

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

AB-9656

File: 47-533021; Reg: 16084173

B & J ENTERTAINMENT, INC.,
dba Recital
3500 West 6th Street, Unit 330,
Los Angeles, CA 90020-5805,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Doris Huebel

Appeals Board Hearing: June 7, 2018
Los Angeles, CA

ISSUED JULY 13, 2018

Appearances: Appellant: Ralph Barat Saltsman, of Solomon, Saltsman & Jamieson, as counsel
for B & J Entertainment, Inc.,

Respondent: Jonathan V. Nguyen, as counsel for Department of
Alcoholic Beverage Control.

OPINION

B & J Entertainment, Inc., doing business as Recital, appeals from a decision of the Department of Alcoholic Beverage Control¹ suspending its license for 30 days because appellant violated two conditions on its license, in violation of Business and Professions Code section 23804.

FACTS AND PROCEDURAL HISTORY

¹The decision of the Department, dated May 23, 2017, is set forth in the appendix.

Appellant's on-sale general eating place license was issued on June 20, 2013, following submission of a Petition for Conditional License on June 12, 2013. The license was issued subject to six conditions which appellant accepted without protest. (Exh. 3.)

Business and Professions Code section 23800 empowers the Department to place reasonable conditions on retail licenses in certain situations. A violation of a condition is grounds for suspension or revocation under section 23804. Appellant has one previous instance of discipline on its license, in 2014, for violation of the same two conditions at issue in this appeal. (Exh. 2.)

On May 16, 2016, the Department instituted a two-count accusation against appellant charging that, on November 21, 2015, appellant violated two of the conditions on its license.

Count 1:

Appellant was charged with providing escorts to undercover police officers, in violation of condition #1 on its license which states:

1. No employee or agent shall be permitted to accept money or any other thing of value from a customer for the purpose of sitting or otherwise spending time with customers while in the premises, nor shall the licensee(s) provide or permit, or make available either gratuitous or for compensation, male or female persons who act as escorts, companions, or guests of and for the customers.

Count 2:

Appellant was charged with permitting an employee to accept an alcoholic beverage from a customer, in violation of condition #6 on its license which states:

6. No employee or agent shall solicit or accept any alcoholic or non-alcoholic beverage from any customer while in the premises.

At the administrative hearing held on February 14, 2017, documentary evidence was received and testimony concerning the violation charged was presented by Los Angeles Police Department (LAPD) Officers Gwan Oh, Gregory Hope, Christopher Duong, and Fernando Guzman, as well as Sergeant Julia Vincent.

Appellant presented no witnesses at the administrative hearing. It was represented at

the hearing by attorneys Jeffrey H. Kim and Michael C. Cho.

Testimony established that on November 21, 2015, at approximately 10:00 p.m., LAPD Vice Unit Officers Oh, Hope and Duong entered the licensed premises in an undercover capacity to conduct an investigation based on multiple citizen complaints about escorts (known as “domi girls” in the Korean community) at the premises.

The officers asked for a karaoke room and then waited. They were greeted by someone named “Chance,”² who introduced himself as their host and led them to karaoke room 11. (Exh. 4.) The officers observed scantily clad women walking in and out of the various rooms which were occupied by male patrons.

Three women entered their room uninvited and lined up in front of their table. One of them asked if they could sit with the men. The women were later identified as Tyra, Joyos, and Garcia. (Exh. 7 & 8.) Tyra sat next to Officer Oh, Joyos sat next to Officer Duong, and Garcia sat next to Officer Hope. Officer Oh placed an order for a bottle of Macallan Scotch with Chance. After taking the order, Chance left the room.

Approximately 10 minutes later, three additional women entered the room uninvited and lined up in front of the table — giving the officers an opportunity to replace the women they were seated with. Officer Oh replaced Tyra with Valencia. (Exh. 6.)

Chance and an assistant returned with the scotch. Officer Oh poured a shot for Chance, then each of the women poured a shot for themselves, as well as a shot for the officer they were with. Everyone — Chance, the three officers, and the three women — drank their shots.

In the course of the evening, Valencia told Oh that she had been working for an escort agency called Darling for five weeks — working primarily at Recital, appellant’s licensed

²This is apparently a nickname for this individual. He did not testify.

premises. Officer Oh asked if it was \$120 for two hours of her time. She affirmed that the charge was \$100 for the first hour, then \$20 for the second hour. Later, Valencia asked Oh to order something “clear” and recommended Grey Goose Vodka, which Officer Oh ordered.

Officer Hope noticed that Garcia was texting during the evening. When asked, she explained that she was texting her boss. She asked Officer Hope for approval to stay with him another hour and he agreed.

