

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

**AB-9815**

File: 20-472434; Reg: 18087448

7-ELEVEN, INC.,  
DEIDRE LYNN DEMPSTER,  
and HAYDEN ERNEST DEMPSTER,  
dba 7-Eleven Store #13628  
13835 Mango Drive  
San Diego, CA 92014-3101,  
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,  
Respondent

Administrative Law Judge at the Dept. Hearing: Doris Huebel

Appeals Board Hearing: January 9, 2020  
Los Angeles, CA

**ISSUED JANUARY 21, 2020**

*Appearances:*        *Appellants:* Adam N. Koslin, of Solomon, Saltsman & Jamieson, as  
counsel for 7-Eleven, Inc., Deidre Lynn Dempster, and Hayden  
Ernest Dempster,

*Respondent:* Colleen Villareal, as counsel for the Department of  
Alcoholic Beverage Control.

**OPINION**

7-Eleven, Inc., Deidre Lynn Dempster, and Hayden Ernest Dempster, doing  
business as 7-Eleven Store #13628, appeal from a decision of the Department of  
Alcoholic Beverage Control<sup>1</sup> suspending their license for 10 days because their clerk  
sold an alcoholic beverage to a minor in violation of Business and Professions Code  
section 25658(a).

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<sup>1</sup>The decision of the Department, dated May 7, 2019, is set forth in the appendix.

## FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on December 7, 2008.

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

On September 4, 2018, the Department filed a single-count accusation against appellants charging that, on June 7, 2018, appellants' clerk, Austin Maes-Valley (the clerk), sold an alcoholic beverage to 17-year-old D.Z. (the minor).

At the administrative hearing held on February 12, 2019, documentary evidence was received, and testimony concerning the sale was presented by the minor and Department Agent Aaron Perry. Appellant Diedre Dempster and former clerk Marlana Barron (Barron) testified on appellants' behalf.

Testimony established that on June 7, 2018, Agent Perry parked his vehicle in front of the licensed premises to conduct a random premises check and observe for any violations. Less than an hour later, Agent Perry observed the minor, who he believed was between 16 and 18 years old, enter the licensed premises and walk toward the beer coolers. Agent Perry, who was in plain-clothes, entered the licensed premises, and observed the clerk and Barron standing behind the sales counter.

Agent Perry observed the minor open a beer cooler and select five cans of alcohol (exhs. 2-6) before heading to another beer cooler and selecting a six-pack of Smirnoff ICE Original bottles (exh. 7). The minor took the alcohol to the sales counter for purchase and presented it to the clerk. The clerk asked Barron if she recognized the minor, and Barron acknowledged that she did. The clerk scanned the alcohol and the minor paid. The clerk then placed the alcohol in a black, plastic bag, which the

minor took and exited the store. The clerk did not ask the minor for her age<sup>2</sup> or identification (ID).

Agent Perry exited the store and contacted the minor, identifying himself as a police officer. Agent Perry told the minor that she looked young and wanted to check her ID to determine her age. The minor immediately replied that her ID was fake. Agent Perry seized the alcohol and instructed the minor to sit on the curb. He also asked the minor for her fraudulent ID and she handed him a Tennessee driver's license, which had her name, photograph, and an incorrect date of birth, falsely showing her to be 22 years old. (Exh. A.)

Agent Perry asked the minor if she had another fake ID, and she told him that she did. The minor then handed over a California driver's license which did not belong to her and contained someone else's photograph, name, date of birth, description, and address. (Exh. B.) Agent Perry then asked the minor for her true ID, and she handed him her California driver's license, which contained her correct date of birth, making her 17 years old at the time.

The minor told Agent Perry that the clerk did not ask for her ID during the sales transaction but admitted she had purchased alcohol from the licensed premises before. The minor told Agent Perry that she had shown a fake ID to some of the employees at the licensed premises but confirmed that none of those employees was the clerk.

After speaking with the minor, Agent Perry re-entered the licensed premises,

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<sup>2</sup> Likewise, the ALJ notes that "Clerk Barron did not tell clerk Maes-Valley whether D.Z. was 21 years of age or of-legal age to purchase alcohol." (Findings of Fact, ¶ 5.)

contacted the clerk, and identified himself as a police officer. Agent Perry asked the clerk if he checked the minor's ID and the clerk confirmed that he did not. The clerk stated that Barron, his co-worker, recognized the minor and that he will often recognize a customer's face and not check ID because it is a hassle. Agent Perry asked the clerk if Barron told him that the minor was over 21 years old or old enough to purchase alcohol and the clerk confirmed that she did not.

The administrative law judge (ALJ) issued her proposed decision on February 27, 2019, sustaining the violation alleged in the accusation and recommending a 15-day suspension. The ALJ rejected appellants' argument that the clerk reasonably relied on the minor's fake ID, stating "[t]here is no credible evidence" to support that defense. (Conclusions of Law, ¶ 7.) The Department adopted the proposed decision in a separate Order dated May 6, 2019, but reduced appellants' suspension to 10 days. The next day, on May 7, 2019, the Department issued its Certificate of Decision.

Appellants then filed a timely appeal contending that the Department erred by rejecting their affirmative defense under Business and Professions Code<sup>3</sup> section 25660—that appellants' clerk reasonably relied on a fake identification when making the sale to the minor.

## DISCUSSION

Appellants contend the Department erred in rejecting their section 25660 defense. (AOB, at pp. 7-10.) Specifically, appellants argue that their clerk reasonably relied on the minor's fake identification. (*Ibid.*)

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<sup>3</sup> All statutory references will be to the Business and Professions Code unless otherwise stated.

Section 25660(c) provides:

Proof that the defendant-licensee, or his or her employee or agent, demanded, was shown, and acted in reliance upon [a government-issued identification or identification purporting to be government-issued<sup>4</sup>] shall be a defense to any criminal prosecution therefor or to any proceedings for the suspension or revocation of any license based thereon.

