

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

AB-9930

File: 21-414370; Reg: 20089809

JASPINDER SINGH and MANJIT SINGH,
dba Bubbas Food & Liquor
929 North 10th Avenue
Hanford, CA 93230,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Alberto Roldan

Appeals Board Hearing: December 3, 2021
Telephonic

ISSUED DECEMBER 3, 2021

Appearances: *Appellants:* Thornton Davidson, of Thornton Davidson, P.C., as
counsel for Jaspinder Singh and Manjit Singh,

Respondent: Matthew Gaughan, as counsel for the Department of
Alcoholic Beverage Control.

OPINION

Jaspinder Singh and Manjit Singh, doing business as Bubbas Food & Liquor (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ revoking their license because they either engaged in or permitted the solicitation of acts of prostitution in violation of Penal Code sections 647(b) and 653.23(a)(1), and for

¹ The decision of the Department, dated August 3, 2021, is set forth in the appendix.

exceeding their license privileges in violation of Business and Professions Code² sections 23300 and 23355.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale general license was issued on August 23, 2004. According to departmental records, there has been one prior instance of discipline against the appellants. The Department suspended their license for 10 days following a violation of section 25658(a) that occurred on April 9, 2010. The licensed premises are operated by co-licensees Jaspinder Singh (J. Singh) and Manjit Singh.

The Department filed an 11-count accusation against appellants on February 24, 2020. The Department charges that, on four different occasions (June 20, 2019, July 2, 2019, July 11, 2019, and July 26, 2019), appellants: engaged in or permitted the solicitation of prostitution on their premises, in violation of Penal Code sections 647(b) and 653.23(a)(1), and exceeded their license privileges by possessing an open container of beer for consumption in violation of sections 23300 and 23355.

At the administrative hearing held on February 3, 2021, documentary evidence was received and testimony concerning the violations was presented by Department Agent Alba Medina (Medina). Appellants did not present any witnesses.

Testimony established that on June 20, 2019, July 2, 2019, July 11, 2019, and July 26, 2019, the licensed premises was the subject of an undercover operation by the Department. Agent Medina testified that the Department initiated the operation in response to complaints that employees were engaging in sexual acts with patrons in

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

exchange for alcoholic beverages. Medina used the name "Brenda" as a pseudonym during the investigation.

June 20, 2019 (Findings of Fact, ¶¶ 6-9)

On June 20, 2019, Medina arrived at the licensed premises at 7:45 p.m. She encountered J. Singh, licensee, near the register and learned that he went by the nickname "Bubba." During their conversation, J. Singh mentioned he was working late that night and Medina told him she was on her way to meet a girlfriend at the Lacey Inn. J. Singh looked up and down Medina and told her he also liked to have a good time. When Medina asked him what time he would leave work, he answered he would not get off until midnight. J. Singh then, with a gesture, directed her to speak with his friend who was seated nearby the northern wall of the premises.

Medina walked over to speak with the seated individual, who identified himself as "Gus." Medina told him that she was meeting a girlfriend at the Lacey Inn and invited Gus to join them. During the course of their conversation, Gus repeatedly stared up and down Medina's body. After declining a drink from Gus, Medina again invited him to join her and her girlfriend to party at the Lacey Inn. As the two continued their conversation, Gus was staring at Medina's chest. Medina asked him how much he would pay her and Gus replied \$50, \$60, \$65. Medina informed him that she wanted \$100 but that this price would have everything, including full sex. Gus invited her to the back area of the premises where he pulled out some money and showed it to Medina. Gus told Medina he would pay her \$60 to dance with him, kiss him, and to give him a "blow job," in reference to oral copulation. Medina agreed to the acts.

At that point, J. Singh approached the pair and began talking to Gus in a language that Medina could not understand. He informed Medina that the pair needed to talk in another room since he had customers. The pair, along with J. Singh, then approached another room along the eastern wall of the premises. After Medina stated she was uncomfortable entering this room since she did not know either of them well, J. Singh returned to the front register.

Medina then informed Gus that she had to leave, but the two failed to exchange phone numbers. Gus then asked for a hug, which Medina obliged. While hugging, Gus remarked to her, “see you got me hard.” Medina then left the premises at around 7:50 p.m. Gus was later identified driving a Toyota Camry registered to a Jagjit Singh. Medina matched the appearance of “Gus” to California Department of Motor Vehicles (DMV) records corresponding to a driver’s license held by Jagjit³ Singh.

July 2, 2019 (Findings of Fact, ¶¶ 11-12)

Medina returned to the premises around 3:50 p.m. on July 2, 2019. Upon entering, she and J. Singh greeted one another. Medina commented to J. Singh that Gus had solicited her for a sex act in exchange for money the prior week. Medina told J. Singh that she had returned to give her phone number to Gus and that she needed partying money, to which J. Singh nodded in the affirmative. J. Singh then asked her to specify how much partying money she wanted. When Medina replied that Gus had agreed to pay her \$100 for “full sex,” J. Singh asked her to speak in a quieter tone so that Jimmy, his

³ The Department’s reports and the Accusation in this matter refer to him as Jagit Singh, but DMV records identify him as Jagjit Singh. For purposes of the Board’s decision here, he shall be referred to by the latter or by “Gus.”

“boss,” would not overhear their conversation. Medina agreed and informed him that \$100 would purchase “full body sex,” including anal intercourse.

J. Singh then asked Medina if she would provide him with a “blow job.” She answered, “of course.” After discussing, in lurid detail, how the two would finish the act of oral copulation, J. Singh asked Medina how much time she would give him. She answered she would provide 30 to 45 minutes for \$100. J. Singh nodded in the affirmative when Medina asked if the sexual act would take place in the back room of the premises. J. Singh told Medina to return to the premises later that evening when his boss would not be working. He asked for her phone number, and Medina gave her name as “Brenda” along with the phone number used for the undercover assignment. Medina witnessed him writing down her name and phone number on a piece of white paper that he pulled from his pocket. J. Singh told her he would call her later that evening. Medina stated she would wait for his call. She then vacated the premises.

July 11, 2019 (Findings of Fact, ¶¶ 13-20)

On July 11, 2019, when Medina entered the premises, both J. Singh and Gus were behind the counter. After greeting J. Singh, Medina approached Gus. While she asked Gus about what time he would finish work that day, J. Singh walked up and said, “I want to talk to you... we need consignment.” When Medina replied she didn’t understand what he meant by “consignment,” J. Singh explained how deliverymen’s salaries depend on merchandise being sold and dropped off. In this analogy, J. Singh was the deliveryman whose salary depended on Medina being “sold.” J. Singh further explained that the only difference between merchandise at the premises and Medina was that Medina was a

“walking mobile service.” Medina replied she was not merchandise and that she needed immediate payment. J. Singh asked for her phone number again, which she provided.

After J. Singh walked away to help a customer, Medina resumed her conversation with Gus by asking him, “you want to date?” Gus nodded, told her he would end work at 8:30 p.m., and asked if she would give him a “blow job.” Medina replied in the affirmative. Medina informed Gus that she would provide a “blow job” for \$40. Gus nodded in the affirmative and then asked if she had a girlfriend who would also engage in sexual activity with him. At his request, Medina provided Gus with physical details of her friend and informed him that sex with both herself and her friend would cost more money. Gus smiled and nodded.

Medina asked if he wanted her to return to the premises when he finished work at 8:30 p.m. Gus replied that he had a friend who wanted to meet Medina. He then made a phone call but spoke in a language that Medina could not understand. The conversation lasted around 2 minutes. While on the call, Gus asked Medina how much she charged for a “blow job.” She replied \$40. Gus then asked Medina to get on the phone to speak with “John,” his friend on the phone. As soon as she took the phone, John immediately stated he wanted a “blow job.” Medina told John that she wanted to make a quick profit and would charge \$40. John asked if she had a phone number, and Medina replied that she had already provided this number to J. Singh. After Medina confirmed to John that she was “clean,” John requested her to hand the phone back to Gus.

After Gus ended the phone call, Medina expressed her discomfort with Gus “pimping me out.” Gus reassured her that the caller was like a cousin to him, and she could trust him. He also informed her that the caller was willing to pay \$100 for a sexual

act that would include “showering.” When Medina explained that she would need gasoline if she borrowed her mother’s vehicle to meet John, Gus took out \$5 from his pocket and gave it to Medina so she could buy gas. Medina wanted Gus to make sure John would have the money and wanted Gus to text him to pick her up from the premises in half an hour. Gus nodded in the affirmative and confirmed to her later that John would be picking her up in 30 minutes.

Medina informed J. Singh that Gus had “pimped” her to someone named John, but J. Singh responded with “Who?” While he and Gus began speaking to one another in a language that Medina could not understand, she asked J. Singh if “John” was a fake name given by Gus. J. Singh did not reply to the question directly, but informed Medina that he and Gus were her agents, specifically that “we are your pimps.” J. Singh assured Medina that she could trust John and that he was like a cousin to him. He also added that if there any issues, that Medina should not call the police on John. J. Singh went onto describe how he knew people in nearby cities and that he could provide Medina with good business since he had her phone number.

Gus got Medina’s attention and told her he wanted something in exchange for the \$5 he gave to her earlier. When he asked for a hug, Medina offered to “go down” on him and provide oral copulation for \$20. Gus asked for a “hug,” pointed to his penis, and then stated, “see, you got me hard.” Medina informed him there was no “freebie” and walked away. As Medina began to leave the licensed premises, she asked J. Singh to have John call her, and he replied he would call him directly. Medina then vacated the premises.

Medina later returned to the premises that night at around 8:30 p.m. After conferring with J. Singh about meeting John, J. Singh informed Medina that John would likely not be able to meet her because he was out of town due to his ailing father.

July 13 and July 24, 2019 (Findings of Fact, ¶¶ 21-22)

As background information, on July 13, 2019, Medina received two missed calls from 1-559-589-4939. This number was later determined to be the phone number of a Harjog S. Lidder (Lidder). Lidder was identified as the caller “John” from July 11, 2019, and would later identify himself to Medina as “Jesse” on July 24, 2019.

On July 24, 2019, Medina received a call from Lidder’s 1-559-589-4939 number. After Medina answered the call as Brenda, Lidder identified himself as “Jesse” from Hanford, stated that he knew Gus, and told Medina he was looking for a “good time” and would wear a condom. Jesse asked Medina to be “clean” and agreed to meet with Medina between 2:00 to 3:00 p.m. on July 26, 2019. The two sides agreed that Medina would charge \$100 for 45 minutes of sex, including oral copulation as well as “vaginal and anal penetration.” Jesse told Medina that he would call her on July 26, 2019.

July 26, 2019 (Findings of Fact, ¶¶ 23-31)

On July 26, 2019, Medina called Jesse (Lidder) at 1-559-589-4939 but left no message after her call went unanswered. She arrived at the licensed premises around 3:08 p.m. that afternoon. She greeted J. Singh, who was behind the counter, and told him that she and Jesse were to meet at the premises at 3:00 p.m. J. Singh advised Medina to call Jesse since she had his number. Medina called and left a message stating that she was at the licensed premises, and that she was ready to party as requested. She also left

a return number. Medina confirmed to J. Singh that she had called Jesse, and J. Singh replied he would call her if he heard anything.

At around 4:54 p.m., Medina got a call from Jesse, who asked for her current location. After she informed him that she was with a friend in Lemoore, Jesse replied that he could pick her up and that he would pay her \$20 for a “quick blow job.” Medina offered to meet him at the premises, and Jesse stated the sex act would take place inside his pickup truck. Jesse agreed to be available by phone at 6:00 p.m. At approximately 5:06 p.m., Medina called Jesse to discuss the details of the transaction. After some negotiation, the pair agreed that he would pay \$40 to Medina for oral copulation. Instead of getting picked up by Jesse, however, Medina said she would meet him at the premises. Jesse directed her to wait for his call. Medina agreed, and then the call concluded.

Medina returned to the premises at around 7:35 p.m. J. Singh asked her if she had been contacted, and Medina replied in the affirmative. She also informed him that Jesse had agreed to meet her at the premises soon. Medina requested J. Singh for some condoms, pointing to a box of condoms in the premises’ inventory. Medina then called Jesse on the phone while standing in front of J. Singh. When Jesse answered, Medina said “I’m at Bubbas, bitch, come pick me up.” As J. Singh processed Medina’s condom purchase, Medina talked aloud about the transaction for oral copulation and informed Jesse that he needed to have \$40 on him. After the call ended, J. Singh asked about the conversation. Medina told him that Jesse was coming to pick her up.

