

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

AB-9917a

File: 48-485515; Reg: 20090465

GC BROTHERS ENTERTAINMENT, LLC,
dba The Palms
2540 North Palm Drive
Signal Hill, CA 90755-4009,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Matthew G. Ainley

Appeals Board Hearing: April 12, 2024
Sacramento, CA / Videoconference

ISSUED APRIL 16, 2024

Appearances: *Appellant:* Adam N. Koslin, of Solomon, Saltsman and Jamieson,
as counsel for GC Brothers Entertainment, LLC,

Respondent: Alanna K. Ormiston, as counsel for the Department of
Alcoholic Beverage Control.

OPINION

GC Brothers Entertainment, LLC, doing business as The Palms (appellant),
appeals from a decision of the Department of Alcoholic Beverage Control (Department)¹
revoking its license because appellant: knowingly permitted its employees to sell,
furnish or offer to sell a controlled substance, to wit: cocaine, within the premises, in
violation of Health and Safety Code section 11352; permitted persons to smoke or

¹ The decision of the Department, dated September 7, 2023, is set forth in the
Appendix.

ingest cannabis within the premises, in violation of Health and Safety Code section 11362.3(a)(1); exceeded its license privileges by permitting patrons to possess and consume alcoholic beverages in an unlicensed portion of the premises, in violation of Business and Professions Code sections 23300 and 23355; allowed employees to perform or simulate sex acts or touch sexualized areas of the body while on the licensed premises, and expose various prohibited body parts to public view, while not on a stage 18 inches above floor level and at least six feet from the nearest patron, in violation of California Code of Regulations, Title 4, section 143.3(1)(a) through (c) and section 143.3(2); allowed employees to solicit the purchase or sale of drinks intended for their consumption, in violation of California Code of Regulations, Title 4, section 143; and, allowed employees to possess with the intent to deliver, furnish or transfer drug paraphernalia, in violation of Health and Safety Code section 11364.7(d).

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general public premises license was issued on April 14, 2010. There is no evidence in the record of any prior departmental discipline.

On September 11, 2020, the Department instituted a forty-count accusation against appellant, alleging it exceeded its license privileges by knowingly permitting the illegal sale, possession and consumption of alcohol and controlled substances on its licensed premises; and permitting several of its employees to violate the Health and Safety Code, Business and Professions Code, and California Code of Regulations by: consuming alcohol in unlicensed areas; exposing their genitalia and performing simulated sex acts; furnishing cocaine and drug paraphernalia to club patrons; soliciting the purchase of alcohol for their own consumption; and smoking or ingesting cannabis on the premises. These charges resulted from numerous undercover visits by

Department agents to the premises between September 19, 2019, and January 30, 2020.

This is the second time this matter has come before this Board. At the outset, appellant failed to respond to an initial accusation, and, as a result, on November 23, 2020, the Department issued a Decision Following Default finding that the accusation was properly served and that continuance of the license would be contrary to public welfare and morals. Accordingly, it was ordered that the license be revoked, effective immediately. A motion to vacate the default decision was filed by appellant on December 2, 2020, and several declarations in support of that motion were also subsequently filed. Ultimately, on June 7, 2021, the motion to vacate the default decision was denied by the Department in an Order on Motion to Vacate.

Appellant then filed a timely appeal of that Order to the Appeals Board. After the matter was fully briefed, and oral argument was heard on October 15, 2021, the Board affirmed the Department's Order four days later. (*GC Brothers Entertainment, LLC*. (2021) AB-9917.)

On November 16, 2021, appellant filed a petition with the Second District Court of Appeals, seeking a writ of mandate directing the Appeals Board and Department to reverse their decisions. (Case No. B316346.) The appeals court granted the writ, and issued a decision on November 1, 2022, reversing the Board's decision and directing that the matter be remanded to the Department for a hearing on the merits. (*GC Brothers Entertainment, LLC v. Alcoholic Beverage Control Appeals Bd.* (2022) 84 Cal.App.5th 1019, 1033 [300 Cal.Rptr.3d 823].)

At the administrative hearings held on March 23-24, 2023, documentary evidence was received and testimony concerning the violations charged was presented

by Department Agents Michael Connolly, Danny Vergara, and Salvador Zavala (retired); Supervising Agent in Charge, Bradley Beach; former Signal Hill Police Department Officer Casey Blair; and senior criminologists from the Los Angeles County Sheriff's Department crime lab: Ramona Neal, Michael Adeva, Joanna Law, and Rachael Harris. Appellant's employees, Dennis Andra and Shakon Clement testified on its behalf, as did owner/licensee George Cataloiu.

Testimony established that undercover Department agents visited the licensed premises — a gentleman's club, or strip club — on seven separate occasions.

Count 1:

On September 19, 2019, Agent Connolly and other Department agents entered the licensed premises and went to the bar where they ordered drinks. Connolly was introduced to a dancer, Corinne Kervorkian (aka "Foxxxy"), who asked if he would like a lap dance. He said yes, and they moved to another area of the premises.

As she was dancing she asked if he wanted to "do a bump"² off her rear end. Or, she suggested he could do it off her chest if they went to the VIP room. Connolly said he didn't have any cocaine, and asked if she could get him some. He paid her \$20 for the lap dance and another \$20 for the cocaine. She made some calls, and later told Connolly that if he was serious about the purchase they needed to go to the VIP room.

Once there, Foxxxy danced a bit and told Connolly that she was having trouble reaching her contacts, and that two eight-balls³ would cost \$465. Connolly asked for one eight-ball for \$260 and paid her that amount, in addition to paying for the lap dance

² Slang for inhaling cocaine.

³ An eighth of an ounce of cocaine is an eight-ball.

and \$20 for helping with the transaction. Foxxxy left, then returned with a cardboard box. Connolly went to the restroom and opened it to find a white powdery substance inside (exh. 2), which was later tested and determined to be cocaine. (Exh. 24.)

Foxxxy gave Connolly her phone number and told him she could get him cocaine in the future. (Findings of Fact (FF) ¶¶ 4-8.)

Count 2:

On October 2, 2019, Connolly texted Foxxxy and asked if she could get him more cocaine. She said yes, and asked him to meet her at the licensed premises.

Connolly and his partner went to the licensed premises where they met Foxxxy and paid her \$425 for two eight-balls of cocaine. She handed him a clear plastic baggie containing white powder (exh. 3) without trying to hide the exchange and with security guards in the area. The substance was later tested and determined to be cocaine. (Exh. 25.)

Foxxxy asked for a tip and Connolly gave her \$20. He also paid her \$100 for five songs worth of lap dances, after which he gave her another \$20 tip. (FF ¶¶ 9-11.)

Counts 3-4:

On October 22, 2019, Connolly texted and spoke to Foxxxy. She was upset that she was previously only tipped \$20 for the cocaine, so they argued.

On October 23, 2019, Connolly and Vergara spoke to Katie Kuns (aka "Roxxy") outside the premises and she said she would meet them inside. Once inside, Roxxy gave Connolly her phone number.

Agent Vergara ordered a whiskey and Coke and a Bud Light beer, and took both drinks to an outside lounge area — an area not within the defined boundaries of the licensed premises (exh. 13). He consumed part of his drinks in this area which

contained couches and was separated from the parking lot by some plants and three posts. (Exhs. 6, 22.) A dancer and security guard were outside, but no one told Vergara not to consume alcoholic beverages there. He observed two people sitting in the lounge area, one of whom rolled and then smoked what appeared and smelled like a cannabis cigarette. (FF ¶¶ 12-15.)

Counts 5-13:

On November 14, 2019, Agents Connolly, Vergara, and Zavala entered the licensed premises. Zavala sat at a cocktail table while Vergara ordered a Bud Light beer and took it to the outside lounge area where he consumed part of it. Other people, including one of the dancers was there, but no employee tried to stop him from drinking in this area.

Connolly was invited by Roxxy to the VIP area and he agreed. While dancing, she pulled down her top and exposed her areola, which she pinched. She also pulled down her bikini bottom, exposing her genitalia. She touched his crotch, then sucked her thumb. She sat on his lap and bounced up and down, rocking her hips while pushing them into him. By this time, she had covered her breasts up — she pushed them into his face and moved them back and forth. Connolly tipped her, then asked if she could get him cocaine. She said yes, and that it would be \$200 for an eight-ball. He agreed, gave her the money, and she left.

Connolly went to the bar and a dancer named “Flame” asked if he needed help. He said he did, and she called over the bartender. She also asked him to buy her a beer. He agreed, and told her he wanted a Hennessy and ginger ale. Flame ordered drinks from the bartender.

Roxy came over, and Connolly asked if she wanted a drink. She said she wanted a sugar-free Red Bull. Roxxy handed him a substance which was later tested and found to be cocaine. (Exh. 26.) She asked for a tip and he gave her \$20. The bartender served Connolly, Flame and Roxxy their drinks. Flame was served some kind of mixed drink with a shot. They went to the outdoor lounge area. Security guards went in and out of the area. Flame rolled a marijuana cigarette and began to smoke it. The guards did not try to stop her.