*(Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.*

*(2004) 118 Cal.App.4th 1429, 1444-1445 [13 Cal.Rptr.3d 826, 837] (Masani).)*

However, section 25660 must be narrowly construed and the licensee has the burden of establishing the defense. *(Lacabanne Properties, Inc. v. Alcoholic Beverage etc.*

*Appeals Board (1968) 261 Cal.App.2d 181, 189-190 [67 Cal.Rptr. 734] (Lacabanne).)*

One of the requirements of section 25660 is that a licensee must show that reliance on the false identification was *reasonable*. *(Lacabanne, supra, at p. 189; 5501 Hollywood v. Dept. of Alcoholic Bev. Control (1957) 155 Cal.App.2d 748, 753-754 [318 P.2d 820] (5501 Hollywood).)* In other words, a licensee (or employee) must exercise the caution that a reasonable and prudent person would show in the same or similar circumstances. *(Lacabanne, supra, at p. 189; Farah v. Alcoholic Bev. Control Appeals*

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<sup>4</sup> It is immaterial whether the identification used was government-issued or a fake. In *Masani*, the court said:

The licensee should not be penalized for accepting a credible fake that has been reasonably examined for authenticity and compared with the person depicted. A brilliant forgery should not ipso facto lead to licensee sanctions. In other words, fake government ID's cannot be categorically excluded from the purview of section 25660. The real issue when a seemingly bona fide ID is presented is the same as when actual governmental ID's are presented: reasonable reliance that includes careful scrutiny by the licensee.

*(Masani, supra at p. 1445.)*

*Bd.* (1958) 159 Cal.App.2d 335, 339 [324 P.2d 98]; *5501 Hollywood, supra*, at p. 753.)

Further, reasonable reliance cannot be established if the appearance of the person presenting the identification is “too young in appearance to be 21.” (*5501 Hollywood, supra*, at p. 754.)

Finally, the Department’s findings regarding a section 25660 defense will be upheld so long as those findings are supported by substantial evidence. (*Masani, supra*, at p. 1437; *Kirby v. Alcoholic Beverage Control Appeals Bd.* (1968) 261 Cal.App.2d 119, 122 [67 Cal.Rptr. 628] [“In considering the sufficiency of the evidence issue the court is governed by the substantial evidence rule[;] any conflict in the evidence is resolved in favor of the decision; and every reasonably deducible inference in support thereof will be indulged. [Citations.]”].) Substantial evidence is “evidence of ponderable legal significance, which is ‘reasonable in nature, credible and of solid value.’ ” (*County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 814 [38 Cal.Rptr.2d 304, 307–308], internal citations omitted.)

In the instant case, the Department rejected appellants’ section 25660 defense because: 1) the clerk never inspected the minor’s ID on or before June 7, 2018; 2) it was not reasonable for the clerk to rely on Barron saying she “recognized” the minor to mean that Barron previously inspected the minor’s fake ID and reasonably relied thereon, and; 3) the minor’s youthful appearance could not pass for someone older than 21. (Conclusions of Law, ¶¶ 7-10.)

First, the Department’s findings regarding the reasonableness of the clerk’s inspection of the minor’s false ID are supported by substantial evidence. The clerk did not testify. However, he confirmed to Agent Perry that he never asked for or inspected

the minor's ID and was never told by Barron that she inspected the minor's ID or that the minor was at least 21 years old. Further, the minor told Agent Perry that she never showed the clerk either fake ID on or before the date of the sale. Although the minor later contradicted her statement at the hearing, testifying that she had showed the clerk her fake IDs prior to the date of sale, the ALJ was within her role as the trier of fact to reject that testimony as not credible. The ALJ found that the minor's statement on the day of the incident was more credible because it was fresher in her mind. The Board sees no error.

Second, the Department found the minor had "a very youthful appearance, as that of a teenager, despite wearing make-up." (Conclusions of Law, ¶ 10.) The Department further stated that "in no way could [she] pass for 21 years of age, let alone 25 years or older as claimed by clerk Barron." (*Ibid.*) The Department based its findings on the testimony of Agent Perry, the personal observations of the ALJ at the hearing, as well as a photograph of the minor from the day of the incident (exh. 8). Photographs of a minor from the same day as the incident are "arguably the most important piece of evidence" in determining how old the minor appeared. (See *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (Southland)* (2002) 103 Cal.App.4th 1084, 1094 [127 Cal.Rptr.2d 652, 659].) The Department did not err in relying on the above evidence in rejecting appellants' section 25660 defense.

Based on the above, the Department's rejection of appellants' section 25660 was reasonable and is supported by substantial evidence. Specifically, appellants offered no evidence that the clerk ever inspected the minor's fake ID and reasonably relied

thereon. Further, it was not reasonable under the circumstances for the clerk to rely on Barron's comment that she "recognized" the minor to mean that Barron previously inspected the minor's ID, that her previous inspection was reasonable under section 25660, and that the minor was old enough to purchase alcohol.

However, assuming *arguendo* that it was reasonable for the clerk to rely on Barron's comment, the defense still fails because the minor could not have passed as being older than 21. This is based on the testimony of Agent Perry, a photograph of the minor, and the trier of fact's personal observations at the hearing, which constitute "substantial evidence" to support the finding. The Board cannot simply second guess the Department and reach a different conclusion based upon its own observations of the evidence or being persuaded by an alternate interpretation. The Department's findings must stand.

#### ORDER

The decision of the Department is affirmed.<sup>5</sup>

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

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<sup>5</sup> This 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.

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:**

7 ELEVEN INC, DEIDRE LYNN DEMPSTER  
AND HAYDEN ERNEST DEMPSTER  
7 ELEVEN 13628  
13835 MANGO DRIVE  
SAN DIEGO, CA 92014-3101

**OFF-SALE BEER AND WINE - LICENSE**

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

SAN MARCOS DISTRICT OFFICE

File: 20-472434

Reg: 18087448

**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 April 24, 2019. 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. For further information, call the Alcoholic Beverage Control Appeals Board at (916) 445-4005, or mail your written appeal to the Alcoholic Beverage Control Appeals Board, 1325 J Street, Suite 1560, Sacramento, CA 95814.

On or after June 17, 2019, a representative of the Department will contact you to arrange to pick up the license certificate.