Throughout the evening, Officer Oh kept in contact with his supervisor, Sergeant Vincent, who remained outside with Officer Guzman. He texted her about the violations he observed. Later, Vincent and Guzman entered the premises with a takedown team and identified themselves as LAPD officers.

Chance rushed into the officers’ karaoke room and told everyone the police were outside. He told them to keep calm, not to give in, to act like they knew each other, to exchange phone numbers, and to come up with a back story about how they met. He told the women not to say they were escorts. Ms. Garcia suggested they could say that they met at the Lion Hotel and had come to the premises together.

The women were taken to another room for questioning, and the three officers remained undercover throughout the operation. As the officers were leaving, Chance asked them to settle their bill. Officer Oh spoke to Chance in Korean and was told it was \$240 for the Macallan Scotch and \$240 for the Grey Goose Vodka. Oh paid Chance. None of the officers had an opportunity to pay the women before the takedown team arrived.

Sergeant Vincent interviewed numerous individuals at the premises, including four male patrons. One of them, Mr. Cox, acknowledged paying \$120 to an escort named Jessica. (Exh. 9.) When interviewed, Jessica admitted to being an escort. Three other men were also interviewed who said they had escorts with them in their rooms, but had not yet paid them when

the police arrived. One of the women, Jennifer, also admitted to being an escort. (Exh. 10-12.) Of the approximately 20 women interviewed by Sergeant Vincent, 7 of whom were arrested (see exhibits 6 through 12), none of them had escort permits from the City of Los Angeles — however, possession of a permit would not have countermanded condition #1 on the license.

Following the hearing, on March 6, 2017, the administrative law judge (ALJ) submitted a proposed decision, sustaining the accusation and suspending the license for a period of 30 days. Thereafter, on March 22, 2017, the Department's Administrative Hearing Office sent a letter from its Chief ALJ to both appellant and Department counsel, inviting the submission of comments on the proposed decision and stating that the proposed decision and any comments submitted would be submitted to the Director of ABC in 14 days.

Appellant submitted comments to the Director, written by Chang Y. Lee, Chairman of the Koreatown Development Committee, vouching for appellant's valuable contributions to the community, as well appellant's good character in general. He argued that there was a misunderstanding between the Department investigator and appellant. Mr. Lee also argued that a 30-day suspension was too harsh a penalty — for appellant, for its employees, for Koreatown, and for the City of Los Angeles — and requested that the matter be remanded for a mandatory settlement conference. The Department did not submit comments.

The Department adopted the proposed decision in its entirety and, on May 23, 2017, issued its Certificate of Decision.

Appellant then filed a timely appeal contending: (1) the ALJ's findings of fact are not supported by substantial evidence, and (2) the ALJ abused her discretion when she failed to articulate the factual basis for her legal conclusion that certain individuals were employees or agents of the licensee. These issues will be discussed together.

DISCUSSION

Appellant contends the ALJ's findings of fact are not supported by substantial evidence. (AOB at p. 8.) Appellant also contends the ALJ abused her discretion when she failed to articulate the factual basis for her legal conclusion that certain individuals were employees or agents of the licensee. (*Id.* at p. 22.)

This Board is bound by the factual findings in the Department's decision so long as those findings are supported by substantial evidence. The standard of review is as follows:

We cannot interpose our independent judgment on the evidence, and we must accept as conclusive the Department's findings of fact. [Citations.] We must indulge in all legitimate inferences in support of the Department's determination. Neither the Board nor [an appellate] court may reweigh the evidence or exercise independent judgment to overturn the Department's factual findings to reach a contrary, although perhaps equally reasonable, result. [Citations.] The function of an appellate board or Court of Appeal is not to supplant the trial court as the forum for consideration of the facts and assessing the credibility of witnesses or to substitute its discretion for that of the trial court. An appellate body reviews for error guided by applicable standards of review.

(*Dept. of Alcoholic Bev. Control v. Alcoholic Bev. Control Appeals Bd. (Masani)* (2004) 118 Cal.App.4th 1429, 1437 [13 Cal.Rptr.3d 826].)

When findings are attacked as being unsupported by the evidence, the power of this Board begins and ends with an inquiry as to whether there is substantial evidence, contradicted or uncontradicted, which will support the findings. When two or more competing inferences of equal persuasion can be reasonably deduced from the facts, the Board is without power to substitute its deductions for those of the Department—all conflicts in the evidence must be resolved in favor of the Department's decision. (*Kirby v. Alcoholic Bev. Control Appeals Bd.* (1972) 25 Cal.App.3d 331, 335 [101 Cal.Rptr. 815]; *Harris v. Alcoholic Beverage Control Appeals Board* (1963) 212 Cal.App.2d 106 [28 Cal.Rptr.74].)