At 7:49 p.m., J. Singh informed Medina that Jesse had arrived and that he was parked in the premises’ lot inside a white vehicle. When Medina exited the premises to contact the driver, the person denied they were Jesse. Medina informed J. Singh that the

driver was not Jesse. However, J. Singh, pointing at the security monitor, notified Medina, “that’s him... white car.” She replied, “he wants to pay me \$40 for a blow job.” J. Singh repeated that Jesse had arrived and was in the premises parking lot.

Medina exited the premises and walked towards the vehicle pointed out by J. Singh on the monitor system. As she walked towards it, a male began approaching her from the vehicle. The two greeted one another. Medina said, “what’s up Jesse” and then the two shook hands and hugged. Jesse asked about what J. Singh had said, and Medina informed him that J. Singh had seen Jesse’s car and instructed Medina to meet him. Jesse confirmed to Medina that he had money. When Medina asked Jesse if he wanted a “blow job,” Jesse replied with, “whatever you want.” After Medina showed him the condoms she had purchased, the two began walking towards his vehicle. Jesse asked, “you and me?” to which Medina replied in the affirmative. When they arrived at the passenger side of the vehicle, Jesse said they should go inside. Medina stated she wanted to see the money first. Jesse then reached into his pants, produced a wad of bills, and showed it to her. Medina, who was wearing a wire, gave the prearranged code word for law enforcement officers to initiate an arrest. Officers from the Department and Hanford Police Department approached Lidder—who had gone by the pseudonym “Jesse”—and took him into custody. His identity was subsequently confirmed. Lidder later admitted to Department agents that he was also the individual identified as “John” during the July 11, 2019 phone call that included Medina.

Medina and officers from the two departments then entered the premises and spoke with J. Singh. Once inside, they identified a cold, open, and partially consumed Bud Light beer sitting below the register in the area where J. Singh was working. He

acknowledged that the beer belonged to him. He also acknowledged knowing Lidder and described him as a friend.

The administrative law judge (ALJ) issued a proposed decision on June 8, 2021. In the decision, the ALJ sustained counts 1, 2, 3, 4, 5, 8, 9, 10, and 11. Counts 6 and 7 were dismissed due to insufficient evidence. Based on the sustained counts, appellants' license was revoked. The Department adopted the ALJ's proposed decision in its entirety. Appellants then filed a timely appeal raising the following issue: the counts sustained in the decision regarding Penal Code sections 647(b) and 653.23(a)(1) are not supported by substantial evidence.

APPLICABLE LAWS

Penal Code section 647 provides that:

Except as provided in paragraph (5) of subdivision (b) . . . every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor[.]

Subdivision (b) specifies, in relevant part, what constitutes disorderly conduct:

(1) An individual who solicits, or who agrees to engage in, or who engages in, any act of prostitution with the intent to receive compensation, money, or anything of value from another person. An individual agrees to engage in an act of prostitution when, with specific intent to so engage, the individual manifests an acceptance of an offer or solicitation by another person to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in an act of prostitution.

(2) An individual who solicits, or who agrees to engage in, or who engages in, any act of prostitution with another person who is 18 years of age or older in exchange for the individual providing compensation, money, or anything of value to the other person. An individual agrees to engage in an act of prostitution when, with specific intent to so engage, the individual manifests an acceptance of an offer or solicitation by another person who is 18 years of age or older to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in an act of prostitution.

(4) A manifestation of acceptance of an offer or solicitation to engage in an act of prostitution does not constitute a violation of this subdivision unless some act, in addition to the manifestation of acceptance, is done within this state in furtherance of the commission of the act of prostitution by the person manifesting an acceptance of an offer or solicitation to engage in that act. As used in this subdivision, “prostitution” includes any lewd act between persons for money or other consideration.

Penal Code section 653.23 provides, in relevant part, that:

(a) It is unlawful for any person to [...]

(1) Direct, supervise, recruit, or otherwise aid another person in the commission of a violation of subdivision (b) of Section 647[.]

DISCUSSION

Appellants contend that the facts of the case do not rise to the level of prostitution. Specifically, they raise two arguments: 1) the Department failed to establish that appellants committed an “act in furtherance” of prostitution, and; 2) the Department failed to establish that appellants “actually intended to solicit or engage in prostitution as opposed to free sex.” (Appellants’ Opening Brief, p. 1 (AOB).)

In determining whether a decision of the Department is supported by substantial evidence, this Board’s review is limited to determining, in light of the entire administrative record, whether substantial evidence exists—even if contradicted—to reasonably support the Department’s factual findings, and whether the decision is supported by those findings. (*Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control* (1970) 2 Cal.3d 85, 94 [84 Cal.Rptr. 113] (*Boreta*).) The Board is bound by the factual findings of the Department. (*Harris v. Alcoholic Beverage Control Appeals Bd.* (1963) 212 Cal.App.2d 106, 113 [28 Cal.Rptr. 74] (*Harris*).) A factual finding of the Department may not be overturned or disregarded merely because a contrary finding would have been equally or more reasonable. (*Boreta*, at p. 94.) The Board may not exercise independent

judgment regarding the weight of the evidence; it must resolve any evidentiary conflicts in favor of the Department's decision. (*Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.* (2004) 118 Cal.App.4th 1429, 1437 [13 Cal.Rptr.3d 826].) The Board must also accept all reasonable inferences from the evidence which support the Department's decision. (*Harris*, at p. 113.)

"Substantial evidence" is relevant evidence which reasonable minds would accept as reasonable support for a conclusion. (*Universal Camera Corp. v. N.L.R.B.* (1951) 340 U.S. 474, 477 [71 S.Ct. 456]; *Toyota Motor Sales U.S.A., Inc. v. Superior Court* (1990) 220 Cal.App.3d 864, 871 [269 Cal.Rptr. 647].) Moreover, it is the province of the ALJ, as trier of fact, to make determinations as to witness credibility. (*Lorimore v. State Personnel Bd.* (1965) 232 Cal.App.2d 183, 189 [42 Cal.Rptr. 640]; *Brice v. Department of Alcoholic Beverage Control* (1957) 153 Cal.App.2d 315, 323 [314 P.2d 807].)

The doctrine of *respondeat superior* provides that an employee or principal is vicariously liable for the wrongful conduct of his or her employees or agents committed within the scope of the employment or agency. (*Perez v. Van Groningen & Sons, Inc.* (1986) 41 Cal.3d 962, 967 [227 Cal.Rptr. 106].) It is well-settled in alcoholic beverage case law that an agent or employee's on-premises knowledge and misconduct is imputed to the licensee or employer. (See *Yu v. Alcoholic Beverage Control Appeals Bd.* (1992) 3 Cal.App.4th 286, 295 [4 Cal.Rptr.2d 280]; *Kirby v. Alcoholic Beverage Control Appeals Bd.* (1973) 33 Cal.App.3d 732, 737 [109 Cal.Rptr. 291]. Actual knowledge of the acts is not required; constructive knowledge will suffice. (*Morell v. Department of Alcoholic Beverage Control* (1962) 204 Cal.App.2d 504, 514 [22 Cal.Rptr.405].) In a previous decision, this Board noted that "[t]he types of misconduct which have been historically

imputed to the licensee are those that are foreseeable in the operation of a licensed premises” such as “prostitution (see AB-8331)[.]” (*Zartosht, Inc.* (2013) AB-9295 at p. 10.)

According to Penal Code section 647(b)(4), there must be “some act . . . in furtherance of the commission of the act of prostitution” in addition to the agreement to the act. Various courts have analyzed what is required of an act in furtherance. There is no specific sequence required, contrary to appellants’ position. Based on the plain language, “for there to be a violation of the statute, there must exist both an act and an agreement, but in no particular order.” (*In re Cheri T.* (1999) 70 Cal.App.4th 1400, 1408 [83 Cal.Rptr.2d 397] (*Cheri*).) In *Cheri*, the minor charged with solicitation had grabbed the undercover officer’s crotch to assure him that she was not a police officer. The two agreed that he would pay her to perform oral copulation on him. The court held that the act of touching the officer’s crotch was a sufficient act in furtherance of the act of prostitution. It did not matter that this act had occurred *prior* to the agreement.⁴

Not only can the act in furtherance take place either before or after the agreement, “words alone can be sufficient ‘acts in furtherance’ under section 647(b).” (*Kim v. Superior Court* (2006) 136 Cal.App.4th 937, 944 [39 Cal.Rptr.3d 338], as modified (Feb. 23, 2006) (*Kim*).) In order for words to constitute “acts in furtherance,” the statements “must be unambiguous and unequivocal in conveying that the agreed act of prostitution will occur and move the parties toward completion of the act.” (*Kim, supra*, 136

⁴ The court also held that there was a sufficient act in furtherance *after* the agreement was reached: “After coming to terms with [the officer], [the minor] told him to drive to a dark place, presumably for the purpose of orally copulating him. We view this as an act in furtherance of the agreement to engage in an act of prostitution which occurred after the agreement was reached.” (*In re Cheri T.* (1999) 70 Cal.App.4th 1400, 1409 [83 Cal.Rptr.2d 397].)

Cal.App.4th at p. 945.) In *Kim*, after agreeing to engage in an act of prostitution, the defendant verbally instructed the undercover officer to take off his clothes. The court held that the defendant's statement constituted "a clear and unequivocal statement directed at completing the agreed-to act of prostitution" and is the "type of 'act directly lead[ing] to sexual contact, e.g., undressing,' contemplated by the Legislature." (*Ibid.*)

The court has rejected the notion that there can be no finding of solicitation if there is no explicit request of sex for money. (*People v. Mecano* (2013) 214 Cal.App.4th 1061, 1069 [154 Cal.Rptr.3d 519] (*Mecano*)). In *Mecano*, the defendant argued there was insufficient evidence to sustain his conviction for solicitation of prostitution due to the absence of an explicit request of sex for money. The court, however, held that the defendant "ordering a taxi for [the woman]," giving her "\$200 in cash," and telling her "to shower at a motel until [the defendant] got off work and met her there" constituted acts "in furtherance of an agreement to engage in an act of prostitution, for the offense of solicitation." (*Mecano, supra*, 214 Cal.App.4th at p. 1072.) The court has similarly held that solicitation can take place even if money never changes hands. (See *In re Elizabeth G.* (1975) 53 Cal.App.3d 725, 730 [126 Cal.Rptr. 118] [holding that the absence of money being exchanged is irrelevant when existing evidence⁵ supports finding that the defendant solicited an act of prostitution] (*Elizabeth G.*)).

⁵ The court held there was sufficient evidence based on: (1) two police officers calling the defendant based on information that she and another female were working as prostitutes and taking appointments by phone, (2) the defendant being responsive on the phone to one officer's request that the four of them—without referring specifically to any sexual acts—simply get together, (3) the defendant stating during the car ride that the price would be discussed at the motel, and (4) the defendant informing the officer in the motel room that the exact price would depend on what the officer requested. (*In re Elizabeth G.* (1975) 53 Cal.App.3d 725, 730 [126 Cal.Rptr. 118].)

In defining the requirement of an act in furtherance under Penal Code section 647(b), courts have drawn analogies to the law of conspiracy. For example, they have pointed out that “[i]n the law of conspiracy, there is no requirement that the overt act itself be criminal, or even be an attempt to commit the crime.” (*Cheri, supra*, at p. 1408.) The “overt act” does not have to be “either so obvious or a physical one.” (*Mecano, supra*, 214 Cal.App.4th at p. 1072.) Just like in a conspiracy, “internal discussions and arrangements” between the parties can “easily constitute overt acts in furtherance of the [punishable agreement].” (*Kim, supra*, at p. 945.)

Finally, whether specific intent exists is a question of fact. (*People v. Maciel* (1925) 71 Cal.App. 213, 218 [234 P. 877] [“When a specific intent is an element of the offense it presents a question of fact which must be proved like any other fact in the case.”].) As outlined above, the Board is obligated to defer to the ALJ’s factual determinations. This includes his findings regarding the appellants’ intent to solicit or facilitate prostitution in the instant case. The Board may not disregard or overturn a factual finding simply because a contrary finding would be equally or more reasonable.