Sacramento, California

Dated: May 7, 2019



Matthew D. Botting  
General Counsel

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

**IN THE MATTER OF THE ACUUSATION  
AGAINST:**

7 Eleven, Inc., Deidre Lynn Dempster and  
Hayden Ernest Dempster  
Db a 7 Eleven 13628  
13835 Mango Drive  
San Diego, CA 92014-3101

Respondent(s)/Licensee(s).

File No.: 20-472434

Reg. No.: 18087448

**ORDER**

The Department hereby adopts the Proposed Decision of the Administrative Law Judge dated February 27, 2019, in the above-entitled matter, and pursuant to Business and Professions Code section 24211, the Department reduces the discipline in this matter as follows:

Respondent's off-sale beer and wine license is hereby suspended for a period of 10 days.

Sacramento, California

Dated: May 6, 2019

  
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per Jacob Appelsmith  
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:**

7 Eleven Inc., Deidre Lynn Dempster, and	}	File: 20-472434
Hayden Ernest Dempster	}	
Dbas: 7 Eleven 13628	}	Reg.: 18087448
13835 Mango Drive	}	
San Diego, California 92014-3101	}	License Type: 20
	}	
Respondents	}	Word Count: 14,004
	}	
	}	Reporter:
	}	Ruth Valdivia
	}	California Reporting
	}	
<u>Off-Sale Beer And Wine License</u>	}	<b><u>PROPOSED DECISION</u></b>

Administrative Law Judge D. Huebel, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter at San Marcos, California, on February 12, 2019.

John Newton, Attorney, represented the Department of Alcoholic Beverage Control (Department).

Brian Washburn, Attorney, represented Respondents, 7 Eleven Inc., Deidre Lynn Dempster, and Hayden Ernest Dempster.

The Department seeks to discipline the Respondents' license on the grounds that, on or about June 7, 2018, the Respondents, through their agent or employee, Austin Maes-Valley, at said premises, sold, furnished, gave or caused to be sold, furnished or given, alcoholic beverages, to-wit: malt beverages, to D.Z., an individual under the age of 21, in violation of Business and Professions Code section 25658(a).<sup>1</sup> (Exhibit 1A.)

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 February 12, 2019.

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

## FINDINGS OF FACT

1. The Department filed the Accusation on September 4, 2018. The Department thereafter filed a First Amendment to Accusation on January 18, 2019.
2. The Department issued a type 20, off-sale beer and wine license to the Respondents for the above-described location on November 7, 2008 (the Licensed Premises).
3. There is no record of prior departmental discipline against the Respondents' license.
4. On June 7, 2018, Department Agent Perry and another agent parked their state vehicle in front of the Licensed Premises to conduct a random premises check and observe for any violations. Agent Perry waited for less than an hour, when at approximately 3:20 p.m. Agent Perry noticed something that caught his attention. He observed a youthful appearing female, whose overall appearance gave him the general impression she was between 16 and 18 years old, enter the Licensed Premises and walk toward the beer coolers. Agent Perry, who was in a plain clothes capacity, exited his vehicle and entered the Licensed Premises. Upon entering he saw a male and female clerk standing behind the sales counter, the store was well-lit, not busy at all, and detected no loud music or distracting elements. Agent Perry later identified the youthful appearing female as D.Z., to which she will be referred hereinafter.
5. Agent Perry saw D.Z. open a beer cooler door, and select five cans of alcohol (later identified as Exhibit 2 – Mike's Harder Cherry Lime, Exhibit 3 – Smirnoff Ice Smash, Exhibit 4 – four loko Watermelon, Exhibit 5 – Mike's Harder Lemonade, and Exhibit 6 – Mike's Harder Blood Orange). D.Z. then headed to the northeast corner of the store to another beer cooler, selected a six-pack of Smirnoff ICE Original (Exhibit 7), and proceeded directly to the sales counter with all items of selected alcohol. D.Z. placed the five cans of said alcohol and six-pack of Smirnoff ICE Original on the sales counter. The male clerk, Austin Maes-Valley (hereinafter referred to as clerk Maes-Valley), asked the female clerk, Marlana Shanell Barron (hereinafter referred to as clerk Barron), who was behind the sales counter, if she recognized the customer, referring to D.Z. Clerk Barron acknowledged that she did. Clerk Barron did not take part in the transaction with D.Z. Clerk Maes-Valley scanned the said alcohol, for which D.Z. paid. Clerk Maes-Valley placed all the said alcohol in a black, plastic bag, which D.Z. took with her and exited the store. Clerk Maes-Valley did not ask for D.Z.'s age or identification (ID). Clerk Barron did not tell clerk Maes-Valley whether D.Z. was 21 years of age or of-legal age to purchase alcohol. Agent Perry witnessed the sales transaction from 10 feet away with a clear, unobstructed view. Agent Perry exited the store just before D.Z. to notify his partner a violation had occurred and that he would make contact with D.Z.

6. Agent Perry made contact with D.Z. right outside the front entrance of the Licensed Premises, and identified himself as a police officer. He advised her she was young and since she purchased alcohol he wanted to confirm her ID to check to see if she was 21 or older. D.Z. immediately replied that her ID was fake. Agent Perry took possession of the black, plastic bag containing the said alcohol and instructed D.Z. to sit on the curb next to the building. Agent Perry asked D.Z. for her fraudulent ID. D.Z. handed to him a Tennessee Driver License, which had her name and photograph thereon and a date of birth of April 10, 1996. (Exhibit A.) Agent Perry asked how old she was, to which D.Z. replied, "17 years old." Agent Perry seized the said alcohol.<sup>2</sup>

7. Agent Perry inquired if D.Z. had another fake ID on her, which she acknowledged she did. D.Z. handed over a California Driver License which did not belong to her and had someone else's photograph, name, date of birth, description and address thereon. (Exhibit B.) The date of birth on the California Driver License was May 24, 1995. Agent Perry asked D.Z. for her true ID, and she handed to him her true California Driver License, which indicated her date of birth to be April 28, 2001, making her 17 years old. Agent Perry found D.Z. to be very cooperative.