Therefore the issue of substantial evidence, when raised by an appellant, leads to an examination by the Appeals Board to determine, in light of the whole record, whether substantial

evidence exists, even if contradicted, to reasonably support the Department's findings of fact, and whether the decision is supported by the findings. The Appeals Board cannot disregard or overturn a finding of fact by the Department merely because a contrary finding would be equally or more reasonable. (Cal. Const. Art. XX, § 22; Bus. & Prof. Code § 23084; *Boreta Enterprises, Inc. v. Dept. of Alcoholic Bev. Control* (1970) 2 Cal.3d 85, 94 [84 Cal.Rptr. 113]; Harris, *supra*, at 114.)

Appellant maintains the decision “contains unsupported conclusory statements of material fact that appear to be based on assumptions.” (AOB at p. 9.) It cites, as an example, the following finding of fact:

18. Of the approximately 20 escorts interviewed and detained by Sergeant Vincent and her team, none of them had escort permits through the City of Los Angeles.

(Finding of Fact, ¶ 18.) Appellant maintains that since the record shows that Sergeant Vincent actually testified that 20 *women* were detained and interviewed, that the ALJ made an unsupported determination that all 20 were *escorts*.

We disagree. The decision is not dependent upon the finding in paragraph 18; even if this paragraph were deleted entirely, the decision would still stand. It is irrelevant whether the ALJ is correct or incorrect about her characterization of these 20 women as escorts. For the purpose of the Appeals Board, the mission is for the Board to determine **in light of the whole record** whether substantial evidence exists, even if contradicted, to reasonably support the Department's findings of fact, and, for the Board to determine whether the decision is supported by the findings. (See *Boreta, supra*.) Our job is not to seize upon a possibly incorrect choice of word and throw the whole decision out if we find a misstep. Moreover, whether all 20 women, or only 7, or even just one woman was an escort, the condition would still be violated.

We agree with the ALJ that substantial evidence supports the finding that condition #1 was violated when women were permitted to enter the officers' private karaoke room uninvited

and solicit themselves as escorts. The officers learned that the women were escorts through their conversations with them and when the women discussed their prices for sitting with the officers. These activities occurred in full view of appellant's employee Chance, and his assistant. Furthermore, when the LAPD takedown team arrived, Chance entered the room and instructed the officers and women to pretend like they knew each other, exchange phone numbers, and make up a back story as to how they met. It is clear from these statements that Chance knew the women were working as escorts. That knowledge is imputed to the licensee.

It is well settled in Alcoholic Beverage Control Act case law that an employee's on-premises knowledge and misconduct is imputed to the licensee/employer, as it has been here. (See *Yu v. Alcoholic Bev. etc. Appeals Bd.* (1992) 3 Cal.App.4th 286, 295 [4 Cal.Rptr.2d 280]; *Laube v. Stroh* (1992) 2 Cal.App.4th 364, 377 [3 Cal.Rptr.2d 779]; *Kirby v. Alcoholic Bev. Etc. Appeals Bd.* (1973) 33 Cal.App.3d 732, 737 [109 Cal.Rptr. 291].)

Count 1 is supported by the testimony of the officers involved regarding the women shown in exhibits 6 through 12. The second half of condition #1 on the license states that the licensee shall not "provide or permit, or make available either gratuitous or for compensation, male or female persons who act as escorts, companions, or guests of and for the customers." It is not necessary that money have changed hands for the condition to be violated, and the officers' testimony established that the women were being provided as escorts, companions, or guests for them.

Appellant argues that it is unclear what is meant by the words "provide" and "permit" and that the condition is unenforceable because any licensee would be unclear about what is prohibited. Appellant maintains the condition is badly written and it is therefore difficult for a licensee to understand and enforce. We disagree. "Provide" means to make available, or to supply; and "permit" means to allow, or to tolerate. ([Http: www.dictionary.com](http://www.dictionary.com), accessed on June 8, 2018.) In other words, the licensee may not directly supply escorts, companions or

guests for its patrons, nor may it allow an outside entity to supply escorts, companions or guests. At oral argument appellant argued that a patron's wife or girlfriend is indistinguishable from these escorts, but the obvious difference is that the patrons in this case did not bring these women with them — they were either made available, or at least tolerated, by the licensee.

