two \$5 bills. Valdes put the baggie in his pocket. Valdes later asked Steffany if she wanted a drink. She responded that she wanted a "preparada" which he bought for her. They exchanged numbers by Valdes having Steffany call his number. The officers departed with the help of a cover team shortly after this exchange. During the course of the evening, the law enforcement officers each consumed beers as part of their cover. When asked, none of the officers testified to their beer consumption impacting their ability to function or recollect. The phone number provided by Steffany was later used to identify her Instagram account. The images of Steffany on the Instagram account were the Steffany that Valdes interacted with. Valdes generated screen captures of two of Steffany's Instagram pages, including the title page. (Exhibit D-11) Through the Instagram information and phone records, Steffany was able to be identified as Nury Steffany Montenegro Mendoza.

12. Valdes later looked at the baggie he received from Steffany. Valdes had over 23 years of experience as a law enforcement officer with the Department. Valdes also had extensive field narcotics training and supplemental narcotics training throughout his career. Valdes has been involved in upwards of 150 narcotics investigations during his employment in law enforcement. From this training and experience Valdes was able to recognize various common narcotic substances and their differing appearances. Valdes believed that the baggie with a white, powdery substance given to him by Steffany contained cocaine. Prior to booking the suspected cocaine received from Steffany on May 10, 2024, Valdes weighed and photographed the baggie. The baggie and its contents weighed .5 grams. Valdes also performed a Scott reagent system chemical presumptive test on a small sample of the powder that he removed from the baggie. Valdes had been trained over several years in the use of this presumptive chemical testing kit. Valdes had also used the presumptive testing kit on at least 60 prior occasions. The presumptive

test involved placing the sample into an ampule next to pre-mixed chemicals in a soft sided sealed container. The vials are broken and combined with the pre-mixed chemicals in the ampule containing the sample. After the pre-mixed chemicals were combined with the sample in the ampule, the color registered that a presumptive positive sample of cocaine was indicated. Valdes photographed the result. (Exhibit D-13) Valdes was familiar with the color result from his training and prior use of the presumptive positive testing kits.

### **May 23, 2024, Investigation**

13. On May 23, 2024, multiple RCPD officers and Department agents converged on the Licensed Premises at approximately 9:00 p.m. to perform a compliance check and inspection of the Licensed Premises. The Licensed Premises was in operation at the time. There was security at the front door and several waitresses and service employees were present, as well as several patrons. The law enforcement officers announced their presence upon entering. The law enforcement officers were in tactical gear, including vests that displayed their law enforcement agencies and identified them as law enforcement officers. Several of the officers wore chest cameras that captured the appearance of the Licensed Premises and the persons they interacted with during the investigation. (Exhibits D-37, D-38, D-42, and D-43)

14. As on previous occasions, the waitresses were wearing coordinated outfits with form-fitting tops and short-shorts or miniskirts. On this date, they were wearing clothing with snakeskin patterns. The waitresses also consistently wore fanny packs that they used to carry personal items and cash. (Exhibits D-37, D-38, D-42, and D-43) Bellotti was one of the RCPD officers present and one of the first to enter. Bellotti directed employees to turn on the lights and to turn off the music. This evening, as on the two prior dates of the investigation, the Licensed Premises played music loudly and was more dimly lit. The entrance to the Licensed Premises was through two glass doors where the glass was entirely covered in a black film that was completely opaque. The glass windows to the left and right of the front door were also completely covered by cloth drapes. The coverings on the doors and windows blocked the interior of the Licensed Premises from being viewed from the street. (Exhibits D-37, D-38, D-42, and D-43)

15. Bellotti and other officers moved through the Licensed Premises from front to rear while conducting an initial safety sweep. While they were moving through the Licensed Premises, they were announcing who they were and their purpose for being there. At one point, while moving through the rear of the Licensed Premises, Bellotti and the officers accompanying him encountered a door that was locked from the inside. This door was to a room that was not depicted on the ABC 257 Licensed Premises Diagram (LPD) that was filed by the Respondents with the Department on April 5, 2023. (Exhibit D-51) The LPD depicted an open space behind the restrooms, but the officers encountered a door to a room that had been added some time after a Department premises inspection on April 5, 2023, noted in the LPD. (Exhibit D-51) The door was adjacent to a pool table and patrons had access to the area directly outside of the door. (Exhibits D-37, D-38, D-42, and D-43) Bellotti knocked on the locked door and demanded that it be opened. Arturo Quintero Castaneda (A. Quintero) unlocked the door and emerged from the room, shortly after Bellotti demanded that the door be opened. A. Quintero was the only person in the locked room when the officers demanded that it be opened. A. Quintero holds all of the

corporate officer positions of the corporation holding the license to the Licensed Premises.  
(Exhibit D-4)

16. Department Agent E. Goerzan (Goerzan) was part of the investigative team at the Licensed Premises on May 23, 2024. She executed the arrest warrant for Steffany and then served as a finder during the Licensed Premises inspection. Goerzan searched the room that A. Quintero exited from earlier. It had been secured by the law enforcement officers who ordered A. Quintero out of the room. Upon entering the room, Goerzan noted a desk with cash and several documents on top of it. Towards the rear of the desk surface were two partially consumed bottles of tequila. The tequila was in decorative bottles with stoppers. Goerzan confirmed the contents by smelling them and confirming that they smelled of tequila, which she was familiar with. One bottle was "Don Julio" branded tequila and the other was "1800" branded tequila. Goerzan photographed the bottles. (Exhibit D-16) In the desk drawer, Goerzan found receipts for the purchase from Smart and Final Warehouse and Market of multi packs of Budweiser beer cans, Heineken beer bottles, and Budweiser Zero. (Exhibits D-17 and D-18) On top of the desk, Goerzan found a large pile of cash in bills, reading glasses, a pen and an open notebook that appeared to be an informal ledger that was in the process of being notated. Most of the cash was in multiple loose piles, but a portion of the cash was folded together into thirds with a rubber band around it. The name "Viviana" was written in ink on the outside of the folded bills wrapped in a rubber band. Viviana was also one of the names on the open page of the handwritten ledger. Goerzan photographed this as found. (Exhibit D-19)

