

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

**AB-9624a**

File: 23-452280 Reg: 16084211

HANGAR 24 CRAFT BREWERY, LLC,  
dba Hangar 24 Craft Brewery  
1710 Sessums Drive,  
Redlands, CA 92374-1909,  
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,  
Respondent

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

Appeals Board Hearing: September 6, 2018  
Ontario, CA

**ISSUED SEPTEMBER 18, 2018**

Appearances: *Appellant.* Donna J. Hooper, of Solomon Saltsman & Jamieson, as counsel for Hangar 24 Craft Brewery, LLC, doing business as Hanger 24 Craft Brewery.  
*Respondent.* Jonathan Nguyen as counsel for the Department of Alcoholic Beverage Control.

**OPINION**

Hangar 24 Craft Brewery, LLC, doing business as Hangar 24 Craft Brewery (appellant), appeals from a decision of the Department of Alcoholic Beverage Control<sup>1</sup> suspending its license for 25 days because its bartender sold an alcoholic beverage to a police minor decoy, a violation of Business and Professions Code section 25658, subdivision (a).

---

1. Both the original decision of the Department, dated November 21, 2016, and the Decision Following Appeals Board Decision, dated February 6, 2018, are set forth in the appendix.

## FACTS AND PROCEDURAL HISTORY

Appellant's small beer manufacturer license was issued on March 13, 2008. On May 25, 2016, the Department filed a two-count accusation against appellant. Count 1 alleged that appellant's bartender,<sup>2</sup> Gregg Ian Glenn (the bartender), sold an alcoholic beverage to 18-year-old Kambria Carmen Noelle Dormae on January 22, 2016. Count 2 alleged that appellant's "agent or employee, an unidentified male," also sold an alcoholic beverage to Dormae. The two counts were based on the same transaction. Although not noted in the accusation, Dormae was working as a minor decoy for the Redlands Police Department at the time.

At the administrative hearing held on September 7, 2016, documentary evidence was received and testimony concerning the sale was presented by Dormae (the decoy); by Officer Dave Frisch and Detective Michael Merriman of the Redlands Police Department; by Agent Eric Burlingame of the Department of Alcoholic Beverage Control; and by Natalie Mortion, appellant's lead bartender and former assistant manager.

Testimony established that on the date of the operation, the decoy entered the licensed premises and ordered a pint of beer. The bartender asked the decoy for identification. The decoy produced her valid California driver's license. The bartender looked at the decoy's identification, then told her the cost of the beer, accepted payment, and made change. (Count 1.) A second, unidentified male employee poured the beer for the decoy. (Count 2.)

---

2. Appellant refers to its bartending employees as "beertenders." For clarity, this decision uses the standard nomenclature of "bartender."

After the hearing, the Department issued a decision determining the violation charged was proved and no defense was established. The decision imposed a standard penalty of 25 days' suspension, as this was appellant's second sale-to-minor violation within 36 months.<sup>3</sup>

Appellant then appealed to this Board. In its decision issued November 28, 2017, this Board affirmed count 1, but reversed count 2, pertaining to the unidentified employee who poured the beer, on two grounds: first, that no face-to-face identification took place, and second, that the employee who poured the beer was entitled to rely on the bartender's review of the decoy's identification. (*Hangar 24 Craft Brewery, LLC* (2017) AB-9624, at pp. 5-10.) The Board remanded the case to the Department for reconsideration of the penalty in light of the partial reversal. (*Id.* at p. 22.)

On remand, the Department<sup>4</sup> again imposed the standard penalty of 25 days' suspension. It found,

This was [appellant]'s second sale of alcohol to a minor within a 36-month period. Although the [appellant] increased training and added ID scanners after the sale in this case, there is no evidence in the record as to what protective measures, if any, were adopted prior to the instant sale and following the first violation. As such, there is neither mitigation nor aggravation in this case.

(Decision Following Appeals Board Decision, at p. 1.)

---

3. The prior violation took place on May 31, 2013. (See Reg. No. 13078974.) Additionally, appellant has an unrelated violation dated September 15, 2009. (See Reg. No. 10073571.) The 2009 violation was not considered in selecting the penalty.

