

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

AB-9720

File: 21-561748 Reg: 17085706

NARGES, LLC,
13444 California Street,
Yucaipa, CA 92399-5402,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: January 10, 2019
Ontario, CA

ISSUED FEBRUARY 13, 2019

Appearances: *Appellant:* Joshua Kaplan as counsel for Narges, LLC.
Respondent: Alanna K. Ormiston and John Newton as counsel for
the Department of Alcoholic Beverage Control.

OPINION

Narges, LLC (appellant) appeals from a decision of the Department of Alcoholic Beverage Control¹ revoking its license because it possessed on the premises a slot machine, a violation of Penal Code sections 330b, 330.1, and 330.4; because its agent or employee permitted consumption of an alcoholic beverage on the licensed premises, a violation of Business and Professions Code section 25612.5(c)(3); and because its agent or employee purchased stolen property, a violation of Penal Code section 664/496(a).

1. The decision of the Department, dated May 31, 2018, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued on December 22, 2015. Appellant has no prior disciplinary history.

On June 30, 2017, the Department filed an 11-count accusation against appellant. Counts 1, 2, and 6 alleged appellant's employee "possessed or permitted upon the premises the operation of a slot machine" from which an undercover Department Agent received cash, in violation of Penal Code section 330.1. Counts 5 and 10 alleged that appellant "permitted at the licensed premises the placement and operation of an illegal slot machine," to wit, a "coin operated video machine," a violation of Penal Code sections 330b, 330.1, and 330.4. Counts 3, 4, and 7 alleged that appellant's employee "permitted an alcoholic beverage to be consumed on the premises of the off-sale establishment," a violation of Business and Professions Code section 25612.5(c)(3). Counts 8, 9, and 11 alleged that appellant's agent "at the premises, bought a total of 36 bottles of distilled spirits 'believing the same to have been stolen,'" a violation of Penal Code section 664/496(a).

At the administrative hearing held on October 24, 2017 and January 30, 2018, documentary evidence was received, and testimony concerning the sale was presented by Agent Jeff Holsapple of the Department of Alcoholic Beverage Control; by Adam Lasad, the managing member of the corporate licensee; and by Francis McCarron, the owner of a pizza business located inside appellant's licensed premises.

Testimony established that undercover Department agents visited appellant's licensed premises on a number of occasions. During the first visit, which took place on December 15, 2016, Department Agents Patel and Holsapple entered the licensed

premises in a plainclothes capacity to follow up on whether the premises' video slot machine complied with Department requirements. Upon entering the licensed premises, Agent Holsapple saw two clerks behind the counter, whom he later learned were Adam al Lasad and Kamal Alkarah (hereinafter referred to as "Kemo"). Agent Holsapple also noticed an unidentified male patron operating the video slot machine.

Agent Holsapple purchased a drink from Kemo and asked Kemo if anyone had won lately on the slot machine. Kemo replied that earlier that day someone had won \$270.

Agent Holsapple played the slot machine. The buttons on the slot machine displayed the words "BIG," "SMALL," "TAKE," "DOUBLE," "START," and "BET." Agent Holsapple first inserted \$5 into the slot machine, which then displayed that he had received 50 credits. He would bet an amount of credits and press the "START" button, which caused the nine squares on the screen to spin. He could not control the spinning of the squares or how they aligned. At some point the squares stopped spinning by themselves and displayed various fruits (watermelon, lemons, cherries, or plums), 7's, bar symbols, and bells. Agent Holsapple won no additional credits. He lost all his credits including the \$5 he initially inserted into the slot machine.

Agent Holsapple then inserted \$10 into the slot machine, which then displayed 100 credits. Agent Holsapple played and lost those credits and his \$10.

Agent Holsapple played the slot machine again, inserting \$20, betting 10 credits, losing those 10 credits, betting an additional 10 credits, and winning. He noticed that if he were to get the same icons in a row, the screen determined if he had won additional credits or not. If he did not win additional credits, then the amount he bet or wagered

would be lost. He noticed at one point that he won because there were three plum icons aligned in the middle row, and the screen displayed a message that he won 40 credits. Agent Holsapple pressed the "TAKE" button and noticed his credits automatically increased from 180 to 220. He notified Kemo that he wanted to redeem his credits. Kemo came to the slot machine and pressed a button on the back of the video gambling machine, and Agent Holsapple's credits reduced from 220 to zero credits. Kemo instructed Agent Holsapple to follow him to the cash register, from which Kemo retrieved \$22 and handed it to Agent Holsapple. After receiving his winnings of \$22, Agents Holsapple and Patel left the licensed premises. (Count 1.)

On December 17, 2016, Agents Patel and Holsapple returned to and entered the licensed premises, again in a plainclothes capacity. Kemo and Lasad were behind the sales counter. Agent Holsapple purchased two beers from Kemo and asked Kemo if they could drink the beers inside the store. Kemo replied that they could not. The agents did not open their beers. When Agent Holsapple reached the slot machine, Lasad advised the agents that it was okay for them to drink their beers inside the store as long as they bagged the beers in brown paper bags. Agent Holsapple turned to see as to what Lasad was referring and saw Kemo holding up two brown paper bags. Agent Patel retrieved the two brown paper bags, which the agents used to bag their respective beers. The agents then opened their beers and consumed them inside the licensed premises, with Lasad and Kemo's permission. The agents raised their beers, tapped them together, and said aloud, "Cheers!" The agents took a photograph of their beers. The photograph depicts an opened Bud Light beer bottle with a brown paper bag to its

left and an opened Miller Lite beer can encased in a brown paper bag, all of which were placed atop the slot machine. (Count 3.)