Valerie Salvador, a dancer, approached Agent Zavala at his cocktail table and asked if he would buy her a vodka and soda. He agreed. Zavala ordered her drink, and a Bud Light beer for himself, from a waitress named Jasmine. He paid \$14 for the drinks and gave Jasmine a \$2 tip. Salvador asked Zavala if he wanted a lap dance. He agreed. Afterwards, they went to the bar. She asked him to buy her another vodka and soda. Zavala agreed, and ordered her drink as well as a drink for himself from the bartender. He paid \$14 for the drinks and gave the bartender a \$2 tip. (FF ¶¶ 16-25.)

Counts 14-22:

On November 21, 2019, Agents Connolly and Zavala entered the licensed premises. Roxxy came over and talked to Connolly. He said he wanted a drink and she asked him to buy her a bottle of water. Connolly gave her \$20, she obtained both drinks, then they went to the VIP room where she gave him a lap dance. During the dance, she pulled down her top and exposed her breasts. She straddled him, and began to rock up and down and lean back. She sucked her thumb, then pulled down her bikini bottom and exposed her vulva.

Connolly asked Roxxy about cocaine. She said it would be \$250, delivered. He paid her and she left. Connolly went to the area where the main stage was located.

Roxy handed him a baggie containing a white powdery substance (exh. 5) without trying to hide it. This was later tested and determined to be cocaine. (Exh. 27.)

Connolly observed a group of men sitting near the VIP area. One of them pulled out a pipe and began to smoke it. Connolly could smell the smoke and determine that it was marijuana being smoked. Roxxy again invited Connolly to the VIP area. He agreed, and her routine was the same as the earlier lap dance.

Agent Zavala was approached by dancer Jade Geneva ("aka Alexis"), who asked him to buy her a vodka and soda. He agreed. He ordered her drink and a Bud Light beer from Jasmine. He paid \$14 for the drinks and gave Jasmine a \$2 tip. Alexis asked if he wanted a lap dance and he agreed to pay for two dances. After the lap dances, he ordered a Bud Light beer from Jasmine, and Alexis asked him to buy her another vodka and soda. He agreed. Jasmine served them their drinks and Zavala paid her \$14, plus a \$2 tip.

Connolly and Roxxy headed to the outside lounge, and on the way invited Zavala to join them. Zavala asked Jasmine if they could take their drinks outside and she said yes. Connolly still had his drink from earlier in the evening and he consumed it while in the outside lounge. Connolly and Zavala observed a dancer smoking a glass pipe in the outside lounge, and could smell that she was smoking marijuana. Guards were moving in and out but they did not try to stop the agents from consuming their drinks or stop the dancer from smoking marijuana.

Connolly walked back inside, ordered a drink from the bartender, and asked for a pair of scissors. He told the bartender that he wanted to cut up a couple of straws because Zavala was a germaphobe and did not want to use a dollar bill to snort cocaine. Zavala held up the bag of cocaine to show the bartender. The bartender cut

up two straws (exh.7) and stated that Zavala should go to the bank and get a new \$2 bill to keep in his wallet so that it would be germ free.

Connolly and Zavala exited the premises, and on their way out, showed the cocaine to the doorman, Devlin (aka "Dee"). They asked if he had any straws. Dee said to wait, and went inside. He returned with two straws which he handed to Zavala. They asked if he would like to join in. He said no, but that he would party if they had good weed. (FF ¶¶ 26-38.)

Counts 23-29:

On December 12, 2019, Connolly and Zavala returned to the licensed premises. Roxxy asked Connolly to take her to the VIP room and she gave him a lap dance, removing her bikini top and exposing her breasts. She sat on his lap, and began to move back and forth and bounce up and down. She put her crotch in his face, touching it.

Afterwards, they returned to the main area and Connolly said he was going to get a drink. Roxxy offered to get it, and asked him to buy her a bottle of water. She obtained a Hennessey and ginger ale and a water from the bartender. Connolly paid for both drinks. They took them to the outside lounge area where they consumed them. Roxxy asked him if he wanted more cocaine, but he said that he did not. She said that her dealer was nearby, but he turned her down again, explaining that he was going to an event later.

Agent Zavala was seated inside the licensed premises and began conversing with Alexis. She told him that she needed a shot. When Jasmine came to the table, Zavala ordered a Bud Light beer and Alexis asked him to buy her a mango shot. He agreed. Jasmine served both drinks to them. Zavala paid \$14 for the drinks and gave

her a \$2 tip. Alexis asked him he wanted a lap dance. He said that he did, and they went to the lap dance area.

Afterward, they returned to the table and Zavala ordered a Bud Light beer from Jasmine. Again, Geneva asked him to buy her a mango shot and he agreed. Jasmine served the drinks to them. He gave her \$14 for the drinks and a \$2 tip. Later, Jasmine approached the table again and he ordered a Bud Light. Alexis asked him to buy her a mango shot. He agreed and Jasmine served the drinks to them. Zavala paid \$14 for the drinks and gave Jasmine a \$2 tip.

Zavala joined Connolly and Roxxy in the outdoor lounge area. He took his beer with him and consumed a portion of it. Security guards were always present, but none of them tried to stop him. Camille, one of the dancers, was also in the outdoor lounge area. She rolled a marijuana cigarette and lit it. Connolly could smell burning marijuana, but no one tried to stop her. Camille offered to let Connolly and Zavala smoke some of it for \$5. (FF ¶¶ 39-46.)

Counts 30-40:

On January 30, 2020, Agents Connolly and Vergara returned to the licensed premises. Connolly texted Foxxxy and Roxxy ahead of time to make sure they would be there. Foxxxy replied that she had a proposition for him. Once there, Foxxxy approached Connolly, and said that she wanted to smooth things over. She gave him her dealer's phone number and asked him to be discrete. Connolly asked if the dealer would be available later that night, and she said that it depended on the amount. Connolly said that he wanted two eight-balls of cocaine, which would cost \$200 each. He asked her to send the dealer's contact information to him, which she did. She also asked him to buy her a shot. He agreed. Agent Connolly sent the contact number to

back-up agents, who determined that it belonged to an individual named Briand Jensen.

Foxxxy began to dance on the stage. During her dance, she pulled up her bikini top, exposing her breasts. Connolly was approximately two feet away from her at the time. While her breasts were still exposed, Foxxxy moved to within one foot of Connolly and began rubbing her genitals. (Exhs. 14-16.) Connolly went to the bar and ordered another Hennessey and ginger ale. Foxxxy asked him to order a drink for her as well. He did so, paying for both drinks.

Later, Foxxxy told Connolly that her dealer was there. He gave her \$440 in marked bills. She took the money, left, and returned with two baggies containing a white powdery substance. She handed it to him in the main stage area. The substance inside both baggies was later tested and determined to be cocaine. (Exhs. 28-29.) Connolly gave her a \$100 tip for helping.

Connolly went to the restroom. As he was leaving, he ran into Roxxy who asked if he wanted any cocaine. He said that he did not, but that he would check with his friends and get back to her. Connolly and Roxxy went to the outdoor lounge area. He had his drink with him, and he consumed some of it, but no one tried to stop him — including the doorman who was also in the lounge area.

Agent Connolly asked Roxxy for an eight-ball of cocaine. They agreed upon a price of \$200, which he gave to her. She went inside the premises and so did he. Connolly saw Roxxy talking to Joel Diaz. They were moving their hands in a manner consistent with them passing something from one to the other. Later, Roxxy handed Connolly a small plastic baggie with smiley faces on it containing a white powdery substance. The substance was later tested and determined to be cocaine. (Exh. 30.)

Roxy performed another lap dance for Agent Connolly. During this dance she straddled him and moved back and forth. She also stood on a bench and placed her crotch into his face.

In the meantime, Agent Vergara ordered a bottle of Corona beer. He took the beer outside and consumed a portion of it. Since no one was in the outside lounge area, he went back inside. Vergara subsequently purchased another Corona beer, which he took outside. There were several other patrons and a security guard in the outside lounge area. Vergara consumed a portion of his beer there, and no one tried to stop him.

When back-up officers responded to the premises, Jensen, Diaz, Foxxxy, and Roxxy were arrested. Signal Hill Police Deputy Blair found cash and two baggies of suspected cocaine on Diaz. Officers found the marked bills on Jensen. (FF ¶¶ 47-60.)

Following the hearing, the administrative law judge (ALJ) issued a proposed decision on August 27, 2023:

- Sustaining counts 1, 2, 5, 18, 19, 21, 27, 36, 37, 39, and 40, and recommending the license be revoked for those counts;
- Sustaining counts 4, 10, 20, 26, and 30, and recommending the license be suspended for 15 days for those counts;
- Sustaining counts 6, 7, 15, 24, and 25, and recommending the license be revoked for those counts;
- Sustaining counts 9, 13, 14, 22, 28, and 32, and recommending that the license be suspended for 15 days for those counts; and
- Dismissing counts 3, 8, 11, 12, 16, 17, 23, 29, 31, 33, 34, 35, and 38.

After considering comments submitted by the parties, the Department adopted the proposed decision in its entirety on October 25, 2023, and a certificate of decision was issued six days later.