The appellants first argue that “entrapment is a complete defense.” (AOB, p. 11.) Their argument is heavy on assertions but light in analysis. While they cite to legal authority explaining the entrapment defense, appellants fail to explain how their cited authority applies to or controls the instant case. In fact, their brief appears to suggest that it is up to the Board to fill in the gaps. (AOB, p. 12 [“the Appeals Board may consider whether Agent Medina’s conduct constituted entrapment.”].) Without discussion or analysis from appellants, however, we may treat their contention as waived and forfeited. (*Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 52 [183 Cal.Rptr.3d 654] [“ . . .

citing cases [or statutes] without any discussion of their application to the present case results in forfeiture.”]; *Atchley v. City of Fresno* (1984) 151 Cal.App.3d 635, 647 [199 Cal.Rptr. 72] [“Where a point is merely asserted by appellant’s counsel without any argument of . . . the proposition, it is deemed to be without foundation and requires no discussion by the reviewing court.”].) Accordingly, we dismiss the appellants’ entrapment argument.

June 20, 2019 (Counts 1-3)

Count 3 charges Jagjit Singh or “Gus,” an agent/employee of the appellants, with soliciting an act of prostitution in violation of Penal Code section 647(b). To show that an individual engaged in solicitation, two elements must be established: (1) the individual requested or solicited a person to engage in an act of prostitution and (2) the individual intended to engage in an act of prostitution. (*Mecano, supra*, 214 Cal.App.4th at p. 1069.) In other words, there must be the solicitation or agreement, and an act in furtherance. Both elements are present in the instant case.

Appellants frame the events of that evening as though Medina initiated and led the entire dialogue between herself and Gus. While it is true that “Medina proposed Gus pay her for sex[,]” the solicitation went both ways. (AOB, p. 13.) The evidence established that Gus offered to pay Medina \$60 in exchange for oral copulation. There is no doubt that he solicited Medina to engage in an act of prostitution.

Appellants maintain that Gus lacked the requisite intent and that there was no act in furtherance present here. This position does not hold up to scrutiny. His actions—encouraging Medina to get in the back room with him by enticing her with a wad of money to “dance with him, kiss him and give him [oral copulation]”—leave little doubt as to what

Gus intended on doing with Medina. Appellants argue there was no physical contact, undressing, or the exchange of money present, but case law makes clear that an “overt act” does not have to be “either so obvious or a physical one.” (*Mecano, supra*, 214 Cal.App.4th at p. 1072.)

Here, Gus’s conduct is rather similar to the acts of furtherance found in the case law discussed earlier in this decision. (See *Cheri, supra*, 70 Cal.App.4th at p. 1409 [act of furtherance found where, while driving together, “[defendant] told [the undercover officer] to drive to a dark place, presumably for the purpose of orally copulating him.”]; *Kim, supra*, 136 Cal.App.4th at p. 945 [holding that defendant’s instruction to the officer to undress was “the type of ‘act directly lead[ing] to sexual contact, e.g., undressing,’ contemplated by the Legislature.”].) Like the defendants in these cases, Gus’s invitation to Medina to enter the room would have led directly to sexual contact. His conduct constituted “a clear and unequivocal statement directed at completing the agreed-to act of prostitution.” (*Kim, supra*, 136 Cal.App.4th at p. 945.) Altogether, we conclude that count 3 is supported by substantial evidence and is therefore affirmed. As Gus was found to be appellants’ agent/employee, and prostitution is foreseeable in the operation of a licensed premises, his misconduct was properly imputed to the appellants.

As to counts 1 and 2, they appear to duplicate one another as well as count 3. Count 1 charges J. Singh, the licensee, with permitting Jagjit Singh, or “Gus,” to solicit an act of prostitution in violation of Penal Code section 647(b). Count 2 charges J. Singh with directing, supervising, or otherwise aiding Jagjit Singh and Medina in the solicitation of an act of prostitution, in violation of Penal Code section 653.23(a)(1). All three counts stem from the agreement between Gus and Medina. However, charging that the licensee

permitted or directed an agent/employee to behave unlawfully (counts 1 and 2) is the same as charging the agent/employee directly for that unlawful behavior (count 3):

It is well settled that a pleading alleging that defendant committed a certain act is simply an allegation that in legal effect the defendant is responsible for the act -- i.e., that defendant through his agent committed the act or that defendant personally committed it. Either can be proved under an allegation that "defendant" committed the act.

(*Cooper v. State Bd. of Equalization* (1955) 137 Cal.App.2d 672, 679 [290 P.2d 914].)

Gus, appellants' agent/employee, personally engaged in the unlawful behavior. If substantial evidence also supports finding that J. Singh permitted or directed the misconduct alleged in count 3, the only liability—as far as the instant case is concerned—lies with the appellants. Ultimately, no matter who committed the underlying act, it is the licensee who bears responsibility and who is penalized for the violation by suspension or revocation of their license.

Although counts 1 through 3 are phrased differently from each other, liability for the three violations lie with the same party, the appellants, arising out of the same operative facts. The Department's decision found three violations when there was only one. In other words, all three counts are duplicative. The Department may only impose discipline for one of the counts. (See *Nguyen v. CTS Electronics Manufacturing Solutions Inc.* (N.D. Cal. 2014) 301 F.R.D. 337, 342 [Under Rule 12(f) of the Federal Rules of Civil Procedure, a court "may strike from a pleading ... any redundant, immaterial, impertinent, or scandalous matter."]; *In re Fremont General Corporation Litigation* (C.D. Cal., Feb. 25, 2010, No. 207CV02693JHNFFMX) 2010 WL 11506879, at *1 ["A matter is 'redundant' if it is 'duplicative' or 'identical.' [Citation] (affirming the district court's decision to strike duplicative counterclaims); [Citation] (striking two nearly identical counts in a complaint)."];

see also *Atwater v. McLean County Orthopedics, Ltd.* (C.D. Ill., Dec. 22, 2016, No. 116CV01217SLDJEH) 2016 WL 7408816, at *2 [In determining whether a count is duplicative and thus ought to be dismissed, courts “have looked at whether the ‘operative facts’ alleged to support each count are the same, [Citations]; whether the elements of the alleged violations are the same, [Citation]; and whether the relief sought is the same [Citation.]”].) Since count 3 was affirmed, we cannot additionally affirm counts 1 or 2. Therefore, counts 1 and 2 must be reversed.

July 2, 2019 (Count 4)

Appellants argue in their brief that there was no evidence regarding Gus’s conduct on this date. (See AOB, p. 14.) However, Gus’s conduct and whether J. Singh permitted his conduct is not what is at issue. Count 4 charges *J. Singh*, a licensee and owner of the premises, with soliciting an act of prostitution in violation of Penal Code section 647(b). The solicitation, or agreement, and the act in furtherance were both present that day.

On July 2, 2019, J. Singh solicited Medina for sexual acts, including oral copulation. The two agreed to engage in 30 to 45 minutes of sexual activity for \$100. J. Singh and Medina discussed, in lurid detail, how they would complete the act of oral copulation. The act of solicitation by J. Singh is clearly present.

J. Singh also specified the time and location of when the sex acts would occur. After Medina and J. Singh verified that the sex acts would take place in the back room of the premises, she informed him that she was ready. He instructed her that the sex acts would take place later that evening and to return to the premises around that time. Just in case, however, J. Singh directed Medina to provide her phone number and told her he would call her later that night when his boss, Jimmy, would not be working.

To be sure, J. Singh's conduct does not appear to rise to the level of the acts of furtherance found in the case law discussed earlier. In *Cheri*, the defendant and the undercover officer were already driving together when she instructed the officer to drive to a dark place for oral copulation. Here, J. Singh was focused on setting up a rendezvous with Medina for later that night at the premises. In *Kim*, the defendant instructed the officer to undress, an unequivocal statement that would lead directly to sexual contact. Here, J. Singh's statements are not quite that explicit. In *Elizabeth G.*, the defendant had reached the point of discussing the price of her services while inside a motel room with an undercover officer. Here, J. Singh was conversing with Medina at the premises, a public space.

With that said, the act in furtherance need not be criminal or even be an attempt to commit the crime. The act does not have to be blatant or physical. In fact, internal discussions and arrangements can constitute overt acts in furtherance of the solicitation of or agreement to engage in an act of prostitution. In *Mecano*, the court rejected the argument that there were no acts of furtherance and held that the defendant's instructions as to when and where he and the woman would meet constituted such acts. (*Mecano, supra*, 214 Cal.App.4th at p. 1072.) Similarly, through their internal discussions, J. Singh sought to arrange how he and Medina would follow through on their plans. J. Singh specifying the exact time and location of the act clearly "clarified or corroborated an agreement to engage in an act of prostitution." (*Ibid.*) Altogether, we conclude that count 4 is supported by substantial evidence and is therefore affirmed.

July 11, 2019 (Counts 5 and 8)

Count 5 charges J. Singh with directing, supervising, or otherwise aiding Lidder, or “John,” in the commission of a violation of Penal Code section 647(b), in violation of Penal Code section 653.23(a)(1).⁶ Count 8 charges Jagjit Singh or “Gus,” an agent/employee of the licensee, with directing, supervising, or otherwise aiding Medina and Lidder in the commission of a violation of Penal Code section 647(b), in violation of Penal Code section 653.23(a)(1).

Before examining whether J. Singh or Gus aided Lidder, we must first determine if substantial evidence supports finding that Lidder’s conduct violated Penal Code section 647(b). The solicitation, or agreement, was established when Lidder and Medina arranged on the phone that she would provide oral copulation in exchange for \$40. While the agreement is established, appellants argue that “the Department presented no evidence of an act in furtherance by [Lidder] on July 11.” (AOB, p. 15.) During their phone conversation, there were only three statements directly attributable to Lidder: when he asked Medina (1) for a “blow job,” (2) whether she had a phone number, and (3) if she was “clean.”

The first statement was an act of solicitation, not an act of furtherance. The third statement came in response to Medina informing Lidder that she would need a ride from

⁶ Count 5 also charged J. Singh with aiding Gus’s commission of a violation of Penal Code section 647(b). However, the underlying conduct—Gus soliciting Medina for an act of prostitution—was dismissed in count 7 by the ALJ due to insufficient evidence. As a result, he also dismissed count 6, which charged that J. Singh permitted Gus to solicit or agree to engage in an act of prostitution, in violation of Penal Code section 647(b). (Conclusions of Law, ¶ 16.) Therefore, since Gus’s alleged violation was dismissed, we shall only focus on count 5 as it relates to J. Singh and whether he aided Lidder in the commission of a violation of Penal Code section 647(b).

Lidder and she could provide oral copulation inside either the premises or his car. Instead of advancing the situation by confirming or clarifying those details, Lidder only asked her if she was “clean.” Although Medina answered his question in the affirmative, the immediate result of this exchange was Lidder asking her to hand the phone back to Gus and ending the call. The pair also never reached a clear agreement as to whether the sex act would take place in the premises or in Lidder’s car. We cannot say that this statement unequivocally moved the pair toward completing the sex act and constituted an act in furtherance of the commission of an act of prostitution.

As for the second statement, it is not clear if Lidder was asking *whether* Medina had a number or *for* her number. At any rate, the evidence established that two days later, on July 13, 2019, Medina received two missed calls from Lidder’s phone number. Lidder did not leave any messages in relation to the missed calls. While the Board is obligated to accept all reasonable inferences from the evidence which support the Department’s decision, we cannot do so when there is insufficient evidence in the first place. Even if we assume that Lidder was asking *for* Medina’s number, there is still no evidence as to what he was calling about on July 13, much less if it had anything to do with the phone agreement from July 11. There is also no indication that Lidder ever instructed Medina to wait for his phone call or that such a call could arrive several days later. Ultimately, counts 5 and 8 are concerned with the events of July 11, 2019. Both counts require establishing that Lidder solicited or agreed to engage in an act of prostitution with Medina, and that there was an act of furtherance that night. It is hard to see how the follow-up phone calls constitute an act in furtherance of an agreement if it

took place days after that agreement was reached. In short, we cannot conclude that Lidder's conduct here constituted an act in furtherance.