Agent Holsapple then inserted \$5 into the slot machine and played it but lost. He inserted another \$20, played it, and lost. He tried to insert a \$10 bill into the slot machine but it would not take the money. Agent Holsapple received from Kemo two \$5 bills as change for the \$10. Agent Holsapple asked Kemo who was the owner, to which Kemo replied he was a partner, not a full owner. Agent Holsapple asked Kemo if he purchased distilled spirits for the licensed premises, to which Kemo replied he did. Agent Holsapple inserted the two \$5 bills into the slot machine and received credits, which he played. He could not control the spinning of the squares or how they aligned. He eventually won 150 credits. He pressed the "TAKE" button and the slot machine displayed an increase in his credits from 90 to 240. He got Kemo's attention and Kemo walked to the slot machine and acknowledged \$25 in winnings. Kemo retrieved \$25 from the cash register and handed it to Agent Holsapple. (Count 2.)

Agent Holsapple asked Kemo about the cheap vodkas, to which Kemo replied they sold well. Agent Holsapple informed Kemo that he could get bottles of distilled spirits for a cheap price because he steals them from CVS, but that he needed about a week's notice. Agent Holsapple and Kemo discussed pricing and Agent Holsapple indicated he could get distilled spirits for about 50% off the posted prices marked on Kemo's shelves. Kemo indicated that he was interested in purchasing the stolen distilled spirits. Agent Holsapple gave Kemo his name and cellular telephone number, which Kemo wrote down along with the word "liquor." Kemo said he had to ask his partner about the stolen distilled spirits. The agents left shortly thereafter.

On December 29, 2016, Agents Holsapple and Patel returned in the evening to the licensed premises and entered in a plainclothes capacity. Agent Holsapple recognized Kemo behind the sales counter and purchased two beers from Kemo. While purchasing the beers, an unidentified male patron told Kemo to provide the agents with brown paper bags because cops in the area are very strict about people drinking in public. Kemo gave the agents two brown paper bags for their beers. After the unidentified male patron exited the licensed premises, Agent Holsapple asked Kemo if it was okay for them to drink their beers inside the licensed premises. Kemo nodded his head up and down, indicating that it was acceptable to do so. The agents opened and consumed their beers inside the licensed premises, with Kemo's permission. (Count 4.)

Agent Holsapple put \$5 into the slot machine, which gave him 50 credits. (Count 5.) While Agent Holsapple played the slot machine, Agent Patel, who was initially at the slot machine with him, walked to the sales counter to look at merchandise. While at the counter Kemo asked Agent Patel, out loud, if their friend could come through with the liquor. Agent Holsapple approached Kemo and Agent Patel at the counter. Kemo indicated he was looking to buy Sailor Jerry Spiced Rum and Black Velvet Whiskey. Agent Holsapple informed Kemo he could acquire the liquor but needed a week to steal it. Agent Holsapple asked Kemo to write down the bottles he wanted, to which Kemo declined and provided to the agents the backside of a cigarette carton and a pen for them to make the notations. Agent Patel wrote down on the cigarette carton the bottle names and sizes as Kemo said them aloud. Kemo indicated what wholesale price he was willing to pay for the stolen bottles. Eventually a customer entered the licensed premises, so Kemo and the agents changed the subject and the

agents walked back to the slot machine with the cigarette carton. Agent Patel handed the cigarette carton to Agent Holsapple. At some point the agents returned to Kemo and Agent Holsapple asked Kemo to write down any additional bottles of distilled spirits Kemo wanted them to steal for him. Kemo wrote down that he wanted a 750 milliliter bottle of Fireball, which he misspelled without an "e," so that it read "Firball," and he wrote "9.99," saying he was willing to pay \$9.99 for it.

On January 13, 2017, at approximately 7:30 pm, Agents Patel and Holsapple returned to and entered the licensed premises in a plainclothes capacity, with their skateboards. Agent Holsapple wore on his person a wire with a digital audio recording device and carried a backpack containing six bottles of distilled spirits of tequila, vodka, rum, and whiskey, namely Fireball, Sailor Jerry's Spiced Rum, Camarena, Smirnoff, Popov, and UV. Some of the bottles were what Kemo had requested, and what Agent Patel and Kemo had written on the cigarette carton on December 29, 2016. Agent Holsapple recognized Lasad standing behind the sales counter. Kemo was not inside the licensed premises. Another individual was present and was later identified as Walid al Lasad, also known as William, Adam Lasad's father.

Agents Holsapple and Patel grabbed two beers and greeted Lasad at the cash register. Agent Holsapple asked Lasad where Kemo was. Lasad said Kemo left for the night. Agent Holsapple then asked Lasad if they could play the slot machine and get two brown paper bags to drink their beers while they played. Lasad said they could play the slot machine and gave the agents two brown paper bags with which to cover their beers once opened in the licensed premises. Agent Holsapple purchased the two beers from Lasad, paying \$5.50 for the beers. Inside the licensed premises, the agents opened and

consumed their alcoholic beverages, covered by the brown paper bags, while Agent Holsapple played the slot machine. (Count 7.)

Agent Holsapple placed \$5 into the slot machine and received 50 credits. After playing the slot machine, at some point he won additional credits and lost credits, until he had reached 150 credits. He called over Lasad, who came to the slot machine, verified that Agent Holsapple had won \$15, and pressed a button on the back of the slot machine, which reduced the credits from 150 to zero. Lasad retrieved \$15 from the cash register and handed it to Agent Holsapple. (Count 6.)

At some point, Agent Holsapple asked Lasad if he could "hit up Kemo" because he had placed an order for bottles. Agent Holsapple asked Lasad if he was Kemo's partner. Lasad replied, "Hmmm?" Agent Holsapple then said that Kemo said he would talk to his partner about some bottles, Fireball, to which Lasad said, "Let's see what you got."

