

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

AB-9712

File: 20-506768; Reg: 17085608

VALERO MART, INC.,
dba Valero Food Mart
101 East Avenue J,
Lancaster, CA 93535-3500,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: January 10, 2019
Ontario, CA

ISSUED JANUARY 31, 2019

Appearances: *Appellant:* Donna J. Hooper, of Solomon, Saltsman & Jamieson, as
counsel for Valero Mart, Inc.,

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

OPINION

Valero Mart, Inc., doing business as Valero Food Mart, appeals from a decision
of the Department of Alcoholic Beverage Control¹ revoking its license pursuant to

¹The decision of the Department under Government Code section 11517, subdivision (c), dated June 1, 2018, is set forth in the appendix, as is the Proposed Decision of the administrative law judge (ALJ) dated January 5, 2018.

Section 11517, subdivision (c)(2)(E) permits the Department to reject the proposed decision—as it did here—and decide the case upon the record, including the transcript of the hearing.

Business and Professions Code sections 23405(d) and 24200(a) because its president and sole shareholder pled nolo contendere to a crime of moral turpitude.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on August 15, 2011.

There is no record of prior departmental discipline against the license.

On June 5, 2017, the Department filed an accusation charging that appellant's president and sole shareholder, Tiffany Ngo, pled nolo contendere to a public offense involving moral turpitude, to wit: vandalism, a violation of Penal Code 594(a), which constitutes grounds for license revocation under Business and Professions Code sections 23405(d) and 24200(d).

The Department filed a motion to consolidate the hearing on this matter with the hearing on an accusation against Cruise Thru Dairy,² pursuant to Government Code section 11507.3, because the cases involve common questions of law and fact, and concern the same individual, Tiffany Ngo. The motion was granted.

At the consolidated administrative hearings held on November 30, 2017, documentary evidence was received and testimony concerning the violation charged was presented by Tiffany Ngo.

Testimony and documentary evidence established that Ngo is the 100% shareholder of appellant Valero Mart, Inc. (Findings of Fact ¶¶ 4-6.) Ngo holds 100% of the shares of said corporation and holds the titles of president and secretary.

²The Department's decision in *Cruise Thru Dairy* was appealed to the Appeals Board and heard on the October 2018 calendar. The Board affirmed the Department's decision in that matter — revoking the license. (See: *Cruise Thru Dairy* (October 19, 2018) AB-9697.) That matter was subsequently appealed to the Second District Court of Appeal, but the Petition for Writ was summarily denied on November 30, 2018.

The underlying facts recounted here are identical to those in the *Cruise Thru Dairy* matter. Ngo admitted that while she was working at Valero Mart, Inc. (hereinafter, "Valero Food Mart") on May 17, 2016, after approximately two hours of repeatedly coming out of the Valero Food Mart premises and asking Reymundo Tejeda to move his truck and his continued refusal to move his truck from gas pump number eight, she threatened to "smash" Tejeda's truck if he did not leave. Ngo went inside the Valero Food Mart and after half an hour, she went back outside to confront Tejeda. While Tejeda remained inside his vehicle, Ngo counted to 10 twice, and when Tejeda did not move his vehicle, she used a wooden stick to strike Tejeda's truck at least four times, damaging the quarter panel, tailgate, and rear left brake light.

Ngo further testified that on September 26, 2016, she pled nolo contendere to a violation of Penal Code section 594(a), vandalism, for which the Los Angeles Superior Court found her guilty. She was ordered to pay, and did pay, \$261 to the court, which included a \$150 court restitution fine in addition to other court costs and fines. The court also ordered her to pay, and she did pay, \$2,867 to Tejeda in restitution for the damage she caused to his vehicle on May 17, 2016. She was ordered to serve 200 hours of community service. She was placed on summary probation for 36 months beginning on the date of conviction, with a two-day credit for having served two days in the Los Angeles County Jail. At the time of the administrative hearing on the matter at hand, Ngo remained on probation in Los Angeles County.

On January 5, 2018, the ALJ issued her proposed decision recommending that the accusation be dismissed on the basis that the evidence in the record was insufficient to establish that the Ngo was the owner of Valero Mart, Inc.

The Department declined to adopt the proposed decision, and on March 13, 2018 it issued a Notice Pursuant to Government Code section 11517(c)(2)(E)(i), rejecting the proposed decision and asking the parties to submit written argument on two issues: (1) whether sufficient evidence exists in the record to support a finding that Ngo was or is the owner of Valero Mart, Inc., and (2) if sufficient evidence does not exist in the record, whether additional evidence exists to make that determination. Both parties submitted written argument on those issues.

On June 1, 2018, the Department issued its Decision under Government Code section 11517(c), determining that appellant was indeed the owner of Valero Mart, Inc., and that license should be revoked.

Appellant then filed a timely appeal raising the following issue: the Department erred by finding that a plea of nolo contendere to Penal Code section 594 constituted sufficient grounds to revoke appellant's license. Appellant contends that under the circumstances, Ngo did not commit a crime of moral turpitude.

DISCUSSION

Penal Code section 594(a), the crime to which Ngo pled nolo contendere, provides:

(a) Every person who *maliciously* commits any of the following acts with respect to any real or personal property not his or her own, in cases other than those specified by state law, is guilty of vandalism:

- (1) Defaces with graffiti or other inscribed material.
- (2) Damages.
- (3) Destroys.

(Pen. Code, § 594(a), emphasis added.) The Penal Code expressly defines the terms "malice" or "maliciously" to "import a wish to vex, annoy, or injure another person, or an intent to do a wrongful act." (Pen. Code, § 7.)

Appellant argues that despite the presence of the word "maliciously" in the language of the statute, a violation of Penal Code section 594 is not necessarily a crime of moral turpitude. Appellant objects to the Department's reliance on *Campbell* — a California court of appeal case holding that a violation of section 594 is a crime of moral turpitude for purposes of impeaching a defendant's testimony. (See *People v. Campbell* (1994) 23 Cal.App.4th 1488, 1493 [28 Cal.Rptr.2d 716].) Appellant argues the Department should be required to look beyond the statutory language and examine the facts of the criminal act before determining the crime involved moral turpitude.