8. Agent Perry read to D.Z. her Miranda rights before asking her further questions, which she answered. D.Z. said that clerk Maes-Valley did not ask for her ID during the sales transaction that had just occurred. D.Z. said she had purchased alcohol from the Licensed Premises before June 7, 2018. D.Z. told Agent Perry that clerk Maes-Valley had never, prior to June 7, 2018, checked D.Z.'s ID. D.Z. admitted to showing a fake ID to some clerks at the Licensed Premises sometime two months prior to June 7, 2018; she did not say to whom she showed the fake ID. Agent Perry took a photograph of the minor D.Z. (Exhibit 8.)

9. Agent Perry made contact with clerk Maes-Valley, to whom he identified himself as a police officer and asked if the clerk recalled whether or not he checked D.Z.'s ID. Clerk Maes-Valley replied he did not check her I.D. Clerk Maes-Valley spontaneously stated that his female co-worker (clerk Barron) had recognized D.Z. on June 7, 2018, and that often times he himself will recognize a customer's face and will not check that customer's ID because it is a hassle. Agent Perry asked clerk Maes-Valley whether his female co-worker (clerk Barron) had told him that D.Z. was over 21 years old or that she was old enough to purchase alcohol. Clerk Maes-Valley confirmed that clerk Barron did not say whether D.Z. was over 21 but that she had recognized D.Z. Agent Perry took a photograph of clerk Maes-Valley after questioning him. (Exhibit 9.)

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<sup>2</sup> Exhibits 2, 3, 5, and 6 all were labeled 80% alcohol by volume. Exhibit 4 contained 12% alcohol by volume. Each of the six bottles in Exhibit 7 were labeled 4.5% alcohol by volume.

10. D.Z. appeared and testified at the hearing. D.Z. was born on April 28, 2001. On June 7, 2018, and at the hearing she was 17 years old. D.Z. has a very youthful appearance; in-person, appearing 16 to 17 years of age, as that of a teenager. D.Z. testified as follows: On June 7, 2018, the reason D.Z. went to the Licensed Premises was to purchase alcohol. Prior to June 7, 2018, D.Z. had been to the Licensed Premises "a lot" to buy alcohol. She admitted to using fake IDs at the Licensed Premises multiple times prior to June 7, 2018. When asked how many times she used fraudulent IDs to purchase alcohol in the Licensed Premises in the past she replied, "Not as often as I bought [alcohol] – they didn't ID me every time I went." D.Z. confirmed that on June 7, 2018, clerk Maes-Valley did not ask for her ID and that she only had two fake IDs on her person that date. On June 7, 2018, she recalled clerk Barron commenting about D.Z.'s colored contacts in her eyes.

11. D.Z. recalled that prior to June 7, 2018, some of Respondents' clerks looked at and scanned her fake IDs, including the Tennessee ID. D.Z. presented no clear testimony as to the duration of time Respondents' clerks looked at the IDs.<sup>3</sup> D.Z. recalled interacting with both clerk Barron and clerk Maes-Valley on multiple occasions prior to June 7, 2018, with no evidence as to what the interaction entailed. D.Z. did not recall having any conversation with Respondents' clerks about her being a college student. Respondents' counsel showed D.Z. two video files (Exhibit C)<sup>4</sup> which had the dates of April 24, 2018, and May 27, 2018, and in which D.Z. acknowledged recognizing herself showing one of her fake IDs to the clerks<sup>5</sup> in each video clip. D.Z. believed she recognized both clerks in the May 27, 2018 video clip, with one clerk being clerk Maes-Valley, who did not assist her that date. D.Z. said that her memory of the sales transaction of June 7, 2018 was better on June 7, 2018, when speaking with Agent Perry, than the day of the hearing.<sup>6</sup> When first questioned at the hearing, D.Z. had thought that a female clerk had helped her with the said transaction of June 7, 2018. There is no credible evidence that prior to June 7, 2018, clerk Maes-Valley had requested to see D.Z.'s ID.

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<sup>3</sup> D.Z. testified that the first time Respondents' clerks looked at her fake ID, she said, "the first time I shown[sic] them longer." It was not clear what D.Z. meant by this statement, nor what duration of time she meant by "longer."

<sup>4</sup> Exhibit C contained two files, file#20180424181925 with date stamp April 24, 2018, time stamps played from 1820 to 1822; file#20180527161722 with date stamp May 27, 2018, time stamps played from 1617 to 1619.

<sup>5</sup> On April 24, 2018, clerk Dominique Morgan, holding D.Z.'s ID, processed the alcohol sales transaction with D.Z. On May 27, 2018, clerk Amaris Molano, looking at the ID in D.Z.'s wallet, which D.Z. held, processed the alcohol sales transaction with D.Z. Both clerks Morgan and Molano appear to press a button on the bottom of the yellow warning screen, which appears to cause the yellow screen to disappear, enabling the alcohol sales transactions to be made; the ID(s) were not swiped or scanned into the POS system.

<sup>6</sup> Eight months and five days passed between June 7, 2018 and the hearing date of February 12, 2019.

**RESPONDENTS' WITNESSES**  
**(Deidre Lynn Dempster)**

12. Deidre Lynn Dempster appeared and testified at the hearing. Mrs. Dempster is one of the Licensed Premises' franchisees for a little over 10 years. She also is a franchise owner of another licensed premise for a little over five years. Mrs. Dempster first started working with 7-Eleven when she was 14 years old and has worked with 7-Eleven for a total of 39 years to the date of the hearing.

13. Mrs. Dempster participates in training employees at the Licensed Premises on the "Come of Age" computer-based training module on the 7-Eleven computer system called 7 Excel University. The "Come of Age" training module reviews all laws applicable to selling any age-restricted merchandise, including alcoholic beverages. Each employee is required to take the training module upon hire and annually thereafter. At the end of the module the employee must pass the quiz and print out a Certificate of Completion of said module. Clerk Maes-Valley completed the "Come of Age" training on February 19, 2018. (Exhibit D.)