4. On remand, the case was decided by Department Director Jacob Appelsmith. (See Decision Following Appeals Board Decision.) There was no new hearing, and no new evidence was presented.

Appellant then filed a second appeal contending the Department failed to proceed in the manner required by law when it disregarded appellant's mitigating evidence.

## DISCUSSION

Appellant contends the Department failed to proceed in the manner required by law and abused its discretion when it disregarded evidence of mitigating measures taken after the instant violation. (App.Br., at pp. 6-11.)

Appellant argues the Department ignored the "plain language of the [penalty] guidelines indicat[ing] that positive actions taken after a violation occurs is [*sic*] a proper factor in mitigation." (App.Br., at p. 7; see also Penalty Guidelines, Code Regs., tit. 4, § 144.) Appellant claims there is nothing in the rule 144 penalty guidelines that suggests actions taken after a second violation should not be considered in mitigation. (App.Br., at p. 7.)

Appellants acknowledge that "[t]he standard penalty for a second violation within three years is a 25-day suspension, which is 10 days longer than the standard penalty for a first violation." (App.Br., at p. 9.) They argue, however, that in imposing the standard penalty, the Department must have been "using the simple fact of a second violation as reason not to mitigate the penalty." (*Ibid.*)

Finally, appellant contends that pursuant to *Topanga*, the Department was required to explain its reasoning. (App.Br., at pp. 9-10, citing *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515 [113 Cal.Rptr. 836].) Appellant argues the Department failed to explain its reasons for disregarding actions taken after the violation. (App.Br., at p. 10.)

Rule 144 provides penalty guidelines for Department discipline. That rule provides, in relevant part:

In reaching a decision on a disciplinary action under the Alcoholic Beverage Control Act [citation], and the Administrative Procedures Act [citation], the Department shall consider the disciplinary guidelines entitled "Penalty Guidelines" (dated 12/17/2003) which are hereby incorporated by reference. Deviation from these guidelines is appropriate where the Department *in its sole discretion* determines that the facts of the particular case warrant such a deviation—such as where facts in aggravation or mitigation exist.

(Code Regs., tit. 4, § 144, emphasis added.) The referenced penalty guidelines in turn state:

#### POLICY STATEMENT

It is the policy of this Department to impose administrative, non-punitive penalties in a consistent and uniform manner with the goal of encouraging and reinforcing voluntary compliance with the law.

#### PENALTY POLICY GUIDELINES

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

Higher or lower penalties from this schedule may be recommended based on the facts of individual cases where generally supported by aggravating or mitigating circumstances.

(Code Regs., tit. 4, § 144, Penalty Guidelines.) Like the rule itself, the plain language of the penalty guidelines unequivocally entrusts the penalty to the Department's discretion.

The penalty guidelines go on to list factors that *may* be considered in aggravation or mitigation, including "[p]ositive action by licensee to correct problem." Throughout the penalty guidelines, however, the language is consistently permissive. (See generally *ibid.*) A licensee is not *entitled* to mitigation, even if it presents evidence.

Because the penalty is, by law, a matter of the Department's discretion, this Board will not disturb the Department's penalty order in the absence of an abuse of that discretion. (*Martin v. Alcoholic Bev. Control Appeals Bd. & Haley* (1959) 52 Cal.2d 287, 291 [341 P.2d 296].) If the penalty imposed is reasonable, the Board must uphold it, even if another penalty would be equally, or even more, reasonable. "If reasonable minds might differ as to the propriety of the penalty imposed, this fact serves to fortify the conclusion that the Department acted within the area of its discretion." (*Harris v. Alcoholic Bev. Control Appeals Bd.* (1965) 62 Cal.2d 589, 594 [43 Cal.Rptr. 633].)