This Board is bound by the factual findings in the Department's decision as long as those findings are supported by substantial evidence. The standard of review is as follows:

We cannot interpose our independent judgment on the evidence, and we must accept as conclusive the Department's findings of fact. [Citations.] We must indulge in all legitimate inferences in support of the Department's determination. Neither the Board nor [an appellate] court may reweigh the evidence or exercise independent judgment to overturn the Department's factual findings to reach a contrary, although perhaps equally reasonable, result. [Citations.] The function of an appellate board or Court of Appeal is not to supplant the trial court as the forum for consideration of the facts and assessing the credibility of witnesses or to substitute its discretion for that of the trial court. An appellate body reviews for error guided by applicable standards of review.

(*Dept. of Alcoholic Bev. Control v. Alcoholic Bev. Control Appeals Bd. (Masani)* (2004)

118 Cal.App.4th 1429, 1437 [13 Cal.Rptr.3d 826].) Where there are conflicts in the evidence, the Board is bound to resolve them in favor of the Department's decision, and must accept all reasonable inferences in support of the Department's findings. (*Kirby v. Alcoholic Bev. Control Appeals Bd.* (1972) 7 Cal.3d 433, 439 [102 Cal.Rptr. 857]; *Kruse v. Bank of America* (1988) 202 Cal.App.3d 38 [248 Cal.Rptr. 271]; *Lacabanne*

Properties, Inc. v. Dept. of Alcoholic Bev. Control (1968) 261 Cal.App.2d 181, 185 [67 Cal.Rptr. 734].)

Moreover, 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].) "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, one such reason for disbelief being the interest of the witnesses in the case." (*Pescosolido v. Smith* (1983) 142 Cal.App.3d 964, 970-971 [191 Cal.Rptr. 415].) The Appeals Board will not interfere with credibility determinations absent a clear showing of abuse of discretion.

Section 23405 provides, in relevant part,

The department may deny any application or suspend or revoke any license of a corporation subject to the provisions of this section where conditions exist in relation to any officer, director, or person holding 10 percent or more of the corporate stock of that corporation which would constitute grounds for disciplinary action against that person if the person was a licensee.

(Bus. & Prof. Code, § 23405(d).)

Section 24200 provides,

The following are the grounds that constitute a basis for the suspension or revocation of licenses:

[¶ . . . ¶]

(d) The plea, verdict, or judgment of guilty, or the plea of nolo contendere to any public offense involving moral turpitude or under any federal law prohibiting or regulating the sale, exposing for sale, use, possession, or giving away of alcoholic beverages or intoxicating liquors or prohibiting the refilling or reuse of distilled spirits containers charged against the licensee.

(Bus. & Prof. Code, § 24200.) A corporate licensee may therefore face revocation if its officer or shareholder pleads nolo contendere to a crime of moral turpitude.

As one court has explained,

"Moral turpitude" is an elusive concept incapable of precise general definition. One dramatic exposition of the term was rendered by this court in 1938, and has since been consistently followed: "an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." [Citations.] Moral turpitude has also been described as any crime or misconduct committed without excuse [citations], or as any "dishonest or immoral" act, not necessarily a crime. [Citation.] "The concept of moral turpitude depends upon the state of public morals, and may vary according to the community or the times," [Citation.], as well as on the degree of public harm produced by the act in question.

(*In re Higbie* (1972) 6 Cal.3d 562, 569-570 [99 Cal.Rptr. 865].) Other courts have observed, however, that moral turpitude "is innately a relative concept depending upon both contemporary moral values and the degree of its inimical quality . . . whose purpose as a legislated standard is not punishment but protection of the public." (*Rice v. Alcoholic Bev. Control Appeals Bd.* (1979) 89 Cal.App.3d 30, 35 [152 Cal.Rptr. 285].)

While not every public offense may involve conduct constituting moral turpitude without a showing of moral unfitness to pursue a licensed activity [citation], conviction of certain types of crimes may establish moral turpitude as a matter of law. [Citation.] Thus, moral turpitude is inherent in crimes involving fraudulent intent, intentional dishonesty for purposes of personal gain or other corrupt purpose [citations] but not in other crimes which neither intrinsically reflect similar inimical factors nor demonstrate a level of ethical transgression so as to render the actor unfit or unsuitable to serve the interests of the public in the licensed activity.

(*Id.*, at p. 37 [finding possession of cocaine and marijuana for sale constituted crime of moral turpitude meriting alcoholic beverage license revocation].)

In *Campbell*, the court of appeal addressed whether a felony violation of Penal Code section 594 constituted a crime of moral turpitude for purposes of witness impeachment. (*Campbell, supra* at p. 1488.) The court found that because a malicious state of mind was a necessary element of vandalism under section 594, a felony conviction under the statute constituted a crime of moral turpitude for purposes of witness impeachment. (*Id.*, at p. 1493.)

It is undisputed that Ngo pled nolo contendere to a charge of vandalism under Penal Code 594, that she paid restitution to the court and to Tejada for the damage to his truck, and that she was sentenced to probation and 200 hours of community service. Where the facts are not in dispute, "whether such offense[] involve[s] moral turpitude within the meaning of the applicable constitutional and statutory provisions thus becomes a question of law." (*Rice, supra*, at p. 36.)

Section 594 of the Penal Code necessarily implicates the defendant's state of mind: "Every person who *maliciously* commits any of the following acts with respect to any real or personal property not his or her own, in cases other than those specified by state law, is guilty of vandalism." (Pen. Code, § 594(a), emphasis added.) The courts have held that a crime committed with malicious intent—including vandalism under section 594 of the Penal Code—constitutes a crime of moral turpitude:

[T]he term "maliciously," defining the requisite mens rea of the offense, "import[s] a wish to vex, annoy, or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law." (§ 7.) Moreover, section 594, subdivision (a), which was enacted as section 594 in the original 1872 Criminal Code as a "preliminary catch-all provision" to what is now title 14 of the Criminal Code, dealing with malicious injury to property (2 Witkin & Epstein, Cal.Criminal Law (2d ed. 1988) Crimes Against Property, § 678, pp. 761–762), still follows the language of the original malicious-mischief statutes in specifying "malice" as the mens rea of the offense. "It is generally held that [the term 'malice' in such statutes] calls for more than mere intentional harm without justification or excuse; there must be a wanton and wilful (or 'reckless') disregard of the plain dangers of harm, without justification, excuse or mitigation." (*Id.* at p. 762.) Such a state of mind betokens that "general readiness to do evil" which constitutes moral turpitude. (See *Castro, supra*, 38 Cal.3d at p. 314, 211 Cal.Rptr. 719, 38 Cal.3d 301.)