Appellant also maintains the decision is not supported by substantial evidence because the ALJ found that Chance was an employee of the appellant. Appellant maintains his classification as an employee was not established, and contends the ALJ reached this conclusion based “on the assumptions of the officers who participated in the operation. The officers based their assumptions solely on the actions of ‘Chance’ and on nothing else.” (AOB at pp. 10-11.)

The ALJ reached the following conclusions on this issue:

8. Chance was clearly an employee and agent of Respondent. He introduced himself to the officers as their host for the evening, he took the Macallan Scotch alcohol order from officer Oh. When Respondent's employee/agent, Chance, was present with the three officers at the lobby and when Chance led the officers to room 11, he was in a position to see the female escorts walking in and out of the rooms, where male patrons were, and permitted them to do so. Additionally, when the take down team entered the Licensed Premises, Chance rushed into room 11 telling the officers, Valencia, Joyos and Garcia the police were there, act like they all know each other, exchange phone numbers and come up with a back story as to how they all met, with Chance telling the women not to say they were escorts. Chance's instructions to the officers and women after the take down team entered clearly indicated he knew Respondent was engaged in illegal activity with the escorts permitted in the rooms of the Licensed Premises with male patrons. Chance's actions and comments revealed that as an employee/agent of Respondent Chance knew the women were present, permitted them to be there and serve as escorts on the Licensed Premises. Thusly, not only were the women serving as Respondent's agents on November 21, 2015, but Chances' actions and knowledge are imputed to Respondent.

(Conclusions of Law, ¶ 8.)

Appellant's assertion that “there is no evidence who ‘Chance’ was or that he actually worked for Appellant” (AOB at p. 12) is not supported by the record. The following facts, which were established by the testimony of the three officers present, support an inference that he

was an employee: that Chance took the officers to the karaoke room, that he introduced himself as their host, that he took their drink order, that he served the scotch to them, and that he collected money for the alcohol.

Appellant maintains this is somehow different than being able to rely on the fact that the person behind a cash register in a convenience store is an employee of that store. Instead, appellant maintains:

[I]t is not reasonable for a court of law to find that there is a legally binding employment relationship between an unknown person and Appellant based on a few observations of the officers made on a single visit to Recital. Those observations gave the officers reason to *suspect* that Chance was an employee, and gave them reason to investigate further, but they do not establish that there was [a] legal relationship between “Chance” and Appellant. The Department seeks to hold Appellant legally accountable for the actions of a person they could not be bothered to identify. . . .

(ACB at p. 6.)

Appellant relies on references to details in the hearing transcript to impeach the testimony of the officers — by pointing out minor inconsistencies in their individual testimonies. However, little would be served by addressing each and every factual contention made by appellant. The ALJ clearly understood the substance of the testimony and made a credibility determination. We cannot say that her conclusions regarding these details were in any way erroneous.

Since the officers' testimony, if believed, is evidence of the apparent agency relationship between appellant and Chance, the issue is really one of credibility — and the ALJ is the person who makes that determination. (Lorimore v. State Personnel Bd. (1965) 232 Cal.App.2d 183, 189 [42 Cal.Rptr. 640]; Brice v. Dept. of Alcoholic Bev. Control (1957) 153 Cal.App.2d 315, 323 [314 P.2d 807].) In this case, the ALJ chose to accept the testimony of the officers as the basis for identifying Chance as an employee, and our review of the record satisfies us that this was reasonable. Any reasonable person would have believed that the person seating them, taking

their order, serving their drinks, and collecting money for them, was an employee of the premises — particularly one who has access to alcohol.

Count 2 is established by the testimony of the officers that Chance accepted an alcoholic beverage — a shot of scotch — in spite of condition #2 which states: “No employee or agent shall solicit **or accept** any alcoholic or non-alcoholic beverage from any customer while in the premises.” (Emphasis added.)

ORDER

The decision of the Department is affirmed.³

BAXTER RICE, CHAIRMAN
PETER J. RODDY, MEMBER
JUAN PEDRO GAFFNEY RIVERA, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

³This 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 ACCUSATION
AGAINST:**

B & J ENTERTAINMENT INC
RECITAL
3500 WEST 6th ST, UNIT 330
LOS ANGELES, CA 90020-5805

ON-SALE GENERAL EATING PLACE - LICENSE

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

CERRITOS DISTRICT OFFICE

File: 47-533021

Reg: 16084173

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 this case. 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 July 5, 2017, a representative of the Department will contact you to arrange to pick-up the license certificate.