Moreover, unless some statute requires it, an administrative agency's decision need not include findings with regard to mitigation. (*Vienna v. Cal. Horse Racing Bd.* (1982) 133 Cal.App.3d 387, 400 [184 Cal.Rptr. 64]; *Otash v. Bureau of Private Investigators* (1964) 230 Cal.App.2d 568, 574-575 [41 Cal.Rptr. 263].) Appellants have cited no law imposing such requirements. Findings regarding the penalty are not necessary as long as specific findings are made that support the decision to impose disciplinary action. (*Williamson v. Bd. of Med. Quality Assurance* (1990) 217 Cal.App.3d 1343, 1346-1347 [266 Cal.Rptr. 520].)

The holding of *Topanga* does *not* extend to the penalty. No "analytical bridge" of any sort is required in imposing a penalty. Provided the penalty is reasonable, this Board has no cause to retrace the ALJ's reasoning. As we have written time and again,

"[t]his Board's review of a penalty looks only to see whether it can be considered reasonable, not what considerations or reasons led to it. If it is reasonable, our inquiry ends there." (*Garfield Beach CVS, LLC/Longs Drug Stores Cal., LLC* (2013) AB-9236, at p. 4; *7-Eleven, Inc. v. Ghuman & Sons, Inc.* (2011) AB-8997, at p. 4.)

In this case, the Department provided more reasoning in its penalty determination than is required by law. The Department took issue with the appellant's failure to take mitigating measures after its first sale-to-minor violation—a failure that appears to have resulted in this, its second violation in less than three years. Based on this, the Department discounted the mitigating measures appellant took after the second violation. Essentially, appellant's mitigating evidence was too little, too late. It was within the Department's discretion to reach that conclusion, and we have no authority to question it. (See Code Regs., tit. 4, § 144.)

Moreover, as appellant acknowledges, a 25-day suspension is the standard penalty for a second sale-to-minor violation within 36 months. (App.Br., at p. 9; Code Regs., tit. 4, § 144.) The penalty is reasonable; we therefore affirm.

#### ORDER

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

BAXTER RICE, CHAIRMAN  
 PETER J. RODDY, MEMBER  
 MEGAN MCGUINNESS, MEMBER  
 ALCOHOLIC BEVERAGE CONTROL  
 APPEALS BOARD

---

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

Any party, before this final order becomes effective, may apply to the appropriate court of appeal, or the California Supreme Court, for a writ of review of this final order in accordance with Business and Professions Code section 23090 et seq.

# APPENDIX



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

IN THE MATTER OF THE ACCUATION  
AGAINST:

Hangar 24 Craft Brewery LLC  
Dba Hangar 24 Craft Brewery LLC  
1710 Sessums Drive  
Redlands, CA 92374-1909

Licensee(s).

File No.: 23-452280

Reg. No.: 16084211

AB-9624

RECEIVED

FEB 08 2018

Alcoholic Beverage Control  
Office of Legal Services

DECISION FOLLOWING APPEALS BOARD DECISION

The above-entitled matter is before the Department of Alcoholic Beverage Control (Department) for decision following a decision of the Alcoholic Beverage Control Appeals Board (Board) dated November 28, 2017, which affirmed the Department's decision as to count 1 of the Accusation, and reversed as to count 2.

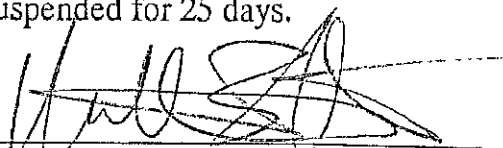
This was Licensee's second sale of alcohol to a minor within a 36-month period. Although the Licensee increased training and added ID scanners after the sale in this case, there is no evidence in the record as to what proactive measures, if any, were adopted prior to the instant sale and following the first violation. As such, there is neither mitigation nor aggravation in this case. The following discipline is in accordance with the Department's Rule 144.

The Department hereby adopts the following as its ORDER in the case.

ORDER

As to Count 1 of the accusation, the license is suspended for 25 days.