14. The Respondents' store policy relating to alcohol sales includes having clerks ask for the ID of anyone appearing under 30 years of age. The Respondents ask their clerks to swipe the magnetic strip or scan the bar code of all IDs through the register. The cash register system is equipped to calculate birthdates. Whether it is a California ID or out-of-state ID, the Respondents ask the clerks to have the patron present the ID outside of the wallet so as to feel the ID, and make sure the picture on the ID matches the person standing before the clerk.

15. The Licensed Premises participates in the BARS Program, in which 7-Eleven sends a secret shopper to see if Respondents' clerks are asking for the IDs of patrons attempting to purchase age-restricted products. If a clerk successfully asks for the ID of a secret shopper the clerk is presented a green card for doing so. The Respondents produced at the hearing green cards submitted to its clerks, including two green cards which were issued to clerk Maes-Valley on some unknown dates. (Exhibit E.)

16. Based on the 7-Eleven training and BARS program training clerk Maes-Valley received, Mrs. Dempster acknowledged that he should have asked for D.Z.'s ID on June 7, 2018. Mrs. Dempster provided an explanation for clerk Maes-Valley's failure to ask for D.Z.'s ID by stating that D.Z. "had been coming in the store for quite some time and ...had become to be known as what we call a 'regular customer.'" Mrs. Dempster defined a "regular customer" as "people that frequent our stores ...at sometimes once a day, sometimes two or three times a day, several times a week - people have routines, they have habits, they may come in always on a specific day you always work, you

always see them - so that's how we establish them as a regular." She further explained that prior to establishing a customer as a "regular" the customer will show an ID; after which regular customers do not show their IDs.

17. Clerk Maes-Valley was disciplined for the said violation, in that his hours were reduced, and he was required to retake the "Come of Age" training module. There was no evidence as to what the Respondents addressed with clerk Maes-Valley when they disciplined him. Clerk Maes-Valley continues to work for the Respondents at the Licensed Premises.

18. After the said violation of June 7, 2018, the Respondents learned that by using a magnifying glass on a California ID one can more readily see the small printed words for the Golden Gate Bridge, which, per Mrs. Dempster, with the naked eye appear to be dotted lines. Mrs. Dempster's daughter purchased a magnifying glass, which the Respondents ask its clerks to use on California IDs to look for said wording. Mrs. Dempster does not know what happens when one looks at a Tennessee ID under a magnifying glass. Mrs. Dempster has had in the Licensed Premises, since she has been a franchisee, an ID Checking Guide, which she claims all clerks are aware of its presence in the store and are supposed to use it. The ID Checking Guide shows how out-of-state IDs should appear and what characteristics they have. There was no evidence Respondents' clerks are trained on how to use the ID Checking Guide.

19. When alcohol is scanned on the Respondents' cash register point of sale (POS) system a yellow screen appears informing the clerk to check the customer's ID. Prior to June 7, 2018, the Respondents were not aware that if a fake ID's bar code was scanned the alcohol sales transaction would be permitted on the Respondents' cash register POS system. The Respondents found out after June 7, 2018, through internet research and scanning a handful of fake IDs in the store against staffs' valid IDs, that: whether a fake ID was in-state or out-of-state, if a fake ID's bar code is scanned the Respondents' POS system will allow the sale of age-restricted products; and if the magnetic strip of a fake ID is swiped a red screen would appear on the Respondents' POS system indicating to the clerk that the ID is fake. Thereafter, the Respondents created a protocol asking its clerks to swipe every ID, whether it be an in-state or out-of-state ID, because the Respondents have more confidence that the magnetic strip will inform them if the ID is fake or not based on their experimentation. If the clerk swipes the ID and the red screen appears the clerk should stop the sale.

20. Mrs. Dempster copied the said two video surveillance files to the flash drive marked as Exhibit C, to show that D.Z. had been in the Licensed Premises on April 24, 2018 and May 27, 2018, to purchase alcohol prior to June 7, 2018. On April 24, 2018, clerk Dominique Morgan, held D.Z.'s ID, and processed the alcohol sales transaction with D.Z. On May 27, 2018, clerk Amaris Molano, looked at D.Z.'s ID in the wallet which D.Z.

held, and processed the alcohol sales transaction with D.Z. Clerk Maes-Valley was behind the sales counter on May 27, 2018, and Mrs. Dempster claims that she sees him in the video to look at D.Z.'s ID with clerk Molano.

21. In the video clips of Exhibit C, both clerks Morgan and Molano appear to press a button on the bottom of the yellow warning screen, which appears to cause the yellow screen to disappear, and enable the alcohol sales transactions to be made; with neither clerk scanning or swiping the ID(s). There is no evidence clerk Maes-Valley was able to clearly see D.Z.'s ID on May 27, 2018. The video clip of May 27, 2018, depicts clerk Maes-Valley leaning over clerk Molano's shoulder in, what appears to be, an attempt to look at D.Z.'s ID, but it does not appear clerk Maes-Valley can get a good look at the ID because it appears that as clerk Maes-Valley gets in to attempt to look at the ID, within a second D.Z. retracts the wallet and clerk Maes-Valley pulls back from attempting to view the same.

**(Marlena Shanell Barron)**

22. Marlena Shanell Barron appeared and testified at the hearing. She worked as a clerk for Respondents at the Licensed Premises for a little over three years. As of the date of the hearing she was not employed with the Respondents and is 25 years old. Ms. Barron recalled working with clerk Maes-Valley on June 7, 2018, and recalled the sales transaction clerk Maes-Valley had with D.Z. Clerk Barron recalled she and clerk Maes-Valley were ringing up "a pretty nice-sized line" of people when D.Z. approached the counter, behind which stood clerk Maes-Valley, and placed the said alcohol on the counter. Clerk Barron was assisting another customer. Clerk Maes-Valley asked clerk Barron if clerk Barron had seen her before, did she know who she was, referring to D.Z. Clerk Barron replied, "Yea, I've seen her before." With that clerk Maes-Valley proceeded with the sale of alcohol to D.Z. without requesting her ID or age.

