

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

AB-9999

File: 48-442511; Reg: 23093593

ARACELI ORTIZ DE JARA,
dba Marty's Cocktails
16351 South Western Avenue
Gardena, CA 90247-4637,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing:

Doris Huebel

Appeals Board Hearing: August 9, 2024

ISSUED AUGUST 14, 2024

Appearances: *Appellant:* Armando H. Chavira, of the Law Office of
Armando H. Chavira, as counsel for Araceli Ortiz De Jara,

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

OPINION

Araceli Ortiz De Jara, doing business as Marty's Cocktails (appellant),
appeals from a decision of the Department of Alcoholic Beverage Control
(Department).¹ revoking her license, with revocation stayed for three years
upon the condition that no further cause for discipline arises during that time.²

¹ The decision of the Department, dated March 12, 2024, is set forth in the
appendix.

² In addition to the stayed-revocation, appellant's license was
suspended for 40 days.

The Department penalized appellant on the grounds that she, either alone or through her agents and employees: 1) possessed and permitted operation of an illegal slot machine or gambling device, in violation of Penal Code sections 330a-b (two counts); 2) sold, gave, or delivered alcoholic beverages between the hours of 2:00 a.m. and 6:00 a.m. of the same day, in violation of Business and Professions Code section 25631³; 3) permitted alcoholic beverages to be consumed upon the premises during hours in which it is unlawful to sell, give, or deliver an alcoholic beverage for consumption on the premises, in violation of section 25632 (two counts); 4) gave beer in connection with the sale or distribution of an alcoholic beverage, in violation of section 25600; 5) refused to permit the Department's representatives to visit and inspect the licensed premises, in violation of sections 25616 and 25753; 6) willfully resisted, delayed, or obstructed peace officers in the discharge or attempted discharge of their duties, in violation of Penal Code section 148(a)(1); 7) falsely imprisoned persons by preventing them from leaving the licensed premises, in violation of Penal Code section 236 (three counts), and; 8) permitted Jane Doe #1 to touch, caress, or fondle the breasts, buttocks, anus, or genitals of another person, in violation of rule 143.2(3).⁴

FACTS AND PROCEDURAL HISTORY

³ All statutory references are to the California Business and Professions Code unless otherwise stated.

⁴ All rules referenced herein refer to the sections of title 4 of the California Code of Regulations, Division 1.

Appellant's license was issued on August 28, 2006. There are two prior records of departmental discipline against the license, the most recent from 2021 for violation of section 25632 (serving alcoholic beverages after hours).

On August 23, 2023, the Department filed a 12-count accusation against appellant. An administrative hearing was held on November 8, 2023 and December 4, 2023. Oral evidence, documentary evidence, and evidence by oral stipulation on the record was received at the hearing. Department agents Michael Connolly, Carlos Valencia, and John Torres, as well as Gardena Police Department (GPD) officer Laurent Hentges, testified for the Department. Appellant did not present any witnesses.

Evidence established that the Department and Gardena Police Department (GPD) received complaints about the licensed premise related to alleged narcotic sales, after hours alcohol consumption, fights, disturbances, loud music, and loitering around the licensed premises.

A. August 27, 2022

On August 27, 2022, Department agents Connolly and Valencia entered the licensed premises in a plain clothes capacity to investigate,⁵ while a cover team of officers remained outside. The agents observed an employee, Rafael Jr. Reyes (Reyes) bring ice from outside and pour it into the drink coolers. At

⁵ The agents had investigated the licensed premises in an undercover capacity on a prior occasion, July 15, 2022, where they discovered the operation of an illegal gambling machine.

approximately 1:52 a.m., Reyes announced to the patrons that he needed all the vehicles in the rear parking lot moved so he could close and lock the gate. Some of the patrons responded to Reyes' announcement and walked out of the rear door to move their vehicles. Reyes then used a key from a lanyard hanging around his neck to lock the rear door. The front door was also locked. Some of the patrons returned from the parking lot and knocked on the door. Reyes used his key to unlock the door and let them back in. The undercover agents and 17 other patrons continued to drink inside the licensed premises.

At 2:29 a.m.,⁶ Agent Connolly texted the officers outside about violations that were occurring inside the licensed premises. An officer replied that the outside cover team was approaching the rear door of the licensed premises. Agents intended to contact whoever was in charge at the licensed premises and investigate. Agents Connolly and Valencia saw Reyes looking at his cell phone screen before announcing aloud that the police were coming. Reyes gestured to everyone inside to be quiet. The agents saw another employee turn off the fans, lights, and music.

At 2:35 a.m., the agents heard a loud banging at the rear metal door of the licensed premises, as well as announcements from outside that police were present and commanded that the rear door be opened. Neither Reyes nor any other employee opened the door. Instead, Reyes moved his hands in a downward and upward motion, commanding everyone to be quiet and not

⁶ The cut-off time to purchase alcoholic beverages is 2:00 a.m. under section 25631.

talk. Everyone inside the licensed premises obeyed Reyes' instruction and the atmosphere drastically changed to a serious mood.

At about 2:40 a.m., GPD Officer Hentges banged his metal flashlight loudly on the licensed premises rear metal door, announcing the presence of police and stated they were there to conduct an inspection of the business. Again, no one from inside the licensed premises opened the rear door. At about 2:50 a.m., another GPD officer parked his patrol car facing the rear door, and sounded the sirens and flashed the lights for approximately five to ten seconds. The officer also announced the presence of police using the vehicle's public announcement system. Another officer knocked on the rear door and announced, "Gardena Police open the door!" (Findings of Fact, ¶ 18.) Every couple of minutes, for close to an hour, Officer Hentges and other agents or officers alternated knocking and announcing the police presence and requesting the rear door be opened.

At some point, Officer Hentges observed a surveillance camera above and to the right of the rear door. The camera's view faced toward the parking lot where the patrol vehicle and the officers were positioned. Another agent saw the camera swiveling, indicating the camera was following the officers' movements. The officers covered the camera for their own safety.

Reyes did not allow anyone inside to leave while the outside law enforcement cover team attempted to enter the licensed premises. During this time, Reyes held the keys to the doors on the lanyard around his neck. While

everyone was locked inside with the fans off, the air became very stale and hot. Bartenders were still serving patrons alcoholic beverages, which the patrons consumed. Agent Connolly was sweating profusely and there was a lot of tension in the air. Agent Connolly wanted to leave because he was afraid. Although Agent Connolly had a concealed firearm, he did not let anyone know he had it and did not pull it out because he did not want to escalate the tense situation. Agent Valencia wanted to leave the premises too and asked Reyes if he could leave. Reyes replied, "No, because the cops are still outside." (Findings of Fact, ¶ 20.) Agent Valencia believed that if he had identified himself as a police officer to Reyes, and showed his weapon, that the already tense situation would have gotten worse. Agent Valencia overheard another patron ask Reyes if they could leave, to which Reyes gave the same response, "No, because the cops are outside." (*Ibid.*)

At about 3:15 a.m., Agents Connolly and Valencia saw appellant's husband, who is a manager at the licensed premises, walk out of the rear office and turn on some of the lights and fans. The agents determined that he had been in the licensed premises the entire time while Reyes had locked everyone in. The bartenders were still serving beer and distilled spirits to the patrons, who were consuming the alcohol served to them.

During the entire time the agents and patrons were locked inside the licensed premises, Agent Connolly observed Reyes constantly monitor his cell phone. The licensed premises' rear and front doors were never opened for the

outside cover team of officers. Outside, the Department agents consulted with GPD officers, and they decided to leave the location for the safety of the undercover officers, and in hopes the occupants would be allowed to leave. This would also give the officers an opportunity to return and investigate the licensed premises. The officers and agents left the licensed premises but staged themselves a short distance away within view.

At approximately 3:41 a.m., Agent Connolly received a text message that the outside cover team would be pulling back and leaving. At approximately 4:20 a.m., Reyes announced that the police had left, and he was going to open the rear door and let everyone leave. Most of the patrons reacted by getting up and running to the back door. Agents Connelly and Valencia stayed at the fixed bar because they did not want anyone to rub up against them and feel their weapons.

At approximately 4:22 a.m., Reyes unlocked the rear door. By this time, agents Connolly and Valencia and some other patrons had been locked in the licensed premises for approximately two and a half hours. At approximately 4:25 a.m., from his observation post, Officer Hentges saw the licensed premises' rear door abruptly open and saw approximately 20 people running out the rear door to their vehicles. Agents Connelly and Valencia walked at a brisk pace and then ran with the other patrons out of the licensed premises' rear door. Officer Hentges caught up with one of the patrons, who was later identified as Marcos Sanchez and spoke with him.

Mr. Sanchez explained his experience inside the licensed premises while locked inside for nearly two hours. Mr. Sanchez stated that he clearly heard the police knock and announce themselves at the doors, and said the patrons were not allowed to leave because Reyes had kept the doors locked. Mr. Sanchez saw the live video feed of the rear door surveillance camera and could clearly see on the video the police at the rear door knocking and announcing.

B. Notice to Produce Records

After the incident on August 27, 2022, the Department served appellant with a notice to produce. In response, appellant provided the Department with video surveillance footage from the interior of the licensed premises for the dates of August 29-September 2, 2022.

On one of the videos from August 31, 2022 (exhibit 23), a female patron is seen giving a male patron a sexual lap dance in one of the alcoves, while the male patron touches the female patron's breasts. However, there is no evidence in the video that any of appellant's employees see the lap dance or lewd conduct between the female and a male patron.

A later portion of the video depicts Reyes looking into the alcove at the female thrusting her hips and buttocks upward and downward, performing a sexual lap dance upon the male patron. Reyes makes a hand gesture and continues to watch the female before turning away briefly. Later, the video depicts Reyes looking again into the alcove and watching the female patron

performing the sexually explicit lap dance upon the male patron, then Reyes again turns briefly away.

The video also depicts Reyes walking toward and into the alcove, while observing the female who continues to perform the sexual lap dance upon the male patron, with the male patron touching the female patron's breasts. Reyes then turns away and stands in the doorway of the alcove as the lap dance continues behind him. Reyes then walks out of the alcove, turns around and walks back into the alcove before he sits down while the female patron continues to perform the lewd lap dance upon the male patron.