17. After documenting the ledger as found, Goerzan moved the glasses, pen and money out of the way so that the ledger entries could be seen. The left column contained names, the center column contained numbers under a header of "hours" and the right column had an amount of money filled out except for a few that were blank. The name entries corresponded to several of the waitresses the law enforcement agents encountered during the investigations on March 22, 2024, through May 23, 2024. The total amount in the money column roughly corresponded to the \$18 an hour pay rate in cash reported by multiple waitresses during their interviews. (Exhibit D-20) An additional page in the ledger showed a similar, complete ledger for "10-15 Mayo"<sup>4</sup> with the same types of entries in three columns. Compared to the above, in process ledger, this one appeared to have been completed because the columns are completely filled out, there is a total at the bottom, and there are check marks next to the cash entries. (Exhibit D-22) In the same notebook, Goerzan found a page that appeared to be an ongoing drink tally. The left column had the names of females, including some of the waitresses encountered during the investigation. There were then four columns with headers. "Cubeta", "Cervez", "Soda", and the words "Shot-Margart-Miche-Drink" stacked at the top of the fourth column. (Exhibit D-21)

18. Bellotti interviewed one of the waitresses in the Licensed Premises named Luisa Crisostomoarias (Crisostomoarias). Because she only spoke Spanish, Department Agent A. Ruiz (Ruiz) translated for Bellotti. Crisostomoarias was identified from her Colombian passport. (Exhibit D-38) Crisostomoarias consented to a search of the fanny pack she was wearing after being asked by Bellotti if he could search it. Bellotti found a small baggie containing what

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<sup>4</sup> "Mayo" is noted as being Spanish for May.

appeared to be cocaine in a zipped interior pocket of the fanny pack. Bellotti had in depth narcotics investigation experience from his over nine years as a police officer with the RCPD and additional five years with the Union City Police Department. Bellotti had additional training after the police academy in narcotics investigations during his law enforcement career and was involved in over 150 narcotics investigations prior to May 23, 2024, because of specific assignments in street crime teams focused on narcotics investigations. From this training and experience he was able to recognize and distinguish narcotic substances based on their appearance. Bellotti's observation was that the baggie recovered from Crisostomoarias' fanny pack contained a white, powdery substance that appeared to be cocaine. Crisostomoarias was interviewed regarding her employment at the Licensed Premises and the suspected narcotics found. The interview was captured on Bellotti's body camera. (Exhibit 42) Crisostomoarias stated that she had worked at the Licensed Premises for 2-3 months. She denied knowing that the suspected cocaine was in her fanny pack. Crisostomoarias stated that, sometimes, customers put tips in her fanny pack and that might be how it got there. Bellotti retained the seized narcotic until he turned it over to RCPD Detective D. Contreras for processing as evidence in the investigation. During this process, the suspected cocaine was weighed at 1.1 grams, then photographed. (Department Exhibit 30)

19. RCPD Detective M. Mroz (Mroz) assisted with the investigation on May 23, 2024. He was part of the team that entered to secure the location. Mroz was informed by RCPD Sergeant Santiago (Santiago) that a member of the team saw a female try to dispose of a suspected narcotic by hiding it in a napkin and placing it on the counter of the bar. Santiago pointed Mroz to the location of the napkin and he pointed out the specific female who had placed the napkin there. Mroz looked at the contents of the napkin and saw a baggie that appeared to contain cocaine. (Exhibit D-37) Mroz based this opinion on his narcotics investigation experience from his over seven years as a police officer with the RCPD and other police departments. Mroz had additional training and guidance from experienced narcotics investigators during his field assignments. After the police academy, Mroz was personally involved in over 100 narcotics investigations prior to May 23, 2024. From this training and experience he was able to recognize and distinguish common narcotic substances based on their appearance. Mroz identified the female from her driver's license as Karoll Dayanna Velasquez Vargas (Velasquez). Because she only spoke Spanish, Mroz interviewed her with the assistance of RCPD Court Liaison S. Bertolozzi (Bertolozzi) who was fluent in Spanish. Velasquez admitted to being aware that the suspected cocaine was in her purse. She stated that she received it from two guys in San Jose two weeks before. Velasquez admitted trying to discard the baggie after the officers arrived. Mroz activated his body camera during the investigation. The recovery of the suspected narcotic and the interview of Velasquez was videotaped. (Exhibit D-37) Mroz turned over the seized suspected cocaine to Bellotti. Bellotti retained the seized narcotic until he turned it over to Contreras for further processing as evidence in the investigation. The suspected cocaine was weighed at 0.5 grams, then photographed. (Department Exhibit 33)

20. Steffany was present and working on May 23, 2024, at the Licensed Premises when the officers arrived. She was arrested by Goerzan on a warrant for the sale that occurred on May 10, 2024. Mroz later interviewed her during booking with the assistance of Bertolozzi. Steffany admitted to working for the Licensed Premises since August 2023. Steffany admitted that she

messed up and that she knew she was under arrest because she sold cocaine on a prior Friday or Saturday<sup>5</sup> at the Licensed Premises to a person she knew as "Edward." (Exhibit D-43)

21. Department Agent R. Ronner (Ronner) was part of the investigative team at the Licensed Premises on May 23, 2024. Ronner has been an agent with the Department since 2011. In addition to his initial narcotics investigation training at the academy, Ronner also went through an 80-hour narcotics training program through California Peace Officer Standards and Training (POST). He also is a trained drug recognition expert (DRE) officer through POST. Ronner has also been involved in over 100 law enforcement investigations regarding narcotics activity. From this training and experience, Ronner was able to recognize and distinguish narcotic substances based on their appearance. Ronner was also able to recognize and identify typical symptoms of being under the influence of common narcotic substances. On May 23, 2024, Ronner was assigned to monitor the outside perimeter of the Licensed Premises while other officers investigated the interior. Ronner contacted a security guard for the Licensed Premises who was later identified as Alvarez Cortez (Cortez). While speaking with Cortez, Ronner noticed that Cortez was sweating profusely and his pupils were dilated. Ronner's training and experience led Ronner to conclude that Cortez was potentially under the influence of a central nervous system stimulant. Ronner asked Cortez for his identification. Cortez produced his wallet to get identification. During the search for identification, Ronner recognized that a dollar bill in Cortez' wallet was folded in a manner that was commonly used to hold narcotic substances. This interaction with Cortez was captured on body camera footage. (Exhibit D-42) Bellotti came over to assist Ronner with Cortez. Bertolozzi assisted in translating since Cortez spoke primarily Spanish. Cortez admitted there was narcotics in the folded bill. Cortez claimed to have found it on the ground. Cortez admitted to ingesting some of the substance earlier in the day. Ronner seized the folded dollar bill as evidence. (Exhibit D-42) He later turned it over to Bellotti for processing. Bellotti subsequently gave the folded dollar bill with the suspected narcotic to Contreras for testing and booking. Bellotti did this at the same time he gave Contreras the evidence he had seized from Crisostomoarias.