Appellant then filed a timely appeal contending: (1) the actions of the Department's agent constituted entrapment, and (2) the penalty is excessive.

CODE SECTIONS & REGULATIONS CITED IN THIS MATTER
PROVIDED FOR REFERENCE

- (1) **Article XX, section 22 of the California Constitution, and Business and Professions Code 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. (Cal. Const. Art. XX, § 22; Bus. and Prof. Code § 24200, subd. (a).)

- (2) **Business and Professions Code section 24200(b)** provides that:

A licensee's violation, or causing or permitting of a violation, of any penal provision of California law prohibiting or regulating the sale of alcoholic beverages is also a basis for the suspension or revocation of the license. (Bus. and Prof. Code § 24200, subd. (b).)

- (3) **Business and Professions Code section 24200.5(a)** provides, in relevant part:

Notwithstanding the provisions of Section 24200, the department shall revoke a license . . . if a retail licensee has knowingly permitted the illegal sale, or negotiations for the sales, of controlled substances or dangerous drugs upon his or her licensed premises. . . . (Bus. and Prof. Code §24200.5(a).)

- (4) **Business and Professions Code section 23300** provides:

No person shall exercise the privilege or perform any act which a licensee may exercise or perform under the authority of a license unless the person is authorized to do so by a license issued pursuant to this division. (Bus. and Prof. Code § 23300.)

- (5) **Business and Professions Code section 23355** provides:

Except as otherwise provided in this division and subject to the provisions of Section 22 of Article XX of the Constitution, the licenses provided for in Article 2 of this chapter authorize the person to whom issued to exercise the rights and privileges specified in this article and no others at the premises for which issued during the year for which issued. (Bus. and Prof. Code § 23355.)

(6) **Health and Safety Code section 11351** provides:

Except as otherwise provided in this division, every person who possesses for sale or purchases for purposes of sale (1) any controlled substance specified in subdivision (b), (c), or (e) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, three, or four years. (Health & Saf. Code § 11351.)

(7) **Health and Safety Code section 11352(a)** provides:

(a) Except as otherwise provided in this division, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport (1) any controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for three, four, or five years. (Health and Saf. Code § 11352(a).)

(8) **Health and Safety Code section 11362.3(a)(1)** provides:

(a) Section 11362.1 does not permit any person to: (1) Smoke or ingest cannabis or cannabis products in a public place, except in accordance with Section 26200 of the Business and Professions Code. (Health & Saf. Code § 11362.3(a)(1).)

(9) **Health and Safety Code section 11364.7(a)(1)** provides:

(a) (1) Except as authorized by law, any person who delivers, furnishes, or transfers, possesses with intent to deliver, furnish, or transfer, or manufactures with the intent to deliver, furnish, or transfer, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance, except as provided

in subdivision (b), in violation of this division, is guilty of a misdemeanor. (Health & Saf. Code § 11364.7(a)(1).)

(10) **Rule 143** provides:

No on-sale retail licensee shall permit any employee of such licensee to solicit, in or upon the licensed premises, the purchase or sale of any drink, any part of which is for, or intended for, the consumption or use of such employee, or to permit any employee of such licensee to accept, in or upon the licensed premises, any drink which has been purchased or sold there, any part of which drink is for, or intended for, the consumption or use of any employee.

It is not the intent or purpose of this rule to prohibit the long-established practice of a licensee or a bartender accepting an incidental drink from a patron. (Cal. Code Regs., tit. 4, § 143.)

(11) **Rule 143.3** provides:

Acts or conduct on licensed premises in violation of this rule are deemed contrary to public welfare and morals, and therefore no on-sale license shall be held at any premises where such conduct or acts are permitted.

Live entertainment is permitted on any licensed premises, except that:

(1) No licensee shall permit any person to perform acts of or acts which simulate:

(a) Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law.

(b) The touching, caressing or fondling on the breast, buttocks, anus or genitals.

(c) The displaying of the pubic hair, anus, vulva or genitals.

(2) Subject to the provisions of subdivision (1) hereof, entertainers whose breasts and/or buttocks are exposed to view shall perform only upon a stage at least 18 inches above the immediate floor level and removed at least six feet from the nearest patron.

No licensee shall permit any person to use artificial devices or inanimate objects to depict any of the prohibited activities described above.

No licensee shall permit any person to remain in or upon the licensed premises who exposes to public view any portion of his or her genitals or anus. (Cal. Code Regs., tit. 4, § 143.3.)

DISCUSSION

I

ENTRAPMENT

Appellant contends the actions of Agent Connolly in the undercover operation constitute entrapment. (Appellant's Opening Brief (AOB) at pp. 6-7.)

This Board is bound by the factual findings in the Department's decision so 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].)

In California, entrapment is an affirmative defense — the burden of proof therefore, falls on the party raising it. (*People v. Schwartz* (1952) 109 Cal.App.2d 450, 455 [240 P.2d 1024].) The defense is available in administrative proceedings. (*Patty v. Bd. of Med. Examiners* (1973) 9 Cal.3d 356, 359 [107 Cal.Rptr. 473]; *Arellanes v. Civil Service Com.* (1995) 41 Cal.App.4th 1208, 1215-1216 [49 Cal.Rptr.2d 73].)

In *Barraza*, a criminal prosecution for the sale of heroin to an undercover officer, the California Supreme Court held that “the proper test of entrapment is the following: was the conduct of the law enforcement agent likely to induce a normally law-abiding

person to commit the offense?" (*People v. Barraza* (1979) 23 Cal.3d 675, 689-690 [153 Cal.Rptr. 459].)

The court utilized an objective test, stating that a court must evaluate an officer's conduct based on whether it would induce an otherwise law-abiding person — *not* the specific defendant on trial — to engage in illicit activity. A court will "presume that such a person would normally resist the temptation to commit a crime presented by the simple opportunity to act unlawfully." (*Id.* at p. 690.)

The *Barraza* court wrote,

Official conduct that does no more than offer that opportunity to the suspect — for example, a decoy program — is therefore permissible; but it is impermissible for the police or their agents to pressure the suspect by overbearing conduct such as badgering, cajoling, importuning, or other affirmative acts likely to induce a normally law-abiding person to commit the crime.

(*Ibid.*) The court also noted that "the determination of what police conduct is impermissible must to some extent proceed on an ad hoc basis," but offered two guiding principles:

First, if the actions of the law enforcement agent would generate *in a normally law-abiding* person a motive for the crime other than ordinary criminal intent, entrapment will be established. Second, affirmative police conduct that would make commission of the crime unusually attractive *to a normally law-abiding person* will likewise constitute entrapment.

(*Id.* at p. 690, emphasis added.)

Appellant argues:

Here, Agent Connolly's conduct clearly violates established standards of what permissible police conduct is when investigating offenses. Agent Connolly posed as - and actually became - a significant client for dancers, spending hundreds of dollars on VIP dances and tips. None of the dancers approached Agent Connolly unprompted about drugs transactions; instead Agent Connolly introduced the idea of drugs transactions along with a dangled lure of purchasing further expensive

dances. [Citations.] In effect, Agent Connolly tied the dancers' legitimate income from dancing to their willingness to participate in his drugs sting aimed at Appellant.

(AOB at pp. 6-7, citations to the record omitted.)

Appellant cites *People v. Martinez*,⁴ for the proposition that similar conduct has been held to constitute entrapment as a matter of law. (*People v. Martinez* (1984) 157 Cal.App.3d 660 [203 Cal.Rptr. 833].) We disagree entirely with appellant's reliance on that case and his characterization of the agent's conduct as entrapment.

The ALJ addressed and rejected appellant's entrapment argument in the decision:

The Respondent argued that, with respect to the drug sales, the Department had entrapped it. In making this argument, the Respondent noted that the drugs (at least in some cases) were not already at the Licensed Premises, but had to be brought there once the agents offered to buy them. This argument is rejected. Entrapment requires some level of cajoling or coercing, which is absent in this case. Rather, Agent Connolly simply asked if he could buy some cocaine. Providing an individual with the opportunity to violate the law (i.e., sell cocaine) is not entrapment.

(FF ¶ 36.) We agree.

As the findings show, it was the **dancer** who first brought up the subject of cocaine, not the agent, on his first undercover visit to the premises. Only after the subject of cocaine was brought up **by her** did the agent ask about purchasing some:

After a brief discussion, Kervorkian asked him if he wanted a lap dance. He said that he did and they went to a different area of the Licensed Premises. She began to dance, during which she asked if he wanted to "do a bump" off her ass. She also stated that, if they went to the VIP room, he could do it off her chest. He replied that he did not have any cocaine and asked her if she could get him some. . . .

(FF ¶ 5.)

⁴ Validity of this case was questioned by four subsequent cases.

It was not the agent who induced the dancer to commit a crime when she is the one who brought up the subject of cocaine. This is particularly true when, at that point in time, no tips had even changed hands. The sequence of events in this finding completely contradicts appellant's assertion that "[n]one of the dancers approached Agent Connolly unprompted about drugs transactions. . ." (AOB at p. 6.)