23. Clerk Barron had seen D.Z. in the Licensed Premises, at one point in time, on a weekly basis with D.Z. coming in every Thursday. Clerk Barron did not recognize the Tennessee ID (Exhibit A) as the ID D.Z. had shown to her because, clerk Barron explained, the last time she had seen D.Z.'s ID was when D.Z. had come in "last summer," prior to clerk Maes-Valley working at the Licensed Premises. Clerk Barron explained that the first couple of times D.Z. came in to purchase alcohol D.Z. was not considered a regular. Clerk Barron described the first time D.Z. came into the Licensed Premises to purchase alcohol as being a "red flag for me because she's a little – she looks a little bit young." Because of that red flag clerk Barron asked for D.Z.'s ID. Clerk Barron said that when D.Z. used to come into the Licensed Premises on almost a weekly basis every Thursday or so to purchase Smirnoff ICE, clerk Barron asked D.Z. once where she was going with the Smirnoff ICE, if she was going to a party in the area every

Thursday. Clerk Barron claimed that D.Z. told her D.Z. and her roommate are college students with an apartment in Del Mar and they would get together every Thursday to hang out. Clerk Barron repeated in her testimony a few times about how youthful D.Z. appears, once stating that D.Z. "looks pretty young."

24. There was no testimony presented as to how, on June 7, 2018, clerk Maes-Valley was able to proceed with the sale of alcohol to minor D.Z. on the Respondents' POS system, despite the yellow warning screen. Based on the testimony of custom and practice relating to not checking IDs of "regular customers" and the video files of Exhibit C, it appears the Respondents' clerks have an option to press a button on the bottom of the yellow screen to bypass that yellow screen and proceed with the sale.<sup>7</sup> There was no evidence whether the Respondents had this button option removed or altered in any way or addressed it with their clerks.

25. 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 24200(b) provides that a licensee's violation, or causing or permitting of a violation, of any penal provision of California law prohibiting or regulating the sale of alcoholic beverages is also a basis for the suspension or revocation of the license.
3. Section 25658(a) provides that every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor.
4. Cause for suspension or revocation of the Respondents' license exists under Article XX, section 22 of the California State Constitution and sections 24200(a) and (b) on the basis that on June 7, 2018, Respondents' employee, clerk Austin Maes-Valley, inside the Licensed Premises, sold alcoholic beverages, to-wit: malt beverages, to D.Z., a person

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<sup>7</sup> In Exhibit C, the video file for April 24, 2018, appears to depict clerk Morgan press a button on the bottom left of the yellow screen, which removes the yellow screen and prompts a number pad, upon which clerk Morgan appears to enter numbers, whereupon a default screen then appears (this default screen is seen on both cash register screens prior to D.Z. approaching the counter and prior to clerk Morgan scanning the alcohol). The video file for May 27, 2018, appears to depict clerk Molano press a button, second from the left on the bottom of the yellow screen, which removes the yellow screen, and immediately prompts the default screen, bypassing the yellow screen and permitting the sale of alcohol.

under the age of 21, in violation of Business and Professions Code section 25658(a).  
(Findings of Fact ¶¶ 4-11, 22, and 23.)

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

6. The defense offered by this section is an affirmative defense. As such, the licensee has the burden of establishing all of its elements, namely, that evidence of majority and identity was demanded, shown, and acted on as prescribed.<sup>8</sup> To provide a defense, reliance on the document must be reasonable, that is, the result of an exercise of due diligence. This section applies to identifications actually issued by government agencies as well as those which purport to be.<sup>9</sup> A licensee or his or her employee is not entitled to rely upon an identification if it does not appear to be a bona fide government-issued identification or if the personal appearance of the holder of the identification demonstrates above mere suspicion that the holder is not the legal owner of the identification.<sup>10</sup> The defense offered by section 25660 is not established if the appearance of the minor does not match the description on the identification.<sup>11</sup> Thus, reasonable reliance cannot be established unless the appearance of the person presenting identification indicates that he or she could be 21 years of age and the seller makes a reasonable inspection of the identification offered.

7. In the present case, the Respondents failed to meet their burden of proof in establishing all of the elements of the affirmative defense. Respondents did not show that evidence of majority and identity was demanded, shown, and acted on as prescribed. On June 7, 2018, clerk Maes-Valley failed to request to see D.Z.'s ID. There is no credible evidence clerk Maes-Valley ever requested to see D.Z.'s ID, as described more fully below. It would have been incumbent upon clerk Maes-Valley to demand to see the minor's ID given that D.Z. does not appear anywhere near 21 years old, let alone near 30 years old - pursuant to Respondents' policy requiring its clerks ask for the ID of anyone

<sup>8</sup> *Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control*, 261 Cal. App. 2d 181, 189, 67 Cal. Rptr. 734, 739 (1968); 27 Ops. Atty. Gen. 233, 236 (1956).

<sup>9</sup> *Dept. of Alcoholic Beverage Control v. Alcoholic Control Appeals Bd. (Masani)*, 118 Cal. App. 4th 1429, 1444-45, 13 Cal. Rptr. 3d 826, 837-38 (2004).

<sup>10</sup> *Masani*, 118 Cal. App. 4th at 1445-46, 13 Cal. Rptr. 3d at 838; *5501 Hollywood, Inc. v. Department of Alcoholic Beverage Control*, 155 Cal. App. 2d 748, 753, 318 P.2d 820, 823-24 (1957); *Keane v. Reilly*, 130 Cal. App. 2d 407, 411-12, 279 P.2d 152, 155 (1955); *Conti v. State Board of Equalization*, 113 Cal. App. 2d 465, 466-67, 248 P.2d 31, 32 (1952).

<sup>11</sup> *5501 Hollywood*, 155 Cal. App. 2d at 751-54, 318 P.2d at 822-24; *Keane*, 130 Cal. App. 2d at 411-12, 279 P.2d at 155 (construing section 61.2(b), the predecessor to section 25660).

appearing under 30 years of age. At the hearing, D.Z. appeared very youthful, 16 to 17 years of age. In fact, Agent Perry's sworn, direct testimony indicated that on June 7, 2018, D.Z. appeared to Agent Perry to be between the ages of 16 and 18 and had a youthful appearance, so much so that it caused Agent Perry to question D.Z. about her age and purchase of the said alcohol. (Findings of Fact ¶¶ 4-10, and 14.)