22. After leaving the Licensed Premises, Contreras prepared the suspected narcotics seized from Crisostomoarias, Cortez, and Velasquez in the RCPD evidence room for booking. Prior to booking the evidence, Contreras weighed and photographed the items. Contreras opened the folded dollar bill seized from Cortez so that the contents were visible. (Exhibit D-27) Contreras, in looking at the substance, believed it was methamphetamine based on his training and experience. Contreras weighed the bill and the contents and found the total weight to be 1.3 grams. (Exhibit D-28) Contreras then tested the suspected narcotic using a TruNarc device. Contreras is not a trained criminalist, but he was formally trained and certified to use the TruNarc device and had used it on at least 20 prior occasions. The training Contreras received was on how to document the use of the device, perform a self-check of the device prior to conducting an actual test, and then conduct an actual test after the self-test shows the device is functioning normally. Part of his training was to ensure the device and sample to be tested were clean and free of debris that might interfere with the analysis of an intended substance. This was the protocol he followed on the early morning of May 24, 2025. Contreras followed the steps he

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<sup>5</sup> May 10, 2024, was a Friday.

had been taught to use the device. The result of the TruNarc device testing was that the substance was shown to contain methamphetamine. (Exhibit D-29) Contreras placed the folded dollar bill and its contents into a baggie for booking.

23. Contreras tested the substance seized from Crisostomoarias. Contreras first weighed the substance on a scale. The substance, in the baggie, weighed 1.1 grams. Contreras took a photograph of the substance on the scale. (Exhibit D-30) Contreras tested the substance with the TruNarc device by followed the standard steps for testing. The result of the TruNarc device testing was that the substance contained cocaine hydrochloride, more commonly known as powdered cocaine. (Exhibit D-31) Contreras placed the baggie and its contents into a booking envelope. Contreras subsequently prepared a report of his findings. (Exhibit D-26)

24. Contreras also tested the substance seized from Velasquez. Contreras first weighed the substance on a scale. The substance, in the baggie, weighed 0.5 grams. Contreras then photographed the substance on the scale. (Exhibit D-33) Contreras tested the substance with the TruNarc device using the steps he had been trained to use for testing during his certification. The result of the TruNarc device testing was that the substance contained cocaine hydrochloride, also commonly known as powdered cocaine. (Exhibit D-34) Contreras placed the baggie and its contents into a booking envelope. Contreras subsequently prepared a supplemental report of his findings. (Exhibit D-32)

25. Leonardo Gomez Bautista (Gomez) testified for the Respondent. Gomez testified that he has 10 years of experience in security work and that from 2022 through May 2024 he worked for the Licensed Premises in the evenings and the Mexican Embassy during the day. Gomez testified that he was trained to check for identification from patrons and that he screened them for weapons before they entered. He and the other security guards rotate between inside and outside assignments. They check for whether patrons are overserved alcohol. Gomez testified that he has never been offered drugs at the Licensed Premises or seen drugs sold. Gomez has never received a report from the waitresses that drugs were offered to them. Gomez said the Respondent emphasized three things for security, check people for weapons upon entry, protect the safety of the waitresses, and check the bathrooms periodically.

26. Gerardo Quintero (G. Quintero) testified for the Respondent. He is the brother of A. Quintero And Domingo Quintero (D. Quintero). A. Quintero and D. Quintero are more involved with the day-to-day operation of the Licensed Premises. G. Quintero primarily operates a Department licensed business in San Mateo, California known as Yuppie. G. Quintero and A. Quintero are officers or shareholders of the corporation that holds the Type 48 licenses at Yuppie and the Licensed Premises. (Exhibits D-3 and D-4) G. Quintero testified that they follow similar policies at both businesses. Employees are not to overserve patrons, no minors are allowed in either premises, no drugs or solicitations for drugs are allowed and they actively try to prevent loitering at both licensed premises. G. Quintero testified that all of the ladies involved in the investigation vanished after the May 23, 2024, arrests occurred. G. Quintero testified that they were not aware of any issues with these female employees. G. Quintero testified that the Licensed Premises was not told of any concerns by law enforcement prior to May 23, 2024. G. Quintero testified that, since the May 23, 2024, investigation, the Licensed Premises has

explored using a canine at the entrance and it has recently prepared written instructions for its employees. The Licensed Premises has also explored using only certified security guards. D. Quintero also testified in this matter. He testified that he was involved in the operation of the Licensed Premises since it opened. He regularly bartends and checks on the behavior of employees during their shifts. He was generally at the Licensed Premises two to three days a week, primarily on weekends. He would give instructions to the female waitresses to not have conversations about sex or drugs, and to not overcharge patrons.

27. Aaron Resendez (Resendez) testified on behalf of the Respondent. He testified that he is a business consultant working with the Licensed Premises. Resendez testified that he first worked with the Respondent with its San Jose business venture. Resendez testified that signage was put up at the Licensed Premises after the May 23, 2024, investigation to combat drug solicitations. Resendez testified that about 3-4 days before the hearing in this matter, the Licensed Premises began using written instructions containing a code of conduct with hired employees. The Respondent introduced an unsigned copy of the code of conduct document that had purportedly just gone into use. (Exhibit L-1) Resendez testified that there was a version in the Spanish language, although this was not introduced. Resendez testified that, as of the hearing date, he was still working with the Respondent to draft security procedures and adopt a security plan. Resendez described an in-development plan to communicate with the RCPD for additional input into the security plan being drafted. Resendez also testified that the Respondent was exploring the installation of a camera system to assist with law enforcement investigations. Resendez also testified to the Respondent exploring the possibility of using a drug sniffing canine to combat illicit narcotics being brought into the Licensed Premises.