Appellant has not identified any evidence that Agent Connolly employed "overbearing conduct such as badgering, cajoling, importuning, or other affirmative acts likely to induce a normally law-abiding person to commit the crime." (*Barraza, supra* at p. 690.) As such, we must agree with the Department's determination that the agent's actions did not constitute entrapment.

II

PENALTY

Appellant contends that the penalty is excessive, and constitutes an abuse of discretion, because it fails to take into consideration appellant's nine years of discipline-free operation to potentially mitigate the penalty. (AOB at p. 7.)

The Board will not disturb the Department's penalty order in the absence of an abuse of discretion. (*Martin v. Alcoholic Bev. Control Appeals Bd. & Haley* (1959) 52 Cal.2d 287, 291 [341 P.2d 296].) "'Abuse of discretion' in the legal sense is defined as discretion exercised to an end or purpose not justified by and clearly against reason, all of the facts and circumstances being considered. [Citations.]" (*Brown v. Gordon* (1966) 240 Cal.App.2d 659, 666-667 [49 Cal.Rptr. 901].)

If the penalty imposed is reasonable, the Board must uphold it even if another penalty would be equally, or even more, reasonable. "If reasonable minds might differ as to the propriety of the penalty imposed, this fact serves to fortify the conclusion that

the Department acted within its discretion.” (*Harris v. Alcoholic Bev. Control Appeals Bd.* (1965) 62 Cal.2d 589, 594 [43 Cal.Rptr. 633].)

Rule 144 provides:

In reaching a decision on a disciplinary action under the Alcoholic Beverage Control Act (Bus. and Prof. Code Sections 23000, *et seq.*), and the Administrative Procedures Act (Govt. Code Sections 11400, *et seq.*), the Department shall consider the disciplinary guidelines entitled “Penalty Guidelines” (dated 12/17/2003) which are hereby incorporated by reference. Deviation from these guidelines is appropriate where the Department in its sole discretion determines that the facts of the particular case warrant such a deviation - such as where facts in aggravation or mitigation exist.

(Cal. Code Regs., tit. 4, § 144.)

Among the mitigating factors provided by the rule are the length of licensure without prior discipline, positive actions taken by the licensee to correct the problem, cooperation by the licensee in the investigation, and documented training of the licensee and employees. Aggravating factors include, *inter alia*, prior disciplinary history, licensee involvement, lack of cooperation by the licensee in the investigation, and a continuing course or pattern of conduct. (*Ibid.*)

The Penalty Policy Guidelines further address the discretion necessarily involved in an ALJ's recognition of aggravating or mitigating evidence:

Penalty Policy Guidelines:

The California Constitution authorizes the Department, in its discretion[,] to suspend or revoke any license to sell alcoholic beverages if it shall determine for good cause that the continuance of such license would be contrary to the public welfare or morals. The Department may use a range of progressive and proportional penalties. This range will typically extend from Letters of Warning to Revocation. These guidelines contain a schedule of penalties that the Department usually imposes for the first offense of the law listed (except as otherwise indicated). These guidelines are not intended to be an exhaustive, comprehensive or complete list of all bases upon which disciplinary action may be taken against a license or licensee; nor are these guidelines intended to

preclude, prevent, or impede the seeking, recommendation, or imposition of discipline greater than or less than those listed herein, in the proper exercise of the Department's discretion.

(Ibid.)

The ALJ found as follows in regards to the penalty:

The Department requested that the Respondent's license be revoked based on the totality of the violations—drug offenses, lewd-conduct offenses, drink-solicitation offenses, and exceeding-license-privileges offenses. In making this argument, the Department noted that most of the violations had standard penalties which ranged up to revocation. In addition to the entrapment and retaliation defenses set forth above, the Respondent argued that any problems had been corrected. Accordingly, the Respondent argued that a stayed revocation, at most, was appropriate.

Section 24200.5 provides that "the [D]epartment shall revoke a license" for any violation thereof. Case law provides that this section as requiring some form of revocation, i.e., outright revocation or stayed revocation is appropriate depending upon the circumstances. Similarly, rule 144 provides that the term "'revocation' includes a period of stayed revocation as well as outright revocation of the license. For drug-related offenses, both under section 24200.5(a) and under the various Health and Safety Code sections, the recommended penalty pursuant to rule 144 is revocation.

With respect to the other types of violations at issue here, rule 144 provides for a range of penalties. For violations involving drug paraphernalia, the recommended penalty is revocation stayed for 3 years plus 20-day suspension. For exceeding license privileges, the penalty ranges from a 5-day suspension up to revocation. For lewd conduct violations, the penalty ranges from a 30-day suspension up to revocation.

Finally, for soliciting or accepting drinks under rule 144, the recommended penalty is a 15-day suspension.

A heavy penalty is appropriate in the present case, particular for the sales of cocaine and related drug offenses. There were multiple sales of cocaine by dancers working at the Licensed Premises on six different days with little attempt to hide them. The penalty recommended herein complies with rule 144.

(Decision at pp. 17-18, footnotes omitted.)

Appellant faults the Department for failing to mitigate the penalty, in view of its penalty-free operation over a period of nine years. However, as we have said time and again, this Board's review of a penalty looks only to see whether it can be considered reasonable, and, if it is reasonable, the Board's inquiry ends there. The *extent* to which the Department considers mitigating or aggravating factors is a matter entirely within its discretion — pursuant to rule 144 — and the Board may not interfere with that discretion absent a clear showing of abuse of discretion, which has not been shown here. We find the decision in regards to the penalty to be entirely reasonable.

ORDER

The decision of the Department is affirmed.⁵

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

⁵ 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 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.* Service on the Board pursuant to California Rules of Court (Rule 8.25) should be directed to: 400 R Street, Ste. 320, Sacramento, CA 95811 and/or electronically to: abcboard@abcappeals.ca.gov.

APPENDIX

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

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

GC BROTHERS ENTERTAINMENT LLC
THE PALMS
2540 N. PALM DR.
SIGNAL HILL, CA 90755-4009

ON-SALE GENERAL PUBLIC PREMISES
- LICENSE

LAKELWOOD DISTRICT OFFICE

File: 48-485515

Reg: 20090465

CERTIFICATE OF DECISION

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

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 October 25, 2023. Pursuant to Government Code section 11519, this decision shall become effective 30 days after it is delivered or mailed.

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

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

On or after December 11, 2023, a representative of the Department will contact you to arrange to pick up the license certificate.



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

Sacramento, California

Dated: October 31, 2023

Matthew D. Botting
General Counsel

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

IN THE MATTER OF THE ACCUSATION AGAINST:

GC Brothers Entertainment LLC	}	File: 48-485515
dba The Palms	}	
2540 N. Palm Dr.	}	Reg.: 20090465
Signal Hill, California 90755-4009	}	
	}	License Type: 48
Respondent	}	
	}	Word Count: 36,000 & 20,000
	}	
	}	Reporter:
	}	Savauna Ramirez & Hanna Jenkin
	}	Kennedy Court Reporters
	}	
<u>On-Sale General Public Premises License</u>	}	<u>PROPOSED DECISION</u>

Administrative Law Judge Matthew G. Ainley, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter at by videoconference on March 23-24, 2023.

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

Roger Jon Diamond, attorney-at-law, represented respondent GC Brothers Entertainment LLC. George Cataloiu, Managing Member of the Respondent, was present.

The Department seeks to discipline Respondent's license on the grounds that, on September 19, 2019, October 3, 2019, November 14, 2019, November 21, 2019, December 12, 2019, and January 30, 2020 (counts 1, 2, 5, 19, 27, 36, and 37), its agent or employee sold, furnished, or offered to sell or furnish cocaine upon the licensed premises in violation of California Health and Safety Code section 11352. (Exhibit 1.)

Additionally, the Department seeks to discipline Respondent's license on the grounds that, on January 30, 2020 (count 39), its agent or employee permitted a patron to possess cocaine for the purposes of sale upon the licensed premises in violation of California Health and Safety Code section 11351. (Exhibit 1.)

The Department also alleged that, between the dates of September 19, 2019 and January 30, 2020 (count 40), the Respondent knowingly permitted the illegal sale, or negotiations

for the sales, of controlled substances or dangerous drugs upon the licensed premises in violation of Business and Professions Code section 24200.5(a).¹ (Exhibit 1.)

The Department seeks to discipline the Respondent's license on the grounds that, on October 23, 2019, November 14, 2019, November 21, 2019, and December 12, 2019 (counts 3, 11, 12, 18, and 29), the Respondent permitted people to smoke or ingest cannabis products within the licensed premises, a public place, in violation of Health & Safety Code section 11362.3(a)(1) (Exhibit 1.)

The Department seeks to discipline the Respondent's license on the grounds that, on or about November 21, 2019 (count 21), the Respondent possessed with intent to deliver, furnish, or transfer drug paraphernalia, as defined in Health and Safety Code section 11014.5, in violation of Health and Safety Code section 11364.7(a), while holding an alcoholic beverage license within the meaning of Health and Safety Code section 11364.7(d). (Exhibit 1.)