Agent Holsapple showed Lasad the bottles of distilled spirits he had in his backpack and said, "Camarena. It's legit. Popov. Smirnoff." Lasad asked, "How much you selling them for?"

Agent Holsapple replied, "The Smirnoff I can do for seven. No, I can do for five. Five bucks. I can't go any lower than that though cus' you know like I had to steal these, so"

Lasad questioned, "Steal them? . . . From where?"

Agent Holsapple displayed the bottles as he replied, "From CVS. Sailor Jerry's, Camarena, Fireball, U.V."

Lasad asked, "You don't get in trouble?"

Agent Holsapple replied, "Nah, I know someone that works there."

Lasad said, "Oh."

Agent Holsapple then showed Lasad a distilled spirit security locking device and said, "The only thing is, I had to get off . . . See like I had to take this one off but it didn't damage the bottle at all. That was on the Fireball and the Fireball is perfect. Legit bottles too. I'll do all six of these bottles for forty bucks." Lasad looked at the bottles and Agent Holsapple said, "Just hey, keep 'em . . . I don't want the cops rolling by and seeing these, so . . . keep it on the D.L. [down low] over there."

Lasad assuredly replied, "No, you're fine."

Agent Holsapple expressed that he thought Kemo bought Camarenas for \$13, but that he would sell it to Lasad for \$9.

Lasad replied, "But the problem is, you know . . . if I'm going to do this, I'm looking at the prices seeing how much we're buying them for to see if it works for me." Lasad said that Stater Brother's sells Camarenas for \$5.99. Agent Holsapple disputed the price, saying it was more like \$10.

They stopped negotiating when a customer came to the sales counter. After the customer left, Agent Holsapple explained that the reason the lowest he could go for the bottles was \$40 was "because like normally my hookup he works at the store and I can get more bottles than this. But this, I had to steal myself from another CVS."

Lasad replied, "Yeah, but this is a one-time deal."

Agent Holsapple said, "Look, I had to take off the fucking bottles. It was a bitch."

Lasad replied, "I know, but we can't do it here, you know. Next time you want to do it, we got to do it outside of the store. We can't do it here."

Agent Holsapple asked Lasad if he wanted to place an order, at which point other customers came to the sales counter, which halted their discussion. After those customers left, Agent Holsapple went over the pricing of the bottles he and Kemo discussed and explained the prices Agent Holsapple was willing to sell the bottles for to Lasad. During their conversation, Agent Holsapple reiterated, "This is my price. This is the lowest I can go, bro. Otherwise, I'm not making anything."

To which Lasad replied, "You didn't pay nothing for it." They negotiated further on the pricing with Lasad explaining, "I can't pay you the same price for Smirnoff for Popov," and later saying, "But listen, I can't pay you . . . for Jack Daniel, I'll pay you ten dollars a bottle." Lasad offered \$27 for four bottles of distilled spirits.

They negotiated further. Agent Holsapple asked if he could throw in \$3 to make it an even \$30, saying "Come on bro, I went through a lot of trouble to get this shit. And he told me . . . He told me he was good for that."

Lasad countered, suggesting the agent throw in a bottle of Popov making it five bottles for \$30.

Agent Holsapple said he would rather drink the Popov if Lasad was not willing to pay \$5 for it.

Lasad eventually paid \$30 to Agent Holsapple for four bottles of purportedly stolen distilled spirits, which included the Fireball, Sailor Jerry's, Camarena, and Smirnoff. (Count 8.)

Agent Holsapple then asked if Lasad wanted more stolen bottles, telling Lasad he could get more because his friend works at CVS. Lasad expressed that he did not want the sales transactions to take place inside the licensed premises, saying he

wanted to them to take place "anywhere besides the store." Lasad asked if Agent Holsapple's friend could get Jack Daniel's or Jameson, to which Agent Holsapple replied, "Anything that . . . If they sell it at CVS, he can get it."

Agent Holsapple then asked if Lasad wanted smokes because he himself could steal the cartons of cigarettes. Lasad said, "I don't want to get in trouble though" and chuckled.

Agent Holsapple replied, "I'm the one who can get in trouble."

Lasad replied, "Yeah but if I know it's stolen and I'm buying it I get in trouble too."

Agent Holsapple said, "Fucking . . . How you going to get in trouble though? How are they going to know?"

Lasad replied, "Um that's why we got to do it outside of the store."

Lasad confirmed that he wanted Agent Holsapple to get for him 750 milliliter bottles of Jameson, Jack Daniel's, Fireball, and Sauza Blanco, and added, "as many as you can get, we can buy it." Lasad explained, "What I'm saying is, once you get it we'll take it as we go. So you bring ten bottles, I'll pay you for ten bottles." Lasad then told Agent Holsapple what he was willing to pay for the varying brands of purportedly stolen distilled spirits.

Agent Holsapple said, "Okay. I'll see what I can get. Um fucking, want to give me your number or . . ."

Lasad answered, "No, you just . . ." with Agent Holsapple interjecting, "Cus I don't want to come by with a bunch of shit and you're like, nah, it's not fuckin', not good enough or it's not what you want or I can't . . ."

Lasad replied, "Nah, nah, nah, nah. Once you get it, we can . . . you can come by the store." When Agent Holsapple interjected again, Lasad said, "You're not listening to me." Agent Holsapple complied, "Okay, go ahead. Go ahead," to which Lasad continued his instructions, "Once you get it come by here," "Kemo will let me know or I'll let him know and you can meet with him or me."

Agent Holsapple replied, "Okay."

Lasad said, "Okay?"