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Appellant, however, argues that the circumstances of the case indicate that Ngo did not commit a crime of moral turpitude. In particular, it contends that a violation of

Penal Code section 594 is not necessarily a crime of moral turpitude, and that in Ngo's case in particular, it does not rise to that level. Appellant acknowledges the presence of the word "maliciously" in section 594, but counters that the language of the statute should be the beginning of the analysis rather [than] the end of the analysis. Appellant questions the Department's reliance on *Campbell*, noting that the case was criminal, and not an administrative licensing matter.

Appellant criticizes the Department's decision for determining that the crime of vandalism was a crime of moral turpitude, and maintains that this was an "unfortunate incident." (AOB at p. 2.) We disagree. Ngo pled nolo contendere to a charge of maliciously causing thousands of dollars in damage to Tejada's property — such conduct was far beyond "unfortunate." The decision determined Ngo was not a credible witness (Conclusions of Law, at ¶ 12), expressly discounted much of her testimony (*Ibid.*), and found that she had indeed committed a crime of moral turpitude. (*Id.* at ¶¶ 17-21.) The reasoning in the decision was thorough and sound, and this Board is bound by the credibility determinations below.

Because a malicious state of mind was a necessary element of Ngo's crime, her plea of nolo contendere alone was sufficient to establish moral turpitude.

ORDER

The decision of the Department is affirmed.¹

MEGAN McGUINNESS, ACTING CHAIR
PETER J. RODDY, MEMBER
ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD

¹This final order is filed in accordance with Business and Professions Code section 23088, and shall become effective 30 days following the date of the filing of this order as provided by section 23090.7 of said code.

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.

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Appellant, however, argues that the circumstances of the case indicate that Ngo did not commit a crime of moral turpitude. In particular, it contends that a violation of Penal Code section 594 is not necessarily a crime of moral turpitude, and that in Ngo's

case in particular, it does not rise to that level. Appellant acknowledges the presence of the word "maliciously" in section 594, but counters that the language of the statute should be the beginning of the analysis rather [than] the end of the analysis. Appellant questions the Department's reliance on *Campbell*, noting that the case was criminal, and not an administrative licensing matter.

Appellant criticizes the Department's decision for determining that the crime of vandalism was a crime of moral turpitude, and maintains that this was an "unfortunate incident." (AOB at p. 2.) We disagree. Ngo pled nolo contendere to a charge of maliciously causing thousands of dollars in damage to Tejada's property — such conduct was far beyond "unfortunate." The decision determined Ngo was not a credible witness (Conclusions of Law, at ¶ 12), expressly discounted much of her testimony (*ibid.*), and found that she had indeed committed a crime of moral turpitude. (*Id.* at ¶¶ 17-21.) The reasoning in the decision was thorough and sound, and this Board is bound by the credibility determinations below.

Because a malicious state of mind was a necessary element of Ngo's crime, her plea of nolo contendere alone was sufficient to establish moral turpitude.

ORDER

The decision of the Department is affirmed.¹

MEGAN McGUINNESS, ACTING CHAIR
PETER J. RODDY, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

¹This final order is filed in accordance with Business and Professions Code section 23088, and shall become effective 30 days following the date of the filing of this order as provided by section 23090.7 of said code.

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.

APPENDIX

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

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

Valero Mart, Inc.
Dbas: Valero Food Mart
101 East Avenue J
Lancaster, California 93535-3500

Licensee(s).

File No.: 20-506768

Reg. No.: 17085608

RECEIVED
JUN 04 2018
Alcoholic Beverage Control
Office of Legal Services

DECISION UNDER GOVERNMENT CODE SECTION 11517(c)

The above-entitled matter having regularly come before the Department on June 1, 2018, for decision under Government Code Section 11517(c) and the Department having considered its entire record, including the transcript of the hearing held on November 30, 2017, before Administrative Law Judge Doris D. Huebel, and the written argument of the parties, and good cause appearing, the following decision is hereby adopted:

The Department seeks to discipline the Respondent's license on the grounds that on or about September 26, 2016, Respondent-Licensee's, officer, director or person holding 10% or more of the corporate stock, Tiffany Ngo, was the subject of a plea, verdict or judgment of guilty or pled nolo contendere to a public offense involving moral turpitude, to-wit: Vandalism (Penal Code section 594), such conviction being grounds for suspension or revocation of the license under Business and Professions Code sections 23405(d) and 24200(d).¹ (Exhibit 1A.)

On September 1, 2017, the Department requested to consolidate the hearings in registration numbers 17085608 (Valero Mart, Inc., file number 20-506768) and 17085609 (Cruise Thru Dairy, file number 20-507909). On September 8, 2017, Chief Administrative Law Judge John Lewis issued an Order Consolidating Hearings with both accusations to be heard on November 30, 2017. (Exhibit 1E.)

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

Oral evidence, documentary evidence, and evidence by oral stipulation on the record was received at the hearing. The matter was argued and submitted for decision on November 30, 2017. Additional documentary evidence was submitted by the Department in its written argument pursuant to Government Code section 11517(c)(2)(E).