Besides the statements that are directly attributable to Lidder, the evidence established he informed Medina, through Gus, that Lidder would pick her up in a half hour at the premises. Although Medina did not hear these instructions from Lidder directly, the circumstances are sufficient, we think, to support an inference that Lidder was acting through Gus. For example, after confirming through Gus that Medina would provide a "blow job" for \$40, Lidder then told Medina directly on the phone that he wanted a "blow job" for \$40. Gus essentially acted as Lidder's spokesperson. However, even if we attribute Gus's statement—that Lidder would pick Medina up at the premises—directly to Lidder, the evidence for establishing that Lidder violated Penal Code section 647(b) remains rather sparse. We are skeptical whether that statement is sufficient to constitute an act in furtherance.

Although the overt act does not have to be physical or so obvious, there is not much to point to as corroborating or clarifying the phone agreement between Lidder and Medina. To the extent that the pair engaged in internal discussions and arrangements, they could not agree as to the exact location where the sex act would take place. When Medina tried to pin down the location, whether inside the premises or Lidder's car, Lidder responded with a non sequitur. We cannot conclude that his promise to pick Medina up from the premise was a clear and unambiguous statement that would lead directly to sexual contact.

Comparing Lidder's statement with, for example, instructing someone to undress, there is a clear difference. Instructing someone to undress is designed to lead specifically

and directly to sexual contact. Lidder's promise to pick Medina up appears to us to be, at most, a means to an end. It is unclear how picking Medina up at the premises would lead directly to the act of prostitution when, as the facts show, there was no agreement as to where the sex act would take place. If they actually met that night, their agreement would have required further clarification before the two parties could move towards completing the act. This is especially true given that this would have been their first in-person conversation and first extended conversation without Gus acting as a liaison. It is likely that the pair would have needed a "feeling out" period before advancing towards sexual contact.

Even if we consider Lidder's conduct in totality—instructing Medina that he would pick her up later that night, asking about her phone number, and calling her a few days later—the instant case is distinguishable from a case like *Mecano*. There, the court found acts of furtherance occurred when the defendant ordered a taxi for the woman to take to the motel, gave her \$200 in cash, and told her to shower at the motel room and wait until he ended work to meet him there. (*Mecano, supra*, 214 Cal.App.4th at p. 1072.) In contrast, Lidder never established when and where the sex act would occur. The defendant in *Mecano* also exercised a greater degree of care over the transportation arrangements. When the woman never arrived at the motel, the "taxi cab company's records showed that [defendant] called the company repeatedly to ask where [the woman] had been dropped off." (*Mecano, supra*, at p. 1070.) He even "went to the great length of getting and calling the cab driver's personal number." (*Ibid.*) Unlike in *Mecano*, Lidder did not go to such lengths to advance or secure his plans. In fact, he never even showed up at the premises that night. It is revealing that the only thing J. Singh told Medina was that

Lidder was traveling out of town. Lidder did not leave a message to Medina, for example, that they would carry out the agreed sex act on a different night at the premises. Not only that, but J. Singh would have had no reason to hide such messages given his awareness of what was transpiring that night. (See Findings of Fact, ¶ 19.) Simply put, there was no attempt by Lidder to salvage the situation.

In sum, there is insufficient evidence to support finding an act of furtherance by Lidder. Since there is no act of furtherance established, we cannot conclude that Lidder's conduct violated Penal Code section 647(b). As stated earlier, counts 5 and 8 both hinged on establishing that Lidder violated Penal Code section 647(b). Since the underlying violation was not established, counts 5 and 8 must fail. Accordingly, both counts are reversed.

July 26, 2019 (Counts 9 and 10)

Count 10 charges J. Singh with permitting Lidder to solicit or agree to engage in an act of prostitution in violation of Penal Code section 647(b). As an initial matter, appellants do not contest that Lidder solicited or agreed to engage in an act of prostitution with Medina. They only argue that the Department did not establish that "J. Singh either knew or believed [Lidder] had solicited or engaged in an act of prostitution." (AOB, p. 17.) Specifically, appellants allege there was no evidence that J. Singh knew about the sex act Lidder had requested from Medina. This contention does not withstand scrutiny.

The evidence established that, a little before 5:00 p.m. on July 26, 2019, Lidder called Medina seeking a "quick blow job" from her. The two agreed on the phone that Lidder would pay Medina \$40 in exchange for oral copulation. Later that evening, Lidder arrived in his car and parked at the licensed premises lot. When Medina exited the

premises, Lidder left his car to greet her. As they walked towards his car, Medina asked her, “you and me?” to which Medina responded in the affirmative. After they reached the passenger side of his car, Lidder invited her inside and produced a wad of money to confirm he could pay for the act of prostitution. Lidder’s intent was clear, and he committed multiple acts in furtherance of his agreement with Medina to pay her for oral copulation. In sum, he committed a violation of Penal Code section 647(b).

The crux of the matter, then, is whether J. Singh was aware of Lidder’s activities that night. After reviewing the record, we conclude that J. Singh had direct knowledge of Lidder’s activities but nevertheless permitted him to carry out his illicit agreement with Medina. J. Singh knew, from prior interactions, that Medina was working as a prostitute. Yet, he allowed her to use the premises that day to conduct her business. J. Singh also knew, from speaking with Medina, that she and Lidder planned to meet each other at the premises that day. At approximately 7:35 p.m. that evening, Medina informed J. Singh that she would be meeting Lidder around that time and that she needed condoms. Medina called Lidder on the phone as J. Singh processed the condom purchase at the register. While standing in front of J. Singh, Medina talked on the phone about how Lidder would have to have \$40 so that he could pay her for the sex act. After ending the call, Medina informed J. Singh that Lidder was coming to pick her up.

When Lidder arrived at the premises, it was J. Singh who immediately notified Medina. He even pointed out Lidder’s car to her on the security monitor screen. If J. Singh had any plausible deniability remaining, it was completely removed when Medina told him, “[Lidder] wants to pay me \$40 for a blow job.” Despite being put on notice as to this illicit arrangement, J. Singh simply repeated that Lidder had arrived and was waiting

in the parking lot of the premises. He then witnessed Medina exiting the premises to go meet Lidder outside. Not only did J. Singh permit Lidder's behavior, but he actively supported it. We conclude that count 10 is supported by substantial evidence, and is therefore affirmed.

As to count 9, it appears to duplicate count 10. Count 9 charges J. Singh with directing, supervising, or otherwise aiding another person in the commission of a violation of Penal Code section 647(b), in violation of Penal Code section 653.23(a)(1). Specifically, it alleges that J. Singh took steps to direct or otherwise aid Lidder and Medina in violating Penal Code section 647(b). Count 10 charges J. Singh with permitting Lidder to violate Penal Code section 647(b). Both counts stem from the agreement between Lidder and Medina. However, charging the licensee for aiding another in the commission of an unlawful act is the same as charging the licensee for permitting the same thing. (See *Cooper, supra*, 137 Cal.App.2d at p. 679.)

We have affirmed that J. Singh permitted Lidder to solicit or agree to engage in an act of prostitution with Medina. If substantial evidence also supports finding that J. Singh directed or otherwise aided Lidder and Medina in the same underlying unlawful behavior, the only liability lies with appellants. In both counts, it is ultimately appellants who bear responsibility and who is penalized by suspension or revocation of their license.

Although counts 9 and 10 are phrased slightly differently from each other, liability for both violations lie with the same party, the appellants, arising out of the same operative facts. The Department's decision found two violations when there was only one. They may impose discipline for one or the other, but not both. See *Nguyen v. CTS Electronics Manufacturing Solutions Inc.* (N.D. Cal. 2014) 301 F.R.D. 337, 342 [Under

Rule 12(f) of the Federal Rules of Civil Procedure, a court “may strike from a pleading ... any redundant, immaterial, impertinent, or scandalous matter.”]; *In re Fremont General Corporation Litigation* (C.D. Cal., Feb. 25, 2010, No. 207CV02693JHNFFMX) 2010 WL 11506879, at *1 [“A matter is ‘redundant’ if it is ‘duplicative’ or ‘identical.’ [Citation] (affirming the district court's decision to strike duplicative counterclaims); [Citation] (striking two nearly identical counts in a complaint).”]; see also *Atwater v. McLean County Orthopedics, Ltd.* (C.D. Ill., Dec. 22, 2016, No. 116CV01217SLDJEH) 2016 WL 7408816, at *2 [In determining whether a count is duplicative and thus ought to be dismissed, courts “have looked at whether the ‘operative facts’ alleged to support each count are the same, [Citations]; whether the elements of the alleged violations are the same, [Citation]; and whether the relief sought is the same [Citation.]”].) Since count 10 was affirmed, we cannot also affirm count 9. Count 9 must be reversed.

Count 11

Count 11 charges J. Singh with exceeding license privileges by having, in his possession, an open container of alcoholic beverage for consumption, in violation of sections 23300 and 23355. Based on their opening brief, appellants have chosen not to appeal count 11. At any rate, evidence established that when law enforcement officers entered the premises, an open and partially consumed container of Bud Light beer was found near the register where J. Singh was working. J. Singh admitted that the beer belonged to him. In short, count 11 is supported by substantial evidence, and is affirmed.

Penalty

Rule 144 provides penalty guidelines for Department discipline.⁷ The rule authorizes the revocation of a license for “recurring/aggravated offenses” related to a disorderly house, prostitution, or lewd conduct. (See Bus. & Prof. Code, § 25601.) In the decision below, the ALJ analogized the instant case to a disorderly house case:

The court in *Morell v. Department of Alcoholic Beverage Control* (1962) 204 Cal.App.2d 504, observed; "Where... objectionable behavior in a licensed establishment is of a continuing nature and not merely an isolated or accidental instance, it is an inescapable conclusion that the licensees have permitted and suffered the resultant condition which offends public welfare and morals and violates the statutory prohibition against keeping a disorderly house."

Here, as in a disorderly house matter, we have a pervasive violation of laws that directly offend public welfare and morals, namely, laws prohibiting prostitution. This conduct occurred over an extended period. J. Singh, one of the Respondents, and Jagjit Singh, an employee, both repeatedly engaged in the solicitation of prostitution and actively encouraged prostitution activity in and around the Licensed Premises with themselves and other parties. J. Singh actually began to inquire from Medina how he could monetarily profit from the prostitution activity she would be engaging in.

(Decision, p. 18.) Rule 144 also authorizes the Department to issue discipline ranging from a five-day suspension to license revocation when a licensee acts in excess of their license privileges, as was alleged against appellants in count 11 of the accusation.

Here, we affirmed three counts (3, 4, and 10) arising out of J. Singh and Jagjit Singh either soliciting or agreeing to engage in an act of prostitution for themselves, or permitting or aiding another individual in doing the same. These violations occurred across three different dates. The evidence amply supports finding that a recurring pattern involving the solicitation of prostitution existed at the licensed premises. Licensee J. Singh's comments

⁷ All rules referred herein are contained in title 4 of the California Code of Regulations unless otherwise noted.

to Agent Medina reveal his knowledge of and involvement in the ongoing scheme. For example, he told Medina that “[Gus and I] are your agents... like we are your pimps” and, in that context, informed her he could get her “good business” since he knew potential clients in nearby cities. (Findings of Fact, ¶ 19.) We also affirmed count 11, which the appellants chose not to contest in the instant case.

Appellants did not present any mitigating circumstances. Given the criminal nature of the violations, Appellant J. Singh’s direct and increasing conduct in the instant case, and the prior history of discipline, revocation was warranted. We conclude that the penalty of license revocation was entirely consistent with rule 144.

ORDER

With regard to counts 1, 2, 5, 8, and 9, the decision of the Department is reversed. Counts 3, 4, 10, and 11 are affirmed, as is the penalty of revocation.⁸

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

⁸ 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:**

JASPINDER SINGH AND MANJIT SINGH
BUBBAS FOOD AND LIQUOR
929 N. 10TH AVE
HANFORD, CA 93230

OFF-SALE GENERAL - LICENSE

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

FRESNO DISTRICT OFFICE

File: 21-414370

Reg: 20089809

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 July 22, 2021. 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, 1325 J Street, Suite 1560, Sacramento, CA 95814. 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 September 13, 2021, a representative of the Department will contact you to arrange to pick up the license certificate.