8. It was clear that on June 7, 2018, clerk Maes-Valley did not recognize D.Z. as someone whom he would have asked for ID in the past, since he turned to clerk Barron to ask if she had seen D.Z. before. It is not credible that clerk Maes-Valley asked for D.Z.'s ID prior to June 7, 2018. Clerk Maes-Valley never testified. D.Z.'s testimony regarding clerk Maes-Valley seeing her fake ID before is not reliable given she admitted her memory of June 7, 2018, was better on that date than on the date of the hearing. In fact, on June 7, 2018, D.Z. told Agent Perry that she had never shown fake ID to clerk Maes-Valley in the past. Mrs. Dempster testified that it appeared to her that in viewing the video clip of Exhibit C that on May 27, 2018 clerk Maes-Valley looked at a fake ID of D.Z. with clerk Molano. There is no evidence clerk Maes-Valley was able to clearly see D.Z.'s ID on May 27, 2018, to make a reasonable and due diligent inspection of the ID, whichever ID it was. The video clip of May 27, 2018, does not show that clerk Maes-Valley appeared to even get a good look at the ID because as clerk Maes-Valley leaned over clerk Molano's shoulder in an attempt to look at D.Z.'s ID, within a second D.Z. retracted the wallet from view and clerk Maes-Valley pulled back from attempting to view the same.

9. Respondents presented no credible evidence that prior to June 7, 2018, clerk Maes-Valley, or clerk Barron for that matter, reasonably relied upon D.Z.'s IDs, that is, exercised due diligence in examining and inspecting D.Z.'s IDs, as prescribed by the 25660. Even if clerk Maes-Valley had seen D.Z.'s ID(s) prior to June 7, 2018, as per Respondents' contentions, it is obvious that he did not recall D.Z. on June 7, 2018, to rely on any prior showing of her ID, let alone any previous due diligent or reasonable inspection thereof by himself. Because clerk Maes-Valley did not remember seeing D.Z. and failed to ask to see her ID on June 7, 2018, his mere reliance that clerk Barron had seen D.Z. before is insufficient to establish clerk Maes-Valley, let alone clerk Barron, reasonably relied on any of D.Z.'s IDs, including, but not limited to, the fake Tennessee ID or borrowed California ID. Clerk Barron did not recognize the Tennessee ID, when Exhibit A was shown to her at the hearing, as the ID that was shown to her in the past, because she said the last time she asked for and saw D.Z.'s ID was "last summer." Clerk Barron was not shown Exhibit B, so there is no evidence as to whether she recognized that ID. However, D.Z. testified that she had shown clerks (in general) in Respondents store both of her fake IDs prior to June 7, 2018. If, on one or both of the two<sup>12</sup> occasions

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<sup>12</sup> Clerk Barron's contention she asked for or saw D.Z.'s ID more than four times is found not credible based on (evaluating Evidence Code Section 780 factors) her inconsistent, inadvertent slippage in her testimony that she did

(or giving the benefit of the doubt it was on more occasions), in which clerk Barron asked for D.Z.'s ID, clerk Barron was handed the California ID, then it is clear clerk Barron did not exercise due diligence in her reliance on that California ID. The California ID has someone else's picture and description thereon. A quick glance at the photograph on the California ID alone indicates that D.Z. is not the legal owner of the ID. Since we do not know which ID clerk Barron had been shown in the past it cannot be argued that clerk Barron reasonably relied on any ID. Clerk Barron merely testified she had identified D.Z. in the past, saying at one point, "I'm sure I identified her." It is also not clear whether the manner in which clerk Barron "identified" D.Z. was by means of scanning one of the fake IDs in the POS system and relying on the system to erroneously state the minor was of age to purchase alcohol. No matter how many times clerk Barron may have seen D.Z.'s ID in the past, there was no evidence clerk Barron conducted a reasonable and due diligent inspection of any of D.Z.'s IDs.

10. Finally, reasonable reliance cannot be established because the appearance of D.Z., who presented the said fake Tennessee ID and California ID, does not indicate she could have been 21 years of age. D.Z.'s personal appearance demonstrated above mere suspicion that she was not the legal owner of either the Tennessee ID or the borrowed California ID. On June 7, 2018, D.Z. appeared in-person in front of clerk Maes-Valley. Nearly eight months later D.Z. appeared in-person at the hearing to the undersigned to have a very youthful appearance, as that of a teenager, despite wearing make-up. D.Z. in no way could pass for 21 years of age, let alone 25 years or older as claimed by clerk Barron. Agent Perry's sworn, direct testimony indicated that on June 7, 2018, D.Z. appeared to Agent Perry to have a youthful appearance, so much so, that it caused Agent Perry to stop and question D.Z. about her age and tell her that she looked "young" to him to purchase the six-pack of Smirnoff ICE and other alcohol. In fact, even clerk Barron kept repeating in her testimony how very young D.Z. appeared to her, so much so that she said D.Z.'s youthful appearance was a "red flag for me because she's a little – she looks a little bit young," and at another point said D.Z. "looks pretty young."<sup>13</sup> (Findings of Fact ¶¶ 4-8, 10, and 23.) There was no clear, consistent evidence that either clerk Maes-Valley or clerk Barron reasonably relied on D.Z.'s fake Tennessee ID or the borrowed California ID at any time prior to, and including, June 7, 2018.

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not consider D.Z. a "regular" until after the first couple of times she came in to purchase alcohol, and the clear record that Respondents' clerks have a custom and practice not to ask for the ID of "regular customers."

<sup>13</sup> Clerk Barron's attempt at correcting her testimony and claiming D.Z. appears 25 years of age, is not found credible, but found to be an attempt at correcting her adamant repetition of how youthful D.Z. appeared to her. This contention is inconsistent with the evidence in the record, Agent Perry's credible testimony relating to D.Z.'s appearance, with Agent Perry having no motive to fabricate his testimony versus clerk Barron who still works for Respondents, as well as the undersigned having seen D.Z. in-person, who appears 16 to 17 years old. (Evidence Code section 780.)