Reyes is in the alcove for an extended period of time while the female is thrusting her hips and buttocks upward and downward, bouncing her buttocks upon the male patron's lap in a sexually explicit manner. At one point a patron walks by and looks at the female patron performing the lap dance. Then at the end, Reyes walks out of the alcove with the female continuing the sexual lap dance.

Throughout the lap dance the female patron performs, she is bent over facing the camera, while continuously thrusting her hips and buttocks in an upward and downward motion, with her buttocks bouncing upon the lap of the male patron who is seated behind her and touching the female's breasts. There was no evidence that Reyes or any employee made the couple stop the sexually explicit lap dance and lewd touching. The female appears to be wearing only white underwear and a black bra.

C. Proposed Decision, Certificate of Decision, and Appeal

On January 18, 2024, the administrative law judge (ALJ) issued a proposed decision sustaining all counts and recommended a 40-day suspension and stayed revocation. The Department adopted the proposed decision on March 12, 2024, and issued a certificate of decision the same day. Appellant filed a timely appeal raising the following issues:

1. Was there substantial evidence to support the Department's finding that appellant and/or her employees and agents falsely imprisoned a person within the premises on August 27, 2022, within the meaning of Penal Code section 236?

2. Did the Department commit a mistake of law finding that appellant and/or her employees and agents falsely imprisoned a person within the premises on August 27, 2022, within the meaning of Penal Code section 236?

3. Was there substantial evidence to support the Department's finding that appellant violated rule 143.2(3)?

4. Was there substantial evidence to support the Department's findings that appellant violated sections 25616, 25632, and 25753?

5. Was there substantial evidence to support a finding that appellant's agents or employees violated Penal Code section 148(a)(1)?

6. Did the Department commit an error of law by issuing a penalty that was vague and/or ambiguous?

7. Did the Department abuse its discretion by issuing an excessive and harsh penalty?

For the reasons stated below, appellant's contentions are rejected, and the Department's decision is affirmed.

DISCUSSION

The Board's scope of review is limited; it may only review a Department's decision based upon "insufficiency of the evidence, excess of jurisdiction, errors of law, or abuse of discretion." (*Boreta Enterprises, Inc. v. Dept. of Alcoholic Bev. Control* (1970) 2 Cal.3d 85, 95, [84 Cal.Rptr. 113].)

Further, the California Constitution provides:

No judgment shall be set aside, or new trial granted, in any cause, on the ground of misdirection of the jury, or of the improper admission or rejection of evidence, or for any error as to any matter of pleading, or for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice.

(Cal. Const., art. VI, § 13, emphasis added.) The burden to show an alleged error was prejudicial is on the party seeking reversal. (*Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 308 [140 Cal.Rptr.3d 459].)

Appellant appeals the Department's decision as it pertains to counts 6 (failure to permit the inspection of records), 8, 9, 10 (false imprisonment), and 11 (rule 143.2(3)). (Appellant's Opening Brief (AOB) at p. 1.) The remaining counts are not contested. (*Ibid.*)

Appellant makes the following arguments in its opening brief:

1) It was a mistake of law for the Department to find that appellant violated Penal Code section 236 because the Department is not a “person” within the meaning of that statute and the Department agents did not bring a personal action for false imprisonment within the statute of limitations period;

2) The Department's findings that appellant violated Penal Code section 236 is not supported by substantial evidence because the agents consented to waiting inside the licensed premises;

3) The Department's findings that appellant violated rule 143.2(3) is not supported by substantial evidence because there is no evidence to support that appellant encouraged or permitted such a violation;

4) Appellant's penalty is unduly harsh and excessive.

These issues will be discussed in order.

A. Penal Code Section 236 – False Imprisonment (Counts 8-10)

Penal Code section 236 defines false imprisonment as “the unlawful violation of the personal liberty of another.” Appellant argues that the Department is not a person within the meaning of Penal Code section 236, and therefore, it cannot be falsely imprisoned. (AOB at p. 6.) Appellant further contends that agents Connolly and Valencia are the only “persons” who could bring actions against appellant for false imprisonment but failed to do so within the applicable statute of limitations period. (*Id.* at p. 7.) Finally, appellant argues that there can be no finding of false imprisonment against appellant, because

after Reyes locked the door, the agents did not object or request to be let out. Thus, appellant contends, the agents consented to remain inside the licensed premises.

For the false imprisonment counts, the Department made the following findings:

22. Cause for suspension or revocation of the Respondent's license exists under Article XX, section 22 of the California State Constitution and sections 24200(a) and (b), for the violation of Penal Code section 236 as alleged, in counts 8, 9 and 10 of the accusation. On August 27, 2022, the Respondent-Licensee's agent or employee, Rafael Jr. Reyes, falsely imprisoned patrons, as well as M. Connolly, and C. Valencia, to wit: by locking them in and preventing them from leaving the Licensed Premises, unlawfully violating their personal liberty, in violation of Penal Code section 236. (Counts 8, 9 and 10.) (Findings of Fact ¶¶ 2, 16-20, 22-23, and 25-27.)

23. Respondent argued counts 8, 9 and 10 should be dismissed for lack of evidence of any violence, duress or deceit and the existence of the defense of consent of the patrons and agents to remain in the Licensed Premises. This argument is rejected. Respondent's employees did not offer the patrons an opportunity to leave and no patrons were permitted to leave. In fact, Reyes refused Agent Valencia's and another patron's request to leave " ... because the cops are still outside." Agent Valencia believed that if he had identified himself as a police officer to Reyes and showed his weapon that the already tense situation would have gotten worse. Agent Connolly was sweating profusely and said there was a lot of tension in the air. Agent Connolly wanted to leave because he was afraid. Although Agent Connolly had a concealed firearm, he did not let anyone know he had it and did not pull it out because he did not want to escalate the tense situation in the Licensed Premises.

24. The Respondent further argued there was no evidence the front door was locked or that the front door was ever used by the Respondent's employees or patrons on August 27, 2022. This argument is rejected. The evidence established that Reyes was only concerned with (1) unlocking and locking the rear door to

allow patrons in after they moved their vehicles, and (2) locking the rear door to prevent law enforcement from entering or patrons from exiting. Reyes eventually unlocked the rear door to let patrons out at 4:22 a.m. The ample evidence, via testimony and bodycam footage established that Officer Amstock was knocking and announcing at the front door requesting to be let in. Based on the record and preponderance of the evidence it is more likely than not that the front door was locked and that was the reason Officer Amstock could not gain access into the Licensed Premises from the front door and was thusly knocking and announcing to have the front door unlocked to be let in.

(Conclusions of Law ¶¶ 22-24.)

The Department responded to appellant's arguments in its reply brief, countering that the Department is permitted to take administrative action against licensees, such as appellant, under section 24200 "for violations of law and in furtherance of the protection of public welfare and morals."

(Department's Reply Brief (DRB) at p. 10.) Further, the Department argues that the statute of limitations for violations of the ABC Act are specified in sections 24206 and 24207. (*Ibid.*) Finally, the Department argues that substantial evidence supports the Department's findings that appellant's agent or employee, Reyes, falsely imprisoned multiple people, not just Department agents, by locking them inside the licensed premises on August 27, 2022. (*Id.* at pp. 11-12.)

The Board agrees with the Department. The Department has brought the accusation against appellant for violations of the ABC Act; not as a private cause of action or criminal proceeding against appellant. The ABC Act gives the Department the power to deny, suspend, or revoke any alcoholic beverage

license for good cause if the granting or continuance of a license would be contrary to public welfare or morals (Cal. Const., art. XX, § 22.) The violation of Penal Code section 236 must be viewed through this lens. As such, there is no requirement that the Department, itself, be falsely imprisoned to bring an accusation against appellant. Further, the statute of limitations for penal or tortious conduct is equally inapplicable. The Department is only required to follow the filing deadlines set forth in section 24206 and 24207 (requiring all accusations to be filed within either one or three years depending on the violation). Since appellant has not shown that the Department failed to comply with sections 24206 or 24207, her contentions are rejected accordingly.

Finally, the Department's findings that Reyes, appellant's agent or employee, falsely imprisoned agents Valencia and Connolly is supported by substantial evidence. This Board is required to defer to the Department's findings so long as they are supported by substantial evidence. (*See Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (Southland)* (2002) 103 Cal.App.4th 1084, 1094 [127 Cal.Rptr.2d 652, 659] [citing *Kirby v. Alcoholic Beverage Control Appeals Bd.* (1968) 261 Cal.App.2d 119, 122 [67 Cal.Rptr. 628] ["In considering the sufficiency of the evidence issue the court is governed by the substantial evidence rule[;] any conflict in the evidence is resolved in favor of the decision; and every reasonably deducible inference in support thereof will be indulged. [Citations.]"]; see also *Kirby v. Alcoholic Bev. etc. Appeals Bd.* (1972) 25 Cal.App.3d 331, 335 [101 Cal.Rptr. 815] ["When two or

more inferences can be reasonably deduced from the facts, the reviewing court is without power to substitute its deductions for those of the department.”.]

“Substantial evidence” is “evidence of ponderable legal significance, which is ‘reasonable in nature, credible and of solid value.’” (*County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 814 [38 Cal.Rptr.2d 304, 307–308], internal citations omitted.)

Here, there is ample evidence that Reyes locked the doors to the licensed premises and denied Agent Valencia's request to leave. (Reporter's Transcript (RT) at pp. 152-153.) Agent Connolly also testified that the doors were locked, and Reyes held the keys. (*Id.* at pp. 46-47.) At one point, a patron made a sudden noise and Reyes looked at them and made a “slashing” gesture with his finger across his neck. (*Id.* at pp. 48-49.) There was also body camera footage that supports the Department's findings. All of the aforementioned evidence is “evidence of ponderable legal significance, which is ‘reasonable in nature, credible and of solid value.’” (*County of Los Angeles, supra* at p. 814.)

For the reasons above, the Department's findings regarding counts 8-10 are affirmed.

B. Rule 143.2(3) (Count 11)

Appellant contends that the Department's finding that she violated rule 143.2(3) is not supported by substantial evidence. (AOB at pp. 10-14.) Appellant questions Agent Connolly's testimony (*id.* at p. 10), second-guesses the Department's interpretation of the video surveillance (exh. 23), suggests the

Department misidentifies another individual as Reyes in the video (AOB at pp. 12-13), and asks the Board to remand the matter to the Department for further review of the video (*id.* at pp. 13-14.)