FINDINGS OF FACT

1. The Department filed the accusation on June 5, 2017.
2. The Department issued a type 20, off-sale beer and wine license to the Respondent for the above-described location on August 15, 2011 (the Licensed Premises).
3. There was no evidence presented of any record of prior departmental discipline against license number 20-506768.²
4. Although there was some confusion in the questioning at hearing, the evidence established that Tiffany Ngo was and is the President/Secretary and 100 percent shareholder of Valero Food Mart, Inc., holding license number 20-506768.
5. Previously, Tiffany Ngo was the sole licensee of a business located at 101 East Avenue J in Lancaster, doing business as Valero Food Mart, holding license number 20-455614. At hearing, Ms. Ngo admitted that she was the 100 percent shareholder of the license issued to Valero Food Mart, 101 East Avenue J in Lancaster. However, the Department next asked her if this was license number 20-455614, to which Ms. Ngo also responded in the affirmative. This was clearly an error on the part of both Department counsel (which was acknowledged in the Department's written argument upon review) and Ms. Ngo, since license number 20-455614 was not a valid license at the time the question was asked and that license was not issued to a corporation (thus the reference to being a "shareholder" makes no sense). Based upon the questioning and the entirety of the proceeding, a reasonable inference is drawn that Ms. Ngo was responding in the affirmative to the fact that she was the 100 percent shareholder of Valero Mart, Inc., the current licensee. Further, in support of its written argument upon review of the proposed decision, the Department submitted a printout from the Department's public on-line License Query System (LQS) and a Corporate Questionnaire (form ABC-243) for Valero Mart,

² While the Department alleged a prior, there were two different license numbers and two different licensee names (the former licensee, Tiffany Ngo with file number 20-455614; and the current licensee, Valero Mart, Inc. with file number 20-506768). While there were no documents or evidence indicating the current licensee agreed to be bound by the former licensee's disciplinary action, the evidence did establish that Tiffany Ngo is the 100% stockholder of Valero Mart, Inc. Since there has been no change in management or control, it follows that the prior discipline against license number 20-455614 may reasonably be found to be disciplinary history in connection with the current license. At this juncture, however, given the ultimate determination in this case, there is no need to decide this issue.

Inc.³ These documents are admitted into evidence and considered pursuant to Government Code section 11517(c)(2)(E), discussed more fully below. Exhibits D-1 and D-2 show that there was a transfer of the license between the former licensee and the current licensee, in what is commonly referred to as a “self-incorporation” (Tiffany Ngo with file number 20-455614; and Valero Mart, Inc. with file number 20-506768), and conclusively establish that Tiffany Ngo is the 100 percent shareholder of Valero Mart, Inc., the current licensee.

6. Tiffany Ngo admitted that while she was working at the Licensed Premises (Valero Mart, Inc.) on May 17, 2016, after approximately two hours of repeatedly coming out of the Licensed Premises and asking Reymundo Tejada to move his truck and his continued refusal to move his truck from gas pump number eight, she threatened to “smash” Reymundo Tejada’s truck if he did not leave after she returned and the count of 10. Tiffany Ngo went inside the Licensed Premises and after half an hour she went back outside the store to confront Reymundo Tejada. While Reymundo Tejada remained inside his vehicle, Tiffany Ngo counted to 10 twice, and thereafter, when Mr. Tejada did not move his vehicle, she used a wooden stick and struck Mr. Tejada’s truck multiple times, at least four times, damaging the quarter panel, tailgate, and left, rear brake light.

7. Tiffany Ngo further testified that, on September 26, 2016, she pled nolo contendere to a violation of Penal Code section 594(a), vandalism, for which the Los Angeles Superior Court found her guilty. The felony count in the complaint was reduced to a misdemeanor in exchange for her plea. She was ordered to pay and did pay to the court \$261, which included a \$150 court restitution fine in addition to other court costs and fines. The court ordered her to pay and she did pay \$2,867 to Reymundo Tejada in restitution for the damage she caused to Mr. Tejada’s vehicle on May 17, 2016. She was ordered to serve 200 hours of community service. She was placed on summary probation for 36 months beginning on the date of conviction (September 26, 2016), with a two-day credit for having served two days in the Los Angeles County Jail. At the time of the hearing in the matter at hand Tiffany Ngo remained on probation in Los Angeles County. (Exhibits 8 and 9.)

8. Tiffany Ngo admitted that she twice violated section 25658(a), once in May 1997, for having sold tobacco to a minor, and in December 2015, for having sold beer to a minor. She further admitted that in 2010 she was convicted of Business and Professions Code section 22974.3(b) for possessing untaxed tobacco products, in violation of section 24200(d). The disciplinary action for the latter violation was license revocation stayed for three years and a 20-day suspension (relating to Tiffany Ngo, doing business as Valero Food Mart, registration number 11074518 and file number 20-455614), and the disciplinary action for the December

³ Exhibits 1 (LQS printout) and 2 (ABC-243) to Department’s Response to Notice Pursuant to Government Code 11517(c)(2)(E)(ii). To avoid confusion and for ease of reference, these documents shall be renumbered as Exhibit D-1 and Exhibit D-2, respectively.

2015 violation was a 15-day suspension of the license (relating to Cruise Thru Dairy, registration number 16083946 and file number 20-507909). (Exhibits 2 and 3.)

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

CONCLUSIONS OF LAW

1. Article XX, section 22 of the California Constitution and section 24200(a) provide that a license to sell alcoholic beverages may be suspended or revoked if continuation of the license would be contrary to public welfare or morals.
2. Section 23405(d) provides that the Department may “suspend or revoke any license of a corporation subject to the provisions of this section where conditions exist in relation to any officer, director, or person holding 10 percent or more of the corporate stock of that corporation which would constitute grounds for disciplinary action against that person if the person was a licensee.”
3. 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.
4. Section 24200(d) provides that the Department may suspend or revoke a license upon the plea, verdict, or judgment of guilty, or the plea of nolo contendere to any public offense involving moral turpitude charged against the licensee.
5. Government Code section 11517(c)(2)(E) provides, in part, that the Director may “decide the case upon the record ... **with or without taking additional evidence.**” (Emphasis added.)
6. Cause for suspension or revocation of the Respondent’s license does exist under Article XX, section 22 of the California State Constitution, and sections 24200(a) and (b) on the basis that Tiffany Ngo, an officer, director or person holding 10 percent or more of the corporate shares of stock in Valero Mart, Inc., holding license number 20-506768, was convicted of misdemeanor vandalism in violation of Penal Code section 594(a), having pled nolo contendere thereto, a public offense involving moral turpitude, in violation of Business and Professions Code sections 23405(d) and 24200(d). (Findings of Fact ¶¶ 4 through 7.)
8. Based upon the record as a whole at hearing, it is found that Tiffany Ngo was and is the sole shareholder in Valero Mart, Inc., the licensee here. Moreover, Exhibits D-1 and D-2 submitted by the Department in support of its written argument upon review conclusively establish this fact, even if there was any question based upon the evidence presented at hearing. (Findings of

Fact ¶¶ 4 and 5.) The Director is expressly authorized to receive additional evidence upon rejection of a proposed decision, and make a decision based thereon. While Respondent's counsel asserted in their written argument that taking additional evidence at this stage of the proceeding would be a violation of due process and contrary to Government Code section 11517(c), no further argument was made nor was there citation to any legal authority for such a position. As such, Respondent's arguments in this regard may be considered waived. However, even if not waived, Respondent is incorrect on the law (as indicated above) and further made no objection to the documents submitted by the Department, which were served on counsel as part of the Department's written argument.