Dated: February 6, 2018

  
Matthew D. Botting  
General Counsel

For: Jacob A. Appelsmith  
Director

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

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

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

IN THE MATTER OF THE ACCUSATION  
AGAINST:

HANGAR 24 CRAFT BREWERY LLC  
HANGAR 24 CRAFT BREWERY LLC  
1710 SESSUMS DRIVE  
REDLANDS, CA 92374-1909

SMALL BEER MANUFACTURER - LICENSE

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

RIVERSIDE DISTRICT OFFICE

AB - 9624  
File: 23-452280

Reg: 16084211

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 November 6, 2016. Pursuant to Government Code section 11519, this decision shall become effective 30 days after it is delivered or mailed.

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

Any appeal of this decision must be made in accordance with Business and Professions Code sections 23080-23089. For further information, call the Alcoholic Beverage Control Appeals Board at (916) 445-4005, or mail your written appeal to the Alcoholic Beverage Control Appeals Board, 300 Capitol Mall, Suite 1245, Sacramento, CA 95814.

On or after January 2, 2017, a representative of the Department will contact you to arrange to pick-up the license certificate.

Sacramento, California

Dated: November 21, 2016

RECEIVED

NOV 23 2016

Alcoholic Beverage Control  
Office of Legal Services



Matthew D. Botting  
General Counsel

2017 MAR 16 PM 1:51  
RECEIVED  
ABC APPEALS BOARD

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

IN THE MATTER OF THE ACCUSATION AGAINST:

Hangar 24 Craft Brewery LLC	}	File: 23-452280
dba Hangar 24 Craft Brewery LLC	}	
1710 Sessums Drive	}	Reg.: 16084211
Redlands, California 92374-1909	}	
	}	License Type: 23
Respondent	}	
	}	Word Count: 19,415
	}	
	}	Reporter:
	}	George Aguilar
	}	Kennedy Court Reporters
	}	
<u>Small Beer Manufacturer</u>	}	<b><u>PROPOSED DECISION</u></b>

Administrative Law Judge D. Huebel, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter at San Bernardino, California, on September 7, 2016.

Jonathan Nguyen, Attorney, represented the Department of Alcoholic Beverage Control.

Melissa Gelbart, Attorney, represented Respondent, Hangar 24 Craft Brewery LLC.

The Department seeks to discipline the Respondent's license on the grounds that, on or about January 22, 2016, the Respondent, through its agents or employees, sold, furnished, and gave alcoholic beverages to Kambria Carmen Noelle Dorame, an individual under the age of 21, in violation of Business and Professions Code section 25658(a).<sup>1</sup> (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 September 7, 2016.

**FINDINGS OF FACT**

1. The Department filed the accusation on May 25, 2016.

---

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

2. The Department issued a type 23, small beer manufacturer license to the Respondent for the above-described location on March 13, 2008 (the Licensed Premises).

3. Respondents have been the subject of the following discipline:

<u>Date of Violation</u>	<u>Reg. No.</u>	<u>Violation</u>	<u>Penalty</u>
May 31, 2013	13078974	BP§25658(a)	POIC in lieu of 15-day suspension
September 15, 2009	10073571	BP§25000 BP§25200 CCR§§105,130	POIC in lieu of 10-day suspension

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

4. Kambria Carmen Noelle Dorame was born on August 6, 1997. On January 22, 2016, she was 18 years old. On that date she served as a minor decoy in an operation conducted by the Redlands Police Department (Redlands PD).

5. Decoy Dorame appeared and testified at the hearing. On January 22, 2016, she was 5'8" tall and weighed 125 pounds. She was wearing a white t-shirt, a purple and white zip-up sweater with a hood, blue jeans, and white Converse tennis shoes. She did not wear the hood of the sweater on her head while in the Licensed Premises. She wore no make-up and no jewelry. Her hair was pulled back with a side braid and a bun. Her hair was brown with a couple of light streaks in the braids. (Exhibits 4B, 4C and 4D.) Her appearance at the hearing was the same except that she wore make-up, weighed 127 pounds and her hair color was darker.