## PENALTY

The Department requested the Respondents' license be suspended for a period of 20 days, based on its argued for aggravating factors, including, (1) the minor's actual age, 17, and youthful appearance, (2) the quantity and potency of hard alcohol sold to a youthful appearing 17 year old minor, (3) despite the Respondents' participation in the BARS program and "Come of Age" training, prior to the said violation, those programs failed to prevent said violation because Respondents' clerks were not following procedure, (4) Respondents' failure to add additional training on how to detect fake IDs or the characteristics of a California or out-of-state ID, or attend ABC LEAD training and inquire what mechanisms are available to rely on detecting fake IDs with their POS system, rather than relying on a magnifying glass, an internet search and how their POS system reacts to a handful of fake IDs in the store.

The Respondents requested a 10-day, all-stayed mitigating penalty based on, (1) its claim that since 2008, it has been "going on 11 years with no prior disciplinary action," (2) Respondents instituting a new policy requiring all employees to swipe IDs rather than scan them, in addition to their purchase of a magnifying glass to better evaluate California IDs, (3) the discipline of clerk Maes-Valley and his retraining after the said violation, along with documented employee training, which is required annually, (4) Respondents' participation in the BARS Program, with production of 12 green cards, two of which were received by clerk Maes-Valley, and (5) Respondents' cooperation in the investigation in permitting the Department Agent to observe and record the video surveillance footage of the said sales transaction.

Although any period of discipline-free operation is always worth noting, the Respondents' nine years, seven months discipline-free history (from issuance of license to date of violation) and argued mitigation is offset by several factors. Despite the Respondents' participation in the BARS program, the Respondents' witnesses testified to a condoned custom and practice of not asking for the IDs of "regulars," who are determined by having been in the store before, without sufficient evidence of the clerks making a reasonable, due diligent inspection of the ID, comparing it to the customer, and checking the ID Checking Guide for out-of-state IDs. Clerk Barron described D.Z. as a "regular" after the "first couple of times D.Z. came in to purchase alcohol." Clerk Maes-Valley told Agent Perry that often times he will recognize a customer's face and will not check that customer's ID because it is a hassle. The fact a clerk might have asked for the ID once or twice before and just because the minor or a regular customer frequents a store does not absolve Respondents' clerks of their duty to make a diligent inspection of the ID and question the holder. There was no evidence clerk Maes-Valley or clerk Barron diligently inspected D.Z.'s IDs, yet D.Z. was deemed a "regular customer." In addition, with out-of-state licenses the clerks should review an ID Checking Guide for

assistance, or call over a manager. There was no testimony that Respondents' clerks receive any training relating to ID Checking Guides and how to use them. All of these precautions should have been performed with minor D.Z. in light of her very youthful appearance and actual age of 17.

While clerk Maes-Valley was disciplined it is unclear what the Respondents addressed with him in his discipline. There was no evidence the Respondents fully addressed the problem arising out of clerk Maes-Valley's actions, as to how he was able to proceed with the sale of alcohol to a minor on June 7, 2018. He did not ask for an ID. Since he neither scanned nor swiped an ID, what button did he press? The preponderance of the evidence indicates that the Respondents' clerks are capable of overriding the safety protocol of the yellow warning screen by pressing a type of bypass button to allow the sale of alcohol to proceed.

While there was no testimony presented as to how, on June 7, 2018, clerk Maes-Valley was able to proceed with the sale of alcohol to minor D.Z. on Respondents' POS system, despite the yellow warning screen, it is more likely than not that clerk Maes-Valley did as clerks Morgan and Molano did and pressed a button on the bottom of the yellow warning screen to bypass that screen and proceed with the sale. Since clerk Maes-Valley did not ask for D.Z.'s ID he would not have had a birthdate to enter into the number pad of the screen, if that was requested.

Additionally, it can be reasonably inferred from the record and testimony, relating to the custom and practice of Respondents' clerks not to request the ID of "regular customers," that Respondents' POS system has a bypass button which overrides any presumed safety-protocol system in place regarding age-restricted sales. There was absolutely no evidence that Respondents addressed this problem. There was no evidence whether the Respondents had this button option removed or altered in any way or addressed it with their clerks. As such, the preponderance of evidence indicates the Respondents' clerks continue to be able to bypass any protocol in place for age-restricted sales, including when the clerk deems the patron a "regular customer." This policy of not checking the IDs of "regular customers" not only encourages its clerks but allows its clerks to override the POS safety protocol for age-restricted sales.

It is unclear how effective Respondents' swiping feature is with fake IDs. Many cash registers are fooled by fake IDs; Mrs. Dempster testified how the premises' POS system is fooled by fake IDs. The Respondents presented no evidence they sought professional advice as to the effectiveness of swiping fake IDs with their POS system. Also of concern with Respondents' new rule requiring clerks swipe IDs is that the clerks may rely on the POS system and fail to exercise due diligence in examining customers' IDs, and

7 Eleven Inc., Deidre Lynn Dempster, and  
Hayden Ernest Dempster  
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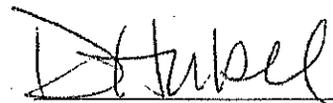
use the ID Checking Guide for out-of-state IDs; especially with customers, such as D.Z., who thereafter frequent the store and are no longer asked for ID.

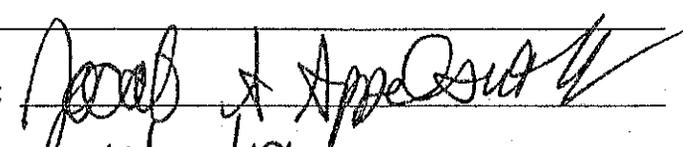
The penalty recommended herein complies with rule 144.<sup>14</sup>

### ORDER

The Respondents' off-sale beer and wine license is hereby suspended for a period of 15 days.

Dated: February 27, 2019

  
\_\_\_\_\_  
D. Huebel  
Administrative Law Judge

<input checked="" type="checkbox"/> Adopt	Reduce penalty to 10 days
<input type="checkbox"/> Non-Adopt:	_____
By:	
Date:	4/24/19

<sup>14</sup> All rules referred to herein are contained in title 4 of the California Code of Regulations unless otherwise noted.