The Department seeks to discipline the Respondent's license on the grounds that, on October 23, 2019, November 14, 2019, November 21, 2019, December 12, 2019, and January 30, 2020 (counts 4, 10, 20, 26, and 30), it exceeded its licensed privileges by permitting consumption of an alcoholic beverage in an unlicensed area in violation of sections 23300 and 23355. (Exhibit 1.)

The Department seeks to discipline the Respondent's license on the grounds that, on November 14, 2019, November 21, 2019, December 12, 2019, and January 30, 2020 (counts 6, 7, 8, 15, 16, 17, 23, 24, 25, 33, 34, 35, and 38), the Respondent permitted various individuals to violate the prohibitions contained in rule 143.3(1)² and rule 143.3(2) while inside the above-captioned premises. (Exhibit 1.)

The Department seeks to discipline the Respondent's license on the grounds that, on November 14, 2019, November 21, 2019, December 12, 2019, and January 30, 2020 (counts 9, 13, 14, 22, 28, 31, and 32), it permitted various women to solicit the purchase or sale of any drink inside the licensed premises, or to accept any drink purchased or sold there, a portion of which was intended for the consumption or use of such employee, in violation of rule 143. (Exhibit 1.)

Oral evidence, documentary evidence, and evidence by oral stipulation on the record was received at the hearing. The matter was argued and submitted for decision on March 24, 2023.

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

² All rules referred to herein are contained in title 4 of the California Code of Regulations unless otherwise noted.

FINDINGS OF FACT

1. The Department filed the accusation on September 11, 2020.
2. The Department issued a type 48, on-sale general license to the Respondent for the above-described location on April 14, 2010 (the Licensed Premises).
3. There is no record of prior departmental discipline against the Respondent's license.

September 19, 2019 (Count 1)

4. On September 19, 2019, Agent M. Connolly and his partners entered the Licensed Premises. They ordered alcoholic beverages at the fixed bar, after which he was introduced to a dancer, Corinne Kervorkian (aka "Foxxxy").
5. After a brief discussion, Kervorkian asked him if he wanted a lap dance. He said that he did and they went to a different area of the Licensed Premises. She began to dance, during which she asked if he wanted to "do a bump" off her ass. She also stated that, if they went to the VIP room, he could do it off her chest. He replied that he did not have any cocaine and asked her if she could get him some. Agent Connolly paid Kervorkian \$20 for the lap dance and gave her another \$20 for the cocaine.
6. Kervorkian made some phone calls. Later, Kervorkian told Agent Connolly that, if he was serious about buying cocaine, they needed to go to the VIP area. Once in the VIP area, she danced a little bit and told him that she was having trouble reaching her contacts. She also told him that two eight-balls³ of cocaine would cost \$465. He asked for one eight-ball for \$260. Agent Connolly paid for the lap dance, gave Kervorkian \$20 for helping with the cocaine, and paid her \$260.
7. Kervorkian left, then returned and handed him a cardboard box of the type used for earplugs. She told him that the cocaine was inside. Agent Connolly went to the restroom and opened the box. There was a white powdery substance inside. (Exhibit 2.) This substance was subsequently tested and determined to be cocaine. (Exhibit 24.)
8. Kervorkian told Agent Connolly that she could get him cocaine in the future and gave him her phone number.

³ An eight-ball is 1/8 of an ounce of cocaine, equal to approximately 3.54 grams.

**October 3, 2019
(Count 2)**

9. On October 2, 2019, Agent Connolly texted Kervorkian and asked if she could get him more cocaine. She said that she could and asked him to meet her at the Licensed Premises.

10. On October 3, 2019, Agent Connolly and his partner entered the Licensed Premises. He met Kervorkian and paid her \$425 for two eight-balls of cocaine. Kervorkian handed him a clear baggie containing a white powder. (Exhibit 3.) This transaction took place openly, with security guards in the vicinity. This substance was subsequently tested and determined to be cocaine. (Exhibit 25.)

11. Kervorkian asked him for a tip and he gave her \$20. He also paid her \$100 for five songs worth of lap dances. At the end of the last dance, he gave her another \$20 tip.

**October 23, 2019
(Counts 3-4)**

12. On October 22, 2020, Agent Connolly texted and spoke to Kervorkian. She was upset that he only tipped her \$20 for the cocaine, so they argued.

13. On October 23, 2019, Agent Connolly and Agent D. Vergara entered the Licensed Premises. Outside, they spoke to a Katie Kuns (aka "Roxxy"), who said that she would meet them inside. Once inside, Kuns approached Agent Connolly and introduced herself and gave him her phone number.

14. Agent Vergara ordered a whiskey and Coke and a Bud Light. He took both drinks outside with him to an outdoor lounge area, where he consumed some of them. The outdoor lounge area was outside of the Licensed Premises as delineated on the diagram of licensed premises. (Exhibit 13.) It had been set up with couches and was separated from the parking area by some plants and three posts. (Exhibits 6 & 22.) There was a dancer and a security guard outside, but no one tried to stop him.

15. Agent Vergara saw a man and a woman sitting in the outdoor lounge area. The woman appeared to be rolling a cannabis cigarette. She began to smoke it. Agent Vergara smelled marijuana when she did so.

**November 14, 2019
(Counts 5-13)**

16. Agent Connolly, Agent S. Zavala, and Agent Vergara entered the Licensed Premises on November 14, 2019. Agent Zavala sat down at a cocktail table. Agent Vergara ordered a Bud Light beer.

17. Agent Vergara took his beer to the outside lounge area. He consumed a portion of the beer. There were other people in the outside lounge area, including one who appeared to be a dancer. No one tried to stop him.

18. Agent Connolly noticed Kuns, who asked him to take her to the VIP area. He agreed. Once in the VIP area, she began to dance for him. While dancing, she pulled down her top and exposed her areola, which she pinched. She also pulled down her bikini bottom, exposing her genitalia. She touched his crotch, then sucked her thumb. She sat on his lap and bounced up and down, rocking her hips while pushing them into him. By this time she had covered her breasts up; she pushed them into his face and moved them back and forth.

19. Agent Connolly tipped Kuns, then asked him if she could get him cocaine. She said that she could and that it would be \$200 for an eight-ball. He agreed and gave her the money, after which Kuns left.

20. Agent Connolly went to the fixed bar, but had trouble buying a drink. A woman identified only as Flame (who had been dancing on the main stage earlier) asked if he needed any help. After he said that he did, she called over the bartender. She also asked him to buy her a beer. He agreed and told her that he wanted a Hennessy's⁴ and ginger ale. Flame spoke to the bartender.

21. Kuns came over and Agent Connolly asked her if she wanted a drink. She said that she wanted a sugar-free Red Bull. Kuns then handed him a substance which was later tested and determined to be cocaine. (Exhibit 26.) She asked for a tip and he gave her \$20.

22. The bartender served all three of them their drinks. Flame was served some kind of mixed drink with a shot. They took their drinks to the outdoor lounge area. Security guards moved in and out of the outdoor lounge.

23. Flame opened up her purse and rolled a marijuana cigarette. She lit it up and smoked it. The guards did not try to stop her.

⁴ Hennessy's is a well-known brand of cognac, an alcoholic beverage.

24. Valerie Salvador, a dancer, approached Agent Zavala while he sat at a cocktail table. A waitress, Jasmine, came to the table. Salvador asked Zavala if he would buy her a vodka and soda. He agreed and ordered a Bud Light for himself and a Skyy vodka and soda for her. He paid \$14 for the two drinks and gave Jasmine a \$2 tip.

25. Salvador asked Agent Zavala if he wanted a lap dance. He said that he did. When the lap dance was over, they went to the bar counter. She asked him to buy her a vodka and soda. He ordered a drink for himself and the vodka and soda. The bartender served the drinks to him. He paid \$14 and gave the bartender a \$2 tip.

November 21, 2019
(Counts 14-22)

26. Agent Connolly and Agent Zavala once again entered the Licensed Premises. Agent Connolly recognized Kuns, who came over and spoke to him. He said that he wanted a drink; she replied that she wanted a bottle of water and asked him if he would buy it for her. He gave her \$20 and she obtained both drinks.

27. They went to the VIP room and she began to give him a lap dance. During the dance she pulled down her top and exposed her breasts. She straddled him and began to rock up and down and lean back. She sucked her thumb, then pulled down her bikini bottom and exposed her vulva.

28. Agent Connolly asked her about cocaine. She said that it would cost \$250 and that it would be delivered. He paid her and she left.

29. Agent Connolly went to the area in which the main stage was located. Kuns returned and handed him a baggie containing a white powdery substance. (Exhibit 5.) This exchange took place in the open. The powdery substance was subsequently tested and determined to be cocaine. (Exhibit 27.)

30. A group of males entered the Licensed Premises and sat down near the VIP area. Some dancers also entered. One of the men pulled out a marijuana pipe, which he lit. He began to smoke it. Agent Connolly was able to smell the smoke and determined that it was from marijuana burning.

31. Kuns asked him to take her to the VIP area. He did and she gave him another lap dance. Her routine was the same as the earlier lap dance.