6. On January 22, 2016, at 7:45 p.m., decoy Dorame entered the Licensed Premises' tasting room and shortly thereafter officer Frisch entered. Decoy Dorame went to the bar counter and was greeted by Respondent's employee, beertender<sup>2</sup> Gregg Ian Glenn (beertender Glenn). Beertender Glenn asked decoy Dorame how she was doing, to which she replied she was "doing good, thank you," and in turn asked him how he was and he replied he was "doing good also." Decoy Dorame asked if she could buy a pint of Orange Wheat. Orange Wheat is an alcoholic beverage and a popular alcoholic beer in Redlands, California.

7. Beertender Glenn asked decoy Dorame for her driver license or identification. Decoy Dorame handed her valid California Driver License to beertender Glenn. Decoy Dorame's California Driver License has a vertical orientation, shows her correct date of birth and includes a red stripe which reads, "AGE 21 IN 2018." (Exhibit 4A.) Beertender Glenn looked at the driver license for two seconds and handed it back to her.

---

<sup>2</sup> Respondent refers to its bartenders as "beertenders."

Beertender Glenn told decoy Dorame the cost of the beer. Decoy Dorame handed him \$20. In the meantime, another employee poured the Orange Wheat from the beer tap behind beertender Glenn and placed the glass of Orange Wheat beer on the counter in front of decoy Dorame, while beertender Glenn then gave change to decoy Dorame. Decoy Dorame took the change and glass of Orange Wheat beer and went onto the patio. Officer Frisch was inside the Licensed Premises by the souvenirs, which was approximately 20 feet from decoy Dorame and beertender Glenn, and during this entire time he witnessed the interaction between beertender Glenn and decoy Dorame, with a clear, unobstructed view. Officer Frisch and decoy Dorame did not communicate with each other during this time while inside the Licensed Premises.

8. Officer Frisch then text-messaged decoy Dorame to re-enter the tasting room so that he could see her for security purposes. Decoy Dorame re-entered the Licensed Premises and stood by some Hangar 24 clothing which was for sale. Officer Frisch also text-messaged detective Merriman that an exchange occurred and decoy Dorame had been served alcohol.

9. Detective Merriman and officer Gonzales entered the Licensed Premises and walked to the clothing rack near the souvenir area, where they met with decoy Dorame and officer Frisch. They all were 10 feet from the bar. Decoy Dorame was asked who had sold her the beer, and she pointed to beertender Glenn, who was behind the bar. There is no evidence beertender Glenn observed decoy Dorame pointing at him during this preliminary identification.

10. Detective Merriman and decoy Dorame walked to the bar, with officer Gonzales behind them. Detective Merriman, with his badge out, approached beertender Glenn, who was still behind the bar, and advised he was an officer with the Redlands PD. Detective Merriman asked beertender Glenn, "Did you sell her the beer?" referring to decoy Dorame who was standing next to detective Merriman. Beertender Glenn answered, "Yes." Detective Merriman asked beertender Glenn if he asked for identification, to which he replied he had. Detective Merriman then asked decoy Dorame, "is this the gentleman who sold you the beer?" Decoy Dorame pointed at beertender Glenn and said, "this is the man who sold me the beer, but it's not the man who poured me the beer." Detective Merriman asked decoy Dorame how old she was, and she replied, "18." Decoy Dorame and beertender Glenn were standing five feet apart, facing and looking at each other at the time of this identification. Detective Merriman then requested beertender Glenn walk to the end of the bar near a door, which he did. Detective Merriman then took a photo of beertender Glenn and decoy Dorame after the face-to-face identification. (See Exhibit 4D).

11. Beertender Glenn was issued a citation after the face-to-face identification. Beertender Glenn did not appear and did not testify at the hearing. There is no evidence

beertender Glenn was distracted, could not hear, or that anyone interfered, during the sales transaction or the face-to-face identification.

12. January 22, 2016, was the second day decoy Dorame had been involved in minor decoy operations. She was not nervous that date. She learned of the minor decoy program through her participation in the police explorer program with the Redlands PD. Decoy Dorame became a police explorer in July of 2015. In that same month she attended the Redlands Emergency Service Academy (RESA), which accepts 10 applicants per year. At RESA she participated in role playing, traffic stops, active shooting, water rapid training, and climbed a 150 foot ladder. As a police explorer she wears a uniform without a badge and attends explorer meetings once a week. She has been on "hundreds" of ride-alongs.