Agent Holsapple replied, "Alright. What's your name, bro?"

Lasad continued with his instructions, "Like if I'm here, you can go in the . . . I'll call Kemo. I'll send you where he's at. You can meet up with him and he'll pay you wherever he's at."

Agent Holsapple complied, saying, "Okay," to which Lasad said, "Okay?" Agent Holsapple answered, "Alright. My name's Jeff, dude," to which Lasad said, "Jeff. Good to meet you, man." Agent Holsapple walked back to the slot machine where Agent Patel stood and then played the slot machine.

Agent Holsapple later asked if Lasad wanted to buy smokes, to which Lasad said he did and listed the brands he wanted and the price he was willing to pay. Thereafter the agents left the licensed premises.

On January 27, 2017, at approximately 4:00 p.m., Agents Holsapple and Patel returned to the licensed premises in a plainclothes capacity. Agent Holsapple wore a wire and carried a backpack and duffle bag with purportedly stolen bottles of distilled spirits. Agent Patel also carried a bag containing purportedly stolen distilled spirits.

Between the agents' three bags, the agents had 17 pre-marked bottles of purportedly stolen distilled spirits. The agents also both carried their skateboards.

Inside the licensed premises Agent Holsapple grabbed two beers and took them to the sales counter at which Lasad stood. Lasad greeted Agent Holsapple and rang up the two beers, for which Agent Holsapple paid \$4.50.

Agent Holsapple informed Lasad he had some bottles of distilled spirits. Lasad asked what he had and Agent Holsapple listed what he brought. Lasad instructed Agent Holsapple to wait for him outside. Agent Holsapple opened his beer inside the licensed premises and Lasad said, "No, no. I got in trouble last time." Agent Holsapple asked, "For what?" to which Lasad replied, "For opening them in here."

Lasad then told Agent Holsapple he would call Kemo. The agents went outside of the store as instructed. At some point, Agent Holsapple reentered the licensed premises. Lasad told Agent Holsapple that Kemo was not answering the phone. When Agent Holsapple suggested Lasad and he should just go in the back of the store "where no one can see," Lasad replied "No, no, no. There's cameras everywhere. Not right here." Agent Holsapple then suggested they meet outside behind the store. Lasad said, "Maybe I'll meet you somewhere. But how much do you think you have?"

Agent Holsapple gave pricing on the different distilled spirits. Lasad said, "let me add them up." Lasad then pressed to see the price list Agent Holsapple held, which Agent Holsapple showed to Lasad. After looking over the price list Lasad questioned, "Hundred and thirty?"

Agent Holsapple replied, "Bare bones minimum. I can't go lower than that. Seventeen bottles. All legit. You know my shit's good. It was a little hard . . . It took me a little harder . . . it was a little harder to steal this time though."

Lasad led the agents outside to the northeast corner of the licensed premises to complete the transaction of the 17 bottles of purportedly stolen distilled spirits. At one point Lasad explained that he wanted to see the condition of the bottles and insisted on seeing the price list again. Lasad looked through the backpacks and duffle bag of purportedly stolen distilled spirits, counting the bottles and inspecting them. Agent Patel took photographs of Lasad inspecting the bottles. At one point Lasad instructed Agent Holsapple to "Just cover me up here."

Agent Holsapple held up a towel saying, "Here, I'll put this towel up so the cops don't see."

Lasad replied, "No, no. That will make people suspicious," and chuckled. Agent Holsapple set the towel aside. At one point, Agent Patel agreed to be a "lookout."

Lasad insisted on counting the number of bottles of distilled spirits. Lasad questioned where they got the bottles. Agent Holsapple replied, "I told you dude, I stole 'em."

Lasad instructed Agent Holsapple, "You don't have to tell me that. You bought 'em, for cheap."

Agent Holsapple replied, "I bought them for five-finger discount, bro."

Lasad replied, "Okay," and Agent Holsapple continued, "Free-ninety-nine."

Lasad then insisted on seeing Agent Holsapple's price list again, and started confirming the number of the various brands of distilled spirits: "Okay, so we got five,

five and J.D. We got four, four. One Sauza, three Sailor Jerry, four Fireball. One, two, three." Lasad kept counting and said, "Okay. Three Fireball, right? Where's the fourth one?" After finding the fourth Fireball, Lasad told Agent Holsapple he would go get the money.

Before leaving to get the money, Lasad grabbed two of the bags filled with distilled spirits and carried them his white Toyota Tacoma truck. The agents observed Lasad as he carried the bags to his truck. Agent Patel took a photograph of Lasad carrying the bags. Lasad removed the bottles from their respective bags and placed the bottles into his truck. The agents followed after Lasad, offering to assist. The agents then went back inside the licensed premises, following Lasad in. Lasad told the agents to go outside. The agents went outside of the licensed premises. Lasad returned to the agents, complaining, "Dude, that guy was looking at you. I mean, you should have stayed outside man." Lasad then handed the bags back to Agent Holsapple. Lasad paid Agent Holsapple \$130 for the 17 bottles of purportedly stolen distilled spirits. (Count 9.)

Agent Holsapple asked Lasad what he wanted next time, to which Lasad replied, "Just Grand Marnier" and "I'll buy as many as you get." Lasad insisted that he did not want to conduct the next exchange at the licensed premises.

On February 3, 2017, at approximately 8:40 p.m., Agents Patel and Holsapple, the latter of whom was again wearing a wire, returned to and entered the licensed premises in a plainclothes capacity, carrying their skateboards. Lasad greeted the agents. Agent Patel grabbed a beer, and Agent Holsapple grabbed a Monster drink, both of which they brought to the sales counter for purchase. Lasad rang them up, and the agents paid for the merchandise.