32. Agent Zavala, meanwhile, was approached by Jade Geneva (aka "Alexis"), a dancer. She asked him if he would buy her a vodka and soda. He agreed and ordered her a drink

and a Bud Light beer from Jasmine. Jasmine served the drinks to them. He paid \$14 and gave her a \$2 tip.

33. Geneva asked him if he wanted a lap dance. He agreed to pay for two dances. When the dances were over, Jasmine approached. Agent Zavala ordered a Bud Light beer. Geneva asked him to buy her a vodka and soda. He agreed. Jasmine obtained and served the two drinks, for which Agent Zavala paid \$14. He also gave Jasmine a \$2 tip.

34. Geneva subsequently solicited a third vodka and soda from Agent Zavala. Once again, Jasmine took their order and served them their drinks. Agent Zavala paid \$14 for the drinks and gave Jasmine a \$2 tip.

35. Agent Connolly and Kuns went to the outside lounge area. On their way outside, Agent Connolly spoke to Agent Zavala and asked him to join them. Agent Zavala asked Jasmine if they could take their drinks outside; she said that they could. Agent Connolly still had his drink, a Hennessy's, from earlier. He consumed it while in the outside lounge.

36. A female dancer was smoking from a glass marijuana pipe. Agents Connolly and Zavala were able to smell it—it smelled like burnt marijuana. Although guards were moving in and out, they did not try to stop Agent Connolly or Agent Zavala from consuming their drinks, nor did they try to stop the dancer from smoking.

37. Agent Connolly walked back inside and ordered a drink from the bartender. He also asked for a pair of scissors. Agent Connolly told the bartender that he wanted to cut up a couple of straw because Agent Zavala was a germaphobe and did not want to use a dollar bill to snort cocaine. Agent Zavala held up the bag of cocaine to show the bartender. The bartender cut up two straws. (Exhibit 7.) He stated that Agent Zavala should go to the bank and get a new \$2 bill to keep in his wallet so that it would be germ free.

38. Agents Connolly and Zavala exited. As they were walking out the door, Agent Zavala showed the cocaine to the doorman, who identified himself as Devlin (aka "Dee"). He asked Devlin if he had any straws. Devlin said to hold on and went inside. He returned with two straws, which he gave to Agent Zavala. Agent Zavala asked Devlin if he wanted to join in; Devlin said no, but he would party if they had good weed.

December 12, 2019
(Counts 23-29)

39. Agents Connolly and Zavala returned to the Licensed Premises on December 12, 2019. Agent Connolly spoke to Kuns, who asked him to take her to the VIP room. Once there, she gave him a lap dance. During this dance she pulled down her bikini top and

exposed her breasts. She sat on his lap and began to move back and forth and bounce up and down. She put her crotch in his face, touching it.

40. They went back to the main area. He said that he was going to get a drink. She offered to get it and asked him to buy her a bottle of water. She obtained a Hennessy's and ginger ale and a water from the bartender. He paid for both drinks. They took their drinks to the outside lounge area, where they consumed them.

41. Kuns asked him if he wanted more cocaine. He said that he did not. She said that her dealer was nearby. He turned her down again, explaining that he was going to an event later.

42. During this time, Agent Zavala was seated inside the Licensed Premises. He noticed Geneva and struck up a conversation with him. She told him that she needed a shot. When Jasmine came to the table, Agent Zavala ordered a Bud Light beer. Geneva asked him to buy her a mango shot. He agreed. Jasmine served both drinks to them. Agent Zavala paid \$14 for the drinks and gave Jasmine a \$2 tip.

43. Geneva asked him if he wanted a lap dance. He said that he did and they went to the lap dance area. Afterward, they returned to the table. Jasmine came over and he ordered a Bud Light beer. Once again, Geneva asked him to buy her a mango shot. He agreed. Jasmine served the drinks to them. He gave her \$14 for the drinks and \$2 for her tip.

44. Jasmine approached the table again and he ordered a Bud Light. Geneva asked him to buy her a mango shot. He agreed and Jasmine served the drinks to them. Agent Zavala paid \$14 for the drinks and gave Jasmine a \$2 tip.

45. Agent Zavala joined Agent Connolly and Kuns in the outdoor lounge area. He took his beer with him and consumed a portion of it. Security guards were always present, but none of them tried to stop him.

46. Camille, one of the dancers, was also in the outdoor lounge area. She rolled a marijuana cigarette and lit it. Agent Connolly was able to smell burning marijuana. Camille offered to let Agents Connolly and Zavala smoke some of it for \$5. No one tried to stop Camille.

January 30, 2020
(Counts 30-40)

47. On January 30, 2020, Agents Connolly and Vergara returned to the Licensed Premises. Agent Connolly had texted Kervorkian and Kuns beforehand to make sure that

they would be there that night. Kervorkian had told him that he had a proposition for him.

48. Once the agents had entered the Licensed Premises, Kervorkian approached Agent Connolly and said that she wanted to smooth things over. She gave him her dealer's phone number and asked him to be discrete. Agent Connolly asked if he would be available later that night. She said that it depended on the amount. He said that he wanted two eight-balls of cocaine, which would cost \$200. He asked her to send the dealer's contact information to him, which she did.

49. Kervorkian also asked him to buy her a shot. He agreed.

50. Agent Connolly sent the contact number to back-up agents, who determined that it belonged to an individual named Briand Jensen.

51. Kervorkian began to dance on the stage. During her dance, she pulled up her bikini top, exposing her breasts. Agent Connolly was approximately two feet away from her at the time. While her breasts were still exposed, Kervorkian moved to within one foot of Agent Connolly and began rubbing her genitals. (Exhibits 14-16.)

52. Agent Connolly went to the bar and ordered another Hennessy's and ginger ale. Kervorkian asked him to order a drink for her as well. He did so, paying for both drinks.

53. Later, Kervorkian told Agent Connolly that Jensen was there. He gave her \$440 in marked bills. She took it, left, and returned with two baggies containing a substance which appeared to be cocaine. She handed it to him in the main stage area. The substance inside both baggies was later tested and determined to be cocaine. (Exhibits 28-29.) He gave her a \$100 tip for helping.

54. Agent Connolly went to the restroom. As he was leaving, he ran into Kuns. She asked him if he wanted any cocaine. He said that he did not, but that he would check with his partners and get back to her.

55. Agent Connolly and Kuns went to the outdoor lounge area. He had his drink, a Hennessy's and ginger ale, with him. He consumed some of it. The doorman was also in the lounge area. No one tried to stop him.

56. Agent Connolly asked Kuns for an eight-ball of cocaine. They agreed upon a price of \$200, which he gave to her. She went inside the Licensed Premises. He entered as well. He saw Kuns talking to Joel Diaz. They were moving their hands in a manner consistent with them passing something from one to the other. Later, Kuns approached Agent Connolly and handed him a small plastic baggie with smiley faces on it. The

baggie contained a white powdery substance. The substance was later tested and determined to be cocaine. (Exhibit 30.)

57. Kuns performed another lap dance for Agent Connolly. During this dance she straddled him and moved back and forth. She also stood on a bench and placed her crotch into his face.

58. In the meantime, Agent Vergara ordered a bottle of Corona beer. He took the beer outside and consumed a portion of it. Since no one was in the outside lounge area, he went back inside.

59. Agent Vergara subsequently purchased another Corona beer, which he took outside. There were several other patrons and a security guard in the outside lounge area. Agent Vergara consumed a portion of his beer; no one tried to stop him.

60. When back-up officers responded, Jensen, Diaz, Kervorkian, and Kuns were arrested. Dep. C. Blair, Signal Hill P. D., found cash and two baggies of suspected cocaine on Diaz. They found the marked bills on Jensen.

61. Dennis Andra and Shakon Clement are employed by the Respondent. They testified that, in May 2019, they saw a man angrily punching a table and breaking it. They went over to see what the problem was and to calm the man down. They finally asked the man to leave, which he did.

62. George Cataloiu, the managing member of the Respondent, told his employees to make sure that the man did not return to the Licensed Premises. The Respondent has a scanner system which takes a video of each patron's ID when they enter. Andra used the system and determined that the person was named Brad Beach.

63. The video is recorded over after 30 days. At the conclusion of this investigation, the Department left some paperwork at the Licensed Premises. The name Brad Beach was on some of the paperwork.

64. Supervising Agent-in-Charge Bradley Beach testified that he has been to the Licensed Premises in the past. He went once, approximately 10 years ago, while off-duty and has been twice since then while on-duty. He denied damaging any furniture at the Licensed Premises. He is unaware of any agent damaging any furniture.

65. Cataloiu spoke to SAC Beach after this incident. SAC Beach informed him that the outdoor lounge area was unlicensed. Cataloiu testified that he did not know this. The outdoor lounge area had been constructed to move smokers away from the front door and the neighborhood to the parking area.