28. A. Quintero testified in this matter. He testified that he was responsible for the primary accounting and food orders of the Licensed Premises. He also testified to handling the information given to the payroll service of the Licensed Premises. A. Quintero did not offer any evidence of an outside payroll service, despite referencing the existence of one in his testimony. A. Quintero testified that he and D. Quintero primarily manage the Licensed Premises. A. Quintero testified to being present at the Licensed Premises 2-3 times a week. He maintains an office there and he is the person with the key to this office. A. Quintero was in the office with the door locked when the law enforcement officers arrived on May 23, 2024. He opened the door when the officers knocked on it. Prior to their arrival, he was working on the books of the Licensed Premises. A. Quintero testified that he felt the office was his personal space. A. Quintero testified that the tequila bottles had been there for a year and that he did not sell alcohol from them. A. Quintero testified that the Smart and Final receipts showing alcohol purchases were personal, non-business purchases, and not for the Licensed Premises. A. Quintero described Steffany as someone who was in a leadership position with the other waitresses and that she arranged schedules and coordinated the outfits of the waitresses. After the May 23, 2024, arrests, all of the female employees stopped communicating with the Licensed Premises. A. Quintero was unable to reach any of them. A. Quintero admitted that the notebook entries found by Goerzan were made by him. A. Quintero denied using the records for anything other than making sure employees were working. A. Quintero described working with Resendez to develop solutions to address the problems identified in the investigation.

## 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. Business and Professions Code 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. Business and Professions Code section 24200.5(a) provides that notwithstanding the provisions of Section 24200, the department shall revoke a license upon any of the following grounds:
  - (a) If a retail licensee has knowingly permitted the illegal sale, or negotiations for the sales, of controlled substances or dangerous drugs upon his or her licensed premises. Successive sales, or negotiations for sales, over any continuous period of time shall be deemed evidence of permission. As used in this section, "controlled substances" shall have the same meaning as is given that term in Article 1 (commencing with Section 11000) of Chapter 1 of Division 10 of the Health and Safety Code, and "dangerous drugs" shall have the same meaning as is given that term in Article 2 (commencing with Section 4015) of Chapter 9 of Division 2 of this code.
4. Health & Safety Code section 11350(a) provides in relevant part that, except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b), (c), (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in a county jail for not more than one year, except that such person shall instead be punished pursuant to subdivision (h) of Section 1170 of the Penal Code if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.
5. Health & Safety Code section 11352 makes it a felony to transport, import into this state, sell, furnish, administer, or give away, or offer to transport, import into this state, sell, furnish, administer, or give away, or attempt to import into this state or transport any controlled substance
  - (1) specified in
    - (a) subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054,
    - (b) paragraph (14), (15), or (20) of subdivision (d) of Section 11054,

- (c) subdivision (b) or (c) of Section 11055, or
- (d) subdivision (h) of Section 11056, or
- (2) classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state.

6. Health & Safety Code section 11377(a) provides that, except as authorized by law and as otherwise provided in subdivision (b) or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year, except that such person may instead be punished pursuant to subdivision (h) of Section 1170 of the Penal Code if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.

7. Business and Professions Code section 25607(a) provides in relevant part that, except as provided in subdivisions (b), (c), (d), (e), and (f), it is unlawful for any person or licensee to have upon any premises for which a license has been issued any alcoholic beverages other than the alcoholic beverage that the licensee is authorized to sell at the premises under their license. It shall be presumed that all alcoholic beverages found or located upon premises for which licenses have been issued belong to the person or persons to whom the licenses were issued. Any person who violates the provisions of this section is guilty of a misdemeanor. The department may seize any alcoholic beverages found in violation of this section.

8. Business and Professions Code section 25607(b) provides that, except as provided in subdivision (c), a bona fide public eating place for which an on-sale beer and wine license has been issued may have upon the premises brandy, rum, or liqueurs for use solely for cooking purposes.

9. With respect to count 1, 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, between March 22, 2024, and May 10, 2024, the Respondent knowingly permitted the illegal sale, or negotiations for sales, of controlled substances or dangerous drugs, to wit, cocaine, upon the Licensed Premises, in violation of Business and Professions Code section 24200.5(a). As agents or employees, the actions of Lina (Sale of cocaine to Gonzales on March 22, 2024.), Steffany (Sale of cocaine to Valdes on May 10, 2024.), and Crystal (Offer to sell cocaine to Gonzales on May 10, 2024.), under the circumstances of this case, are imputed to the Respondent. (Findings of Fact ¶¶ 1-28)

10. With respect to counts 2, 3, and 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), on the basis that, between March 22, 2024, and May 10, 2024, the agents or employees of the Respondent sold, furnished or offered to sell or furnish, within the Licensed Premises, controlled substances, to-wit: cocaine, in violation of California Health and Safety Code section 11352. As agents or employees, the actions of Lina (Sale of cocaine to Gonzales on March 22, 2024.), Steffany (Sale of cocaine to Valdes on May 10, 2024.), and Crystal (Offer to sell cocaine to Gonzales on May 10, 2024.), under the circumstances of this case, are imputed to the Respondent. (Findings of Fact ¶¶ 1-28)

11. With respect to counts 5, and 6, 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 May 23, 2024, the Respondent's agents or employees, Crisostomoarias (Identified as Luisa Crisostomao in Count 5.) and Velasquez (Identified as Karoll Dayanna Velasquez Vargas in Count 6.), possessed, within the Licensed Premises, a controlled substance, to wit: cocaine, in violation of California Health and Safety Code section 11350. As agents or employees of the Respondent, their actions and knowledge, under the circumstances of this case, are imputed to the Respondent. (Findings of Fact ¶¶ 1-28)