Rule 143.2(3) states that it is unlawful to “encourage or permit any person on the licensed premises to touch, caress or fondle the breasts, buttocks, anus or genitals of any other person.” As stated above, this Board is required to defer to the Department’s findings so long as they are supported by substantial evidence. (See *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (Southland)* (2002) 103 Cal.App.4th 1084, 1094 [127 Cal.Rptr.2d 652, 659]

In determining whether the Department's decision is supported by substantial evidence, the Board may not independently reweigh the evidence. (*Kirby v. Alcoholic Beverage Control Appeals Bd.* (1970) 7 Cal.App.3d 126, 129; *Reimel v. Alcoholic Beverage Control Appeals Bd.* (1967) 255 Cal.App.2d 40, 43.) The function of the Board is "merely to determine whether the findings of the Department are supported by substantial evidence." (*Harris v. Alcoholic Beverage Control Appeals Bd.* (1963) 212 Cal.App.2d 106, 113.) Any conflicts in the evidence are to be resolved in favor of the Department's decision, and the Board must accept all reasonable inferences from the evidence which support the Department's decision. (*Ibid.*) The Board may not disregard or overturn a finding of fact by the Department simply because the Board believes that a different finding would have been more reasonable. (*Id.* at p. 114.)

For violation of rule 143.2(3) (Count 11), the Department found:

26. [...] On August 31, 2022, Respondent-Licensee's agent and employee, Rafael Jr. Reyes, encouraged and permitted Jane Doe #1, the unknown female patron to engage in lewd conduct with a male patron, and to perform upon a male patron a sexually explicit lap dance, for more than 20 minutes, resulting in the touching, caressing or fondling of the breasts, buttocks and genitals of another person, in violation of rule 143.2(3). (Count 11.) (Findings of Fact ¶¶ 2, 43-47.)

27. During the prolonged lap dance and lewd conduct between the female and male patron, the female patron is bent over, while thrusting her hips and buttocks in an upward, downward and backward motion, with the male patron touching the female's breasts, and the male patron thrusting his hips and genital area against the female's buttocks, with the female's buttocks coming into contact with the male's genital area.

(Conclusions of Law at ¶¶ 26-27.)

Appellant's criticisms of the Department's evidence are problematic. The Board cannot re-evaluate the testimony of Agent Connolly, give its own interpretation of the video evidence, or determine whether the individual in the video was Reyes or someone else. In fact, this is precisely what the Board is prohibited from doing by law. (*Harris, supra* at p. 114.) The Board may only look at whether there is sufficient evidence to support the Department's findings. If there is sufficient evidence, the Board's inquiry ends.

Here, there is sufficient evidence to support the Department's finding that Reyes, appellant's employee, violated rule 143.2(3). The testimony of the agents as well as video surveillance (exhs. 23 and 24) support the Department's findings and are evidence of "ponderable legal significance [and] 'reasonable in nature, credible and of solid value.'" (*County of Los Angeles, supra* at p. 814.)

The Board must defer to the Department as the trier of fact and the weight it affords to the evidence offered at the hearing. (See *People v. Burton* (1958) 162 Cal.App.2d 790, 792 [328 P.2d 492, 493] ["It was for the trier of the facts to pass upon the credibility of the witnesses and the weight to be accorded the evidence."]; *Pescosolido v. Smith* (1983) 142 Cal.App.3d 964, 970-971 ["The trier of fact . . . is the sole judge of the credibility of the witnesses [and] may disbelieve them even though they are uncontradicted if there is any rational ground for doing so . . .".]) For these reasons, the Department's findings that appellant violated rule 143.2(3) is affirmed.

C. Inspection of the Licensed Premises (Count 6)

Appellant contests the Department's findings that she refused to permit the Department to inspect her records. (AOB at pp. 14-15.) Appellant argues that her records were provided to Agent Connolly and that the Department already had the records requested in its Notice to Produce. (*Id.* at p. 15.)

For Count 6, the Department found:

17. [...] On August 27, 2022, the Respondent-Licensee's agent or employee, Rafael Jr. Reyes, refused to allow and permit the Department and its representatives to enter, visit and conduct an inspection of the Licensed Premises, as authorized by section 25753, in violation of section 25616 (Count 6.) (Findings of Fact ¶¶ 2, 4 16 to 20, 23 and 25.)

18. Respondent argues count 6 was incorrectly pled, claiming that sections 25616 and 25763 relate to discovery or inspection of records and not to the inspection of the premises. This argument is rejected. Code sections 25616 and 25763 are not limited to the inspection of records only in the premises. Section 25616 permits "the department or any of its representatives to make any inspection" and section 25763 provides the department "may visit

and inspect the premises ... to perform its duties under this division."
(Emphasis added by italics.)

(Conclusions of Law ¶¶ 17-18.)

Here, it seems that appellant has again misinterpreted section 25616 to pertain only to records. Section 25616 is broader, allowing for “any inspection,” while section 25763 allows the Department's agents to “visit and inspect the premises.” The evidence clearly shows that the Department agents and GPD officers intended to inspect the licensed premises on August 27, 2022, but were prevented from doing so by Reyes, appellant's employee. (Findings of Fact, ¶¶ 16-23.) Thus, there is substantial evidence to support the Department's findings that appellant violated sections 25616 and 25763, and the Board affirms the Department's decision for Count 6.

D. Penalty

Appellant contends the stayed revocation and 40-day suspension are “excessive and unduly harsh.” (AOB at p. 16.)

This Board may examine the issue of excessive penalty if it is raised by an appellant. (*Joseph's of Cal. v. Alcoholic Bev. Control Appeals Bd.* (1971) 19 Cal.App.3d 785, 789 [97 Cal.Rptr. 183].) However, the Board will not disturb the Department's penalty order in the absence of an abuse of discretion. (*Martin v. Alcoholic Bev. Control Appeals Bd. & Haley* (1959) 52 Cal.2d 287, 291 [341 P.2d 296].) An administrative agency abuses its discretion when it “exceeds the bounds of reason.” (*County of Santa Cruz v. Civil Service Commission of Santa*

Cruz (2009) 171 Cal.App.4th 1577, 1582 [90 Cal.Rptr.3d 394, 397].) However, “[i]f reasonable minds might differ as to the propriety of the penalty imposed, this fact serves to fortify the conclusion that the Department acted within its discretion.” (*Harris v. Alcoholic Bev. Control Appeals Bd.* (1965) 62 Cal.2d 589, 594 [43 Cal.Rptr. 633].)

In determining appellant's penalty, the Department found:

The Department's penalty guidelines are in California Code of Regulations, Title 4, Division 1, Article 22, section 144, commonly referred to as rule 144. The standard penalty under rule 144 for a first-time offense of the licensee or employee not permitting inspection of records in violation of section 25616 is 30 days and indefinite until records are produced. Interestingly, rule 144 does not set forth a recommended penalty for violations of section 25600, although it sets forth the basic guidelines to be followed in crafting a penalty. The penalty for sales and for consumption after hours, for violations of sections 25631 and 25632, is 5 days, 10 days and 15 days depending on whether it is by employees only, employees and friends only, or by the public, respectively. For violations of Penal Code section 330 relating to electronic/video gambling machines with payoffs, the penalty is a 30-day suspension, with 15 days stayed for two years. The penalty guidelines recommend a 35-day suspension up to revocation for a licensee or employee interfering with investigation on the premises consistent with a violation of Penal Code section 148(a)(1). There is no guideline penalty for penal code section 236. A penalty for a violation of rule 143.2 ranges from a 30-day suspension up to revocation. Rule 144 offers guidance on adjusting the standard up or down depending on aggravating and mitigating factors.

[...] The Respondent's license has somewhat of a recent disciplinary history for the same after hours violations in 2021 as alleged in the present matter. The prior disciplinary action shows the Respondent had prior notice and warning, and in conjunction with the current violations over several months shows a continuing course or pattern of conduct. The foregoing is weighed against any argued for cooperation by the Licensee. However, that cooperation is outweighed by Respondent's employee's repeated refusal to allow law enforcement entry into and inspection of the

Licensed Premises, and obstruction for approximately two hours of peace officers in the discharge or attempted discharge of their duties. Additional aggravating factors include, Respondent's manager and husband, Mr. Jara's presence, and complicity in the illegal activities, and Respondent's failure to take any corrective measures.

As the Board has said many times over the years, the extent to which the Department considers mitigating or aggravating factors is a matter entirely within its discretion. Rule 144 recommends a penalty "up to revocation" for two of appellant's violations. Rule 144 also allows the Department to exercise discretion to consider aggravation and mitigation.

The Board finds that the Department's calculation of the penalty based on aggravating factors was reasonable and not an abuse of discretion. A 40-day suspension with stayed revocation is certainly within the reasonable outcomes based on appellant's conduct. Therefore, the penalty must stand.

ORDER

The decision of the Department is affirmed.⁷

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

⁷ 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.* Service on the Board pursuant to California Rules of Court (Rule 8.25) should be directed to: 400 R Street, Ste. 320, Sacramento, CA 95811 and/or electronically to: abcboard@abcappeals.ca.gov.

APPENDIX

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

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

ARACELI ORTIZDEJARA
MARTYS COCKTAIL
16531 SOUTH WESTERN AVENUE
GARDENA, CA 90247-4637

**ON-SALE GENERAL PUBLIC PREMISES -
LICENSE**

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

LAKEWOOD DISTRICT OFFICE

File: 48-442511

Reg: 23093593

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 March 12, 2024. Pursuant to Government Code section 11519, this decision shall become effective 30 days after it is delivered or mailed.

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

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

On or after April 22, 2024, a representative of the Department will contact you to arrange to pick up the license certificate.



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

Sacramento, California

Dated: March 12, 2024

RECEIVED

MAR 12 2024

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:

Araceli Ortizdejara	}	File: 48-442511
Db: Marty's Cocktail	}	
16531 South Western Avenue	}	Reg.: 23093593
Gardena, California 90247-4637	}	
	}	License Type: 48
Respondent	}	
	}	Word Counts: 33,562; 5,624
	}	
	}	Kennedy Court Reporters:
	}	Leticia Reyna (11/8/23)
	}	Hanna Jenkin (12/4/23)
	}	
<u>On-Sale General Public Premises License</u>	}	<u>PROPOSED DECISION</u>

Administrative Law Judge D. Huebel, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter by videoconference on November 8, 2023 and December 4, 2023.