Sacramento, California

Dated: May 23, 2017

RECEIVED

MAY 24 2017

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:

B & J Entertainment, Inc,	}	File: 47-533021
Dbas: Recital	}	
3500 West 6 th Street, Unit 330	}	Reg.: 16084173
Los Angeles, California 90020-5805	}	
	}	License Type: 47
Respondent	}	
	}	Word Count: 43,475
	}	
	}	Reporter:
	}	Cathryn Azama
	}	California Reporting
	}	
<u>On-Sale General Eating Place License</u>	}	<u>PROPOSED DECISION</u>

Administrative Law Judge D. Huebel, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter at Cerritos, California, on February 14, 2017.

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

Jeffrey H. Kim and Michael C. Cho, Attorneys, represented Respondent, B & J Entertainment, Inc.

The Department seeks to discipline the Respondent's license on the grounds that, on November 21, 2015, Respondent failed to comply with two conditions attached to Respondent's license in violation of Business and Professions Code section 23804.¹ (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 February 14, 2017.

PRELIMINARY MATTERS

1. At the hearing on February 14, 2017, Respondent initially requested to submit a motion in limine and thereafter withdrew that motion.

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

2. At the hearing on February 14, 2017, Respondent also sought to submit, a motion to compel the Department's witness list and acknowledged that it might be moot. Respondent acknowledged having received the police report along with the Department's discovery response letter dated September 21, 2016, the latter of which indicated the potential witnesses were listed in the police report. The Administrative Law Judge denied Respondent's motion to compel as moot.

3. At the hearing on February 14, 2017, Respondent further requested to be permitted to file a Pitchess Motion. Respondent acknowledged it could have filed its motions in a timely fashion through either of its co-counsel. Respondent's request was denied as untimely.

FINDINGS OF FACT

1. The Department filed the accusation on May 16, 2016.
2. The Department issued a type 47, on-sale general eating place license to the Respondent for the above-described location on June 20, 2013 (the Licensed Premises).
3. Respondent has been the subject of the following discipline:

<u>Date of Violation</u>	<u>Reg. No.</u>	<u>Violation</u>	<u>Penalty</u>
September 19, 2014	15081999	BP§23804	POIC 15-day suspension stayed

The foregoing disciplinary matter is final. (Exhibit 2.)

4. On June 12, 2013, the Respondent, signed a Petition for Conditional License, Form ABC-172. (Exhibit 3.) Two of the conditions, conditions number 1 and 6, contained therein provide that:

1. "No employee or agent shall be permitted to accept money or any other thing of value from a customer for the purpose of sitting or otherwise spending time with customers while in the premises, nor shall the licensee(s) provide or permit, or make available either gratuitous or for compensation, male or female persons who act as escorts, companions, or guests of and for the customers."

...

6. "No employee or agent shall solicit or accept any alcoholic or non-alcoholic beverage from any customer while in the premises."

The Petition for Conditional License states the conditions were imposed to mitigate against consideration points, high crime and overconcentration of licenses in the census tract in which the Licensed Premises is located.

5. On November 21, 2015, at 10:00 p.m., officers Gwan Oh, Gregory Hope and Christopher Duong, of the Los Angeles Police Department (LAPD) Vice Unit, arrived at the Licensed Premises, in a plain clothes capacity, to conduct an investigation, after the LAPD received multiple complaints against the Licensed Premises including, but not limited to solicitation of alcohol and providing escorts without a permit, to determine if the Licensed Premises was engaging in violations of conditions endorsed upon Respondent's license.

6. Officers Oh, Hope and Duong entered the Licensed Premises. At the lobby entrance they asked for a Karaoke room and waited. They were greeted by an employee named Chance, who introduced himself as their host for the evening and who led them to karaoke room 11, located at the far end of the establishment. (Exhibit 4.) While in the lobby and walking to room 11, the officers observed scantily clad women walking in and out of the other rooms, with male patrons occupying the rooms.

7. In room 11, the officers took a seat at the u-shaped table which was accessorized with beer cups and whisky glasses. The room was dimly lit, with disco lights, karaoke equipment and a big screen television.

8. Three women immediately entered room 11, uninvited, and lined up next to each other in front of the table without saying anything for a moment. The women were later identified as Tyra, Carolina Joyos/Defendant 3, and Garcia/Defendant 4. One of the women asked if they could sit with the men. The officers replied affirmatively. Tyra sat next to officer Oh, Joyos sat next to officer Duong, and Garcia sat next to officer Hope. Joyos wore a black with white polka dot mini-skirt dress and black pumps. (Exhibit 8.) Garcia wore black criss-cross strap toeless heels, a short-sleeved black and white fitted shirt dress that fell at the top of her thighs, and which had a slit at the right thigh. (Exhibit 7.)