12. With respect to count 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 May 23, 2024, the Respondent's agent or employee, Cortez (Identified as Celso Alvarez Cortez in Count 7.), possessed, within the Licensed Premises, a controlled substance, to wit: methamphetamine, in violation of California Health and Safety Code section 11377. As an agent or employee of the Respondent, his actions and knowledge, under the circumstances of this case, are imputed to the Respondent. (Findings of Fact ¶¶ 1-28)

13. With respect to count 8, 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 May 23, 2024, the Respondent possessed upon the Licensed Premises, distilled spirits, to wit: tequila, for which a license had not been issued, in violation of Business and Professions Code section 25607(a). (Findings of Fact ¶¶ 1-28)

14. One evidentiary matter to be addressed is the Department's partial reliance on the presumptive testing of narcotics that was offered in this case. Only the suspected narcotic seized by Felix on March 22, 2024, from the transaction that occurred in front of the Licensed Premises, was sent to a lab for conclusive testing of its contents. The remaining seized narcotics were only field tested through the use of the TruNarc device, with the exception of one instance, where the narcotic received from Steffany by Valdes on May 10, 2024, was presumptively tested through the use of a Scott reagent system chemical presumptive test. This court relies on *People v. Kelly* (1976) 17 Cal.3d 24 and the recent case of *People v. Rios* (2024) 99 Cal. App. 5th 1128 in determining that findings made as a result of these tests do not meet the threshold for consideration as evidence in this matter. The Department did not present evidence to establish proof of reliability or general acceptance of these new scientific techniques in the scientific community as required by *People v. Kelly, supra*.

15. *People v. Rios* specifically addressed the admissibility of the TruNarc device in a California criminal proceeding. In finding the TruNarc device results inadmissible, the *People v. Rios* court noted that:

“[The] [p]olice officer's testimony in defendant's trial for possession and transportation for sale of methamphetamine and carisoprodol as to test results from handheld laser narcotics identification device and how the device worked did not satisfy rule in *People v. Kelly*, (1976) 17 Cal.3d 24, requiring proof of reliability or general acceptance of new scientific technique in the scientific community, where despite officer's capability of using the device as he was trained, he could not testify as to acceptance of the test results within relevant scientific community, nor did he appear to be qualified to testify about underlying scientific principles, which ostensibly involved laser technology.

The *Kelly* rule requires that it be applied when scientific techniques are sought to be introduced that are “ ‘new,’ novel, or “ ‘experimental,” ’ ” and “convey a ‘misleading aura of certainty.’ ” ( *People v. Stoll* (1989) 49 Cal.3d 1136, 1155–1156, 265 ( *Stoll* ).) The rule applies to a “ ‘limited class’ ” of expert testimony based “on a technique, process, or theory which is new to science, and even more so, the law.” ( *People v. Cowan* (2010) 50 Cal.4th 401, 470.) “*Kelly* applies to unproven techniques or procedures that appear ‘in both name and description to provide some definitive truth which the expert need only accurately recognize and relay to the jury,’ such as ‘machines or procedures which analyze physical data,’ because ‘[l]ay minds might easily, but erroneously, assume that such procedures are objective and infallible.’ ” ( *People v. Therrian* (2003) 113 Cal.App.4th 609, 614.).... In determining whether a new scientific test or process has ... received general acceptance by recognized experts in the scientific field to which it belongs, ... a court may, and should, take judicial notice of the case law and comments on the particular field of scientific endeavor and of the articles from reliable sources that appear in scientific journals and other publications ....” (2 *Witkin, Cal. Evidence* (6th ed. 2023) *Demonstrative, Experimental, and Scientific Evidence*, § 45, pp. 57–58.)” *People v. Rios* (2024) 99 Cal. App. 5th 1128, 1136.

16. In this matter, the personnel who used the TruNarc device and the Scott reagent system chemical presumptive testified credibly that they followed the procedures taught to them in their training, but they were unable to address the underlying scientific principles of how each test operated or whether they were the application of scientific techniques that were generally accepted in the scientific community. The Department offered no evidence supporting reliability beyond the use of these tests consistent with the way their training required for accurate outcomes.

17. While the presumptive evidence cannot be considered, the remaining evidence presented by the Department is available for consideration. Beyond the presumptive testing of the suspected narcotics, the Department also offered substantial evidence regarding the nature of the substances found during the various investigations. *People v. Rios* is instructive in this regard as well. The *People v. Rios* court noted, in affirming the defendant’s conviction on multiple counts of methamphetamine possession, that the remaining circumstantial evidence remained admissible

and supported the jury's findings that the substance the Defendant possessed was methamphetamine, despite the lack of formal lab testing of the evidence seized by law enforcement:

“When an information charges a crime involving a controlled substance, proof of the identity of the substance is an essential element of the offense. (*People v. Davis* (2013) 57 Cal.4th 353, 359–362, [a jury could not properly infer that a seized substance was a controlled substance based solely on its chemical name].) “Ordinarily the narcotic character of a substance is proved by a trained expert who has made a chemical analysis thereof.” (*People v. Galfund*, supra, 267 Cal.App.2d at p. 320.) However, “chemical analysis is not always required to establish the identity of a controlled substance. The essential elements of possession of a controlled substance ‘may be established circumstantially.’” (*People v. Mooring* (2017) 15 Cal.App.5th 928, 943 [“Chemical test results are routinely introduced at trial to establish the illegal nature of a controlled substance, but they are not required”]; *People v. Bailey* (1991) 1 Cal.App.4th 459, 462–463 [a trained narcotics officer's “testimony establishes that the substance in question was cocaine base”]; *People v. Sonleitner* (1986) 183 Cal.App.3d 364, 369 [“the nature of a substance, like any other fact in a criminal case, may be proved by circumstantial evidence”]; *People v. Marinos* (1968) 260 Cal.App.2d 735, 738–739 [police officer's opinion that cigarette smoked by defendant contained marijuana constituted sufficient evidence that defendant possessed marijuana].” *People v. Rios* (2024) 99 Cal. App. 5th 1128, 1143–44