13. Decoy Dorame appeared her age at the time of the decoy operation. Based on her overall appearance, i.e., her physical appearance, dress, poise, demeanor, maturity, and mannerisms shown at the hearing, and her appearance and conduct in front of beertender Glenn at the Licensed Premises on January 22, 2016, decoy Dorame displayed the appearance which could generally be expected of a person under 21 years of age under the actual circumstances presented to beertender Glenn. Decoy Dorame appeared her true age.

14. Respondent's lead beertender, Natalie Morton, appeared and testified at the hearing. On January 22, 2016, Ms. Morton was an assistant manager. She is currently a lead beertender. Respondent has a four day training process, with the first day reviewing and signing policy and three days of shadowing a beertender behind the bar; with instruction on preventing sales of alcoholic beverages to minors. After the decoy operation on January 22, 2016, the Respondent sent beertender Glenn home. The following day, Respondent terminated beertender Glenn's employment. The Respondent made changes to its training procedures and policies, including a more thorough training on checking identifications, requiring beertenders to ask each customer if they are 21 or how old they are, in addition to acquiring ID scanners. Respondent has signs at each terminal advising customers that if they appear under 40 they will be asked to show ID. It does occur within the Licensed Premises that one employee will check the ID of a customer while another employee will pour the beer for the customer. Natalie Morton testified that Orange Wheat is an alcoholic beer served in the Respondent's establishment.

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

## CONCLUSIONS OF LAW

1. Article XX, section 22 of the California Constitution and section 24200(a) provide that a license to sell alcoholic beverages may be suspended or revoked if continuation of the license would be contrary to public welfare or morals.
2. Section 24200(b) provides that a licensee's violation, or causing or permitting of a violation, of any penal provision of California law prohibiting or regulating the sale of alcoholic beverages is also a basis for the suspension or revocation of the license.
3. Section 25658(a) provides that every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor.
4. Cause for suspension or revocation of the 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 January 22, 2016, the Respondent's employees, inside the Licensed Premises, sold, furnished and gave an alcoholic beverage to Kambria Carmen Noelle Dorame, a person under the age of 21, in violation of Business and Professions Code section 25658(a). (Counts 1 and 2.) (Findings of Fact ¶¶ 4-14.)
5. The Respondent argued the decoy operation at the Licensed Premises failed to comply with rules 141(a)<sup>3</sup>, 141(b)(2), 141(b)(4) and 141(b)(5), therefore, the accusation should be dismissed pursuant to rule 141(c).
6. With respect to rule 141(a), the Respondent argued that it was unfair the decoy was instructed to enter and specifically ask for Orange Wheat beer, as it indicates decoy Dorame was a "regular" and had a familiarity with beer, and as such it was misleading. This argument is rejected. It is an assumption made by Respondent's counsel. Respondent did not produce beertender Glenn at the hearing. There is no evidence to indicate that decoy Dorame's requesting Orange Wheat beer led beertender Glenn to believe decoy Dorame was a "regular" or had familiarity with beer. Sworn testimony by detective Merriman and decoy Dorame clearly indicate Orange Wheat beer is a popular beer. In fact, detective Merriman credibly testified Orange Wheat beer is almost as popular as Bud Light beer in Redlands, California. It is not some specialty beer that only an aficionado of beer would know to order. There was no Rule 141(a) violation in giving this said instruction to the decoy.

Respondent further argued that officer Frisch's testimony that decoys are instructed to give money at the same time they give their ID "is similar to 141(b)(4) violation, and

---

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

intricately tied with 141(a).” Respondent argued that the decoy is suggesting to the employee the decoy is of age and the employee will complete the sales transaction. Respondent argues this is misleading and the instruction is “extremely unfair.” This argument is without merit. Firstly, the sworn, direct testimony of officer Frisch credibly indicated he gave no instructions to decoy Dorame, and that it was detective Merriman who gave instructions to her. Detective Merriman credibly testified he gave no such instruction to decoy Dorame to give her ID at the same time she gave the money. Finally, the sworn, direct testimony of decoy Dorame credibly indicated that she did not give her ID with the \$20, but that she gave the ID and money distinctly separate from each other to beertender Glenn. There was no violation of rules 141(a) or 141(b)(4).