Alanna Ormiston and Erica Navarro, attorneys, represented the Department of Alcoholic Beverage Control (hereinafter "the Department").

Armando Chavira, attorney, represented the Respondent, who was not present at the hearing.

The Department seeks to discipline the Respondent's license on the grounds that¹:

- 1) On or about and between July 15, 2022, and August 31, 2022, Respondent-Licensee possessed and permitted operation of an illegal slot machine or gambling device, to-wit: cash-operated video machine, at the licensed premises, in violation of Penal Code section 330a;
- 2) On or about and between July 15, 2022, and August 31, 2022, Respondent-Licensee possessed an illegal slot machine or gambling device, to-wit: cash-operated video machine, at the licensed premises, in violation of Penal Code section 330b;
- 3) On or about August 27, 2022, Respondent-Licensee's agents or employees, at said premises, sold, gave or delivered alcoholic beverages between the hours of

¹ The numbered paragraphs correspond to the counts of the accusation.

- 2:00 a.m. and 6:00 a.m. of the same day, in violation of Business and Professions Code section 25631²;
- 4) On or about August 27, 2022, Respondent-Licensee's agents or employees permitted alcoholic beverages to be consumed upon the premises during hours in which it is unlawful to sell, give, or deliver an alcoholic beverage for consumption on the premises, in violation of section 25632;
 - 5) On or about August 27, 2022, Respondent-Licensee, directly or indirectly, gave a premium, gift, or free goods, to-wit: beer, in connection with the sale or distribution of an alcoholic beverage, in violation of section 25600;
 - 6) On or about August 27, 2022, Respondent-Licensee's agent or employee, Rafael Jr. Reyes, refused to permit the Department and the Department's representatives to visit and inspect Respondent-Licensee's premises, to wit: refused to allow ABC agents to enter the licensed premises, in violation of sections 25616 and 25753;
 - 7) On or about August 27, 2022, Respondent-Licensee's agent or employee, Rafael Jr. Reyes, willfully resisted, delayed or obstructed peace officers of the Gardena Police Department and Agents of the Department when said peace officers were in the discharge or attempted discharge of their duties, in violation of Penal Code section 148(a)(1);
 - 8) On or about August 27, 2022, Respondent-Licensee's agent or employee, Rafael Jr. Reyes, falsely imprisoned patrons, to wit: prevented patrons from leaving the premises, in violation of Penal Code section 236;
 - 9) On or about August 27, 2022, Respondent-Licensee's agent or employee, Rafael Jr. Reyes, falsely imprisoned M. Connolly, to wit: prevented him from leaving the premises, in violation of Penal Code section 236;
 - 10) On or about August 27, 2022, Respondent-Licensee's agent or employee, Rafael Jr. Reyes, falsely imprisoned C. Valencia, to wit: prevented him from leaving the premises, in violation of Penal Code section 236;
 - 11) On or about August 31, 2022, Respondent-Licensee's agent or employee encouraged or permitted Jane Doe #1, on the licensed premises, to touch, caress or fondle the breasts, buttocks, anus, or genitals of another person, in violation of California Code of Regulations, Title 4, Division 1, Section 143.2(3);
 - 12) On or about and between August 29, 2022, and September 2, 2022, Respondent-Licensee's agents or employees permitted alcoholic beverages, to-wit: beer, to be consumed upon the premises during hours in which it is unlawful to sell, give, or deliver an alcoholic beverage for consumption on the premises, in violation of section 25632. (Exhibit 1.)

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

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

December 4, 2023.

FINDINGS OF FACT

1. The Department filed the Accusation on August 23, 2023. (Exhibit 1.)
2. The Department issued a type 48, on-sale general public premises license to the Respondent at the above-described location on August 28, 2006 (the Licensed Premises).
3. The Respondent's license has been the subject of the following discipline:

<u>Violation Date</u>	<u>Reg. No.</u>	<u>Violation</u>	<u>Penalty</u>
09/02/2010	11074500	PC§ 347b, H&S§§ 110545 ³ , 110560, 110620	5-day, all-stayed suspension
10/27/2021	22092618	B&P§ 25632	POIC in lieu of 15-day susp.

The foregoing disciplinary matters are final. (Exhibits 2 and 3.)

4. At some point, the Department and Gardena Police Department (hereinafter the Gardena PD) received complaints about the Licensed Premises relating to alleged narcotic sales, after hours alcohol consumption, fights, disturbances, loud music and loitering around the Licensed Premises.

July 15, 2022

5. On July 15, 2022, Department Agents Connolly and Valencia, both in a plain clothes capacity, entered the Licensed Premises through the west, rear door by way of the Licensed Premises' parking lot. The Licensed Premises has a second door, the front door, located on the east side of the Licensed Premises which faces South Western Avenue. Upon entering the Licensed Premises, the agents observed and recognized, based on their training and experience, a black tabletop gambling machine/a cash-operated video machine, which was about a foot and a half tall and wide, with a lit-up touch screen monitor and "bet" and "hold" buttons below the screen. The gambling machine's power cord was plugged into an electric wall outlet.

³ The accusation had a typographical error reciting the Health and Safety Code section as 110454. Exhibit 2 contains the accusation relating to registration number 11074500, which cites section 110545.

6. Agent Valencia walked to and sat at the fixed bar. Agent Connolly walked up to the gambling machine. There were different game options available on the cash-operated video machine from which to play, including slots or the game known as Jacks or Better Poker. Agent Connolly selected the latter. To win the bet for Jacks or Better Poker and receive a payout the player must have at least a pair of Jacks or higher (Kings, Queens or aces). Agent Connolly inserted a five-dollar bill into the gambling machine. The screen monitor thereafter reflected a bank of credits which went from zero to \$5. Random cards were dealt. There was no skill or expertise required to play the game but dependent upon chance. Agent Connolly played the card game by selecting the "bet" and "hold" buttons and eventually he lost the hands and his \$5 in credits. He inserted \$20 into the gambling machine, which reflected a bank of \$20 credits on the screen, and he kept playing Jacks or Better Poker. Agent Connolly won a hand and received a \$1 credit. The machine gave him the option to double-down on the bet. On the double-down a random card is dealt to the player and a random card is dealt to the house, if the player's card is higher than the house the player wins. Agent Connolly double-downed twice and won each time, receiving \$3 credits in winnings, which were reflected on the screen.

7. Agent Connolly asked the bartender, who was the attendant, to cash him out. The bartender was later identified as Milan Ruiz (hereinafter referred to as Ruiz). Ruiz asked Agent Connolly if he was done playing or wanted to play more. Agent Connolly said he was done. Ruiz took out her cellular telephone, held it horizontally, and took a picture of the \$23 winnings on the screen. Ruiz said she needed to take a picture of the winnings to show her boss that someone won. Agent Connolly asked Ruiz what the biggest winnings were, to which Ruiz said \$2,500, but that the boss only paid out \$1,000 of the winnings. Ruiz reached behind the machine and reset it for the next player and the balance on the screen reflected zero. Agent Connolly walked to the fixed bar and sat next to Agent Valencia. Ruiz walked behind the fixed bar, wrote down the agent's winnings on a ledger, retrieved \$23 from the cash register and handed it to Agent Connolly. The \$23 reflected the \$20 the agent inserted into the gambling machine and his \$3 winnings. Agent Connolly took a photograph of the \$23. (Exhibit 4.)

August 27, 2022

8. On August 27, 2022, at approximately 1:20 a.m., Agents Connolly and Valencia returned in a plain clothes capacity and entered the Licensed Premises, again going through the rear door from the parking lot. A team of officers remained outside the premises in a high-profile capacity, referred herein as the outside cover team, which included Supervising Agent (SA) Delarosa, Agent Torres and five Gardena PD officers.

9. Upon entering the Licensed Premises Agents Connolly and Valencia sat at the fixed bar. The agents recognized Jose Jara, the Licensee's husband, who works as a manager at the Licensed Premises. Agent Connolly observed another employee, later identified as

Rafael Jr. Reyes (hereinafter referred to as Reyes), bring ice in from outside, pour it into the coolers, and clean and organize behind the fixed bar.

10. The agents saw that the same gambling machine/cash-operated video machine was still inside the Licensed Premises. Agent Connolly walked over to the gambling machine and inserted \$20 into it. He selected the option for Jacks or Better Poker and random cards were dealt. All the buttons and rules were still the same. There still was no skill or expertise required to play the game but dependent upon chance. Agent Connolly played the card game, winning and losing hands, and eventually ending up winning \$6, with a bank of \$26. Agent Connolly stopped Reyes, who was walking by, and asked him to cash him out. Reyes looked at the gambling machine screen, then reached behind the machine (like Ruiz did on the agents' prior visit on July 15, 2022) and reset it for the next player so the balance on the screen reflected zero. Reyes walked to the back office and returned to Agent Connolly handing the agent \$26. Agent Connolly took a photograph of the currency Reyes gave him as his winnings. (Exhibit 5.)

11. Agent Connolly walked back to join Agent Valencia at the fixed bar, where they both ordered a Modelo beer, which they were served and began consuming. Agent Valencia paid for the beers.

12. At approximately 1:52 a.m., Reyes announced to the patrons that he needed all the vehicles in the rear parking lot to be moved out of the parking lot because he was going to put up the chain, after which no vehicles could get in or out. Thereafter, a number of patrons responded to Reyes' announcement and walked out of the rear door to move their vehicles. Reyes used a key from a lanyard hanging around his neck and locked the rear door. The front, eastern door was closed and locked.

13. A few minutes later, some of the patrons who had exited, knocked on the rear door, whereupon Reyes unlocked and opened the rear door, letting the patrons back into the Licensed Premises. Reyes then closed and locked the rear door. Again, at about 2:15 a.m. Reyes unlocked the rear door and let four more patrons back into the Licensed Premises, and then locked the rear door. At that point there were approximately 24 people, including 17 patrons, the two undercover agents, and five employees, inside the Licensed Premises.