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

10. Because this matter and accusation number 17085609 were consolidated for hearing, the ALJ's findings regarding the credibility of Tiffany Ngo in the proposed decision issued in that matter, which was adopted as the decision of the Department, apply equally to this matter and are hereby adopted for purposes of this decision, and are thus restated herein.

11. Tiffany Ngo's contentions that on May 17, 2016, (1) she was afraid and scared of Reymundo Tejeda, (2) that Reymundo Tejeda "came out of his car" and "rushed towards" her and so her "basic instinct reaction is to hit, to protect myself," but hit the car instead, (3) she did not say to Reymundo Tejeda, if he did not leave by the time she returned she would smash his truck and (4) she believed Reymundo Tejeda to be dealing drugs or marijuana from his vehicle while parked at gas pump number eight at Valero Food Mart, located at 101 East Avenue J in Lancaster, are disbelieved for the following reasons.

12. Ms. Ngo presented inconsistent testimony and had a clear motive to fabricate her testimony as the president and 100 percent shareholder of Valero Food Mart, Inc., which was facing revocation. Ms. Ngo claimed she was afraid/scared of Reymundo Tejeda but inconsistently admitted to feeling "agitated for him to go," "angry," and "wanted him to leave." She further presented inconsistent testimony that despite being afraid of Mr. Tejeda, who allegedly "rushed towards" her, she allegedly had time to ponder not strike him but to instead strike his vehicle because, "When you hit a human being it's going to be even greater trouble than that, that's why I hit the car instead." If Mr. Tejeda was rushing toward her, as Ms. Ngo claimed, it would seem

more probable that her reaction would be to defend herself against the person rushing her, not the vehicle. Ms. Ngo's contentions of fear are further inconsistent with her testimony that she went in and out of the Valero Food Mart a number of times to confront Mr. Tejada on multiple occasions. She further admitted that she was not so afraid of Mr. Tejada that she felt the need to lock herself up in Valero Food Mart or call the police. She then claimed whenever she does call the police they do not come. Yet, she acknowledged that when the police were called by Mr. Tejada on May 17, 2016, the police did come by 7:00 p.m., two and a half to three hours after the incident.

13. Ms. Ngo continued to present further inconsistent testimony. When asked despite claiming to be afraid of Mr. Tejada she did not stay away from him but went back outside of the premises and hit his truck, Ms. Ngo immediately replied, "He was inside the car." She then immediately corrected her testimony and claimed, "When I went out the final time, he came out of the car towards me, that's why I hit his car."

14. Upon examination by the Department attorney, when Ms. Ngo was asked if she told the police officer on May 17, 2016, that she told Mr. Tejada if he did not leave by the time she returned she would smash his vehicle, she initially denied making the statement, replying, "No I did not say it *like* that. I just said I asked him to leave again." (Emphasis added with italics.) She also said, "I don't know whether the police lying [sic] or not, I just know that I did not say that, what he said - what you say." Upon further questions Ms. Ngo then admitted she did not *recall* making the statement.

15. The Department attorney then read from the officer's statement from the County of Los Angeles Sheriff's Incident Report - Narrative, which indicated that at 4:10 pm Ms. Ngo noticed Mr. Tejada was still at the gas pump, she "approached him with a wooden stick and told him she would count to 10 and give him a chance to leave or she would smash his vehicle." The Department attorney asked Ms. Ngo if she made that statement, to which Ms. Ngo replied, "Perhaps I did say something to that extent." She also admitted to telling the police officer that she counted to 10 but Mr. Tejada did not leave so she told him she would count to 10 one more time giving him plenty of warning for him to leave in his truck.

16. The Respondent questioned whether a violation of Penal Code section 594(a), vandalism, is a crime involving moral turpitude, citing three cases, *Rice v. Alcoholic Beverage Control Appeals Board* (1979) 89 Cal.App.3d 30, *Donley v. Jeff Davi* (2009) 180 Cal.App.4th 447, *People vs Lindsay* (1989) 209 Cal.App.3d 849. The *Donley* court cites both *Campbell* and *Castro*, which is relied upon by the Department (see citations below). The Respondent contends those cases relied upon by the Department do not involve licensing matters, that "moral turpitude is a more fluid term," and that "our courts have grappled with the amorphous term in a variety of factual contexts." Respondent went on to state that "our highest court has defined moral turpitude as 'an act of baseness, vileness or depravity in the private and social duties which a

man owes to his fellowmen” which definition the Respondent says the *Rice* court repeats and discusses, eventually finding drug dealing to be a crime involving moral turpitude. Respondent then states the *Donley* court found spousal abuse to be a crime involving moral turpitude, defined as “the general readiness to do evil.” Respondent states that the *Lindsay* court opined in citing earlier cases that “moral turpitude means the general readiness to do evil, and act of baseness, vileness or depravity, and so on.” Respondent concludes with stating “the circumstances presented in this case, according to all sources of information, don’t leave us to that conclusion.” Respondent’s counsel opined that he did not “believe we have a readiness to do evil. We have a woman who is alone at the station, with issues in the back of her mind as to what this guy's doing for two and a half hours. Who in the world spends two or two and a half hours at a gas pump? Well, maybe drugs dealers do that. And with the murder, the shooting death in the past history at one of these locations” and her past experience calling the police who do not come. As described more fully above, in balancing the factors of Evidence Code section 780 those matters described disprove the truthfulness of Ms. Ngo’s testimony at the hearing, therefore the undersigned did not find Ms. Ngo’s testimony to be credible, including, but not limited to these suggestions of Ms. Ngo’s testimony as stated above by Respondent’s counsel.