7. With respect to rule 141(b)(2), specifically, the Respondent argued decoy Dorame did not have the appearance generally expected of an individual under the age of 21 because of various factors. Those factors included Respondent’s counsel’s belief decoy Dorame was an “exceptional” explorer, having been “selected to attend an exclusive police academy,” where she participated in active shooter scenarios, which were her favorite, and felony traffic stops, as well as climbed 150 feet up a fire ladder in a fire simulation and was not scared. Additional factors cited were the fact decoy Dorame “wants to be a police officer when she grows up,” and that she admitted she was not nervous during the decoy operation of January 22, 2016. This rule 141(b)(2) argument is rejected. The Respondent presented no evidence that these factors actually resulted or had any impact in decoy Dorame appearing 21 or older to beertender Glenn. While decoy Dorame had explorer training and experience at RESA as of the date of the operation, there was nothing about that experience or training which made her appear older than her actual age. Decoy Dorame’s appearance was consistent with that of a person who was 18 years old at the time of the operation and 19 years old at the time of the hearing. In other words, decoy Dorame appeared her true age and had the appearance generally expected of a person under the age of 21. (Finding of Fact ¶ 13.)

8. As to rule 141(b)(5), the Respondent argued the face-to-face identification was not valid for various reasons. These reasons included that the decoy did not make the identification because detective Merriman first asked beertender Glenn whether he had sold alcohol to her and then asked a leading question to the decoy, “is this the gentleman who sold you the beer,” without the decoy pointing to the clerk. Respondent further added the decoy and beertender were five to six feet away in a room loud, with music playing and other customers.

Respondent’s rule 141(b)(5) argument is rejected. The face-to-face identification was not tainted just because detective Merriman asked beertender Glenn whether he had sold alcohol to the decoy prior to the decoy’s face-to-face identification. The otherwise, un rebutted, sworn and direct testimony of both decoy Dorame and detective Merriman is that decoy Dorame identified beertender Glenn when the two were standing five feet



apart, facing and looking at each other. In fact, decoy Dorame stated, "this is the man who sold me the beer, but it's not the man who poured me the beer." Detective Merriman credibly testified that at the time of the face-to-face identification decoy Dorame pointed at beertender Glenn. Respondent presented no evidence beertender Glenn was distracted during this face-to-face identification or that it was too loud for him to hear the identification. In fact, the testimony made clear that beertender Glenn clearly heard detective Merriman's questions despite the fact he was five feet away, because beertender Glenn answered the detective's questions. There was no evidence to indicate beertender Glenn did not hear decoy Dorame's identification of him, from five feet away, with decoy Dorame standing right next to detective Merriman, and beertender Glenn facing them. The un rebutted, sworn and direct testimony establishes that a face-to-face identification was conducted as required by the rule.

9. Respondent also argued the Department should not have pled two counts in the accusation because there was only one sale, regardless of the fact one person rang up the beer and a second person poured the beer; arguing the Department did not learn the identity of the second man and "in the best scenario only one count should be sustained." This argument is also rejected. There is no unreasonable accumulation of counts. The Department has complied with Business and Professions Code section 25658(a) which provides that "every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any person under 21 years of age is guilty of a misdemeanor." Two of the Respondent's employees were involved in the selling and furnishing of an alcoholic beverage to a minor decoy; one employee who looked at the decoy's ID, accepted her \$20 and made change thereby processing the sale of an alcoholic beverage to the decoy, and the second employee who poured the alcoholic beverage and placed it in front of the decoy who retrieved the beer, thereby furnishing an alcoholic beverage to the decoy. Rule 144 penalty guidelines allow for a 15-day suspension for sales of alcoholic beverages to persons under 21 and a 15-day suspension for furnishing or causing to be furnished an alcoholic beverage to a person under 21. Furthermore, the penalty which the department sought is consistent with a second sale-to-a-minor violation, despite the fact two counts were pled.