14. The agents continued to consume their beers after 2:00 a.m., along with a majority of the patrons who were also consuming beers inside the Licensed Premises. The employees permitted the agents and other patrons to consume their alcoholic beverages after 2:00 a.m. Both agents saw approximately 15 patrons ordering distilled spirits, which they were served and consumed after 2:00 a.m. No employee made any attempt to prevent anyone from drinking beer or distilled spirits after 2:00 a.m. in the Licensed Premises.

15. At 2:22 p.m. Agent Connolly ordered Jameson Whiskey from a female bartender, who reached behind the fixed bar to a shelf and grabbed a bottle of Jameson Whiskey. The bartender placed a shot glass on the counter, poured the amber whiskey into it and handed it to Agent Connolly, who paid \$12 for the shot of Jameson Whiskey. Agent Connolly took a photograph of his Modelo beer bottle and shot glass of Jameson Whiskey, both of which he continued to consume. (Exhibit 6.)

16. At 2:29 a.m. Agent Connolly text messaged and relayed to SA Delarosa and Agent Torres the violations for sales, service, and consumption of alcoholic beverages after 2:00 a.m. in the Licensed Premises. Agent Torres replied by text at 2:34 a.m. advising Agent Connolly that the outside cover team was approaching the rear door of the Licensed Premises. Agent Torres intended to make contact with whomever was in charge of the Licensed Premises to conduct an investigation and inspection therein. Agents Connolly and Valencia saw Reyes looking at his cell phone screen and immediately thereafter Reyes announced aloud that the police are coming. Reyes gestured to those persons inside by forming a partially closed fist and placing his index finger to his mouth, for the universal sign to be quiet. Reyes appeared to Agent Connolly to be alarmed. The agents saw another employee turn off the fans, lights, and music in the Licensed Premises.

17. At 2:35 a.m., Agents Connolly and Valencia clearly heard a loud banging at the rear metal door of the Licensed Premises, and they could clearly hear the outside cover team make announcements from outside the rear door that police were present and commanding that the rear door be opened. Neither Reyes nor anyone else opened the door. Instead, Reyes, stretched his arms out in front of him, with his palms down and moved his hands in a downward and upward motion, commanding everyone to be quiet and not talk. Everyone inside the Licensed Premises obeyed Reyes' instruction and the atmosphere in the Licensed Premises drastically changed to a serious mood.

18. At about 2:40 a.m., Gardena PD Officer Hentges, in a high-profile capacity, banged his metal flashlight loudly on the Licensed Premises' rear metal door, announcing the presence of police and stating they were there to conduct an inspection of the business. No one from inside the Licensed Premises opened the rear door. Every couple of minutes, for close to an hour, Officer Hentges and Department agents alternated knocking and announcing the police presence and requesting the rear door be opened. At about 2:50 p.m., Gardena PD Officer Pech parked his Gardena PD black and white patrol vehicle (with red and blue wig wag lights and "Police" on the side doors) facing the rear door. Officer Pech sounded the sirens and flashed the lights of the patrol vehicle, for approximately five to 10 seconds, and announced the presence of police using the vehicle's public announcement system. Gardena PD Officer Amstock, who was positioned outside the front door at South Western Avenue, also repeatedly knocked and

announced, "Gardena Police open the door!" (Exhibit 9⁴ - body cam footage, both audio and video, of officers knocking and announcing at the rear and front doors, and the patrol vehicle sirens and lights.) For approximately one hour, Agents Connelly and Valencia could hear the officers repeatedly knocking very loudly on the doors of the Licensed Premises, announcing themselves and the patrol vehicle sirens. Agent Connolly described the very loud knocking as thuds from an officer's metal flashlight against the metal doors. No one inside the Licensed Premises opened either the front or rear doors in response to the officers' commands to do so.

19. At some point, Officer Hentges observed a surveillance camera above and to the right of the rear door of the Licensed Premises. The camera's view faced toward the parking lot where the patrol vehicle and officers were positioned. Agent Torres saw the camera swiveling, indicating the camera was following the officers' movements. For officer safety, Officer Pech placed a red cup over the camera.

20. Reyes did not allow the undercover agents or patrons to leave while the outside cover team attempted to enter the Licensed Premises. During this time Reyes held the keys to the doors on the lanyard around his neck. While everyone was locked inside the Licensed Premises with the fans off, the air became very stale and hot. Bartenders were serving patrons alcoholic beverages, which the patrons consumed. Agent Connolly was sweating profusely and there was a lot of tension in the air. Agent Connolly wanted to leave because he was afraid. Although Agent Connolly had a concealed firearm, he did not let anyone know he had it and did not pull it out because he did not want to escalate the tense situation. Agent Valencia wanted to leave the premises too and asked Reyes if he could leave. Reyes replied, "No, because the cops are still outside." Agent Valencia believed that if he had identified himself as a police officer to Reyes and showed his weapon that the already tense situation would have gotten worse. Agent Valencia overheard another patron ask Reyes if they could leave, to which Reyes gave the same response, "No, because the cops are outside."

21. At some point, Agent Connolly asked the bartender for a glass of water. The bartender instead gave the agent a glass of Coca Cola. Agent Connolly explained that the Coca Cola would not quench his thirst and that he needed water. The bartender then handed the agent water.

22. At about 3:15 a.m., Agents Connolly and Valencia saw Mr. Jara walk out of the rear office and turn on some of the lights and fans. The agents determined that Jara had been in the Licensed Premises the entire time that Reyes had locked everyone in. The bartenders were serving beer and distilled spirits to the patrons, who were consuming the alcohol served to them.

⁴ During the direct examination of Officer Hentges his body cam footage was played (Exhibit 9).

23. During the entire time the agents and patrons were locked inside the Licensed Premises, Agent Connolly observed Reyes constantly monitor his cell phone. The Licensed Premises' rear and front doors were never opened for the outside cover team of officers. The Department agents consulted with Gardena PD officers, and they decided to leave the location for the safety of the undercover officers and in hopes the occupants would be allowed to leave to give the officers an opportunity to return and conduct an investigation of the Licensed Premises. At approximately 3:41 a.m., Agent Connolly received a text message that the outside cover team would be pulling back and leaving the Licensed Premises. The Gardena PD officers and Department agents left the Licensed Premises' parking lot. Agent Torres drove his vehicle to 166th Street and parked approximately one block west of the Licensed Premises. Agent Torres had a view of the Licensed Premises from his position. Officer Hentges walked across the street to a neighboring business and concealed himself behind a trash can, while keeping an eye on the rear door of the Licensed Premises.

24. At about 4:09 a.m., Reyes, who was behind the fixed bar, opened a Modelo beer bottle and handed it to Agent Connelly, who then consumed part of the beer served to him. Neither of the agents paid for the Modelo beer; it was given to Agent Connelly at no charge. At no point while the agents were in an undercover capacity in the Licensed Premises did they run a tab, whether on July 15, 2022, or August 27, 2022.

25. At approximately 4:20 a.m., Reyes announced that the police had left, and he was going to open the rear door and let everyone leave. The vast majority of the patrons reacted by getting up and running to the back door. Agents Connelly and Valencia stayed at the fixed bar because they did not want anyone to rub up against them and feel their weapons.

26. At approximately 4:22 a.m., Reyes unlocked the rear door. By this time Agents Connolly and Valencia and some other patrons had been locked in the Licensed Premises for approximately two and one-half hours.⁵ At approximately 4:25 a.m., from Officer Hentges' position, he observed the Licensed Premises' rear door abruptly open and saw approximately 20 people running out the rear door to their vehicles, with the majority running westbound on 166th Street and two separate couples running northbound. Agents Connelly and Valencia walked at a brisk pace and then ran with the other patrons out of the Licensed Premises' rear door. Officer Hentges caught up with one of the patrons, who was later identified as Marcos Sanchez and spoke to him.

⁵ This time period is based on the fact that starting at 1:52 a.m., when Reyes initially locked the rear door, some patrons remained in the Licensed Premises the entire time and did not exit to move their vehicles. Reyes let some patrons out to move their vehicles and let them back in again a few minutes later. At about 2:15 a.m. Reyes unlocked the rear door and let four more patrons into the Licensed Premises.

27. Marcos Sanchez explained his experience inside the Licensed Premises while locked inside for nearly two hours. Mr. Sanchez clearly heard the police knock and announce themselves at the doors, and said the patrons were not allowed to leave the Licensed Premises, because Reyes had kept the door locked. Mr. Sanchez saw, from inside the Licensed Premises, the live video feed of the rear door surveillance camera and could clearly see on the video the police at the rear door knocking and announcing until one of the officers placed something over the camera.

28. At some subsequent date, the Department served the Respondent with a notice to produce. On September 8, 2022, Agent Valencia spoke with Mr. Jara on the phone about the notice to produce and gambling machine that was in the Licensed Premises. Mr. Jara acknowledged knowing the gambling machine was illegal and added that he had it removed from the Licensed Premises because he was not making much money off of it.

29. In response to the Department's notice to produce, the Respondent provided the Department with video surveillance footage from the interior of the Licensed Premises for the dates of August 29, August 30, and August 31, 2022, September 1 and September 2, 2022. Agent Connolly reviewed the video footage. During the hearing that video surveillance was played and admitted as exhibits. (Exhibits 10 through 25.) Agent Connolly relied upon the video footage (exhibits 10 through 25) and based his testimony on that footage as well as his training and experience. Based on his examination of the video footage and his training and experience, Agent Connolly said the videos depicted approximately 10 to 13 patrons consuming alcoholic beer in the Licensed Premises between the hours of 2:00 a.m. and 6:00 a.m. during the dates in question. Agent Connolly testified that based on his training and experience none of the beers appeared to be non-alcoholic and that beer served at a licensed premises is generally alcoholic.

30. Agent Connolly testified that the video in exhibit 10, is dated August 29, 2022, and captured the Licensed Premises' interior from camera three, which depicted, at time stamp 4:59:06 a.m. to 4:59:29 a.m., two people standing by the fixed bar drinking alcoholic beverages. He based that opinion on his training and experience and on the shape and neck of the bottles, with the person to the left holding a bottle with foil around the neck of the bottle, which Agent Connolly said is indicative of beer.