Agent Holsapple asked Lasad, "So those bottles selling well or?"

Lasad replied, "Oh yeah. It sells like every now and then it sells. You know," referring to the purportedly stolen distilled spirits Lasad had purchased from Agent Holsapple on January 27, 2017.

Agent Holsapple soon thereafter said, "Yeah. Still, I got you good prices though," to which Lasad replied, "Not too bad," and reiterated, "Not too bad. That's why I didn't argue with you, you know." Lasad then said, "You keep the prices like and we can . . . But I don't want to do any deals here because I got in trouble last time."

Agent Holsapple asked Lasad if he had any friends at other stores because he could get a lot of distilled spirits. Lasad asked, "You have a lot?" and Agent Patel replied, inanely, "He said a lot," which caused both Agent Holsapple and Lasad to laugh. Agent Holsapple eventually stated his buddy would get "like maybe a hundred bottles."

Lasad replied, "Okay that's fine."

Agent Holsapple confirmed, "That's fine what?"

Lasad answered, "We'll buy it."

Agent Holsapple continued, "You will? . . . I don't want to bring stuff you have a lot of and then, you know what I mean. I'm trying to get rid of it all. So if you have friends"

Lasad said, "I told you already, I told you. We'll get Fireball, Jack Daniel, that . . . What do you call that thing? Uh, Grand Marnier," "Jameson."

Agent Holsapple then said, "Okay. Yeah, yeah, yeah. Cus' I'm going to see if I can get a ride next time, that way I can put it all in a truck."

Lasad twice told Agent Holsapple, "Yeah, but not here." Lasad asked to see the paper from the last transaction so he could see what he got the last time and the pricing.

While Agent Holsapple and Lasad were discussing what types of stolen distilled spirits Lasad wanted, Agent Patel asked Lasad if he could play the video slot machine. Lasad said, "I don't know dude. The owner's here so . . ." to which Agent Holsapple replied, "I thought you were the owner." Lasad answered, "I wish" and chuckled.

Lasad continued to let Agent Holsapple know what other stolen distilled spirits he wanted, including Sauza Tequila and Sailor Jerry's. Lasad then confirmed the prices of the stolen distilled spirits he wanted Agent Holsapple to get for him. Agent Holsapple then said, "So, if I came with like a hundred bottles"

Lasad cut him off and instructed him, saying, "Don't come with a hundred bottles. No. Not, you let us know you have a hundred bottles. You come like this. No bags, no nothing. You say, 'I have a hundred bottles.' I tell you okay, we meet . . ." "And then I'll pay you. We'll do the deal here and then we'll do the exchange outside."

Agent Patel added, "Like on the side?"

Agent Holsapple asked, "Like on the side again. Yeah?"

Agent Patel asked, "Is that cool? By your truck?"

Lasad replied, "No, no, no. What I'm saying is, you come in, you say, 'I have a hundred bottles.' You have a list of what you have. You have the prices."

Agent Holsapple obeyed, saying, "Alright."

A female entered the store laughing and asked Lasad if he had a bathroom, to which he said he did not. The female joked with Lasad, asking something to the effect

of, "What if I have to go," to which Lasad joked back with her and told her, "Just on the side there's a tree right there." Lasad and the agents laughed heartily.

Lasad did not skip a beat but continued instructing the agents: "Then we'll figure out how much it's going to be and we'll go meet somewhere. You know what I mean?"

Agent Holsapple answered "Alright."

Lasad continued, "And then we'll pay for it and get the bottles. Alright?"

Agent Holsapple said, "Okay. That's cool. Yeah cuz' he uh, said he's going to be able to jack a big load"

Lasad interrupted, "He's going to buy a big load?"

Agent Holsapple replied, "No, no. Steal a big load."

Lasad said, "What?"

Agent Holsapple replied, "He's going to steal a big load."

Lasad directed, "We don't do that."

Agent Holsapple asked, "What do you mean we don't do that?"

Lasad instructed, "You got to use the right terms."

Agent Holsapple replied, "Oh, I got you. Sorry. I wasn't" Lasad said, "Yeah," and Agent Holsapple said, "I was being stupid." Agent Holsapple then laughed.

Agent Patel chimed in, "He means 'free-ninety-nine.' Free ninety-nine."

Lasad asked Agent Patel, "You do that too? You do free ninety-nine?"

Agent Patel soon after asked, "How much would you pay for a carton of cigs?"

Lasad asked, "What kind?"

Agent Patel said, "You guys got Marlboro Reds? How much? How much for that?"

Lasad answered, "I'll pay you thirty."

Agent Patel asked what other cigarettes Lasad wanted, to which Lasad said, "Marlboro Red and Marlboro Lights," "I mean that's what sells the most. Camel's, Camel filters, Camel nine-nine, Camel Short." Lasad again instructed, "And again, don't bring anything in here."

Agent Holsapple consented, "Alright."

Lasad also ordered Camel Whites and said he'd pay "Twenty-five for the Camels."

Agent Patel asked if he could check if the machine was on and Lasad told them, "Just come back later."

Agent Holsapple replied, "Alright, we'll hang out. We'll be back in a little bit."

Agents Patel and Holsapple left the licensed premises.