10. A letter correctly addressed and properly mailed is presumed to have been received in the ordinary course of mail. (Evidence Code section 641.)

11. The Respondent's counsel failed to rebut the presumption that the Supplemental Discovery Response letter dated August 24, 2016 (Exhibit 5), with its attachments, including a copy of a color photo of a chalkboard menu (Exhibit 6), mailed to its current mailing address was not received by it. Respondent's counsel could provide no reasonable explanation as to why her law firm would not have received the said letter and attachments despite the fact they were mailed to the law firm's current mailing address at the time. Respondent's counsel further acknowledged that it was possible her law firm

received the said letter and attachments, but that they were simply inadvertently not given to her. The Department attorney, Jonathan Nguyen, credibly stated that he properly mailed the said letter and attachments to Respondent's counsel at their address. As such, it is found the Respondent's counsel did receive the said letter and attachments in the ordinary course of mail.

### PENALTY

The Department requested the Respondent's license be suspended for a period of 25 days, noting it was the Respondent's second sale-of-alcohol-to-a minor violation within a 36 month period, and that two employees were involved in the said sale; adding that any mitigation should have occurred after the first violation in 2013. The Respondent argued that, if the accusation were not dismissed, a 20-day suspension was appropriate since the Respondent has taken preventative measures of adding ID scanning units, requiring its staff ask customers if they are 21 or ask their age, with success a month prior to the hearing in preventing a minor decoy sale, in addition to terminating Gregg Glenn. The penalty recommended herein complies with rule 144.

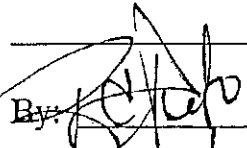
### ORDER

The Respondent's small beer manufacturer license is hereby suspended for a period of 25 days.

Dated: September 19, 2016



D. Huebel  
Administrative Law Judge

<input checked="" type="checkbox"/> Adopt
<input type="checkbox"/> Non-Adopt: _____
By: 
Date: 11/6/16

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

<p>IN THE MATTER OF THE ACCUSATION AGAINST:</p> <p>HANGAR 24 CRAFT BREWERY LLC HANGAR 24 CRAFT BREWERY LLC 1710 SESSUMS DRIVE REDLANDS, CA 92374-1909</p> <p>SMALL BEER MANUFACTURER - LICENSE</p> <p>under the Alcoholic Beverage Control Act.</p>	<p>File: 23-452280</p> <p>Reg: 16084211</p> <p style="text-align:center">DECLARATION OF SERVICE BY MAIL</p>
---	---

The undersigned declares:

I am employed at the Department of Alcoholic Beverage Control. I am over 18 years of age and not a party to this action. My business address is 3927 Lennane Drive, Suite 100, Sacramento, California 95834. On November 21, 2016, I served, by CERTIFIED mail (unless otherwise indicated) a true copy of the following documents:

**DECISION AND CERTIFICATE OF DECISION**

on each of the following, by placing them in an envelope(s) or package(s) addressed as follows:

HANGAR 24 CRAFT BREWERY  
LLC  
P.O. BOX 9420  
REDLANDS, CA 92375

MELISSA GELBART  
SOLOMON, SALTSMAN &  
JAMIESON  
426 CULVER BOULEVARD  
PLAYA DEL REY, CA 90293

Jonathan Nguyen  
Southern Division, Legal – Inter  
Office Mail

and placing said envelope or package for collection and mailing, following our ordinary business practices. I am readily familiar with this department's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, County of Sacramento, State of California, in an envelope with the postage fully prepaid. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 21, 2016 at Sacramento, California.

  
\_\_\_\_\_  
Mark Kinyon

RIVERSIDE DISTRICT OFFICE (INTEROFFICE MAIL)  
 DIVISION OFFICE (INTEROFFICE MAIL)