18. In count 2 (Sale of cocaine to Gonzales on March 22, 2024), there was a negotiation for the sale of cocaine with Lina. The transaction was consistent with the sale of cocaine, and the substance received appeared to be cocaine to an officer who was experienced with the appearance of the substance. It was packaged like cocaine would be packaged. The transaction was negotiated surreptitiously. In totality, these factors established that it was more likely than not that the substance sold by Lina to Gonzales was, in fact, cocaine. (Findings of Fact ¶¶ 1-28)

19. In count 3 (Sale of cocaine to Valdes on May 10, 2024), there was a negotiation for the sale of cocaine with Steffany. Valdes and Steffany had a specific conversation clarifying that he was seeking to purchase cocaine. The transaction was conducted in a manner consistent with cocaine sales. The substance received was packaged as cocaine is packaged. It appeared to be cocaine to an officer well experienced with the appearance of the substance. The transaction was negotiated surreptitiously. In totality, these factors established that it was more likely than not that the substance sold by Steffany to Valdes was cocaine. (Findings of Fact ¶¶ 1-28)

20. Count 4 involved the negotiation for the sale of cocaine that occurred between Crystal and Gonzalez on May 10, 2024. Under the circumstances of the case, the elements of the allegation were proven, by a preponderance of the evidence, after Crystal finished negotiating with Gonzalez for the sale of “perico” which was a Spanish term for cocaine. Crystal and Gonzalez negotiated a specific amount to be purchased, which was one gram. Crystal identified to Gonzalez who she was going to obtain it from, when she pointed to the unknown male in the Licensed Premises. At the point Crystal finished the negotiation and walked over to this male, she met all of the elements of section 11352, which required an offer to sell a controlled

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substance with the specific intent to make the sale. The fact that she was unsuccessful in completing the transaction was not relevant to the section charged in count 4. Her effort to complete the transaction, after negotiating for the narcotic sale, further reinforced the intent she had formed moments before, but was not a required element. As noted in *People v. Encerti* (1982) 130 Cal. App. 3d 791:

“...[t]he elements of the offense here in question—offering to sell heroin—are an offer to sell the drug with the specific intent to make a sale. (*People v. Jackson* (1963) 59 Cal.2d 468, 469–470; *People v. Innes* (1971) 16 Cal.App.3d 175, 178.) The proscribed act is the making of the offer. (*People v. Daniels* (1975) 14 Cal.3d 857, 861.) But the offense is complete when an offer is made with the accompanying requisite intent; neither delivery of the drug, an exchange of money, nor a direct, unequivocal act toward a sale are necessary elements of the offense. (*People v. Medina* (1972) 27 Cal.App.3d 473, 476; *People v. Reynolds* (1969) 276 Cal.App.2d 825, 828.)” *People v. Encerti* (1982) 130 Cal. App. 3d 791, 800–01

Crystal’s offer to sell cocaine to Gonzales on May 10, 2024, met the elements of the charged count, and under the circumstances of this case, are imputed to the Respondent because they occurred during a period in which repeated sales and possession of controlled substances were occurring in or near the Licensed Premises. (Findings of Fact ¶¶ 1-28)

21. In count 5 (Possession of cocaine by Crisostomoarias on May 23, 2024.), Bellotti determined that the baggie recovered from Crisostomoarias’ fanny pack weighed 1.1 grams. Based on his extensive narcotics experience, he believed that it was cocaine because of its appearance and packaging. While Crisostomoarias denied knowing that cocaine was in her fanny pack, she stated that, sometimes, customers put tips in her fanny pack and that might be how it got there. Her excuse for its presence was circumstantial evidence of knowing possession. Further, she had been wearing the pack just prior to the search, so she had sole control of its contents. In totality, these factors established that, by a preponderance of the evidence, Crisostomoarias was in knowing possession of the substance and that it was, more likely than not, cocaine. Crisostomoarias’ possession of cocaine on May 23, 2024, met the elements of the charged count, and under the circumstances of this case, are imputed to the Respondent. It occurred during a period in which repeated sales and possession of controlled substances were taking place in or near the Licensed Premises. (Findings of Fact ¶¶ 1-28)

22. In count 6 (Possession of cocaine by Velasquez on May 23, 2024.), Velasquez was seen trying to surreptitiously discard and hide a baggie. After she was caught by law enforcement, Velasquez admitted to being aware that cocaine was in her purse. She stated that she received it from two guys in San Jose two weeks before. Velasquez admitted trying to discard the baggie after the officers arrived. Velasquez statements were circumstantial evidence of the nature of the substance contained in the baggie. Further, based on his extensive narcotics experience, Mroz believed that it was cocaine because of its appearance and packaging. In totality, these factors established that, by a preponderance of the evidence, Velasquez was in knowing possession of the substance and that it was, more likely than not, cocaine. Velasquez’ possession of cocaine on May 23, 2024, met the elements of the charged count, and under the circumstances of this case,

are imputed to the Respondent. It occurred during a period in which repeated sales and possession of controlled substances were taking place in or near the Licensed Premises. (Findings of Fact ¶¶ 1-28)

23. In count 7 (Possession of methamphetamine by Cortez on May 23, 2024) Ronner noticed that Cortez was sweating profusely and his pupils were dilated. Ronner had extensive training in the sale, possession, and appearance of narcotic substances. Ronner was also trained as a drug recognition expert and he had experience in recognizing how controlled substance use manifested itself in the appearance of users. Ronner's training and experience led Ronner to conclude that Cortez was potentially under the influence of a central nervous system stimulant. Cortez was found with a dollar bill in his wallet folded in a way commonly used to hold narcotic substances. After unfolding the bill, Ronner found that it contained a substance consistent with the appearance of methamphetamine, which is a central nervous system stimulant. Cortez stated he found the bill on the ground and had used some of the contents earlier in the day. In totality, these factors established that, by a preponderance of the evidence, Cortez was in knowing possession of the substance and that it was, more likely than not, methamphetamine. Cortez' possession of methamphetamine on May 23, 2024, met the elements of the charged count, and under the circumstances of this case, are imputed to the Respondent. It occurred during a period in which repeated sales and possession of controlled substances were taking place in or near the Licensed Premises. (Findings of Fact ¶¶ 1-28)