31. Agent Connolly testified that the video in exhibit 11, is dated August 30, 2022, and captured the Licensed Premises' interior from camera three, which depicted, at time stamp 4:27:15 a.m. to 4:28:35 a.m., a person at the bottom left of the video dancing and drinking a Modelo beer. Agent Connolly was able to identify the specific brand of alcoholic beer based on his training and experience.

32. Agent Connolly testified that the video in exhibit 12, is dated August 31, 2022, and captured the Licensed Premises' interior from camera three, which depicted, at time

stamp 3:06:30 a.m. to 3:06:42 a.m., an unknown female in the video drinking a Corona beer. Agent Connolly was able to identify the specific brand of alcoholic beer based on his training and experience.

33. Agent Connolly testified that the video in exhibit 13, is dated September 1, 2022, and captured the Licensed Premises' interior from camera three, which depicted, at time stamp 3:34:10 a.m. to 3:34:53 a.m., an unknown female in the video drinking a beer. Agent Connolly was able to identify the female was drinking an alcoholic beer based on his training and experience.

34. Agent Connolly testified that the video in exhibit 14, is dated September 2, 2022, and captured the Licensed Premises' interior from camera three, which depicted, at time stamp 2:49:47 a.m. to 2:50:05 a.m., at the top of the video Reyes wearing a white t-shirt and a female sitting to his left, both of whom were drinking alcoholic beer. In the same video, at time stamp 2:48 a.m. to 2:51:17 a.m., it depicts a male patron drinking beer. Agent Connolly was able to identify that it was alcoholic beer the three persons were drinking based on his training and experience.

35. Agent Connolly testified that the video in exhibit 15, is dated August 29, 2022, and captured the Licensed Premises' interior from camera four, which depicted, at time stamp 3:01:22 a.m. (played for a duration of 3:46), at the left side of the screen the tabletop gambling machine (which Agent Connolly played on July 15, 2022 and August 27, 2022), and which was being played by two people, during which a portion of the time Mr. Jara stood at the fixed bar.⁶ One of the persons playing the gambling machine reached into his pocket and placed what he retrieved into the side of the machine where money is inserted.

36. Agent Connolly testified that the video in exhibit 16, is dated August 30, 2022, and captured the Licensed Premises' interior from camera four, which depicted, at time stamp 4:21:33 a.m. to 4:21:51 a.m., at the left side of the screen, a man seated on a barstool playing the tabletop gambling machine, and at the center of and behind the fixed bar an employee serve a Modelo beer to a patron; the video then depicts the same employee pick up a Modelo beer from the fixed bar and consume from it while walking toward the bottom of the screen out of the fixed bar and out of view.

37. Agent Connolly testified that the video in exhibit 17, is dated August 30, 2022, and captured the Licensed Premises' interior from camera four, which depicted, at time stamp 4:31:39 a.m. to 4:33:03 a.m., at the left of the screen a person playing the gambling

⁶ Agent Connolly testified that Mr. Jara is the man, seen near the beginning of the video at the bottom of the screen, who walks into the frame with his back turned to the viewer and then walks off the screen.

machine, and on the right side of the screen an employee behind the fixed bar serving two Modelo beers, one of which a male patron (with a white and dark shirt seated at the fixed bar) takes and consumes; all the while Mr. Jara (wearing a striped shirt) is standing in between and speaking to both the man playing the gambling machine and the man seated at the fixed bar consuming the Modelo beer. Agent Connolly was able to identify the two beers as alcoholic Modelo beers based on his training and experience.

38. Agent Connolly testified that the video in exhibit 18, is dated August 30, 2022, and captured the Licensed Premises' interior from camera four, which depicted, at time stamp 22:23:17 hours to 22:25:07 hours, at the left of the screen a shirtless man playing the same gambling machine, with Reyes (wearing a white shirt sweeping the floor and communicating with the shirtless man) and Mr. Jara seen walking into the fixed bar to the right of where the shirtless man is playing the gambling machine.

39. Agent Connolly testified that the video in exhibit 19, is dated August 31, 2022, and captured the Licensed Premises' interior from camera four, which depicted, at time stamp 3:48:44 a.m. to 3:49:41 a.m., at the left of the screen three people wearing white shirts standing at the gambling machine; with Reyes playing the gambling machine, standing to the left and wearing a baseball cap.

40. Agent Connolly testified that the video in exhibit 20, is dated August 31, 2022, and captured the Licensed Premises' interior from camera four, which depicted, at time stamp 4:13:08 a.m. to 4:13:47 a.m., at the center of the screen an unknown male Caucasian (wearing a beanie cap and standing at the fixed bar) with a Modelo beer in his left hand while speaking with Mr. Jara (who is at the end of the fixed bar); and two people, one of whom is Reyes, both wearing white shirts and playing the gambling machine. Agent Connolly identified the alcoholic Modelo beer based on his training and experience.

41. Agent Connolly testified that the video in exhibit 21, is dated August 31, 2022, and captured the Licensed Premises' interior from camera four, which depicted, at time stamp 4:23:21 a.m. to 4:23:42 a.m., at the right of the screen Mr. Jara (wearing a dark shirt) and Reyes (wearing a white shirt) behind the fixed bar, and the same unknown male Caucasian (wearing a beanie cap) standing at the fixed bar at the top of the screen; the video depicts the male Caucasian turn and walk away from the fixed bar while consuming a Modelo beer.

42. Agent Connolly testified that the video in exhibit 22, is dated August 31, 2022, and captured the Licensed Premises' interior from camera four, which depicted, at time stamp 19:46:14 hours to 19:48:16 hours, at the left of the screen Reyes greeting patrons, including one seated at the fixed bar and an unknown female playing the gambling machine; the video then depicts Mr. Jara walking into the scene standing to the left of the fixed bar wearing a dark shirt and dark jeans. The female who is playing the gambling

machine can be seen reaching into her purse and placing what she retrieved into the side of the machine where money is inserted.

43. Agent Connolly testified that the video in exhibit 23, is dated August 31, 2022, and captured the Licensed Premises' interior from camera four, which depicted, at time stamp 20:41:11 hours to 20:42:46 hours, at the left of the video screen three people, including Mr. Jara, Reyes and an unknown Hispanic male, standing at and playing the gambling machine. Then the video depicts in the upper left side of the screen (in an alcove) a female patron⁷ giving a male patron a sexual lap dance with the male patron touching the female patron's breasts. During the afore-mentioned time stamp, there is no evidence in this video footage that Mr. Jara, Reyes or any employee of Respondent sees the lap dance or lewd conduct between the female and male patron.

44. The undersigned viewed additional portions of exhibit 23 and found the following⁸: At time stamp 20:44:47 hours to 20:45:02 hours the video depicts Reyes looking into the alcove at the female thrusting her hips and buttocks upward and downward, performing a sexual lap dance upon the male patron; and Reyes makes a hand gesture, continues to watch and then turns away briefly. At 20:45:04 hours to 20:45:08 hours the video depicts Reyes looking again into the alcove and watching the female patron performing the sexually explicit lap dance upon the male patron, then Reyes turns briefly away. At 20:45:47 hours to 20:46:03 hours the video depicts Reyes walk toward and into the alcove, while observing the female who continues to perform the sexual lap dance upon the male patron, with the male patron touching the female patron's breasts; Reyes then turns away and stands in the doorway of the alcove as the lap dance continues behind him. At 20:46:50 hours to 20:48:16 hours the video depicts Reyes walk out of the alcove, turn around and walk back into the alcove, and sit down while the female patron continues to perform the lewd lap dance upon the male patron; Reyes is in the alcove for an extended period of time while the female is thrusting her hips and buttocks upward and downward, bouncing her buttocks upon the male patron's lap in a sexually explicit manner. At one point a patron walks by and looks at the female patron performing the lap dance; then at the end Reyes walks out of the alcove with the female continuing the sexual lap dance. Throughout the lap dance the female patron performs, she is bent over facing the camera, while continuously thrusting her hips and buttocks in an upward and downward motion, with her buttocks bouncing upon the lap of the male patron who is seated behind her and touching the female's breasts. There was no evidence that Reyes, any employee or Mr. Jara made the couple stop the sexually explicit lap dance and lewd touching. The female appears to be wearing only white underwear and a black bra.

⁷ The unknown female patron is referred to in the accusation as Jane Doe #1.

⁸ After all the exhibits were admitted and after the hearing, the undersigned viewed all exhibits in their entirety.

45. Agent Connolly testified that the video in exhibit 24, is dated August 31, 2022, and captured the Licensed Premises' interior from camera four, which depicted, at time stamp 21:05:31 hours to 21:06:28 hours, at the left side of the screen a man sitting on a barstool appearing to play the gambling machine, with the gambling machine screen facing camera four and the back of the machine open. Agent Connolly further testified that in the upper left corner of the screen in the alcove the video depicts the same unknown female and male patron with the female giving the male patron a lap dance. Agent Connolly testified that he sees the male touching the females' legs, thighs and buttocks.

46. The undersigned viewed the same time stamp as above and additional portions of exhibit 24 and found the following⁹: in the alcove the video depicts the female and male patron from their left sides, with the female bent forward leaning on the table in front of her, her buttocks and the male's genital area thrusting against each other, with the male patron touching the female patron's thighs and buttocks. The female appears to have, at some point removed her black bra. During this time stamp, at first it appears no one may be watching the couple's lewd conduct, until at 21:06:13 hours Reyes' elbow is seen sliding and leaning on the pony wall, with Reyes facing the couple as they engage in the lewd conduct. At 21:06:24 hours the female turns around facing the male patron and at 21:06:29 hours she grabs her bare breasts with her hands moving her breasts up and down, with Reyes watching. At 21:06:48 the male appears to bend over and kiss the female's left bare breast. At 21:07:44 hours the female turns around, leans against the table in front of her and bends over and the male patron is seen grabbing the female's hips, as they both begin thrusting, with the female's buttocks and the male's genital area making contact, while Reyes appears to be still looking at them over the pony wall and then walks away, leaving the couple engaging in the lewd conduct. At 21:09:37 hours an employee walks from behind the fixed bar and towards the alcove and at 21:09:43 hours the employee places what appears to be a bottled beer on the pony wall for the male patron, who takes a drink from the bottle, places it back on the wall, while continuing to engage in the lewd, sexual conduct with the female patron. At 21:09:58 hours the employee moves the bottle a little further away from the couple's interaction and the employee looks back at the couple engaging in the sexual conduct.