66. 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. Health and Safety Code section 11351 makes it a felony to possess for purposes of sale any controlled substance
 - (1) specified in
 - (a) subdivision (b), (c), or (e) of section 11054,
 - (b) paragraph (14), (15), or (20) of subdivision (d) of section 11054,
 - (c) subdivision (b) or (c) of section 11055, or
 - (d) subdivision (h) of section 11056, or
 - (2) classified in Schedule III, IV, or V which is a narcotic drug.
4. Health & Safety Code section 11352 makes it a felony to transport, import into this state, sell, furnish, administer, or give away, or offer to transport, import into this state, sell, furnish, administer, or give away, or attempt to import into this state or transport any controlled substance
 - (1) specified in
 - (a) subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054,
 - (b) paragraph (14), (15), or (20) of subdivision (d) of Section 11054,
 - (c) subdivision (b) or (c) of Section 11055, or
 - (d) subdivision (h) of Section 11056, or
 - (2) classified in Schedule III, IV, or V which is a narcotic drug,
unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state.
5. Cause for suspension or revocation of the Respondent's license exists under Article XX, section 22 of the California State Constitution, and sections 24200(a) and (b) for the violations section 11352 alleged in counts 1, 2, 5, 19, 27, 36, and 37. (Findings of Fact ¶¶ 4-11, 19, 21, 28-29, 41, 47-48, 53-54 & 56.)

6. The evidence established that, on September 19, 2019 (count 1), October 3, 2019 (count 2), January 30, 2020 (count 36), Corinne Kervorkian, a dancer at the Licensed Premises, sold cocaine to Agent M. Connolly inside the Licensed Premises. The negotiations for each sale took place inside the Licensed Premises. (Findings of Fact ¶¶ 4-11, 47-48 & 53.)
7. The evidence also established that, on November 14, 2019 (count 5), November 21, 2019 (count 19), December 12, 2019 (count 27), and January 30, 2020 (count 37), Katie Kuns, a dancer at the Licensed Premises, sold cocaine to Agent M. Connolly inside the Licensed Premises. The negotiations for these sales took place inside the Licensed Premises. (Findings of Fact ¶¶ 19, 21, 28-29, 41, 47, 54 & 56.)
8. Cause for suspension or revocation of the Respondent's license exists under Article XX, section 22 of the California State Constitution, and sections 24200(a) and (b) for the violations section 11351 alleged in count 39. (Findings of Fact ¶¶ 55-56 & 60.)
9. With respect to this count, the evidence established that, as part of her sales to Agent Connolly, Kuns arranged for Joel Diaz to bring cocaine to the Licensed Premises. Diaz provided some of the cocaine to Kuns, who sold it to Agent Connolly, but kept some with him. He still had the cocaine on him when he was arrested later that night. (Findings of Fact ¶¶ 55-56 & 60.)
10. Section 24200.5(a) provides that the Department shall revoke a license "[i]f a retail licensee has knowingly permitted the illegal sale, or negotiations for the sales, of controlled substances or dangerous drugs upon his or her licensed premises." It further provides that "[s]uccessive sales, or negotiations for sales, over any continuous period of time shall be deemed evidence of permission." As noted above, the negotiations for the sales of cocaine on September 19, 2019, October 3, 2019, November 14, 2019, November 21, 2019, December 12, 2019, and January 30, 2020 all took place inside the Licensed Premises. In every case, these negotiations took place between dancers employed by the Licensed Premises and law enforcement personnel. (Findings of Fact ¶¶ 4-11, 19, 21, 28-29, 41, 47-48, 53-54 & 56.)
11. Health and Safety Code section 11364.7(a) provides, in part, that "any person who delivers, furnishes, or transfers, possesses with intent to deliver, furnish, or transfer, or manufactures with the intent to deliver, furnish, or transfer, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance . . . in violation of this division, is guilty of a misdemeanor."

12. Health and Safety Code section 11364.7(d) provides that “[t]he violation, or the causing or the permitting of a violation, of subdivision (a), (b), or (c) by a holder of a business or liquor license issued by a city, county, or city and county, or by the State of California, and in the course of the licensee’s business shall be grounds for the revocation of that license.”

13. Cause for suspension or revocation of the Respondent’s license exists under Article XX, section 22 of the California State Constitution, and sections 24200(a) and (b) for the violation of Health & Safety Code section 11364.7(a)(1) alleged in count 21. (Findings of Fact ¶¶ 37-38.)

14. Not all drug paraphernalia is dedicated for drug use only. Some paraphernalia has other uses which are perfectly legal. The paraphernalia in this case is such an item—a straw. While there is no doubt that it is legal to provide straws to a person for the purpose of drinking a beverage, it is clear that the straws provided to the agents in this case were specifically intended to be used for snorting cocaine. After purchasing cocaine from Kuns, Agent Connolly asked both the bartender and the doorman (Deviin) for some straws in order to snort cocaine. Agent S. Zavala held up the baggie of cocaine and showed it to both the bartender and Devlin. Both the bartender and Devlin provided the straws as requested. Based on these conversations, it is clear that Devlin knew that the straws he ultimately provided to the agents were intended to be used as drug paraphernalia. (Findings of Fact ¶¶ 37-38.)

15. Section 23300 provides that “no person shall exercise the privilege or perform any act which a licensee may exercise or perform under the authority of a license unless the person is authorized to do so by a license issued pursuant to this division.”

16. Section 23355 provides that, except as otherwise provided in the Alcoholic Beverage Control Act and subject to the provisions of Section 22 of Article XX of the Constitution, a license “authorize[s] the person to whom issued to exercise the rights and privileges specified in this article and no others at the premises for which issued during the year for which issued.”

17. Cause for suspension or revocation of the Respondent’s license exists under Article XX, section 22 of the California State Constitution, and sections 24200(a) and (b) for the violations of section 23300 and 23355 alleged in counts 4, 10, 20, 26, and 30. (Findings of Fact ¶¶ 14, 17, 20-22, 35, 40, 43-45, 55 & 58-59.)

18. With respect to all five counts, the Respondent set up an outdoor lounge area for people to smoke. The outdoor lounge area was outside the boundaries of the Licensed Premises. Nonetheless, the agents were able to take their alcoholic beverages outside on October 23, 2019, November 14, 2019, November 21, 2019, December 12, 2019, and

January 30, 2020. Often, the agents were accompanied by dancers employed by the Licensed Premises. Even though there were security guards in the outdoor lounge area, no one tried to stop the agents from consuming their alcoholic beverages. (Findings of Fact ¶¶ 14, 17, 20-22, 35, 40, 43-45, 55 & 58-59.)

19. Health & Safety Code section 11362.3(a)(1) provides that Health and Safety Code section 11362.1 (which provides that it is legal to smoke cannabis in certain circumstances) does not permit any person to smoke or ingest cannabis or cannabis products in a public place, except in accordance with Section 26200 of the Business and Professions code (dealing with local control over cannabis uses).

20. Cause for suspension or revocation of the Respondent's license exists under Article XX, section 22 of the California State Constitution, and sections 24200(a) and (b) for the violation of Health & Safety Code section 11362.3(a)(1) alleged in count 18. (Finding of Fact ¶ 30.)

21. On November 21, 2019, a group of men entered the Licensed Premises and sat down near the VIP area. One of the men pulled out a marijuana pipe and began to smoke it. Agent Connolly was able to smell the marijuana as it burned. (Finding of Fact ¶ 30.)

22. Cause for suspension or revocation of the Respondent's license does **not** exist for the violations of Health & Safety Code section 11362(a)(1) alleged in counts 3, 11, 12, and 29. While it is illegal to smoke cannabis in a premises holding an alcoholic beverage license, none of these incidents alleged took place inside the Licensed Premises. Rather, all four incidents took place in the outside lounge area described above.⁵ (Findings of Fact ¶¶ 15, 23 & 46.)

23. Rule 143.3(1) prohibits a licensee from permitting any person to perform acts of, or acts which simulate, (a) sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts which are prohibited by law, (b) the touching, caressing, or fondling of the breast, buttocks, anus, or genitals, and (c) the displaying of the pubic hair, anus, vulva, or genitals. All such acts or conduct are contrary to public welfare or morals and, therefore, no on-sale license shall be held at any premises where a licensee permits such conduct or acts.

24. Rule 143.3(2) permits live entertainment on a licensed premises by entertainers whose breasts, buttocks, or both are exposed to view, provided that such entertainers

⁵ It is perfectly acceptable, and well within the Department's prerogative, to plead inconsistent allegations. In this case, counts 4, 10, 20, 26, and 30 (alleging consumption outside the Licensed Premises) and counts 3, 11, 12, and 29 (alleging cannabis consumption inside the Licensed Premises) are directly inapposite. Any finding that one group of counts has been sustained necessarily means that the other group cannot.

perform upon a stage at least 18 inches above the immediate floor level and removed at least six feet from the nearest patron. Performances which violate these restrictions are contrary to public welfare or morals and, therefore, no on-sale license shall be held at any premises where a licensee permits such performances.

25. Cause for suspension or revocation of the Respondent's license exists under Article XX, section 22 of the California State Constitution, and sections 24200(a) and (b) for the violations of rule 143.3(1)(b), rule 143.3(1)(c), and rule 143.3(2) alleged in counts 6, 7, 15, 24, and 25. (Findings of Fact ¶¶ 18, 27 & 39.)