Sacramento, California

Dated: August 3, 2021

RECEIVED

AUG 03 2021

Alcoholic Beverage Control
Office of Legal Services



Matthew D. Botting
General Counsel

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

IN THE MATTER OF THE ACCUSATION AGAINST:

Jaspinder Singh and Manjit Singh
DBA: Bubbas Food & Liquor
929 N. 10th Ave.
Hanford, California 93230

Respondent

Off-Sale General License

} FILE: 21-414370
}
} REG.: 20089809
}
} LICENSE TYPE: 21
}
} WORDS: 25,000
}
} REPORTER:
} Virginia Perez-CSR# 11433
} iDepo Reporters
}
} **PROPOSED DECISION**

Administrative Law Judge Alberto Roldan, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter, via videoconference, on February 3, 2021. Supplemental briefing by the parties was received from March 7, 2021 through March 25, 2021.

Matthew Gaughan, Attorney, represented the Department of Alcoholic Beverage Control (Department).

Thornton Davidson, Attorney, represented Respondents Jaspinder Singh and Manjit Singh (Respondents).

The Department seeks to discipline the Respondents' license in an eleven count Accusation on the grounds that:

Count 1

On or about June 20, 2019, Respondent-Licensee(s) Jaspinder Singh, permitted Jagit Singh aka "Gus" to solicit or agree to engage in an act of prostitution, on the premises, in violation of Penal Code section 647(b).

Count 2

On or about June 20, 2019, Respondent-Licensee(s) Jaspinder Singh, directed, supervised, recruited, or otherwise aided another person in the commission of a violation of subdivision (b) of section 647, in violation of Penal Code section 653.23(a)(1).

Count 3

On or about June 20, 2019, Respondent-Licensees' agent or employee Jagit Singh aka "Gus" solicited an act of prostitution in the licensed premises, in violation of Penal Code section 647(b).

Count 4

On or about July 2, 2019, Respondent-Licensee(s) Jaspinder Singh, solicited or agreed to engage in an act of prostitution, on the premises, in violation of Penal Code section 647(b).

Count 5

On or about July 11, 2019, Respondent-Licensee(s) Jaspinder Singh, directed, supervised, recruited, or otherwise aided another person in the commission of a violation of subdivision (b) of section 647, in violation of Penal Code section 653.23(a)(1).

Count 6

On or about July 11, 2019, Respondent-Licensee(s) Jaspinder Singh, permitted Jagit Singh aka "Gus" to solicit or agree to engage in an act of prostitution, on the premises, in violation of Penal Code section 647(b).

Count 7

On or about July 11, 2019, Respondent-Licensees' agent or employee Jagit Singh aka "Gus" solicited an act of prostitution in the licensed premises, in violation of Penal Code section 647(b).

Count 8

On or about July 11, 2019, Respondent-Licensees' agent or employee, Jagit Singh aka "Gus", directed, supervised, recruited, or otherwise aided another person in the commission of a violation of subdivision (b) of section 647, in violation of Penal Code section 653.23(a)(1).

Count 9

On or about July 26, 2019, Respondent-Licensee(s) Jaspinder Singh, directed, supervised, recruited, or otherwise aided another person in the commission of a violation of subdivision (b) of section 647, in violation of Penal Code section 653.23(a)(1).

Count 10

On or about July 26, 2019, Respondent-Licensee(s) Jaspinder Singh, permitted Harjob Lidder to solicit or agree to engage in an act of prostitution, in violation of Penal Code section 647(b).

Count 11

On or about July 26, 2019, Respondent-Licensee(s) Jaspinder Singh, exceeded their license privileges by possessing for consumption an open container of alcoholic beverage, to-wit: beer, in violation of Business and Professions Code sections 23300 and 23355.

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

Oral evidence, documentary evidence, and evidence by oral stipulation on the record was received at the hearing. The matter was concluded in terms of the taking of testimonial evidence on February 3, 2021. Both parties submitted additional written briefing between March 10, 2021 and March 25, 2021.

FINDINGS OF FACT

1. The Department filed the Accusation on February 24, 2020.
2. The Department issued a type 21, off-sale general license to the Respondents at the above-described location on August 23, 2004 (the Licensed Premises). The following is the record of prior Department discipline against the Respondents' license as established by official records introduced by the Department (Exhibit D-28):

Violation Date	Violation	Registration Date	Registration Number	Penalty
04/09/2010	B&P 25658(a)	8/31/2010	10073483	10 day suspension

3. The Licensed Premises operates under the business name of Bubba's Food & Liquor. Jaspinder Singh (J. Singh) and Manjit Singh (M. Singh) are the co-licensees and Respondents in this matter. The Licensed Premises has operated, since its licensure, in Hanford, California.

4. Department Agent A. Medina (Medina) testified¹ that the Department initiated an undercover operation against the Licensed Premises based on complaints that Licensed Premises employees were engaging in sexual acts with patrons in exchange for alcoholic beverages. During the undercover operation, Medina used the fake identity of "Brenda"

¹ The parties stipulated that the Investigation Reports prepared by Medina and received as Exhibits D-29 through D-31 would be received as her sworn, direct testimony. Medina was cross examined and provided redirect examination testimony under oath during the hearing in this matter.

throughout her interactions with persons in and around the Licensed Premises during the investigation. Medina would walk from a drop off point to the Licensed Premises during each visit so that she was not seen operating a vehicle.

5. On April 25, 2019 Medina entered the Licensed Premises at approximately 2:15 p.m. She was in plain clothes and had driven to the location in an unmarked vehicle. Medina walked past the clerk who was on duty, and she selected a bottle of distilled spirits and a can of beer from the cooler for purchase. Medina returned to the counter with her selections and placed them in front of the clerk. While the clerk was ringing up the selections, Medina asked the clerk for his name and she introduced herself as "Brenda." The clerk responded that his name was "Jimmy." Medina told "Jimmy" that she was going to the "Lacey Inn" later that evening. Medina invited "Jimmy" to join her and a girlfriend to "party." While she was being rung up, Medina asked about the price of a box of condoms. Medina again invited "Jimmy" to join her at the Lacey Inn and that he would have a good time. "Jimmy" responded that he was a "family man" and that he did not frequent bars. Medina completed the purchase and departed the Licensed Premises.

6. On Thursday, June 20, 2019 Medina returned to the Licensed Premises in an undercover capacity. She entered the Licensed Premises at 7:45 p.m. and observed Respondent J. Singh working at the register. During her interactions with J. Singh, Medina learned that he went by the nickname of "Bubba". Medina went to the coolers, then went to the counter and asked J. Singh to assist her in retrieving a can of Bud Ice beer because she couldn't reach it. J. Singh returned with Medina to the cooler, retrieved the beer and handed it to her. Medina asked J. Singh if he was working late. He responded that he was. Medina told J. Singh she was on her way to the Lacey Inn to meet a girlfriend. Singh looked Medina up and down and told Medina he too liked to have a good time. J. Singh walked behind the counter and began to ring up the beer. Medina asked J. Singh to add a package of Swisher sweets to the transaction. J. Singh retrieved the requested cigars from the display. Medina asked J. Singh what time he was getting off work. J. Singh said he was not getting off until midnight and he then directed Medina with a gesture to speak with his friend. Medina observed a partially visible person seated toward the northern wall of the Licensed Premises.

7. Medina walked over to the seated person J. Singh referenced, and spoke with him. He identified himself as "Gus." Medina told "Gus" that she was meeting a girlfriend at the Lacey Inn and asked him if he wanted to join them. "Gus" said he had never been there. Medina responded that it was a close by bar and that she often partied there with friends. During their conversation, "Gus" repeatedly eyed Medina up and down her body. "Gus" offered Medina a drink from a Styrofoam cup that contained an amber colored liquid with foam. It appeared to be an alcoholic beverage. Medina declined and said she did not take drinks from other people. "Gus" did not answer when Medina asked him what was in the cup. Medina thanked "Gus" for his offer and again invited him to join her and her girlfriend at the Lacey Inn to party.

8. While staring at Medina's chest, "Gus" asked Medina "what do you want?" Medina responded that she wanted to party, and she was inviting him to join her. "Gus" repeated "what do you want?" Medina responded that she partied with "meth" and added that "I like to party with crystal." "Gus" responded that he did not do drugs. During this conversation, "Gus" was

staring at Medina's chest. While he was doing this Medina asked "Gus" how much he would pay her. "Gus" replied, "\$50, \$60, \$65." Medina responded that her prices were higher and that she wanted \$100 and that the price included "everything, full sex." "Gus" responded that the sex act would take place at the Comfort Inn and asked Medina if she was familiar with it. Medina responded that she was not and that she would not accompany him there because she did not know him well enough. "Gus" invited Medina to the back area of the Licensed Premises to continue their conversation. Medina followed "Gus" to the back. "Gus" opened a door to a small, dimly lit room and entered it. "Gus" invited Medina to enter the room with him. Medina stood outside of the room and told "Gus" that she preferred to remain standing where she was. "Gus" produced a wad of cash in different denominations and showed it to Medina. "Gus" told Medina that he would pay her \$60 to dance with him, kiss him and give him a "blow job" in reference to oral copulation. Medina agreed to these acts and told him that she would charge \$100.

9. During this portion of the conversation, J. Singh approached them and spoke with "Gus" in a language that Medina did not understand. J. Singh spoke directly to Medina and told her that he had customers and that she and "Gus" needed to talk in another room. "Gus" exited the room and approached another door to a room along the eastern wall of the Licensed Premises. Medina took a few steps toward this room, but she then told "Gus" and J. Singh that she was not comfortable entering a room because she did not know either one of them well enough. J. Singh nodded, said he understood, and then walked back to the front register. Medina spoke with "Gus" and again invited him to join Medina and her friend at the Lacey Inn. "Gus" asked Medina if the friend would join them in sex acts. Medina responded it was possible if the friend had consumed alcoholic beverages. Medina told "Gus" she had to leave and asked for his cellular number. "Gus" responded by asking Medina for her phone number. Medina declined and "Gus" then declined to give his number. Medina again invited "Gus" to join her at the Lacey Inn. "Gus" asked Medina for a hug. Medina obliged. While hugging him, "Gus" stated "see you got me hard." Medina exited the Licensed Premises at approximately 7:50 p.m. with the beer and Swisher purchase. "Gus" was later observed driving a Toyota Camry registered to a Jagjit Singh². Medina matched the appearance of "Gus" to California Department of Motor Vehicles (DMV) identifying information corresponding to a driver's license held by Jagjit Singh. (Jagjit Singh, or "Gus") (Exhibit D-22)

10. On June 27, 2019 at 7:30 p.m., Medina entered the Licensed Premises and spoke with the clerk she had met as "Jimmy" on April 25, 2019. While purchasing a beer, Medina told "Jimmy" that she was looking for "Gus." "Jimmy" responded that he did not know who "Gus" was. Medina told "Jimmy" that "Bubba" and "Gus" had requested that she return and that they were expecting her. Medina asked "Jimmy" if he liked to party after she had said that she was "partying". "Jimmy" did not respond. "Jimmy" agreed to call "Bubba" at Medina's request after Medina

² In Department written reports and the Accusation received in evidence in this matter, Jagjit Singh is repeatedly and erroneously referred to as "Jagjit Singh". DMV records received in evidence identify him as Jagjit Singh. (Exhibit D-22) On October 9, 2019 Medina contacted Jagjit Singh at his residence to confirm that the DMV records relied on corresponded with the actual person she had interacted with as "Gus" during the investigation. Medina reviewed the DMV record, Jagjit Singh's driver's license, and the individual she had detained to confirm that they were the same person. (Exhibit D-31)

claimed he was expecting her. "Jimmy" appeared to make a call as requested. "Jimmy" then said that he did not answer. Medina asked "Jimmy" to let "Bubba" and "Gus" know she had called. Medina then departed with her beer purchase.

11. Medina returned to the Licensed Premises on July 2, 2019 at approximately 3:50 p.m. J. Singh was inside. When she entered, he smiled at Medina and said, "What's going on?" Medina greeted J. Singh and said she returned for more beer and wanted the same as last time. J. Singh responded, "Bud Ice?" and Medina confirmed that this was the beer she wanted. Medina told J. Singh that she was ready to "party" and that she wanted a beer. J. Singh walked with Medina to the beer coolers. While walking there, Medina observed the clerk she knew as "Jimmy" working behind the counter. Medina remarked to J. Singh that "Gus" had solicited her for a sex act in exchange for money the prior week. Medina told J. Singh that she had returned to give "Gus" her cellular number. Medina told J. Singh that, "I need partying money." J. Singh nodded in response. J. Singh retrieved the Bud Ice can from the cooler and handed it to Medina. J. Singh asked "how much" in response to Medina's remark about the partying money. Medina responded that "Gus" had agreed to pay \$100 for "full sex." J. Singh nodded but then asked Medina to speak in a low tone so that his "boss" "Jimmy" would not hear. Medina agreed to this and then told J. Singh that \$100 would get him "full body sex" and would include "anal" in reference to anal intercourse.