17. The Department argued that Penal Code section 594(a) misdemeanor vandalism is a crime involving moral turpitude, citing, *People vs Campbell* (1994) 23 Cal.App. 4th 1488, and *People v. Castro* (1985) 38 Cal. 3d 301. The Department stated that the *Campbell* court analyzed whether section 594 is a crime of moral turpitude, with the *Campbell* court focusing on the fact that vandalism has, as a necessary element, a minimal element of proof, the element of malice. The Department went on to add that Penal Code section 594(a), which is the definition of both the misdemeanor and felony versions of the offense, includes malice as a necessary minimal element in that it states “every person who *maliciously* commits any of the following acts...is guilty of vandalism.” (Emphasis added with italics.) The Department further argued the *Campbell* court found that any crime that has malice as a necessary element is a crime of moral turpitude, with the *Campbell* court relying upon *People v. Castro* (1985) 38 Cal. 3d 301. The Department went on to state there is some dicta in the *Campbell* case whether or not \$1,000 worth of damage was a trivial amount; and that the court first suggested that vandalism of any kind is not trivial, and second the court found vandalism resulting in \$1,000 in damage is not trivial. The Department then argued that in the matter at hand the evidence established the Los Angeles Superior Court ordered restitution, the amount Tiffany Ngo testified she paid at the time of conviction was \$2,876. The Department argued, therefore, pursuant to the *Campbell* standard, that is not a trivial amount. The Department finished with saying, “more importantly, because the necessary element [of vandalism] is malice [vandalism] is a crime of moral turpitude.” The Department added that pursuant to the standard Judicial Council CALCRIM Jury Instruction the element of malice is included in both the misdemeanor and felony instructions, with the only difference being that the felony jury has to make an affirmative finding the damage is more than \$400.

18. The undersigned agrees with the Department's analysis and application of the *Campbell* and *Castro* decisions to the matter at hand. The *Campbell* court analyzed whether felony vandalism is a crime of moral turpitude for the purpose of determining whether such prior conviction may be used for impeachment purposes. The *Campbell* court pointed out that under Evidence Code 788, a defendant who testifies may be impeached with a prior conviction of any felony evincing moral turpitude, defined as the "general readiness to do evil." (*Campbell, supra* at p. 1492, citing *People v. Castro* (1985) 38 **Cal.3d** 301, 313-316, 211 Cal.Rptr. 719, 696 P.2d 111.) The *Campbell* court went on to say, "Only if 'the least adjudicated elements of the conviction necessarily involve moral turpitude' is the conviction admissible for impeachment." (*Campbell, supra* at p. 1492, citing *Castro supra* at p. 317.) The "least adjudicated elements" test means that "from the elements of the offense alone—without regard to the facts of the particular violation—one can reasonably infer the presence of moral turpitude." (*Campbell supra* at p. 1492, citing *People v. Thomas* (1988) 206 Cal.App.3d 689, 698, 254 Cal.Rptr. 15, italics added; accord *People v. White* (1992) 4 Cal.App.4th 1299,1303, 6 Cal.Rptr.2d 259; *People v. Bautista* (1990) 217 Cal.App.3d 1, 6, 265 Cal.Rptr. 661.) The *Campbell* court maintained that with malice as the mens rea of the Penal Code section 594 offense "such a state of mind betokens that 'general readiness to do evil' which constitutes moral turpitude." (See *Campbell, supra*, at p. 1493, citing *Castro, supra*, at p. 314.) In the matter at hand, misdemeanor vandalism under Penal Code section 594(a) in fact has malice as the least adjudicated element, and as the mens rea of the offense it "betokens that general readiness to do evil which constitutes moral turpitude."

19. Using the Respondent's own reliance upon the *Donley* decision, that court found that Penal Code section 273.5 is a crime involving moral turpitude based on the "least adjudicated elements' of the offense - without regard to the facts of the particular violation," with a "readiness to do evil." (*Donley supra* at pp. 458-461, with citations to *Campbell supra* at p. 1488, and *Castro supra* at p.313-316.) The *Donley* court also determined that even if they were to consider the underlying facts of the *Donley* case they would also find the offense to involve moral turpitude because "[Donley] became the aggressor and physically reengaged with Ms. Riddle, which behavior constitutes conduct involving moral turpitude." (*Donley supra* at p. 461.) The *Donley* court went on to make the point, "That this decision was conscious and intentional is revealed by [Donley's] testimony that he wanted to resume the argument because he felt Ms. Riddle was wrong in what she was doing. Given the existence of the special relationship between [Donley] and Ms. Riddle as described in *People v. Rodriguez, supra*, [5 Cal.App.4th at p. 1402, 7 Cal.Rptr.2d 495,] [Donley's] revival of the conflict despite a clear opportunity to disengage constitutes moral turpitude." (*Donley supra* at p. 463.) Similarly, even if the undersigned were to consider the underlying facts of the case at hand, Ms. Ngo clearly had the opportunity to disengage and call the police, but her revival of the conflict by repeatedly going outside of Valero Food Mart to confront Mr. Tejeda to tell him to leave over two hours, then threatening him she would smash his truck if he did not leave after the count of 10, and her subsequent malicious act of vandalism of Mr. Tejeda's vehicle, constitutes a "readiness to do evil,"- moral turpitude.

20. The *Lindsay* court, which also cited *Castro* and was relied upon by the Respondent, held that battery upon a police officer involves moral turpitude, for purposes of determining whether a prior conviction may be used for impeachment purposes; and that “the knowledge element of the crime of battery upon a peace officer (that defendant know or reasonably should have known the victim was a peace officer in the performance of his duties) clearly involves moral turpitude”, which demonstrates a readiness to do evil. (*Lindsay supra* at p. 857.)