Later on February 3, at approximately 9:12 p.m., Agents Patel and Holsapple returned to and entered the licensed premises. Agent Holsapple again wore a wire. Agent Holsapple approached Lasad and said, "I text my boy, dude. Look." Agent Holsapple showed Lasad his cellular telephone screenshot of text threads between Holsapple and "Carlos" from "CVS," and Agent Holsapple said, "I said, 'Hey how many bottles can you steal this weekend.'" Agent Holsapple read to Lasad the text from Carlos: "I can get u NE amount. I ordered bout 2000 bottles for the district. U let me know how much U need, and wat kind." Agent Holsapple's text reply read, "Im looking 2 get about 100-200 bottles of jameson, jack, fireball, gran marnier, sailer jerrys. Maybe more 2." Carlos' text reply read, "Ima get you ALL that soon. Shipment gonna be in for the Supa Bowl and I'm gonna steal ALL them bottles."

Lasad replied, "Okay."

Agent Holsapple asked if he could play the video slot machine. Lasad told that someone was mopping the floor for him and to "Just come back later when he's done." Agent Holsapple asked, "How long you think?" to which Lasad replied, "I don't know. Ten, fifteen minutes." Agents Patel and Holsapple left the licensed premises.

Later that night, at approximately 10:30 p.m., Agents Patel and Holsapple returned to and entered the licensed premises with their skateboards. Agent Holsapple again wore a wire.

Agent Holsapple saw and recognized Lasad and Walid al Lasad (Lasad's father, also known as William) behind the sales counter. The agents walked over to the video slot machine and noticed it was not working. Agent Holsapple asked William if the slot machine was broken, and William said he did not know. Agent Holsapple unplugged the machine and plugged it into the second outlet and the video slot machine turned on. The slot machine would not take Agent Holsapple's money. Agent Holsapple walked over to the sales counter and asked Lasad for change, asking for two \$10 bills, which Lasad provided to him. Agent Holsapple walked back to the slot machine. Lasad walked over and asked Agent Holsapple to show him what happened to the slot machine and Agent Holsapple explained that he plugged it into another outlet to get the machine to work. Agent Holsapple played the video slot machine and lost. While Agent Holsapple played the video slot machine, Lasad watched him play. (Count 10.)

Later, the agents grabbed candy and brought it to the cash register where Lasad rang them up. Lasad asked Agent Patel if he was okay, why he was nodding his head

back and forth repeatedly and why he kept saying, "Two, three, four, five." The agents told Lasad Agent Patel has Tourette's.

Agent Patel then said to Lasad, "For sure though, I got you," to which Lasad replied, "Nah, I can't do deals here, dude."

Agent Holsapple repeated, "Not here." Lasad replied, "Yeah? Alright?" to which Agent Patel responded, "Yeah." The agents left the licensed premises.

On February 22, 2017, at approximately 2:10 p.m., Agents Patel and Holsapple returned to the licensed premises and entered with two backpacks full of purportedly stolen distilled spirits and a skateboard each. Agent Holsapple was again wearing a wire.

Agent Holsapple greeted Kemo, saying, "Hey, I got some of those bottles you ordered."

Kemo replied, "I can't do that."

Agent Holsapple asked if James (also known as Lasad) was at the store, and when he learned he was not, Agent Holsapple asked Kemo, "Why not? I got these bottles for you. You don't have the money or?" Agent Holsapple paused, then said, "We skateboarded all the way over here. Can you call James?"

Kemo said James was on vacation.

Agent Patel explained that James "said he wanted those Grand Marnier bottles."

Agent Holsapple unzipped his backpack and asked to show Kemo the bottles.

Kemo again said, "I can't."

Agent Holsapple replied, "He ordered that. Good prices." Agent Holsapple then acquiesced, "Alright man."

Agent Patel then asked Kemo if they could "Buy a beer and play the machine?"

Kemo responded, "There's somebody back there."

Agent Holsapple replied, "We'll wait. We'll wait for them." The agents walked to the video slot machine and found an unidentified male patron playing the slot machine. Agent Holsapple politely asked the unidentified male patron, "What's up man? Winning today? No rush, but we're going to play after you, if that's okay. Yeah? You just start playing?"

After some time passed, Agent Patel stayed by the slot machine and Agent Holsapple grabbed two beers, which he purchased from Kemo for \$4.50 at the sales counter. Agent Holsapple asked Kemo, "You want to look at the list?"

Kemo replied, "No. I can't, I can't."

Agent Holsapple asked, "I though you said you wanted them though? I know it took me awhile. What happened? What changed your mind? Should we come back another time? Is that better?"

Kemo replied, "No, no. I can't. I'm sorry."

Agent Holsapple asked, "What changed your mind though?"

Agent Holsapple again asked Kemo to call James. Kemo advised Agent Holsapple that he called him and James "said no." Agent Holsapple replied, "He said no what? He ordered Grand . . . Tell him I got Grand Marnier."

Kemo said, "I know, we ordered it yesterday and got some bottles."

Agent Holsapple said, "Oh, really? I can do eighteen dollars a bottle though, dude."

Kemo said, "No, I can't."

Agent Holsapple said, "Alright, can we play the machine though?" Agent Holsapple walked over to the slot machine and rejoined Agent Patel.

After some time had passed, Kemo informed Agent Holsapple that James would be coming to the store in five to ten minutes and directed the agents to wait for James. The agents waited by the slot machine.

Eventually, Lasad entered the licensed premises and nodded his head, motioning to Agent Holsapple to meet him outside the licensed premises. Agents Holsapple and Patel stepped outside the licensed premises.

Agent Holsapple proposed to Lasad, "Let's go here in the corner."

Lasad reprimanded him, saying "No, no, no, no, no, no. You guys going to get us in trouble like this. You can't be here, hanging out with all this stuff . . . I know you don't care and you say it as it is and you're stealing it. But we care."

Agent Holsapple said, "Dude, I don't want to go all"

Lasad interjected, raising his voice, "Okay? You don't want to go we're not going to do the deal anymore. This is the last time then."

Agent Holsapple replied, "Why you trippin' dude?"