12. J. Singh then asked Medina, "will you give me a blow job?" Medina responded, "of course." J. Singh, asked, "will you swallow?" Medina responded that she preferred not to. J. Singh said that he understood and that he knew a lot of females that preferred not to. Medina said that she would allow him to ejaculate on her chest. J. Singh nodded in the affirmative and asked Medina how much time she would give him. Medina responded, "15 minutes." J. Singh said he wanted the sexual act to last 3 hours. Medina told him he was asking for too much time but that she would agree to 30-45 minutes for \$100. Medina then asked where the sexual act would take place. J. Singh did not initially reply. Medina then asked him if it would take place in the back room of the Licensed Premises. J. Singh then nodded in the affirmative. Medina told J. Singh she was ready. J. Singh requested Medina's cellular number and asked Medina to return later in the evening when his boss would not be working. Medina told J. Singh that she had evening plans with a girlfriend and wanted "partying money." J. Singh asked Medina for her cellular number and produced a white piece of paper from his pocket. Medina gave him the number used for the undercover assignment which was 916-919-1985. Medina again gave her name as "Brenda." Medina observed J. Singh to write the name and number on the piece of paper. J. Singh then said he would call later in the evening. Medina walked to the front counter with the beer to purchase it. After no one was found there, Medina went back and got J. Singh to ring up the beer purchase. After she got the beer and change, Medina said she would wait for his call and then departed. Medina did not receive any calls from J. Singh on July 2, 2019.

13. On July 11, 2019 Medina entered the Licensed Premises after J. Singh was observed entering from his vehicle. J. Singh and "Gus" were both behind the counter. Medina greeted J. Singh while he was at the register and walked past him to where "Gus" was seated. Medina asked "Gus" if he was working. "Gus" replied in the affirmative and told her he was getting off work at 8:30 p.m. While Medina and "Gus" were talking, J. Singh walked up and remarked, "I want to talk to you...we need consignment." Medina responded that she didn't understand what

he meant by the word “consignment” and asked him to explain. J. Singh then gave an example of merchandise dropped off by deliverymen and that their salaries depended on the merchandise being sold. J. Singh then remarked to Medina that he considered her to be on “consignment.” J. Singh then further remarked that the only difference between the premises merchandise and Medina was that Medina was a “walking mobile service.” Medina responded that she was not merchandise and that she needed immediate payment. Medina stated that she charged for her services and needed to get paid.

14. Medina told J. Singh that she had waited for his call over the weekend but had not received one. J. Singh replied, I talked to him, but he is busy...he’s a busy man.” Medina expressed confusion about what J. Singh was referring to. J. Singh did not respond to the query and he then requested Medina’s number again. Medina reminded him that she had already provided her number, but she agreed to give it again. J. Singh wrote down the number and he remarked that he would entitle it “consignment.”

15. J. Singh walked away to assist a customer and Medina returned to her conversation with “Gus” by asking him, “you want to date?” “Gus” nodded and told Medina that he was off work at 8:30 p.m. “Gus” then asked Medina if she would give him a “blow job” to which Medina said and nodded that she would. “Gus” asked Medina if she would be at the Lacey Inn. Medina replied in the affirmative and said that she had plans to meet a friend there at 9 p.m. While they were talking, J. Singh returned and asked “Gus” to retrieve a large size shirt from a merchandise box. “Gus” searched and told J. Singh that the box did not contain that size. J. Singh then returned to the customer he was assisting. Medina then told “Gus” she would give him a “blow job” for \$40. “Gus” nodded in the affirmative and he then asked if Medina had a girlfriend who would also engage him in sex acts. Medina responded in the affirmative and answered questions “Gus” had about the physical details of the friend. Medina said that sex with Medina and the friend would cost more money. “Gus” smiled and nodded in the affirmative. Medina asked “Gus” if he wanted Medina to return to the Licensed Premises at 8:30 p.m. when “Gus” got off work. “Gus” responded that he had a friend who wanted to meet Medina. “Gus” said the friend could pick up Medina. Medina responded that she wasn’t there to be sold. Medina then remarked that she was willing to give “Gus” a “blow job” in one of the back rooms of the Licensed Premises. Medina told “Gus” that she did not have transportation unless she borrowed her mother’s vehicle. If she did this, she would have to put gas in it, and she was low on money.

16. “Gus” made a call and spoke with someone in a language that Medina did not understand for approximately 2 minutes. While remaining on the call, “Gus” looked at Medina and asked her how much for a “blow job.” Medina responded, “\$40.” “Gus” continued to speak with the person on the phone and then he asked Medina to speak with his friend, “John.” Medina took the cellular device from “Gus” and spoke with the person on the line (“John”). “John” immediately said he wanted a “blow job.” Medina told “John” that she was looking to make “quick money,” that she would charge \$40, and she would “deep throat” his request. “John” asked Medina if she had a cellular number. Medina said she did and that she had previously provided this number to “Bubba.” Medina told “John” that she didn’t have transportation and that he would have to pick her up. Medina said she could provide the “blow job” inside of the Licensed Premises or inside of John’s car. “John” asked Medina if she was “clean” and Medina replied in the affirmative. “John” then asked Medina to hand the cellular phone to “Gus.”

17. "Gus" ended the call with "John" and Medina immediately said to him that she wasn't sure if she was good with "Gus" pimping me out." "Gus" said that she could trust the caller because he was like a cousin to him. "Gus" said the caller was willing to pay \$100 for a sexual act that would include "showering." Medina raised her lack of a vehicle and that if she had to borrow her mother's vehicle, she would need to put gasoline in it. "Gus" took \$5 out of his pocket and gave it to Medina so she could buy gas to meet with the caller. Medina told "Gus" that she was hesitant to meet the caller and did not want to get "burned." Medina stated that she wanted "Gus" to make sure that the caller would have the \$100 discussed. Medina then asked "Gus" to text the caller and direct him to pick up Medina in a half hour at the Licensed Premises. "Gus" nodded in the affirmative. "Gus" later confirmed to Medina that the caller would pick her up in 30 minutes.

18. "Gus" and Medina continued to converse while waiting for "John" to arrive. "Gus" said that he was married and sometimes masturbated. "Gus" asked Medina about the physical details of her friend and what she would do sexually for "Gus." Medina told "Gus" about how J. Singh had solicited her for a paid sexual act but had not followed through. J. Singh then approached where they were talking and asked "Gus" for Medina's name. Medina spoke directly to J. Singh and replied, "Brenda." J. Singh remarked to Medina that she was wasting her time talking to "Gus." J. Singh then began to talk with Medina about sex acts he would perform with her and that if he had access to a hotel room, he would take her to it. Medina remarked that she could not spend a lot of time with him but that she could give him a "blow job" for \$50. J. Singh laughed and nodded.

19. Medina then stated that "Gus" had pimped her out to a person named "John." J. Singh responded, "Who?" "Gus" then spoke directly with J. Singh in a language that Medina did not understand. While they were speaking, Medina asked J. Singh if "Gus" had given her a fake name. J. Singh did not reply to the question, but he said, "we are your agents...like we are your pimps." Medina responded she was ready and for him to get a "Trojan." Medina asked J. Singh if she knew "John." J. Singh again spoke with "Gus" in a language she did not understand. J. Singh then said to Medina that she could trust "John" and that he was a "cousin." "Gus" added that "John" would arrive at 9 p.m. and that she did not need to worry about him. J. Singh interjected that if there were any issue, to not call the police on "John". J. Singh went on to say that he had Medina's cellular number and that he knew people in multiple nearby cities. J. Singh then said, "some people they never had pussy their whole lives so we can give you good business, ok." Medina thanked J. Singh after this remark, and she began to leave. "Gus" waved Medina over and told her that he wanted something in exchange for the \$5 he had given her earlier. "Gus" asked for a "hug." Medina responded that she would "go down" on him for \$20 in reference to oral copulation. "Gus" again asked for a "hug," pointed to his penis, and then said, "see, you got me hard." Medina responded that she was not going to give him a "freebie" and walked away. Medina remarked to J. Singh that "Gus" was "chicken." J. Singh responded, "sometimes he acts like a woman." Medina then asked J. Singh to have "John" call her. J. Singh replied, "I'll call him." Medina then left the Licensed Premises.

20. Medina returned to the Licensed Premises on July 11, 2019 at approximately 8:30 p.m. After entering, J. Singh asked Medina if she had spoken with "John." Medina responded that she had returned in order to meet with him. J. Singh responded that "John" would likely not be able to

meet with Medina because "John" had an ill father and was travelling to the Fresno area. Medina asked J. Singh for a phone number. Singh wrote down the number "572-1232" and gave it to Medina. Medina left after remarking that she lived off Myrtle Street and did not have a vehicle to meet "John." (Medina preserved the handwritten note from J. Singh in evidence. (Exhibit D-10)

21. On July 13, 2019, between 5:46 p.m. and 7:12 p.m. Medina received six missed cellular calls to the number she had provided in her role as "Brenda" in the ongoing investigation of the Licensed Premises. The six calls were from the number "1-552-572-1232" which corresponded to the number J. Singh provided on July 11, 2019. Two messages were left. One said, "Hey, this is John can you call me back please I'm from Selma, thank you." The other message appeared to be an accidental dial that sounded like it captured a transaction at a cash register. In both calls, J. Singh sounds like the person in the call. Two additional calls from "1-559-589-4939" were received without messages during the same time period. Medina later determined this to be the phone number of Harjog S. Lidder (Lidder) who was identified as the caller "John" on July 11, 2019 and later identified himself to Medina as "Jesse" on July 24, 2019. Medina left messages and texts to the "1-552-572-1232" number between July 17 and July 18, 2019 but no responses were received.

22. On July 24, 2019 at approximately 11:46 a.m. Medina received an incoming call from the "1-559-589-4939" number. When Medina answered in the role of "Brenda", the caller identified himself as "Jesse" from Hanford. During the conversation with the caller, he stated that he knew "Gus." "Jesse" told Medina he was looking for a "good time" and he stated he would wear a condom. "Jesse" asked Medina to be "clean" and asked to meet with Medina on July 25, 2019. Medina countered with July 26, 2019 between 2-3 p.m. which "Jesse" agreed to. In discussing details, "Jesse" said he wanted full body sex. Medina agreed to the request and told him she would charge \$100 for a half hour of sex. Medina said she would "deep throat" "Jesse" and allow vaginal and anal penetration. "Jesse" asked for more time than a half hour and Medina agreed to 45 minutes for the sex acts. "Jesse" said he would call Medina on July 26, 2019.

23. On July 26, 2019 Medina called "1-559-589-4939" but there was no answer and no message was left. Medina went to the Licensed Premises at approximately 3:08 p.m. When she entered, J. Singh was working behind the counter. Medina greeted him and J. Singh responded that "hey I know they're looking for you." Medina replied that she knew "Jesse" had called her and Medina said that she had planned to meet him at the Licensed Premises at 3 p.m. J. Singh asked if Medina had actually spoken with "Jesse" to which she replied that she had not. J. Singh said he thought "Jesse" was going to be out of town. J. Singh then said to Medina "you have his number right, just call him." Medina expressed agreement and then made a call to "1-559-589-4939." Medina left a message when there was no answer. She stated she was at "Bubbas" and that she was ready to party as requested. She also stated the return number to the phone. After hanging up, Medina confirmed to J. Singh that she had called "Jesse." J. Singh said to Medina that he had her number and would call her if he heard anything.

24. At 4:54 p.m. on July 26, 2019, Medina received a call from "Jesse" who asked for Medina's location. Medina responded that she was in Lemoore with a friend. "Jesse" responded that he was nearby and could pick her up. "Jesse" stated he was seeking a "quick blow job" and would pay Medina \$20. Medina offered to meet "Jesse" at "Bubbas" referring to the Licensed Premises.