21. The 1979 *Rice* case, which was also relied upon by the Respondent, held that “proof of conviction of the crimes of possessing cocaine or marijuana for purposes of sale constitute moral turpitude as a matter of law within the meaning of [Cal. Const.,] Art. XX, § 22, and Bus. & Prof. Code, § 24200, justifying the imposition of administrative sanctions without a further showing of unfitness or unsuitability or its effect upon the conduct of the licensed business.” (*Rice supra* at p.38, citing *Otash v. Bureau of Private Investigators*, 230 Cal.App.2d 568, 574; *H. D. Wallace & Assoc., Inc. v. Dept. of Alcoholic Bev. Control* (1969) 271 Cal.App.2d 589, 593.) The *Rice* court opined that a crime of moral turpitude is one that demonstrates “a level of ethical transgression so as to render the actor unfit or unsuitable to serve the interests of the public in the licensed activity.” (*Rice supra* at p. 37, citing *In re Rohan* (1978) 21 Cal.3d 195, 200.) In applying that standard to the case at hand, Ms. Ngo’s actions, described above, also fit this version of the definition of a crime involving moral turpitude.

PENALTY

The Department requested that the Respondent’s license be revoked citing that the standard penalty under Rule 144 for conviction of a crime involving moral turpitude is automatic revocation. The Department argued aggravating factors which included “a fairly recent[]” prior history of discipline, with direct licensee involvement, continuing course or pattern of conduct, by repeatedly demonstrating “her inability to adhere to the standards expected of individuals engaged in the high risk, high responsibility profession of selling alcohol,” and, lastly, arguing the lack of credibility of Tiffany Ngo’s testimony. The Respondent recommended a penalty less than revocation in the event that the accusation was sustained, such as revocation stayed upon the condition the license is transferred, or revocation stayed with some period of suspension. The Respondent argued for mitigating circumstances based on the alleged circumstances in which Tiffany Ngo found herself, pursuant to her alleged testimony. The penalty recommended herein complies with Rule 144.⁴

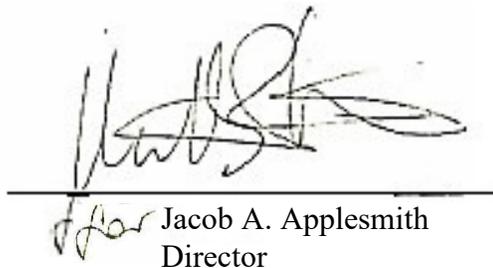
⁴ All rules referred to herein are contained in title 4 of the California Code of Regulations unless otherwise noted.

ORDER

The Respondent's off-sale beer and wine license is hereby revoked.

Sacramento, California

Dated: *Jun 1, 2018*



for Jacob A. Applesmith
Director

Pursuant to Government Code section 11521(a), any party may petition for reconsideration of this decision. The Department's power to order reconsideration expires 30 days after the delivery or mailing of this decision, or on the effective date of the decision, whichever is earlier.

Any appeal of this decision must be made in accordance with Chapter 1.5, Articles 3, 4 and 5, Division 9, of the Business and Professions Code. For further information, call the Alcoholic Beverage Control Appeals Board at (916) 445-4005.

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

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

VALERO MART, INC.
VALERO FOOD MART
101 EAST AVENUE J
LANCASTER, CA 93535-3500

OFF-SALE BEER AND WINE - LICENSE

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

VAN NUYS DISTRICT OFFICE

File: 20-506768

Reg: 17085608

CERTIFICATE OF DECISION

NOTICE CONCERNING PROPOSED DECISION

To the parties in the above-entitled proceedings:

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

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

Sacramento, California

Dated: February 22, 2018



Matthew D. Botting
General Counsel

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

IN THE MATTER OF THE ACCUSATION AGAINST:

Valero Mart, Inc.	}	File: 20-506768
Dbas: Valero Food Mart	}	
101 East Avenue J	}	Reg.: 17085608
Lancaster, California 93535-3500	}	
	}	License Type: 20
Respondent	}	
	}	Word Count: 21,050
	}	
	}	Reporter:
	}	Tracy Terkeurst
	}	California Reporting
	}	Khmer Interpreter:
	}	Paulina Laurent, Badge No. 301695
	}	
<u>Off-Sale Beer and Wine License</u>	}	<u>PROPOSED DECISION</u>

Administrative Law Judge D. Huebel, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter at Van Nuys, California, on November 30, 2017.

Jacob Rambo, Attorney, represented the Department of Alcoholic Beverage Control (hereinafter referred to as the Department).

Ralph Saltsman, Attorney, represented Respondent, Valero Mart, Inc.

The Department seeks to discipline the Respondent’s license on the grounds that on or about September 26, 2016, Respondent-Licensee’s, officer, director or person holding 10% or more of the corporate stock, Tiffany Ngo, was the subject of a plea, verdict or judgment of guilty or pled nolo contendere to a public offense involving moral turpitude, to-wit: Vandalism (Penal Code section 594), such conviction being grounds for suspension or revocation of the license under Business and Professions Code sections 23405(d) and 24200(d).¹ (Exhibit 1 A.)

On September 1, 2017, the Department requested to consolidate the hearings in registration numbers 17085608 (Valero Mart, Inc., file number 20-506768) and 17085609 (Cruise Thru Dairy, file number 20-507909). On September 8, 2017, Chief

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

Administrative Law Judge John Lewis issued an Order Consolidating Hearings with both accusations to be heard on November 30, 2017. (Exhibit 1E.)

Oral evidence, documentary evidence, and evidence by oral stipulation on the record was received at the hearing. The matter was argued and submitted for decision on November 30, 2017.

FINDINGS OF FACT

1. The Department filed the accusation on June 5, 2017.
2. The Department issued a type 20, off-sale beer and wine license to the Respondent for the above-described location on August 15, 2011 (the Licensed Premises).
3. There was no evidence presented of any record of prior departmental discipline against the Respondent's license.²
4. Tiffany Ngo was the sole licensee of a business located at 101 East Avenue J in Lancaster, doing business as Valero Food Mart, with license number 20-455614. There was no evidence presented that Tiffany Ngo held any title, either as an officer or director, or held any corporate stock or shares relating to the Department license issued to Valero Mart, Inc., with file number 20-506768. A Corporate Questionnaire, ABC-243 Form, was admitted, relating to the corporation name of Cruise Thru Dairy, which lists the officers, directors and reflects that as of January 1, 2009, Tiffany Ngo held 200 shares, or 100% of the shares of stock, of Cruise Thru Dairy (Exhibit 4.) No such ABC-243 Form was presented at the hearing or placed into evidence for Valero Mart, Inc. There was no evidence of self-incorporation or transfer between the former licensee and the current licensee (Tiffany Ngo with file number 20-455614; and Valero Mart, Inc. with file number 20-506768).
5. Tiffany Ngo admitted that while she was working at the Licensed Premises (Valero Mart, Inc.) on May 17, 2016, after approximately two hours of repeatedly coming out of the Licensed Premises and asking Reymundo Tejeda to move his truck and his continued refusal to move his truck from gas pump number eight, she threatened to "smash" Reymundo Tejeda's truck if he did not leave after she returned and the count of 10. Tiffany Ngo went inside the Licensed Premises and after half an hour she went back outside the store to confront Reymundo Tejeda. While Reymundo Tejeda remained inside