9. Officer Oh placed an order with Chance for a bottle of Macallan Scotch. Chance took the order and left the room. Approximately 10 minutes later three other women entered room 11, uninvited, lined up in front of the table, giving the officers the option to replace the women with whom they were currently seated with one of the women who just entered the room. Officer Oh had Tyra replaced with Vivian Valencia/Defendant 2. Vivian Valencia wore black toeless heels, a maroon laced negligée see-through bra top, and a black ankle length skirt with a long side slit which exposed her right thigh and leg. (Exhibit 6.)

9. Chance and an assistant brought a 750 milliliter bottle of Macallan Scotch to room 11. Macallan Scotch is an alcoholic beverage. Officer Oh poured a shot glass of the Macallan Scotch for Chance. Chance took the scotch glass. Officer Oh's female partner poured a shot glass of the scotch for herself and for officer Oh. Joyos poured a shot glass of the scotch for herself and for officer Duong, and Garcia poured a shot glass of the scotch for herself and officer Hope. Chance, the three officers, and all three females drank their Macallan shots.

10. During the evening officer Oh spoke with Valencia. Valencia told officer Oh she had been working for five weeks as an escort for an escort agency named Darling, and during that five weeks has primarily worked as an escort at Recital, the Licensed Premises. Valencia indicated the reason she is working as an escort is due to the high tuition costs as a student at FIDM college. Valencia advised officer Oh that her escort charge is \$120, which is broken down to \$100 for the first hour and \$20 for the second hour.

11. When the Magallan Scotch bottle was empty Valencia asked officer Oh to purchase something "clear" and recommended Grey Goose Vodka. No one, other than Valencia, had mentioned anything about ordering more alcohol. Officer Oh ordered a 750 ml bottle of Grey Goose Vodka, which was served and partially consumed by the officers and three women. Grey Goose Vodka is an alcoholic beverage.

12. Officer Oh and Duong used tactical measures they learned so as not to become inebriated and not to consume all of the alcohol poured for them; they either spit the alcohol out in another cup, pretended to drink or did not consume it. During the evening, officer Duong consumed approximately one shot, and officer Hope consumed four shots. Officer Oh could not estimate how much he drank. The three officers' judgments were not affected by the alcohol consumed relating to the violations they observed. Officer Hope said he only felt the effects of the alcohol by the end of the evening.

13. Officer Hope noticed Garcia was text messaging while with him. She explained she was texting her boss. She asked officer Hope for approval to stay with him another hour and she would check with her boss. Officer Hope acquiesced to another hour with her.

14. Throughout the evening officer Oh kept in contact with his supervisor, Sergeant Vincent, who remained outside with officer Guzman and the other take down team of the LAPD vice unit. Officer Oh text messaged Sergeant Vincent of the violations as he observed them.

15. Sergeant Vincent, officer Guzman and the remaining take down team entered the Licensed Premises with their badges, identifying themselves as officers. Thereafter Chance rushed into room 11, told the occupants the police were outside, keep calm, don't give in, act like you know each other, exchange phone numbers and come up with a back

story as to how you met. Chance told the women not to say they were escorts. Officer Duong exchanged telephone numbers with Joyos. Garcia told the occupants to say they all came from the Line hotel in Koreatown, and came to the Recital to Karaoke for the night.

16. Officers Oh, Hope and Duong were engaged in the undercover operation in the Licensed Premises for approximately two and one-half hours. At 12:30 a.m., as officers Oh, Hope and Duong were exiting the Licensed Premises, Chance stopped and asked them to pay their bill. Officer Oh spoke in Korean, at that time, with Chance, who said it would cost \$240 for the Macallan Scotch and \$240 for the Grey Goose Vodka. Officer Oh paid Chance as requested. Officers Oh, Hope and Duong did not have the opportunity to pay the female escorts with them in room 11 before the take down team arrived.

17. While inside the Licensed Premises Sergeant Vincent interviewed numerous persons, including four male patrons. A male patron by the name of Cox informed Sergeant Vincent that Cox and his friends came to the Licensed Premises to get girls. Cox acknowledged having paid \$120 to an escort by the name of Jessica, who was with him in his karaoke room. Officer Guzman took a picture of Jessica, who acknowledged she was an escort. Jessica wore black stiletto pumps and a body-fitting red and black mini dress (Exhibit 9). Sergeant Vincent spoke with three other male patrons² who said they each had a female escort who spent time with them in their rooms but they did not have the opportunity to pay for the girls' time with them prior to the police arriving. Sergeant Vincent questioned Jennifer, who admitted to being an escort, and who acted as a companion for one of the said male patrons interviewed by Sergeant Vincent. Jennifer wore a front zippered maroon mini dress and stiletto jewel-strapped heels. (Exhibit 10.) Sergeant Vincent also questioned Nazary (Exhibit 11) and Hana (Exhibit 12)³ who were the escorts for the two other male patrons interviewed by Sergeant Vincent. All of the male patrons wore casual pant and shirt attire.