Lasad explained, "Because! You guys are making it obvious. We can't do the . . . This is have a license, you know what I mean? And I can't get in trouble with the owner and get fired over this shit."

Agent Holsapple said in response, "I'm not trying to get jacked dude, that's my concern and"

Lasad sternly interjected, "But you're making it obvious. Like you don't care. 'I'm stealing it.' You're telling the whole world, 'I'm stealing it.' And you're selling it to me. And that . . . that affects me. I know it doesn't affect you. But that affects me."

Agent Holsapple timidly replied, "Alright, I understand where you're coming from but here's my concern"

Lasad again interrupted, "It doesn't seem you understand because he's telling you, 'Hey, you know, this is not going to work this way. This is not going to work.' And you guys are just hanging out with the bags and stuff. That's . . . doesn't look good."

Agent Holsapple timidly replied, "We didn't take the bottles out or anything, James. Dude, I just don't want cops rolling by. If we're at a liquor store it makes sense that there is bottles. If we're elsewhere . . . We go to the corner here, then it looks weird dude."

Lasad explained, "No, you have a backpack. You're not making it obvious over there neither."

Agent Holsapple acquiesced, saying, "Alright, you want to go to the tow yard dude?"

Lasad instructed Agent Holsapple, "You got to go to the park down the street. Well, I need to know how much you have and what you have."

Agent Holsapple told Lasad he had five bottles of Grand Marnier, to which Lasad replied, "That's it?" Agent Holsapple explained what he had and Lasad told him, "Okay, meet me at the park down the street."

Agent Patel interjected, saying, "We're already here dude," to which Lasad retorted, "I can't. I can't do it here. I told you that. You don't want to do it then."

Agent Holsapple said, "Where is this park? I'm not familiar with this park."

Lasad explained, "You go down the loop, and there's a park right on the corner. On the loop right here between Valero and the intersection."

Agent Holsapple said, "Dude, that's kind of far bro."

Lasad replied, "Well, I can't do it here. Like I said, I told you before."

Agent Holsapple asked if they could just go in the back of the licensed premises, to which Lasad replied, "No. The park."

Agent Holsapple asked, "Well are you going to buy it all or what?"

Lasad answered, "That's what I'm telling you."

After further conversation Agent Holsapple acquiesced to go to the park. Lasad explained how to get to the park and told Agent Holsapple how much he was willing to pay for the distilled spirits and offered to pay \$140 for all 15 bottles Agent Holsapple had in his backpacks. Lasad and the agents left the licensed premises separately to meet at the park.

At approximately 3:00 p.m., the agents arrived at the park, which was an Equestrian Center approximately 0.3 miles north of the licensed premises. Lasad and his 74-year-old father, William, were standing outside of a parked Toyota Camry with its trunk open in the parking lot of the Equestrian Center. The agents later determined that the Toyota Camry was registered to Kamal Alkarah (also known as Kemo).

The agents approached Lasad and his father at the Toyota Camry. Agent Holsapple said, "Alright. So one forty?"

Lasad asked to see the price list again and counted the 15 bottles of purportedly stolen distilled spirits. Lasad instructed Agent Holsapple to place the bottles in the trunk of the Toyota Camry.

Agent Holsapple did as requested, unzipped the bags, and explained that he did not have time to take off the black plastic security locking devices which remained on two of the bottles of Grand Marnier and one bottle of Skyy Vodka. Agent Holsapple attempted to remove the security devices from the bottles but was unsuccessful, and asked Agent Patel to help. When Agent Patel removed one of the distilled bottles from the trunk to remove the security device, Lasad instructed him, "Put it in the car dude." Agent Patel removed one security device from a bottle and Agent Holsapple removed another. Agent Holsapple again had difficulty attempting to remove a security device from another bottle and Lasad instructed him to "push down or something." Agent Holsapple confirmed the manner in which to remove the black security devices from the bottles, saying, "It's you twist, you push down, and you twist normally."

Lasad instructed Agent Holsapple, "Do it. Do it. You know."

Agent Holsapple was still not able to remove the device. At some point Agent Holsapple gave Lasad the magnetic key, which is commonly used by retail establishments to remove the black security devices, and Lasad removed one of the black security devices from a bottle. Eventually all of the black plastic security locking devices were removed from the bottles.

Lasad counted the bottles one last time and was about to shut the trunk when Agent Holsapple said, "Whoa, whoa, whoa, whoa. I want to make sure you don't take off with my shit dude."

Lasad laughed and assured him he was not going anywhere.

Agent Holsapple laughed and replied, "You're going to close the trunk and fucking take off with my shit. Leave it open until I get my money."

Lasad laughed and asked to see the agent's list again. Lasad pressed him, saying, "Dude, I don't want people to see man. Come on now. Grow up. Give me the paper."

Agent Holsapple could not find his list and it turned out that Lasad still had it. After reviewing the list, Lasad gave \$140 to Agent Holsapple for the 15 bottles of purportedly stolen distilled spirits. (Count 11.)

Agent Holsapple asked Lasad what he wanted for the next time. Lasad expressed, "You know what. I don't want to do this anymore dude to be honest with you. Just too much of a risk." "It's just the way you guys handle it. I don't like it."

Agent Holsapple asked, "What if we meet back here?"

Lasad replied, "If you do it more properly maybe." Lasad then asked Agent Holsapple, "Do you have a house?" to which Agent Holsapple said that he lives in an apartment. Lasad then provided instruction on how to conduct future transactions properly, and when they could contact Lasad in the licensed premises, saying, "Exactly, so keep your shit in the apartment. Come by the store and say hey I got some shit, do you want it? We'll make an appointment and we'll go and get it." "I don't want you walking into the store, you know call the store, call something you know what I mean? But if I'm not there you know . . . I'm mostly there in the mornings." "I mean, just the way you it is just . . . Once you have a bigger amount or something keep it in your

apartment. Maybe we'll go to the apartment and get it." Agent Holsapple acquiesced to the plan.