47. Agent Connolly relied upon the video footage in exhibits 23 and 24 to determine what happened relating to the lap dance and whether Reyes had observed any part of that sexually explicit lap dance. Agent Connolly based his testimony on that footage. Agent Connolly testified the video depicts in the same alcove the unknown female patron continuing the lap dance on the unknown male patron for approximately 15 minutes, and at some points Reyes observing the said lap dance.

⁹ After all the exhibits were admitted and after the hearing, the undersigned viewed all exhibits in their entirety.

48. Agent Connolly testified that the video in exhibit 24, is dated August 31, 2022, and captured the Licensed Premises' interior from camera four, which depicted, at time stamp 21:10:24 hours to 21:11:09 hours, at the left side of the screen a male who is either playing or servicing the gambling machine, which he closes, unplugs, and removes from the Licensed Premises.

49. Agent Connolly testified that the video in Exhibit 25, is dated September 2, 2022, and captured the Licensed Premises' interior from camera four, which depicted, at time stamp 3:25:45 a.m. to 3:25:58 a.m., at the bottom of the screen a male who walks behind the fixed bar while drinking from an alcoholic beer bottle.

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 330a provides..., "(a) Every person, who has in his or her possession or under his or her control, either as owner, lessee, agent, employee, mortgagee, or otherwise, or who permits to be placed, maintained, or kept in any room, space, enclosure, or building owned, leased, or occupied by him or her, or under his or her management or control, any slot or card machine, contrivance, appliance or mechanical device, upon the result of action of which money or other valuable thing is staked or hazarded, and which is operated, or played, by placing or depositing therein any coins, checks, slugs, balls, or other articles or device, or in any other manner and by means whereof, or as a result of the operation of which any merchandise, money, representative or articles of value, checks, or tokens, redeemable in or exchangeable for money or any other thing of value, is won or lost, or taken from or obtained from the machine, when the result of action or operation of the machine, contrivance, appliance, or mechanical device is dependent upon hazard or chance, and every person, who has in his or her possession or under his or her control, either as owner, lessee, agent, employee, mortgagee, or otherwise, or who permits to be placed, maintained, or kept in any room, space, enclosure, or building owned, leased, or occupied by him or her, or under his or her management or control, any card dice, or any dice having more than six faces or bases each, upon the result of action of which any money or other valuable thing is staked or hazarded, or as a result of the operation of which any merchandise, money, representative or article of value, check or token, redeemable in or exchangeable for

money or any other thing of value, is won or lost or taken, when the result of action or operation of the dice is dependent upon hazard or chance, is guilty of a misdemeanor.”

4. Cause for suspension or revocation of the Respondent’s license exists under Article XX, section 22 of the California State Constitution, and sections 24200(a) and (b) on the basis that on or about and between July 15, 2022, and August 31, 2022, Respondent-Licensee possessed and permitted operation of an illegal slot machine or gambling device, to-wit: a cash-operated video machine, at the Licensed Premises, in violation of Penal Code section 330a. (Count 1.) (Findings of Fact ¶¶ 2 to 10, 35-39, 42-43, and 48.)

5. Penal Code section 330b provides, “(a) It is unlawful for any person to manufacture, repair, own, store, possess, sell, rent, lease, let on shares, lend or give away, transport, or expose for sale or lease, or to offer to repair, sell, rent, lease, let on shares, lend or give away, or permit the operation, placement, maintenance, or keeping of, in any place, room, space, or building owned, leased, or occupied, managed, or controlled by that person, any slot machine or device, as defined in this section. It is unlawful for any person to make or to permit the making of an agreement with another person regarding any slot machine or device, by which the user of the slot machine or device, as a result of the element of hazard or chance or other unpredictable outcome, may become entitled to receive money, credit, allowance, or other thing of value or additional chance or right to use the slot machine or device, or to receive any check, slug, token, or memorandum entitling the holder to receive money, credit, allowance, or other thing of value.” Section 330b further provides “(d) For purposes of this section, “slot machine or device” means a machine, apparatus, or device that is adapted, or may readily be converted, for use in a way that, as a result of the insertion of any piece of money or coin or other object, or by any other means, the machine or device is caused to operate or may be operated, and by reason of any element of hazard or chance or of other outcome of operation unpredictable by him or her, the user may receive or become entitled to receive any piece of money, credit, allowance, or thing of value, or additional chance or right to use the slot machine or device, or any check, slug, token, or memorandum, whether of value or otherwise, which may be exchanged for any money, credit, allowance, or thing of value, or which may be given in trade, irrespective of whether it may, apart from any element of hazard or chance or unpredictable outcome of operation, also sell, deliver, or present some merchandise, indication of weight, entertainment, or other thing of value.”

6. Cause for suspension or revocation of the Respondent’s license exists under Article XX, section 22 of the California State Constitution, and sections 24200(a) and (b) on the basis that on or about and between July 15, 2022, and August 31, 2022, Respondent-Licensee possessed an illegal slot machine or gambling device, to-wit: a cash-operated video machine, at the Licensed Premises, in violation of Penal Code section 330b. (Count 2.) (Findings of Fact ¶¶ 2-10 and 28, 35-39, 42-43, and 48.)

7. Section 25631 provides that, “Any on- or off-sale licensee, or agent or employee of that licensee, who sells, gives, or delivers to any persons any alcoholic beverage or any person who knowingly purchases any alcoholic beverage between the hours of 2 o’clock a.m. and 6 o’clock a.m. of the same day, is guilty of a misdemeanor. For the purposes of this section, on the day that a time change occurs from Pacific standard time to Pacific daylight saving time, or back again to Pacific standard time, “2 o’clock a.m.” means two hours after midnight of the day preceding the day such change occurs.”

8. Cause for suspension or revocation of the Respondent’s license exists under Article XX, section 22 of the California State Constitution, and sections 24200(a) and (b) for the violation of section 25631 alleged in count 3. Specifically, on August 27, 2022, the Respondent-Licensee’s agents or employees, at the Licensed Premises, sold, gave or delivered alcoholic beverages between the hours of 2:00 a.m. and 6:00 a.m. of the same day, in violation of Business and Professions Code section 25631. (Count 3.) (Findings of Fact ¶¶ 2, 4, 8, 11, 14-15, and 22.)

9. Section 25632 provides that, “Any retail licensee, or agent or employee of such licensee, who permits any alcoholic beverage to be consumed by any person on the licensee’s licensed premises during any hours in which it is unlawful to sell, give, or deliver any alcoholic beverage for consumption on the premises is guilty of a misdemeanor.”

10. Cause for suspension or revocation of the Respondent’s license exists under Article XX, section 22 of the California State Constitution, and sections 24200(a) and (b) for the violations of section 25632 alleged in counts 4 and 12. Specifically, on or about August 27, 2022, and between August 29, 2022, and September 2, 2022, Respondent-Licensee’s agents or employees permitted alcoholic beverages to be consumed upon the Licensed Premises during hours in which it is unlawful to sell, give, or deliver an alcoholic beverage for consumption on the premises, in violation of Business and Professions Code section 25632. (Counts 4 and 12.) (Findings of Fact ¶¶ 2, 4, 8, 11, 14-15, 20, 22 and 24, 29-34, 36-37, 40-41 and 49.)

11. Respondent argued as to counts 3, 4 and 12 there was no substantial evidence the drinks were alcoholic beverages given the video footage was allegedly grainy and that the drinks could have been non-alcoholic. This argument is rejected. As to counts 3 and 4, Agents Connolly and Valencia personally were served and consumed alcoholic beverages (beer and Jameson Whiskey) and observed other patrons being served and consuming beers and distilled spirits after 2:00 a.m. As to count 12, Agent Connolly credibly maintained, that based on his training and experience, he could discern that the drinks consumed in the video surveillance of exhibits 10 through 25, were alcoholic beer, and were not non-alcoholic. He further credibly testified that based on his training and experience beer served at a licensed premises is generally alcoholic. The Respondent

presented no evidence, either through witness testimony or otherwise, that the drinks being consumed in the Licensed Premises on the said dates were non-alcoholic beverages. It was within the power of the Respondent to produce stronger more satisfactory evidence to rebut the department's credible evidence that the beers consumed were alcoholic, as such the evidence Respondent offered, or lack thereof, is viewed with distrust. (Evidence Code section 412.)

12. Section 25600(a)(1) provides that “[n]o licensee shall, directly or indirectly, give any premium, gift, or free goods in connection with the sale or distribution of any alcoholic beverage, except as provided by rules that shall be adopted by the department to implement this section or as authorized by this division.”

13. Cause for suspension or revocation of the Respondent's license exists under Article XX, section 22 of the California State Constitution, and sections 24200(a) and (b) on the basis that on August 27, 2022, the Respondent-Licensee, through her employee, Rafael Jr. Reyes, gave to Agent Connolly, a premium, gift, or free goods, to-wit: a free Modelo beer, for which Agent Connolly was not charged and for which he did not pay, in connection with the sale or distribution of an alcoholic beverage, in violation of section 25600(a)(1). (Count 5.) (Findings of Fact ¶¶ 2, 4, and 24.)

14. Respondent argued there was no evidence the beer Reyes gave Agent Connolly was free and that Reyes might have been running a tab for the agents. This argument is rejected. At no point while the agents were in an undercover capacity in the Licensed Premises did they run a tab, whether on July 15, 2022, or August 27, 2022. The evidence established that each time they ordered a beer, or distilled spirit, that they were served they immediately paid for the alcoholic beverage. The record established that the agents did not pay for the Modelo beer Reyes gave Agent Connolly at 4:09 a.m. on August 27, 2022.

15. Business and Professions Code section 25616 provides that “Any person who knowingly or willfully files a false license fee report with the department, and any person who refuses to permit the department or any of its representatives to make any inspection or examination for which provision is made in this division, or who fails to keep books of account as prescribed by the department, or who fails to preserve such books for the inspection of the department for such time as the department deems necessary, or who alters, cancels, or obliterates entries in such books of account for the purpose of falsifying the records of sales of alcoholic beverages made under this division is guilty of a misdemeanor and shall be punished by a fine of not less than two hundred dollars (\$200) nor more than one thousand dollars (\$1,000), or by imprisonment in the county jail for not less than one month nor more than six months, or by both such fine and imprisonment.”