18. Of the approximately 20 escorts interviewed and detained by Sergeant Vincent and her team, none of them had escort permits through the City of Los Angeles.

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

² The names of the male patrons were not spelled, but phonetically spelled are Jamie Lai, Bobby Lin and Tony Ong.

³ Nazary and Hana's names were not spelled in the hearing and are phonetically spelled herein.

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 23804 provides that the violation of a condition placed upon a license constitutes the exercise of a privilege or the performing of an act for which a license is required without the authority thereof and constitutes grounds for the suspension or revocation of the license.
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) for the violations of section 23804 alleged in counts 1 and 2. Specifically, on November 21, 2015, the Respondent's employee/agent, Chance, gratuitously permitted Tyra, Valencia, Joyos and Garcia, female persons who acted as escorts, companions, or guests of and for officers Oh, Hope and Duong, who were customers, while in the Licensed Premises, in violation of condition number 1 endorsed upon Respondent's license. Furthermore, specifically, on November 21, 2015, the Respondent's employee/agent, Chance accepted and consumed a shot of Macallan Scotch, an alcoholic beverage, from officer Oh, a customer, while in the Licensed Premises, and Respondent's agents, Valencia, Joyos and Garcia, accepted and consumed a shot of Macallan from officers Oh, Hope and Duong, customers, while in the Licensed Premises, in violation of condition number 6 endorsed upon Respondent's license. Additionally, Respondent's agent, Valencia, solicited a bottle of Grey Goose Vodka, an alcoholic beverage, from officer Oh, on November 21, 2015, while in the Licensed Premises in violation of condition number 6 endorsed upon Respondent's license. (Findings of Fact ¶¶ 4-18.)
5. Respondent argued the Department failed to meet its burden of proof for various reasons and the accusation should be dismissed. Respondent argued that Chance consumed the shot of Macallan Scotch out of Asian cultural courtesy and respect toward the elder of the two, officer Oh. This argument is rejected. There is no evidence of the age of Chance or officer Cho or that it was a cultural courtesy shot consumed by Chance. Nevertheless, condition number 6 specifically prohibits an employee or agent from accepting any alcoholic beverage from any customer while in the premises. Chance, as an employee and agent for Respondent, violated condition number 6.

6. Respondent further argued, the officers' judgment must have been impaired based on the alcohol purchased. This argument is rejected. The sworn, direct, credible testimony of officers Oh, Hope and Duong indicated their judgment was not impaired, including during their observations of the said violations. The further credible testimony by officers Oh and Duong revealed they consumed a small amount of alcohol because they used tactical tools to avoid consuming all of the alcohol by either spitting it out into another cup or pretending to drink the alcohol. Officer Hope's credible testimony indicated he did not feel impaired by the alcohol until the end of the evening.

7. Respondent argued there was no proof the licensee knew of or was responsible for the actions of Chance accepting an alcoholic beverage or whether the said women were allowed at the Licensed Premises as escorts for compensation or gratuitously or if any solicitation was occurring in the Licensed Premises. Respondent argued the evening was "more in line with friends" or young people getting together, meeting new people, asking to buy them drinks, having a good time for two hours, since the men and women simply went to a public place, to have fun, drink alcohol and sing Karaoke. Respondent argued it was a common scenario for persons to meet new people, buy them drinks, "doing rounds," having fun, but that it was not about solicitation, as there has to be some intent or knowledge where the licensee is knowingly allowing people to be at the Licensed Premises and solicit. Respondent's counsel doubted that Valencia's requesting a clear bottle of vodka for a whole group is considered solicitation. These arguments are rejected.

8. Chance was clearly an employee and agent of Respondent. He introduced himself to the officers as their host for the evening, he took the Macallan Scotch alcohol order from officer Oh. When Respondent's employee/agent, Chance, was present with the three officers at the lobby and when Chance led the officers to room 11, he was in a position to see the female escorts walking in and out of the rooms, where male patrons were, and permitted them to do so. Additionally, when the take down team entered the Licensed Premises, Chance rushed into room 11 telling the officers, Valencia, Joyos and Garcia the police were there, act like they all know each other, exchange phone numbers and come up with a back story as to how they all met, with Chance telling the women not to say they were escorts. Chance's instructions to the officers and women after the take down team entered clearly indicated he knew Respondent was engaged in illegal activity with the escorts permitted in the rooms of the Licensed Premises with male patrons. Chance's actions and comments revealed that as an employee/agent of Respondent Chance knew the women were present, permitted them to be there and serve as escorts on the Licensed Premises. Thusly, not only were the women serving as Respondent's agents on November 21, 2015, but Chances' actions and knowledge are imputed to Respondent.