24. As alleged in count 8, on May 23, 2024, the Respondent had, in the Licensed Premises, distilled spirits, to wit, tequila. This possession was not shown to meet the criteria of any defenses. The Respondent only had the privileges of a type 41 on-sale beer and wine eating place license on that date, yet it possessed two bottles of tequila in an office that was adjacent to the public area of the Licensed Premises. These bottles were possessed in a location within the footprint of the Licensed Premises Diagram where the Respondent was allowed to engage in its privileged business. Respondent A. Quintero admitted to knowledge of the bottles of tequila. He claimed in sworn testimony that the bottles were for personal use. This testimony is at odd with an exhibit that shows a shot tally in a record that was admittedly prepared by A. Quintero. The elements of the charged count have been established by a preponderance of the evidence against the Respondent. (Findings of Fact ¶¶ 1-28)

25. In this matter, the Department alleged, in count one, a violation Business and Professions Code section 24200.5(a) between the dates of March 22, 2024, and May 10, 2024. This statute is directly applicable to the circumstances of this case and has been proven in this matter. A pattern of sales of cocaine on two occasions, and an offer to sell cocaine on one occasion, was established to have occurred in the Licensed Premises. All three instances involved employees who worked as waitresses in the Licensed Premises. Imputed knowledge of this pattern of drug activities is established by the three instances that occurred inside of the Licensed Premises as alleged in counts 2, 3, and 4. These violations occurred in the larger context of a drug sale in front of the Licensed Premises on March 22, 2024 where the seller walked into the Licensed Premises after the sale, and multiple possession of drug counts that were proven against employees of the Licensed Premises who were present there on May 23, 2024. Both waitresses were found with cocaine on their persons while they were working on May 23, 2024. Cortez was

working as a security guard for the Licensed Premises on May 23, 2024. Cortez had methamphetamine in his possession and he was under the influence of a central nervous system stimulant when officers encountered him guarding the entrance of the Licensed Premises on May 23, 2024. These six different incidents occurred over the course of several weeks between March 22, 2024, and May 23, 2024. These controlled substance sales, solicitations and possessions occurred directly as a result of the lax oversight of the Respondent regarding the actions of employees and agents of the Licensed Premises. (Findings of Fact ¶¶ 1-28)

26. The cocaine sales in counts two and three, and the offer to sell cocaine in count four, each occurred within the Licensed Premises. They each involved employees working as waitresses who facilitated the transactions. One of the incidents involved an unknown patron of the Licensed Premises. (Findings of Fact ¶¶ 1-28)

27. The Respondent presented testimony and argued that the Respondent was not aware of any drug dealing or drug possession that was taking place. A. Quintero, a security employee, and a consultant for the Respondent each testified that they would not tolerate such behavior and that the alleged actions of the waitresses were contrary to the expectations of the Respondent. Based on this, the Respondent argued that the Department improperly imputed knowledge of the drug transactions to the Respondent and that Business and Professions Code section 24200.5(a) should not apply. The Respondent also argued, without supporting authority, that the Department had an affirmative duty to inform the Respondent of its investigation prior to the May 23, 2024, date. This contention is rejected.

28. The Respondent likened its circumstances to the petitioner in *McFaddin San Diego 1130 Inc. v. Stroh* (1989) 208 Cal.App.3d 1384. In *McFaddin*, the Court of Appeal granted the petition and reversed the order of the Board and the decision of the Department. The Court of Appeals found that the licensee did not know of the drug transactions at issue, and further, that the licensee had taken extensive preventive measures to combat such activity. It held that such evidence did not support the imputed inference that the licensee “permitted” the illicit activity.

29. The evidence did not establish that the Respondent was specifically aware of the actions of the employees or patrons identified in the drug transactions proven by the Department. However, that is only the first prong of the test established in *McFaddin*. The failure of the Respondent to enact any significant, preventive measures to combat drug activity in the Licensed Premises make the comparison to the circumstances in *McFaddin* unwarranted. The evidence showed a failure on the part of the Respondent to comply with its responsibility to enact preventive measures to combat drug activity in its Licensed Premises. Further, the evidence showed that the Respondent had actively taken steps to undermine investigative efforts by law enforcement and regulatory agencies to prevent the conduct that was occurring in the Licensed Premises over an extended period. The evidence established that, during the period at issue, the Licensed Premises entrance was blacked out and curtained in such a way as to prevent anyone on the public street in front of the Licensed Premises from viewing activity inside of the Licensed Premises. The Respondent added a locked room to the Licensed Premises that was not depicted on the Licensed Premises Diagram. There is no evidence that the Respondent updated its Department records to reflect the subsequent construction of this enclosed room. On May 23, 2024, law enforcement

officers unexpectedly encountered this enclosed and locked room. It was inside of this locked room that the Respondent appeared to be administering a cash based, ad hoc, employment system for the Licensed Premises. It was also in this locked room that the two distilled spirit bottles of tequila were found. Respondent is mistaken in asserting that the Department had a burden of proof requiring that sales of the distilled spirits needed to be proven. Business and Professions Code section 25607(a) requires proof of possession, not sales. The evidence did establish that the Respondent possessed the distilled spirits in the Licensed Premises. It is noted that the Department did present evidence in one spreadsheet ledger (Exhibit D-21), prepared by A. Quintero, that appeared to reference "shots" that presented an inference that the distilled spirits in the Licensed Premises were being furnished to patrons. (Findings of Fact ¶¶ 1-28)

30. In this case, drug sales activity occurred in the Licensed Premises over several months. There is no evidence that the Respondent screened employees or had any established, enforceable policies or procedures in place to curtail drug activity. There was no evidence of monitoring equipment to discourage drug activity. On May 23, 2024, one of the security personnel and two waitresses possessed narcotic substances. The guard appeared to actually be under the influence of a narcotic substance. Employees acted with little to no oversight in the Licensed Premises. A. Quintero was present at the Licensed Premises 2-3 times a week, yet denied any awareness of a drug culture that appeared to be pervasive in the Licensed Premises. Employment appeared to be administered in a haphazard fashion and there was significant evidence that employees were paid off the books. The manner in which the Respondent ran the Licensed Premises invited exactly the behavior that occurred between March 22, 2024, and May 23, 2024. The lack of oversight allowed drug possession and drug transactions to occur, without consequences, over an extended period. (Findings of Fact ¶¶ 1-28)