16. Business and Professions Code section 25753 provides, “The department may make any examination of the books and records of any licensee or other person and may visit and inspect the premises of any licensee it may deem necessary to perform its duties under this division.”

17. Cause for suspension or revocation of the Respondent’s license exists under Article XX, section 22 of the California State Constitution and sections 24200(a) and (b), for the violation of Business and Professions Code sections 25616 and 25753 as alleged, in count 6 of the accusation. On August 27, 2022, the Respondent-Licensee’s agent or employee, Rafael Jr. Reyes, refused to allow and permit the Department and its representatives to enter, visit and conduct an inspection of the Licensed Premises, as authorized by section 25753, in violation of section 25616 (Count 6.) (Findings of Fact ¶¶ 2, 4 16 to 20, 23 and 25.)

18. Respondent argues count 6 was incorrectly pled, claiming that sections 25616 and 25763 relate to discovery or inspection of records and not to the inspection of the premises. This argument is rejected. Code sections 25616 and 25763 are not limited to the inspection of records only in the premises. Section 25616 permits “the department or any of its representatives to make *any* inspection” and section 25763 provides the department “may visit and inspect the premises...to perform its duties under this division.” (Emphasis added by italics.)

19. Penal Code section 148(a)(1) provides that it is illegal for a person to willfully resist, delay, or obstruct any peace officer in the discharge or attempt to discharge any duty of his or her office or employment.

20. Cause for suspension or revocation of the Respondent’s license exists under Article XX, section 22 of the California State Constitution and sections 24200(a) and (b), for the violation of Penal Code section 148(a)(1) as alleged in count 7 of the accusation. On August 27, 2022, the Respondent-Licensee’s agent or employee, Rafael Jr. Reyes, willfully resisted, delayed and obstructed peace officers of the Gardena PD and Department Agents when said peace officers were in the discharge or attempted discharge of their duties, in violation of Penal Code section 148(a)(1). (Count 7.) (Findings of Fact ¶¶ 2, 16-20, 23, and 25.)

21. Penal Code section 236 provides that, “False imprisonment is the unlawful violation of the personal liberty of another.”

22. Cause for suspension or revocation of the Respondent’s license exists under Article XX, section 22 of the California State Constitution and sections 24200(a) and (b), for the violation of Penal Code section 236 as alleged, in counts 8, 9 and 10 of the accusation. On August 27, 2022, the Respondent-Licensee’s agent or employee, Rafael Jr. Reyes,

falsely imprisoned patrons, as well as M. Connolly, and C. Valencia, to wit: by locking them in and preventing them from leaving the Licensed Premises, unlawfully violating their personal liberty, in violation of Penal Code section 236. (Counts 8, 9 and 10.) (Findings of Fact ¶¶ 2, 16-20, 22-23, and 25-27.)

23. Respondent argued counts 8, 9 and 10 should be dismissed for lack of evidence of any violence, duress or deceit and the existence of the defense of consent of the patrons and agents to remain in the Licensed Premises. This argument is rejected. Respondent's employees did not offer the patrons an opportunity to leave and no patrons were permitted to leave. In fact, Reyes refused Agent Valencia's and another patron's request to leave "...because the cops are still outside." Agent Valencia believed that if he had identified himself as a police officer to Reyes and showed his weapon that the already tense situation would have gotten worse. Agent Connolly was sweating profusely and said there was a lot of tension in the air. Agent Connolly wanted to leave because he was afraid. Although Agent Connolly had a concealed firearm, he did not let anyone know he had it and did not pull it out because he did not want to escalate the tense situation in the Licensed Premises.

24. The Respondent further argued there was no evidence the front door was locked or that the front door was ever used by the Respondent's employees or patrons on August 27, 2022. This argument is rejected. The evidence established that Reyes was only concerned with (1) unlocking and locking the rear door to allow patrons in after they moved their vehicles, and (2) locking the rear door to prevent law enforcement from entering or patrons from exiting. Reyes eventually unlocked the rear door to let patrons out at 4:22 a.m. The ample evidence, via testimony and bodycam footage established that Officer Amstock was knocking and announcing at the front door requesting to be let in. Based on the record and preponderance of the evidence it is more likely than not that the front door was locked and that was the reason Officer Amstock could not gain access into the Licensed Premises from the front door and was thusly knocking and announcing to have the front door unlocked to be let in.

25. Rule 143.2(3) prohibits a licensee from encouraging or permitting any person on the licensed premises to touch, caress, or fondle the breasts, buttocks, anus, or genitals of any other person. All such acts or conduct are contrary to public welfare or morals and, therefore, no on-sale license shall be held at any premises where a licensee permits such conduct or acts.

26. Cause for suspension or revocation of the Respondent's license exists under Article XX, section 22 of the California State Constitution, and sections 24200(a) and (b) for the violation of rule 143.2(3) alleged in count 11. On August 31, 2022, Respondent-Licensee's agent and employee, Rafael Jr. Reyes, encouraged and permitted Jane Doe #1, the unknown female patron to engage in lewd conduct with a male patron, and to perform

upon a male patron a sexually explicit lap dance, for more than 20 minutes, resulting in the touching, caressing or fondling of the breasts, buttocks and genitals of another person, in violation of rule 143.2(3). (Count 11.) (Findings of Fact ¶¶ 2, 43-47.)

27. During the prolonged lap dance and lewd conduct between the female and male patron, the female patron is bent over, while thrusting her hips and buttocks in an upward, downward and backward motion, with the male patron touching the female's breasts, and the male patron thrusting his hips and genital area against the female's buttocks, with the female's buttocks coming into contact with the male's genital area.

28. Except as set forth in this Decision, all other allegations in the Accusation and all other contentions of the parties lack merit.

PENALTY

The Department recommended revocation stayed for three years, plus a 40-day suspension to emphasize to the Licensee the importance of compliance with ABC laws, and to give the Licensee a chance to remedy and take seriously her duty of legal compliance. The Department based its recommendation on the following aggravating factors: (1) continuing course or pattern of conduct, (2) recent similar disciplinary history for afterhours violation, (3) Respondent's employees repeated refusal to allow law enforcement entry into and inspection of the Licensed Premises, and obstruction for approximately two hours of peace officers in the discharge or attempted discharge of their duties, (4) the false imprisonment of multiple persons, to evade enforcement and cover-up the ongoing illegal activities in the Licensed Premises on August 27, 2022, (5) Respondent's manager and husband, Mr. Jara, was present and complicit in these illegal activities, (6) there was no evidence Respondent removed the illegal gambling machine for mitigative corrective measures but for repair, and (7) after the violations on August 27, 2022, the Licensee took no corrective measures but instead continued serving, selling and allowing consumption of alcohol after hours, with continuing gambling and permitting prolonged, open and overt lewd conduct in the Licensed Premises.

The Respondent argued for a disciplinary penalty much lower than the penalty guidelines recommend based on the following mitigating factors: (1) positive action by licensee to correct the problem, namely that it voluntarily removed the cash-operated video gambling machine, (2) with no prior violations of Penal Code sections 300a and 330b, (3) cooperation by the Licensee in providing the voluminous video surveillance footage requested by the Department, (4) Respondent's license had no discipline between issuances on August 28, 2006 and September 2, 2010. The Respondent requested a 15-day suspension for the violations relating to Penal Code sections 330a and 330b.

The Department's penalty guidelines are in California Code of Regulations, Title 4, Division 1, Article 22, section 144, commonly referred to as rule 144. The standard penalty under rule 144 for a first-time offense of the licensee or employee not permitting inspection of records in violation of section 25616 is 30 days and indefinite until records are produced. Interestingly, rule 144 does not set forth a recommended penalty for violations of section 25600, although it sets forth the basic guidelines to be followed in crafting a penalty. The penalty for sales and /or consumption after hours, for violations of sections 25631 and 25632, is 5 days, 10 days and 15 days depending on whether it is by employees only, employees and friends only, or by the public, respectively. For violations of Penal Code section 330 relating to electronic/video gambling machines with payoffs, the penalty is a 30-day suspension, with 15 days stayed for two years. The penalty guidelines recommend a 35-day suspension up to revocation for a licensee or employee interfering with investigation on the premises consistent with a violation of Penal Code section 148(a)(1). There is no guideline penalty for penal code section 236. A penalty for a violation of rule 143.2 ranges from a 30-day suspension up to revocation. Rule 144 offers guidance on adjusting the standard up or down depending on aggravating and mitigating factors.

The prior 2010 violations are too remote to constitute aggravation. The Respondent's license has somewhat of a recent disciplinary history for the same after hours violations in 2021 as alleged in the present matter. The prior disciplinary action shows the Respondent had prior notice and warning, and in conjunction with the current violations over several months shows a continuing course or pattern of conduct. The foregoing is weighed against any argued for cooperation by the Licensee. However, that cooperation is outweighed by Respondent's employee's repeated refusal to allow law enforcement entry into and inspection of the Licensed Premises, and obstruction for approximately two hours of peace officers in the discharge or attempted discharge of their duties. Additional aggravating factors include, Respondent's manager and husband, Mr. Jara's presence, and complicity in the illegal activities, and Respondent's failure to take any corrective measures. The penalty recommended herein complies with rule 144.

ORDER

Counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of the accusation are sustained. In light of these violations, the Respondent's on-sale general public premises license is hereby revoked, with the revocation stayed for a period of three years from the effective date of this decision, upon the condition that no subsequent final determination is made, after hearing or upon stipulation and waiver, that cause for disciplinary action occurred within the period of the stay. Should such a determination be made, the Director of the Department of Alcoholic Beverage Control may, in the Director's discretion and without further hearing, vacate this stay order and revoke Respondent's license, and should no

such determination be made, the stay shall become permanent. In addition, the license is suspended for 40 consecutive days.

Dated: January 18, 2024



D. Huebel
Administrative Law Judge

<input checked="" type="checkbox"/> Adopt
<input type="checkbox"/> Non-Adopt: _____
By: <u> J. McCullough </u>
Date: <u> 03/12/24 </u>

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