9. Additionally, based on the testimony and evidence presented it was clear the female women were not friends with the officers and the four interviewed male patrons, but

were Respondent's agents permitted as escorts, to spend time with the men, at the Licensed Premises. The officers did not invite the women into room 11, yet immediately three women at a time entered, lined up on display in front of the officers' table, and asked to sit with the officers; then 10 minutes later another set of three women entered the room, uninvited, and inquired if the officers wished to switch them out for the women currently with the officers; officer Oh switched Tyra out for Valencia. Based on the officers' training and experience this was common practice of escorts in a licensed premises. The four male patrons confirmed they were patrons of the Licensed Premises and that all the women sitting with them were escorts.

10. Furthermore, the scheme for the escorts and payment structure is supported by varying findings: Valencia confirmed for five weeks she worked for Darling escort agency and she was primarily assigned to work at the Respondent's Licensed Premises, Recital; Valencia informed officer Oh she charges \$120 for her escort services; Garcia asked officer Hope whether he approved her staying with him for another hour; Sergeant Vincent's interviews with the four male patrons, a Mr. Cox who acknowledged having paid \$120 to an escort by the name of Jessica who was with him in his karaoke room, and three other male patrons who said they each had a female escort who spent time with them in their rooms but they did not have the opportunity to pay for the girls prior to the police arriving. This all confirms there was a scheme to pay the said women for their time. Whether or not the women were actually paid does not prevent the violation as argued by Respondent. The condition is violated even when the females were permitted by the Respondent to gratuitously act as escorts for customers in the Licensed Premises.

11. Lastly, when Respondent's agent, Valencia, asked officer Oh to purchase something "clear" and recommended Grey Goose Vodka this was a clear solicitation. The 750 milliliter bottle of Macallan Scotch was empty. None of the officers or anyone else said they wanted more alcohol, except that it was only Valencia who encouraged officer Oh to purchase another bottle of alcohol.

12. It is well settled in Alcoholic Beverage Control Act case law that an employee's on-premises knowledge and misconduct is imputed to the licensee/employer.⁴ To not hold licensees responsible in this fashion would only encourage licensees to be absentee operators and subvert proper regulation and accountability of the licensees and their businesses. To that extent, and towards that end, the Respondent is held accountable for

⁴ A licensee is vicariously responsible for the on-premises acts of his employees. Such vicarious responsibility is well settled by case law. *See Harris v. Alcoholic Beverage Control Appeals Board* (1962) 197 Cal.App.2d 172 [17 Cal.Rptr. 315,320]; *Morel v. Department of Alcoholic Beverage Control* (1962) 204 Cal.App.2d 504 [22 Cal.Rptr. 405,411]; *Mack v. Department of Alcoholic Beverage Control* (1960) 178 Cal.App.2d 149 [2 Cal.Rptr. 629, 633], "... a licensee can draw no protection from his lack of knowledge of violations committed by his employees or from the fact that he has taken reasonable precautions to prevent such violations.' There is no requirement... that the licensee have knowledge or notice of the facts constituting its violation,' [Citations.]" (*Reitnel v. Alcoholic Bev. etc. Appeals Bd., supra, 252 Cal. App. 2d atp. 522.*)

its employee's and agents' actions, including that of Chance and the female escorts at the Licensed Premises on November 21, 2015.

PENALTY

The Department requested that the Respondent's license be suspended for a period of 30 days, noting it was the Respondent's second condition violation under section 23804 within approximately 14 months, and given the short licensure since June of 2013. The Respondent did not recommend a penalty in the event the accusation were sustained. Respondent provided no evidence of mitigation. The penalty recommended herein complies with rule 144.⁵

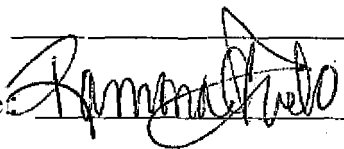
ORDER

The Respondent's on-sale general eating place license is hereby suspended for a period of 30 days.

Dated: March 6, 2017



D. Huebel
Administrative Law Judge

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

⁵ All rules referred to herein are contained in title 4 of the California Code of Regulations unless otherwise noted.