31. The undercover law enforcement officers investigating the alleged narcotic activity between March 22, 2024, and May 10, 2024, found that they were easily and readily able to arrange drug sources through the waitresses inside of the Licensed Premises. In only one instance, on May 10, 2024, was a request for drugs immediately denied. Even in this instance, while Vivian stated to the law enforcement officer that she personally didn't have drugs, she also told the officer that he could go into the bathroom of the Licensed Premises to procure what he was looking for. This incident, the completed sales, and the offer to sell reinforce that the Licensed Premises had become a location where narcotics could be possessed and sold with impunity and little fear of repercussion. Given this, the Respondent cannot establish that "extensive preventive measures" took place evincing an effort to curtail drug activity by employees, as were shown in *McFaddin*. The Respondent permitted this behavior by not taking reasonable steps to prevent it from occurring. A finding of imputed knowledge is supported in this case. (Findings of Fact ¶¶ 1-28)

32. The Respondent presented testimony that the Respondent was considering preventative measures like the use of a drug sniffing dog. The Respondent also presented testimony that it was considering putting in a video monitoring system to assist law enforcement investigations. The Respondent also presented testimony that it was considering hiring security through a formal service. The Respondent presented testimony that it was exploring input from local law enforcement on improving its practices. In terms of implemented practices or changes, the Respondent presented a document that had purportedly been recently put into use at the Licensed

Premises. The document presented was an unsigned blank, and in the English language, despite evidence that all of the involved individuals in the investigation from the Licensed Premises, including A. Quintero, only spoke Spanish. (Exhibit L-1) The document had purportedly been put in use in the weeks prior to the hearing in this matter. The Respondent argued based on these actions and the lack of prior discipline, that a revocation, under the circumstances in this case, would be an abuse of discretion.

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

### PENALTY

Title 4, section 144 of the California Code of Regulations sets forth the penalty guidelines for disciplinary action. The penalty discussed in this matter is pursuant to these guidelines. The Department requested that the Respondent's license be revoked given the severity of the violations and the statutory requirement set forth in section 24200.5(a) which is also alleged as count 1. The individual violations of Health and Safety Code section 11352 alleged in counts 2-4 each call for penalties up to revocation because of the specific statutes violated and because they were crimes of moral turpitude committed in the Licensed Premises. There is no schedule for recommended discipline for the possession counts alleged in counts 5 through 7. Count 8, standing alone, has a presumptive penalty of 10 days.

The Respondent sought a dismissal of the Accusation by focusing on the defense of lack of imputed knowledge. Respondent further argued that the court should consider the mitigating circumstances of the Respondent's purported lack of knowledge of the conduct alleged and the Respondent's lack of prior discipline during licensure. The Respondent asserted that a revocation, under the circumstances in this case, would be an abuse of discretion.

Business and Professions Code section 24200.5(a) statutorily establishes revocation as a proscribed penalty under the circumstances of this case. It is inherently an expression of the legislative policy of the state and should be given deference unless it is shown to be a grossly disproportionate punishment. That is not the case in this matter. There is a direct proportion between the penalty, specifically the revocation of a liquor license, and the gravity of the offenses proven in this matter. The Department specifically showed that the Respondent permitted cocaine sales transactions in its Licensed Premises on multiple occasions over the course of months. These transactions repeatedly involved employees. Additional counts involved the possession of narcotic substances, on the Licensed Premises, by employees were also proven.

The conduct that was allowed directly demonstrated that the Respondent is an unsuitable license holder. The potential penalty in this matter is the revocation of the Respondent's type 41 license. The Respondent has failed to demonstrate how this penalty would be "grossly disproportional" to the proven conduct.

Section 24200.5 provides that "the [D]epartment shall revoke a license" for any violation thereof. The Department has consistently construed this section as requiring some form of

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revocation although not necessarily outright revocation.<sup>6</sup> Outright revocation<sup>7</sup> or stayed revocation<sup>8</sup> can be appropriate depending upon the circumstances.

In the present case, outright revocation is warranted. The Respondent had an affirmative obligation to ensure that the Licensed Premises was operated in full compliance with the law. The Respondent did not. The illegal activity at issue here—repeated drug sale negotiations by employees of the Licensed Premises that resulting in repeated sales of cocaine to undercover officers in the Licensed Premises, clearly warrants revocation given the lax approach to management of the Licensed Premises evinced in this case. The Respondent’s poor oversight facilitated the circumstances that developed in the Licensed Premises.

Further, there is no indication that the Respondent has taken appropriate steps to prevent future unlawful activity. Since learning of the Accusation, the Respondent has continued to operate the Licensed Premises while doing little to change the culture of the Licensed Premises that allowed this conduct to take root. Only one purported change has occurred with the introduction of the code of conduct document. It is unclear if this document has been actually introduced or used in a meaningful way. None of the other “reforms” under consideration by the Respondent have been implemented, despite the Respondent being on notice of the investigation since May of 2024 and the Accusation since November 2024.

The penalty recommended herein complies with rule 144.

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<sup>6</sup> Cal. Code of Regs., tit. 4, §144.

<sup>7</sup> See, e.g., *Greenblatt v. Martin* (1960) 177 Cal. App. 2d 738 (outright revocation imposed for violations of section 24200.5).

<sup>8</sup> See, e.g., *Harris v. Alcoholic Beverage Control Appeals Board* (1964) 244 Cal. App. 2d 468 (revocation stayed coupled with suspension imposed for violations of section 24200.5).

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**ORDER**

The Respondent's on-sale beer and wine eating place license is hereby revoked.

Dated: April 8, 2025

*Alberto Roldan*

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Alberto Roldan  
Administrative Law Judge

<input checked="" type="checkbox"/> Adopt
<input type="checkbox"/> Non-Adopt: _____
By: <i>[Signature]</i> _____
Date: <i>6/11/25</i> _____