"Jesse" said it would be quick and could occur inside of his pickup truck. "Jesse" agreed to be available by phone at 6 p.m. At 5:06 p.m., Medina called "Jesse" and said she could not get a ride back to Hanford and that "Jesse" should call next week. "Jesse" responded that he could pick her up. Medina expressed concern that she *did* not know him. "Jesse" responded that he was friends with "Gus" and J. Singh. Medina asked "Jesse" for \$100 and "Jesse" responded that they weren't spending enough time to be worth that. Medina expressed concern that \$20 was not worth her time. "Jesse" agreed to pay \$40 to Medina for oral copulation. Medina declined to be picked up at her current location and offered to meet "Jesse" at Bubbas. "Jesse" instructed Medina to wait for his call to which Medina agreed. The call was ended.

25. At approximately 7:35 p.m. on July 26, 2019, Medina entered the Licensed Premises. J. Singh asked Medina if she had been contacted. Medina responded in the affirmative and she told J. Singh that "Jesse" had agreed to meet her at the Licensed Premises. J. Singh asked Medina when they would be meeting. Medina responded that it was occurring around that time. Medina told J. Singh that she needed condoms and would like flavored ones. J. Singh responded that they did not have flavored condoms. Medina pointed to a box of condoms in the Licensed Premises' inventory.

26. While standing in front of J. Singh, Medina called "Jesse." "Jesse" answered, and Medina said, "I'm at Bubbas, bitch, come pick me up." J. Singh rang up the condom purchase while Medina spoke with "Jesse." Medina talked about the transaction for oral copulation and stated that "Jesse" would have to have \$40 with him. Medina ended the call and J. Singh asked Medina about what "Jesse" said. Medina responded that "Jesse" was coming to pick her up. Medina asked J. Singh about what "Jesse" was like since she didn't know him. J. Singh responded that "he panic (sic)...like a woman, he scared." J. Singh then stated to Medina, "so where do you want to pay me?" Medina did not respond to this comment. Medina then briefly stepped out of the Licensed Premises. Medina returned to the Licensed Premises just prior to 7:49 p.m.

27. At 7:49 p.m., J. Singh called Medina over and told her that "Jesse" had arrived and was in the Licensed Premises lot inside of a white vehicle. Medina exited the Licensed Premises and contacted the driver. The person denied that they were "Jesse." Medina returned inside the Licensed Premises and told J. Singh that it was not "Jesse." Medina remained in the Licensed Premises and later purchased an ice cream bar. During this transaction, Medina paid \$1.50 and remarked that it was all of her remaining money. J. Singh replied, "normally, you will get money back right now." Right after this remark, J. Singh pointed at the computer screen to the monitor system and stated, "that's him...white car." Medina stated, "dude he wants to pay me \$40 for a blow job." J. Singh repeated that he had arrived and was in the parking lot of the Licensed Premises.

28. Medina exited the Licensed Premises and walked to the car J. Singh had pointed out on the monitor. As she was walking towards it, a male was walking towards her from the vehicle. The male smiled and said, "hi." Medina replied, "what's up, Jesse." "Jesse" shook her hand and they hugged. "Jesse" stated, "Bubba inside, what he say?" Medina replied that "Bubba" had seen his car and told Medina to meet him. Medina asked "Jesse" where he was going to take her and whether he had money. "Jesse" said "yeah" regarding whether he had money. "Jesse" asked Medina if they could go to her house. Medina said no, because her mother was home. Medina

asked "Jesse" for \$100 to make it worth her time. "Jesse" said he did not have enough time. "Jesse" proposed that they "go on the side somewhere" of the Licensed Premises lot as a location for the sexual act. Medina asked "Jesse" if he wanted a "blow job" to which he replied, "whatever you want."

29. Medina told "Jesse" that she had bought condoms and she showed him the box. They both walked towards the vehicle "Jesse" had arrived in. "Jesse" asked, "you and me?" to which Medina responded, "yeah." Medina asked "Jesse" to show her the money. "Jesse" responded that he had \$40. Medina asked for him to show the money. Jesse responded, "you don't trust?" Medina said she had been in situations where people tried to use a credit card. "Jesse" responded that he had "cash." When they arrived at the passenger side of the truck "Jesse" said "let's go inside." Medina again said she wanted to see the money. "Jesse" reached into his right, front pants pocket, removed a wad of bills and showed it to Medina. Medina was wearing a wire and had a prearranged code word for supporting law enforcement officers to initiate an arrest. Department and Hanford Police Department officers then approached and took Lidder into custody. His identifying information was confirmed. (Exhibit D-23) Lidder later confirmed to Department agents that he was the individual who was identified as "John" during the July 11, 2019 phone call Medina had been part of.

30. Medina donned a tactical vest and her badge and joined the Department and Hanford Police Department officers who were assisting in the investigation. They entered the Licensed Premises and contacted J. Singh. A cold, open, partially consumed container of Bud Light beer was located below the register in the area where J. Singh was working. J. Singh acknowledged it was his. The open container was photographed. (Exhibit D-25)

31. J. Singh acknowledged knowing Lidder and described him as a friend. J. Singh repeatedly identified Lidder only as "Jesse." J. Singh denied knowing "Gus" or "Jagjit Singh" which was the legal name of "Gus." J. Singh denied that Jagjit Singh worked for the Licensed Premises. J. Singh did acknowledge that he had made repeated phone calls to Medina's phone. Logs of the actual cellular phone activity records on Medina's phone corresponded with the ingoing and outgoing activity observed by Medina. (Exhibits D-11 through D-17) During many of the interactions with "Gus" AKA Jagjit Singh, "Bubba" AKA Jaspinder Singh, and "Jesse" AKA Harjog S. Lidder, Medina wore a wire to record their conversations. These recordings were preserved. (Exhibits D-2 through D-9 and D-27) The recordings were of varying quality but in the instances that the conversations could be heard, they were consistent with the circumstances described in the investigative reports prepared by Medina. (Exhibits D-29 through D-31)

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. Penal Code section 647(b)(1) provides that an individual who solicits, or who agrees to engage in, or who engages in, any act of prostitution with the intent to receive compensation, money, or anything of value from another person. An individual agrees to engage in an act of prostitution when, with specific intent to so engage, the individual manifests an acceptance of an offer or solicitation by another person to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in an act of prostitution.

4. Penal Code section 647(b)(4) provides that a manifestation of acceptance of an offer or solicitation to engage in an act of prostitution does not constitute a violation of this subdivision unless some act, in addition to the manifestation of acceptance, is done within this state in furtherance of the commission of the act of prostitution by the person manifesting an acceptance of an offer or solicitation to engage in that act. As used in this subdivision, "prostitution" includes any lewd act between persons for money or other consideration.

5. Penal Code section 653.22(a)(1) provides that, except as specified in paragraph (2), it is unlawful for any person to loiter in any public place with the intent to commit prostitution. This intent is evidenced by acting in a manner and under circumstances that openly demonstrate the purpose of inducing, enticing, or soliciting prostitution, or procuring another to commit prostitution.

6. Penal Code section 653.23 provides that:

(a) It is unlawful for any person to do either of the following:

(1) Direct, supervise, recruit, or otherwise aid another person in the commission of a violation of subdivision (b) of Section 647 or subdivision (a) of Section 653.22.

(2) Collect or receive all or part of the proceeds earned from an act or acts of prostitution committed by another person in violation of subdivision (b) of Section 647.

(b) Among the circumstances that may be considered in determining whether a person is in violation of subdivision (a) are that the person does the following:

(1) Repeatedly speaks or communicates with another person who is acting in violation of subdivision (a) of Section 653.22.

(2) Repeatedly or continuously monitors or watches another person who is acting in violation of subdivision (a) of Section 653.22.

(3) Repeatedly engages or attempts to engage in conversation with pedestrians or motorists to solicit, arrange, or facilitate an act of prostitution between the pedestrians or motorists and another person who is acting in violation of subdivision (a) of Section 653.22.

(4) Repeatedly stops or attempts to stop pedestrians or motorists to solicit, arrange, or facilitate an act of prostitution between pedestrians or motorists and another person who is acting in violation of subdivision (a) of Section 653.22.

(5) Circles an area in a motor vehicle and repeatedly beckons to, contacts, or attempts to contact or stop pedestrians or other motorists to solicit, arrange, or facilitate an act of prostitution between the pedestrians or motorists and another person who is acting in violation of subdivision (a) of Section 653.22.

(6) Receives or appears to receive money from another person who is acting in violation of subdivision (a) of Section 653.22.

- (7) Engages in any of the behavior described in paragraphs (1) to (6), inclusive, in regard to or on behalf of two or more persons who are in violation of subdivision (a) of Section 653.22.
- (8) Has been convicted of violating this section, subdivision (a) or (b) of Section 647, subdivision (a) of Section 653.22, Section 266h, or 266i, or any other offense relating to or involving prostitution within five years of the arrest under this section.
- (9) Has engaged, within six months prior to the arrest under subdivision (a), in any behavior described in this subdivision, with the exception of paragraph (8), or in any other behavior indicative of prostitution activity.
- (c) The list of circumstances set forth in subdivision (b) is not exclusive. The circumstances set forth in subdivision (b) should be considered particularly salient if they occur in an area that is known for prostitution activity. Any other relevant circumstances may be considered. Moreover, no one circumstance or combination of circumstances is in itself determinative. A violation of subdivision (a) shall be determined based on an evaluation of the particular circumstances of each case.

7. Business and Professions Code 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.

8. Business and Professions Code section 23355 provides that, 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.

Standard of Review

9. Respondents have raised a question regarding the standard of review. Before getting to the merits of the allegations in the Accusation, it is important to resolve this matter. Respondents have primarily cited *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853 for the proposition that the standard of proof in this matter requires a showing of “clear and convincing evidence” that the alleged charges in the Accusation occurred. Respondents’ reliance on *Ettinger* is misplaced. The license under consideration in *Ettinger* was a professional or vocational license, not a liquor license. The holding in that matter is limited to proceedings for suspending or revoking those categories of licenses. There is express statutory language and language in the California Constitution setting forth the standard of review in disciplinary proceedings before the Department. “The Department of Alcoholic Beverage Control (the Department) has broad discretion to revoke or suspend a liquor license if it determines “for good cause” that continuing the license would be “contrary to public welfare or morals....” (Cal. Const., art. XX, § 22; Bus. & Prof. Code, § 24200.) *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.* (2002) 100 Cal.App.4th 1094, 1097. This is the standard of review that will be applied in this matter.

June 20, 2019 Counts

10. Counts 1-3 of the Accusation involve conduct that is alleged to have occurred on June 20, 2019. Cause for suspension or revocation of Respondents' license was established for the violations alleged in these counts. The Department's evidence credibly demonstrated that Jagjit Singh, using the name "Gus" and J. Singh believed that Medina was engaged in prostitution while in the Licensed Premises on June 20, 2019. Medina's initial interactions with J. Singh at the counter of the Licensed Premises strongly inferred that she was engaging in prostitution and that she was inquiring of J. Singh whether he was interested in engaging her services. (Findings of Fact, ¶¶ 1-9)

11. While the discussion with J. Singh, on that date, established that he was not seeking to engage Medina in a sexual act, J. Singh did direct Medina to speak with Jagjit Singh who was sitting in earshot of the conversation that J. Singh and Medina just had. The record in this matter established that Jagjit Singh AKA "Gus" was an ongoing agent or employee of the Licensed Premises based on repeated observations of Jagjit Singh performing work functions in the Licensed Premises during the period of the investigation and his access to employee areas of the Licensed Premises that the public would not have access to. The discussion between Jagjit Singh and Medina quickly turned explicit and there was a detailed discussion about sexual acts being performed in exchange for money. Jagjit Singh proposed going to a "Comfort Inn" after Medina offered to engage in "full sex" in exchange for \$100. Jagjit Singh ultimately offered \$60 for oral copulation from Medina and he encouraged her to accompany him to a back room in the Licensed Premises to perform the act. Jagjit Singh entered the room and gestured for Medina to follow him into the room. While standing in the room with Medina outside of the entryway, Jagjit Singh displayed a wad of cash to demonstrate to Medina that he would pay for the sex act discussed. (Findings of Fact, ¶¶ 1-9)