² While the Department alleged a prior, the undersigned did not consider it a prior disciplinary action against the current licensee. There were two different license numbers and two different licensee names (the former licensee, Tiffany Ngo with file number 20-455614; and the current licensee, Valero Mart, Inc. with file number 20-506768). There was no evidence presented of any self-incorporation or transfer between the former licensee and the current licensee. There were no documents or evidence indicating the current licensee agreed to be bound by the former licensee's disciplinary action.

his vehicle, Tiffany Ngo counted to 10 twice, and thereafter, when Mr. Tejada did not move his vehicle, she used a wooden stick and struck Mr. Tejada's truck multiple times, at least four times, damaging the quarter panel, tailgate, and left, rear brake light.

6. Tiffany Ngo further testified that, on September 26, 2016, she pled nolo contendere to a violation of Penal Code section 594(a), vandalism, for which the Los Angeles Superior Court found her guilty. The felony count in the complaint was reduced to a misdemeanor in exchange for her plea. She was ordered to pay and did pay to the court \$261, which included a \$150 court restitution fine in addition to other court costs and fines. The court ordered her to pay and she did pay \$2,867 to Reymundo Tejada in restitution for the damage she caused to Mr. Tejada's vehicle on May 17, 2016. She was ordered to serve 200 hours of community service. She was placed on summary probation for 36 months beginning on the date of conviction (September 26, 2016), with a two-day credit for having served two days in the Los Angeles County Jail. At the time of the hearing in the matter at hand Tiffany Ngo remained on probation in Los Angeles County. (Exhibits 8 and 9.)

7. Tiffany Ngo admitted that she twice violated section 25658(a), once in May 1997, for having sold tobacco to a minor, and in December 2015, for having sold beer to a minor. She further admitted that in 2010 she was convicted of Business and Professions Code section 22974.3(b) for possessing untaxed tobacco products, in violation of section 24200(d). The disciplinary action for the latter violation was license revocation stayed for three years and a 20-day suspension (relating to Tiffany Ngo, doing business as Valero Food Mart, registration number 11074518 and file number 20-455614), and the disciplinary action for the December 2015 violation was a 15-day suspension of the license (relating to Cruise Thru Dairy, registration number 16083946 and file number 20-507909). (Exhibits 2 and 3.)

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

CONCLUSIONS OF LAW

1. Article XX, section 22 of the California Constitution and section 24200(a) provide that a license to sell alcoholic beverages may be suspended or revoked if continuation of the license would be contrary to public welfare or morals.

2. Section 23405(d) provides that the Department may "suspend or revoke any license of a corporation subject to the provisions of this section where conditions exist in relation to any officer, director, or person holding 10 percent or more of the corporate stock of that corporation which would constitute grounds for disciplinary action against that person if the person was a licensee."

3. 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.

4. Section 24200(d) provides that the Department may suspend or revoke a license upon the plea, verdict, or judgment of guilty, or the plea of nolo contendere to any public offense involving moral turpitude charged against the licensee.

5. Cause for suspension or revocation of the Respondent's license does not exist under Article XX, section 22 of the California State Constitution, and sections 24200(a) and (b) on the basis that there was insufficient evidence to sustain Count 1 of the Accusation because it was not reliably proven that Tiffany Ngo was an officer, director or person holding 10 percent or more of the corporate shares of stock in Valero Mart Inc., associated with file number 20-506768. Based on the questions asked by the Department attorney and evidence presented, the record reflected that Tiffany Ngo was the named sole licensee doing business as Valero Food Mart, located at 101 East Avenue J in Lancaster, associated with file/"license" number 20-455614. There was no evidence of any Corporate Questionnaire, ABC-243 Form, relating to Valero Mart, Inc. listing any title or corporate shares of stock Tiffany Ngo held in Valero Mart, Inc. associated with file number 20-506768.³ There was no stipulation by the parties or testimony from Tiffany Ngo or a Department representative that Tiffany Ngo held any title or shares of stock in Valero Mart, Inc. with file number 20-506768. The premises located at 101 East Avenue J, Lancaster, California 93535-3500, had two different license names (Tiffany Ngo, dba Valero Food Mart; and Valero Mart, Inc. dba Valero Food Mart) and two different license numbers (20-455614 and 20-506768, respectively). There was no evidence presented as to a self-incorporation or transfer between the former licensee under file number 20-455614 and the current licensee under file number 20-506768. (Findings of Fact ¶ 4.)

³ In Respondent's Notice of Defense, which is signed by Tiffany Ngo as CEO, Tiffany Ngo states she is the Chief Executive Officer of Valero Mart, Inc. a California Corporation, with mailing address 101 East Avenue J, Lancaster, California 93535. However the Notice of Defense is part of Exhibit 1 which was admitted for jurisdictional purposes only and is not considered proof or evidence of fact beyond its face value as a pleading.

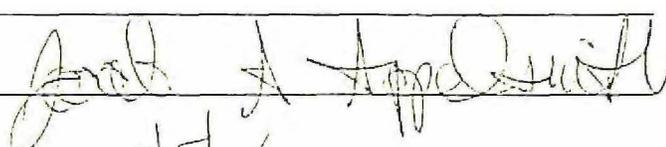
ORDER

The Accusation is hereby dismissed.

Dated: January 5, 2018



D. Huebel
Administrative Law Judge

<input type="checkbox"/> Adopt
<input checked="" type="checkbox"/> Non-Adopt: _____
By: 
Date: <u>2/5/18</u>