26. Cause for suspension or revocation of the Respondent's license does **not** exist for the violation of rule 143.3(1)(a), rule 143.3(1)(b), and rule 143.3(2) alleged in counts 8, 16, 17, 23, 33, 34, 35, and 38. (Findings of Fact ¶¶ 18, 27, 39, 51 & 57.)

27. With respect to counts 6 and 7, the evidence established that, on November 14, 2019, Kuns performed a lap dance during which she exposed her breast and pinched her nipple. She also pulled down her bikini bottom and exposed her genitalia. Although parts of her dance were suggestive, it did not rise to the level of a violation of rule 143.3(1)(a) as alleged in count 8.⁶ (Finding of Fact ¶ 18.)

28. With respect to count 15, the evidence established that, on November 21, 2019, Kuns performed a lap dance during which she pulled down her bikini bottom and exposed her vulva. Although she pulled down her top and exposed her breasts (a violation of rule 143.3(2), which was not pled), there is no evidence that she touched, caressed, or fondled her breast, buttocks, anus, or genitalia as alleged in count 17. Once again, although parts of her dance were suggestive, it did not rise to the level of a violation of rule 143.3(1)(a) as alleged in count 16. (Finding of Fact ¶ 27.)

29. On December 12, 2019, the evidence established that Kuns performed a lap dance during which she pulled down her bikini top and exposed her breasts in violation of rule 143.3(2) as alleged in count 25. She also pushed her crotch into Agent Connolly's face, touching it, a violation of rule 143.3(1)(b) as alleged in count 24. Once again, although Kuns' dance was suggestive, it did not rise to the level of a rule 143.3(1)(a) violation as alleged in count 23. (Finding of Fact ¶ 39.)

30. On January 30, 2020, Kuns performed a lap dance for Agent Connolly. She did not expose herself or touch herself, although she did place her crotch in his face (apparently without actually touching it). As such, there is no evidence she violated rule 143(1)(b), rule 143.3(2), or rule 143.3(1)(a) as alleged in counts 33, 34, 35. (Finding of Fact ¶ 57.)

⁶ Although Kuns exposed her breasts while within one foot of Agent Connolly, the Department did not allege a violation of rule 143.3(2) with respect to this lap dance.

31. Also on January 30, 2020, Kervorkian danced on the main stage inside the Licensed Premises. During this dance, she pulled up her bikini top and exposed her breasts. Agent Connolly was approximately two feet away from him at the time.⁷ Moving to within one foot of Agent Connolly, she began to rub her genitals.⁸ There was no evidence, however, of any conduct which would rise to the level of a rule 143.3(1)(a) violation as alleged in count 38. (Findings of Fact ¶¶ 51.)

32. Rule 143 prohibits a licensee's employees from soliciting, in the licensed premises, the purchase or sale of any drink, any part of which is for, or intended for, the consumption or use of such employee. Rule 143 further prohibits a licensee's employees from accepting, in the licensed premises, any drink purchased or sold there, any part of which is for, or intended for, the consumption or use of any employee.

33. Cause for suspension or revocation of the Respondent's license exists under Article XX, section 22 of the California State Constitution, and sections 24200(a) and (b) for the violations of rule 143 alleged in counts 9, 13, 14, 22, 28, and 32. (Findings of Fact ¶¶ 20, 22, 24, 26, 32-34, 42-44, 49 & 53.)

34. On November 14, 2019 (count 9), a dancer known only as "Flame" solicited and accepted a beer from Agent Connolly. Also on November 14, 2019 (count 13), Valerie Salvador, a dancer employed by the Licensed Premises, solicited and accepted a drink from Agent Zavala. On November 21, 2019 (count 14), Kuns solicited and accepted a water from Agent Connolly. On November 21, 2019 (count 22) and December 12, 2019 (count 28), Jade Geneva, a dancer employed by the Licensed Premises, solicited and accepted three vodkas and soda and three mango shots, respectively, from Agent Zavala. Finally, on January 30, 2020 (count 32), Kervorkian solicited and accepted two drinks from Agent Connolly. (Findings of Fact ¶¶ 20, 22, 24, 26, 32-34, 42-44, 49 & 53.)

35. Cause for suspension or revocation of the Respondent's license does not exist for the violation of rule 143 alleged in count 31. No evidence was presented that Kuns solicited or accepted a drink on January 30, 2020.

36. The Respondent argued that, with respect to the drug sales, the Department had entrapped it. In making this argument, the Respondent noted that the drugs (at least in some cases) were not already at the Licensed Premises, but had to be brought there once the agents offered to buy them. This argument is rejected. Entrapment requires some level of cajoling or coercing, which is absent in this case. Rather, Agent Connolly simply asked if he could buy some cocaine. Providing an individual with the opportunity to violate the law (i.e., sell cocaine) is not entrapment.

⁷ Another violation of rule 143.3(2) which was not pled.

⁸ A violation of rule 143.3(1)(b) which was not pled.

37. The Respondent also alleged that it has been the subject of retaliation because it ejected a man (allegedly named Brad Beach) from the Licensed Premises a few months earlier for destructive and disruptive behavior. This argument is rejected.

38. First, the evidence is tenuous that the man in question was named Brad Beach. No one identified him by name at the time; instead, his name was “determined” retroactively by viewing video. Second, Supervising Agent-in-Charge Bradley Beach testified credibly that he had not been disruptive or destructive at any time he had been at the Licensed Premises. Finally, there is no evidence of retaliation, only of an investigation which found numerous violations. The investigation did not even originate with the Department—Agent Connolly testified that the impetus for the investigation was a complaint from the Signal Hills Police Department.

PENALTY

The Department requested that the Respondent’s license be revoked based on the totality of the violations—drug offenses, lewd-conduct offenses, drink-solicitation offenses, and exceeding-license-privileges offenses. In making this argument, the Department noted that most of the violations had standard penalties which ranged up to revocation. In addition to the entrapment and retaliation defenses set forth above, the Respondent argued that any problems had been corrected. Accordingly, the Respondent argued that a stayed revocation, at most, was appropriate.

Section 24200.5 provides that “the [D]epartment shall revoke a license” for any violation thereof. Caselaw provides that this section as requiring some form of revocation, i.e., outright revocation⁹ or stayed revocation¹⁰ is appropriate depending upon the circumstances. Similarly, rule 144 provides that the term “‘revocation’ includes a period of stayed revocation as well as outright revocation of the license. For drug-related offenses, both under section 24200.5(a) and under the various Health and Safety Code sections, the recommended penalty pursuant to rule 144 is revocation.

With respect to the other types of violations at issue here, rule 144 provides for a range of penalties. For violations involving drug paraphernalia, the recommended penalty is revocation stayed for 3 years plus 20-day suspension. For exceeding license privileges, the penalty ranges from a 5-day suspension up to revocation. For lewd conduct violations, the penalty ranges from a 30 day suspension up to revocation. Finally, for soliciting or accepting drinks under rule 144, the recommended penalty is a 15-day suspension.

⁹ See, e.g., *Greenblatt v. Martin*, 177 Cal. App. 2d 738, 2 Cal. Rptr. 508 (1960) (outright revocation imposed for violations of section 24200.5).

¹⁰ See, e.g., *Harris v. Alcoholic Beverage Control Appeals Board*, 244 Cal. App. 2d 468, 36 Cal. Rptr. 697 (1964) (revocation stayed coupled with suspension imposed for violations of section 24200.5).

A heavy penalty is appropriate in the present case, particular for the sales of cocaine and related drug offenses. There were multiple sales of cocaine by dancers working at the Licensed Premises on six different days with little attempt to hide them. The penalty recommended herein complies with rule 144.

ORDER

Counts 1, 2, 5, 18, 19, 21, 27, 36, 37, 39, and 40 are sustained. For these violations, the Respondent's on-sale general public premises license is hereby revoked.

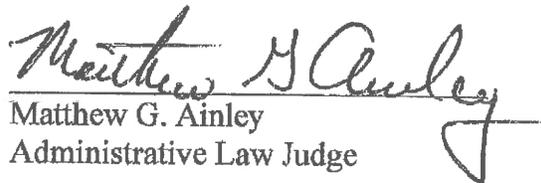
Counts 4, 10, 20, 26, and 30 are sustained. For these violations, the Respondent's on-sale public premises license is hereby suspended for 15 days.

Counts 6, 7, 15, 24, and 25 are sustained. For these violations, the Respondent's on-sale general public premises license is hereby revoked.

Counts 9, 13, 14, 22, 28, and 32 are sustained. For these violations, the Respondent's on-sale general public premises license is hereby suspended for 15 days.

Counts 3, 8, 11, 12, 16, 17, 23, 29, 31, 33, 34, 35, and 38 are dismissed.

Dated: August 27, 2023


Matthew G. Ainley
Administrative Law Judge

<input checked="" type="checkbox"/> Adopt
<input type="checkbox"/> Non-Adopt: _____
By: <u>J. McCullough</u>
Date: <u>10/25/23</u>