12. As alleged in count three of the Accusation, Jagjit Singh, an employee or agent of the Licensed Premises, fully solicited an act of prostitution in violation of Penal Code section 647(b)(1) with the agreement of \$60 in exchange for oral copulation. The manifestation requirement of Penal Code section 647(b)(4) was fulfilled by the movement into a room to receive the oral copulation, the display of money, and the attempt to lure Medina to another, more private room after J. Singh intervened to keep them from being overheard during their ongoing discussion. (Findings of Fact, ¶¶ 1-9)

13. When J. Singh walked up to their location in the Licensed Premises, he did not direct Jagjit Singh to stop or direct Medina to leave, even though they were actively negotiating an act of prostitution in his Licensed Premises. He instead directed Jagjit Singh and Medina to move to another more private area of the Licensed Premises so customers would not hear their discussion. Jagjit Singh attempted to do so to further the act that he had already negotiated. Medina then feigned concern about her safety with people she didn't know and used this as an excuse to leave. J. Singh was clearly aware of what was occurring between Jagjit Singh and Medina and he made no effort to stop them even though he had a duty to do so. He had, in fact, initiated their contact by directing Medina to him. If there was any ambiguity regarding Medina and what she was discussing with Jagjit Singh, it evaporated when Jagjit Singh and Medina engaged in an explicit negotiation for sex acts in exchange for money within earshot of J. Singh. J. Singh

clearly heard what was being discussed because he directed them to a more private area of the Licensed Premises. J. Singh permitted Jagjit Singh to solicit a sex act in the Licensed Premises in violation of Penal Code section 647(b) as alleged in count one of the Accusation. Additionally, J. Singh went beyond “permitting” a violation because J. Singh was in control of the Licensed Premises and he allowed Jagjit Singh and Medina to use the location for their negotiation and the potential consummation of a sex act in exchange for money. J. Singh actively aided Jagjit Singh and Medina and his active participation was in violation of Penal Code section 653.23(a)(1) as alleged in count two. (Findings of Fact, ¶¶ 1-9)

July 2, 2019 Count

14. As alleged in count four of the Accusation, J. Singh, one of the Respondents and an owner of the Licensed Premises, fully solicited an act of prostitution in violation of Penal Code section 647(b)(1) with the agreement of \$100 in exchange for 30-45 minutes of sexual activity, including oral copulation, from Medina. The manifestation requirement of Penal Code section 647(b)(4) was fulfilled by J. Singh discussing particulars of the location, time and details of the sex acts to occur. He then acted, after the agreement, to ensure that he and Medina could reach each other. J. Singh agreed that the act would take place at the Licensed Premises. J. Singh directed Medina to return after “Jimmy” left the Licensed Premises. J. Singh then obtained from and wrote down Medina’s phone number so he could contact her to come over after “Jimmy” left the Licensed Premises. (Findings of Fact, ¶¶ 1-12)

July 11, 2019 Counts

15. On July 11, 2019 J. Singh actively aided Jagjit Singh and “John” AKA Lidder in their negotiations with Medina for separate violations of Penal Code section 647(b)(1). His active participation in furthering both Jagjit Singh’s and Lidder’s efforts to engage in sexual acts with Medina in exchange for money, was in violation of Penal Code section 653.23(a)(1) as alleged in count five of the Accusation. On that date, Medina entered the Licensed Premises in her ongoing role as “Brenda” and she spoke with J. Singh and Jagjit Singh, who were both working. J. Singh, that date, raised the concept of receiving a cut of “Brenda’s” prostitution earnings with his ongoing discussion about “consignment” and his calling Medina a “walking mobile service.” J. Singh facilitated Jagjit Singh’s negotiations for sex acts from Medina, that date, by allowing Medina to loiter in the store in furtherance of her prostitution activities. The extended conversation that occurred between Jagjit Singh and Medina was a sexually explicit discussion of potential sex acts between Jagjit Singh, Medina and potentially a third female in exchange for money. (Findings of Fact, ¶¶ 1-19)

16. Unlike the June 20, 2019 incident, the record in this matter did not establish that a legally sufficient agreement had been reached between Jagjit Singh and Medina for a particular sex act in exchange for money. While an explicit and extended negotiation had occurred at the Licensed Premises between Jagjit Singh and Medina, (much of it in the direct presence of J. Singh), an agreement to a particular act, pursuant to Penal Code section 647(b)(1), and the manifestation of acceptance of an offer required by Penal Code section 647(b)(4) did not occur. As a result, the violation alleged in count seven is not established. Since count seven is not established, the allegation alleged in count six (that J. Singh, permitted Jagit Singh to solicit or agree to engage in

an act of prostitution, on the premises, in violation of Penal Code section 647(b)) must also fail. (Findings of Fact, ¶¶ 1-19)

17. The remaining count tied to the July 11, 2019 date involved an allegation in count eight that Jagjit Singh aided another person in the commission of a violation of subdivision (b) of section 647, in violation of Penal Code section 653.23(a)(1). The record amply demonstrates that Jagjit Singh actively facilitated the negotiations over the phone between Lidder AKA "John" and Medina. This negotiation culminated in an agreement between Lidder and Medina where Medina would orally copulate Lidder in exchange for \$40. Jagjit Singh made the call to Lidder. He spoke with Lidder on the call and presented Medina in the role of a prostitute to him. Jagjit Singh and J. Singh both advocated for "John" as being trustworthy when Medina asked questions about this potential client. Jagjit Singh gave Medina \$5 to facilitate Medina getting gasoline to assist in Medina connecting with Lidder. The violation of Penal Code section 653.23(a)(1) as alleged in count eight is established. (Findings of Fact, ¶¶ 1-19)

July 26, 2019 Counts

18. Counts 9-11 of the Accusation involve conduct that is alleged to have occurred on July 26, 2019. Cause for suspension or revocation of Respondents' license was established for the violations alleged in these counts. The Department's evidence credibly demonstrated that J. Singh permitted a violation of Penal Code section 647(b)(1) to occur on the grounds of the Licensed Premises as alleged in count ten. Lidder had agreed to pay \$40 in exchange for oral copulation from Medina. The manifestation requirement of Penal Code section 647(b)(4) was fulfilled by Lidder discussing particulars of the location, time and details of the sex act to occur and his subsequent arrival at the Licensed Premises parking lot as discussed. Further, Lidder got out of the car and sought out Medina, then returned to his vehicle and showed Medina the agreed upon payment. (Findings of Fact, ¶¶ 1-31)

19. The record also established that J. Singh was aware of the details of the agreed upon sex act in exchange for money prior to the meeting between Lidder and Medina. Beyond awareness, J. Singh actively took steps to aid Lidder and Medina in violating Penal Code section 647(b)(1). J. Singh actively vouched for Lidder. J. Singh sold Medina condoms prior to the meeting between Medina and Lidder. J. Singh actively communicated with Lidder to encourage the prostitution transaction in the period prior to their in person meeting on July 26, 2019. J. Singh allowed Medina to use the Licensed Premises as a meeting place for a prostitution transaction. On July 26, 2019, J. Singh allowed Medina to loiter in the Licensed Premises while waiting for Lidder to arrive. J. Singh used his security monitor to tip off Medina when Lidder arrived at the Licensed Premises so she would know who to meet with. The violation of Penal Code section 653.23(a)(1) as alleged in count nine is established. (Findings of Fact, ¶¶ 1-31)

20. Subsequent to the arrest of Lidder on July 26, 2019 J. Singh was contacted in the Licensed Premises, a type 21, off-sale general license establishment. Department agents found an opened, partially consumed Bud Light beer bottle under the register area where J. Singh was working. J. Singh admitted the beer was his. This established the violation alleged in count eleven that J. Singh had exceeded his license privileges in violation of Business and Professions Code sections 23300 and 23355. (Findings of Fact, ¶¶ 1-31)

Entrapment

21. The Respondents have alleged that the actions of Medina constituted entrapment and that the charges related to Medina's actions in the role of "Brenda" should fail. Entrapment is a defense to a Department licensure proceeding. (See *Provigo Corp. v. Alcoholic Beverage Control Appeals Bd.* (1994) 7 Cal.4th 561, 569; *Patty v. Board of Medical Examiners* (1973) 9 Cal.3d 356, 362-363; *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.* (2002) 100 Cal.App.4th 1094, 1097.)

21. *People v. Smith* (2003) 31 Cal.4th 1207 offers helpful guidance regarding the issue of entrapment and its applicability to this matter. *Smith*, in affirming the criminal convictions and finding the conduct of the law enforcement officers to be "unremarkable" declined to apply federal sentence manipulation or the federal standard outrageous conduct doctrine to California. *Smith* did cite with approval California's settled law on the concept of entrapment established in *People v. Barraza* (1979) 23 Cal.3d 675:

"We hold that the proper test of entrapment in California is the following: was the conduct of the law enforcement agent likely to induce a normally law-abiding person to commit the offense? For the purposes of this test, we presume that such a person would normally resist the temptation to commit a crime presented by the simple opportunity to act unlawfully. 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." (23 Cal.3d at 689-690 fn. omitted)

22. In applying the appropriate standard of *Barraza* to this matter, there is no evidence that entrapment took place. Here, none of the actions of Medina involved anything more than Medina offering the opportunity to engage her as a prostitute. Medina contacted another employee of the Licensed Premises, "Jimmy" and he had no difficulty rebuffing her offers. Medina did nothing more than offer J. Singh and Jagjit Singh the opportunity to hire her as a prostitute. This was a completely unremarkable investigation. Further, both men went beyond merely engaging with Medina unlawfully. Both J. Singh and Jagjit Singh went beyond the unlawful activity that was presented by Medina by trying to actively serve as intermediaries to have Medina prostitute herself to others. J. Singh went even further by broaching the subject of receiving a portion of Medina's prostitution earnings as "consignment." Entrapment has not been established in this matter as a defense.

23. Good cause being shown that the allegations set forth in counts one through five and eight through eleven are supported by substantial evidence, the counts are sustained. The allegations set forth in counts six and seven are dismissed based on insufficient evidence. Except as set forth in this decision, all other contentions of the parties lack merit.

PENALTY

The Department is seeking a revocation in this matter given the criminal nature of the violations, the Respondent J. Singh's direct and increasing involvement in the conduct in this case, and the prior history of discipline. The Respondent argued that the Department failed to meet its burden of proof as to any of the counts and it sought dismissal. No mitigating circumstances were presented.

This case does not involve a disorderly house charge, but there is a close correlation between the totality of the conduct in this matter and the conduct that is addressed in typical disorderly house cases. The court in *Morell v. Department of Alcoholic Beverage Control* (1962) 204 Cal.App.2d 504, observed; "Where... objectionable behavior in a licensed establishment is of a continuing nature and not merely an isolated or accidental instance, it is an inescapable conclusion that the licensees have permitted and suffered the resultant condition which offends public welfare and morals and violates the statutory prohibition against keeping a disorderly house."

Here, as in a disorderly house matter, we have a pervasive violation of laws that directly offend public welfare and morals, namely, laws prohibiting prostitution. This conduct occurred over an extended period. J. Singh, one of the Respondents, and Jagjit Singh, an employee, both repeatedly engaged in the solicitation of prostitution and actively encouraged prostitution activity in and around the Licensed Premises with themselves and other parties. J. Singh actually began to inquire from Medina how he could monetarily profit from the prostitution activity she would be engaging in.

J. Singh's duty was to prevent activity like this from occurring in and around his Licensed Premises. Instead, he was a driving force and active participant in the activity occurring. When J. Singh was contacted by law enforcement on July 26, 2019, he was drinking in the Licensed Premises which is a further act showing the Respondents' direct disregard of the responsibilities of licensure.

The Licensed Premises had prior discipline from 2010 in addition to the violations that occurred from June 20, 2019 through July 26, 2019.

Rule 144 provides for a penalty up to revocation for disorderly house violations with similar circumstances. Given the multiple aggravating circumstances in this matter, outright revocation is warranted. The penalty recommended herein complies with rule 144.³

³ All rules referred to herein are contained in title 4 of the California Code of Regulations unless otherwise noted.

Jaspinder Singh and Manjit Singh
DBA: Bubbas Food & Liquor
File: 21-414370
Registration: 20089809
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ORDER

The Respondents' off sale general license is revoked.

Dated: June 8, 2021


Alberto Roldan
Administrative Law Judge

<input checked="" type="checkbox"/> Adopt
<input type="checkbox"/> Non-Adopt: _____

By:  _____
Date: <u>07/22/21</u> _____