Lasad and William drove off in the Toyota Camry. Department agents followed Lasad and William to the licensed premises and took photographs of Lasad and William removing the bottles of distilled spirits from the trunk of the Toyota Camry, placing them into a shopping cart, and taking the cart of bottles inside the licensed premises.

On February 23, 2017, Agent Holsapple and a team of Department agents executed a search warrant at the licensed premises. The agents seized 21 marked bottles of distilled spirits sold to Lasad on various dates, with four of those bottles found on the display shelf behind the sales counter and the remaining bottles found in the rear of the licensed premises, in the storage area.

After the hearing, the Department issued a decision determining the violations charged were proved and no defense was established.

Appellant then filed this appeal contending (1) Lasad was entrapped into purchasing stolen property; (2) Lasad lacked the specific intent to purchase stolen property; (3) the Department unlawfully accumulated counts; and (4) the penalty is excessive.

DISCUSSION

I

Appellant contends Lasad was entrapped into purchasing purportedly stolen distilled spirits by overbearing Department agents. (App.Br., at pp. 14-18.) As support, appellant selectively cites portions of the wire recordings made by Agent Holsapple. Appellant argues, for example, that "Lasad expressed incredulity and shock" when the

agents offered to sell him stolen alcohol, that he "advised the undercover [agents] at that time that he did not wish to deal with them at any time in the future," and "that he did not want to get into trouble by buying known stolen property." (*Id.* at pp. 16-17.)

Appellant directs this Board to Lasad's testimony, in which he "specifically testified that there was indeed overbearing conduct, specifically badgering, cajoling and importuning by ABC investigators." (*Id.* at p. 17.)

Appellant emphasizes Lasad's purported unwillingness to engage in illicit activity by directing this Board to a single moment in which Lasad told undercover agents, "No, no, no, no, no, no." (*Id.* at p. 18, quoting exh. 6, at p. 42, ll. 24-26.) Appellant argues that rather than accepting Lasad's refusal, the agents "kept at him until finally they badgered him into agreeing." (*Ibid.*)

Appellant also argues Lasad was "naturally fearful and emotionally traumatized" due to a 2007 robbery in which he was physically assaulted. (*Id.* at p. 18; see also Part II, *infra.*) According to appellant, "[a]ny alleged completion of any transaction on that date was effectuated only so that Lasad could rid himself of these unkempt and threatening individuals." (App.Br., at p. 17.)

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].)

Moreover, it is the province of the ALJ, as trier of fact, to make determinations as to witness credibility. (*Lorimore v. State Personnel Bd.* (1965) 232 Cal.App.2d 183, 189 [42 Cal.Rptr. 640]; *Brice v. Dept. of Alcoholic Bev. Control* (1957) 153 Cal.App.2d 315, 323 [314 P.2d 807].) The Appeals Board will not interfere with those credibility determinations absent a clear showing of an abuse of discretion.

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

In *Barraza*, a criminal prosecution for the sale of heroin to an undercover officer, the California Supreme Court held that "the proper test of entrapment is the following: was the conduct of the law enforcement agent likely to induce a normally law-abiding person to commit the offense?" (*People v. Barraza* (1979) 23 Cal.3d 675, 690 [153 Cal.Rptr. 459].)

The court specifically rejected the subjective approach to an entrapment defense favored in federal jurisprudence as it removed the focus from the conduct of the officers and placed it instead on the character of the defendant. The court observed,

Even though California courts do not permit introduction of the highly prejudicial evidence of subjective predisposition allowed in jurisdictions following the federal rule, our more limited focus on the character and

intent of the accused is still misplaced and impairs our courts in their task of assuring the lawfulness of law enforcement activity.

Commentators on the subject have overwhelmingly favored judicial decision of the issue by application of a test *which looks only to the nature and extent of police activity* in the criminal enterprise.

(*Id.* at pp. 688-689, emphasis added.) This new objective approach focused solely on the conduct of law enforcement officers, and not on the character or propensities of the defendant. According to the court, "under this test such matters as the character of the suspect, his predisposition to commit the offense, and his subjective intent are irrelevant." (*Id.* at pp. 690-691.)

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

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

(*Ibid.*)

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

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

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

In this case, appellant characterizes Lasad as unusually fragile—and therefore presumably more likely to succumb to the machinations of undercover agents—due to a violent robbery he suffered while working at another licensed premises. Whether Lasad was motivated by his own unique fears, however, is irrelevant to an entrapment defense. As a matter of law, we must examine the officers' conduct only, and not Lasad's purported emotional sensitivities. In any event, the claim that Lasad as an individual was *more likely* than a normally law-abiding person to accept an offer of criminal opportunity certainly does little to support appellant's case.

As far as the agents' conduct goes, we are bound by the factual and credibility findings reached below, provided they are supported by substantial evidence. Appellant does not raise any meaningful factual dispute—nor could he, given that the tremendous majority of the illicit transactions in this case were recorded via Agent Holsapple's wire. Appellant, however, does selectively cite portions of the wire transcript in support of its claim that Lasad repeatedly attempted to reject the agents' overtures.

The ALJ addressed this claim at length in her credibility findings:

20. Respondent and Adam Lasad's various asserted theories, as to why Lasad engaged in the illegal sales transactions, or what he meant by what he said, are contradicted by Lasad's own admissions and are inconsistent with the clear record and the context of the conversations when read or listened to as a whole (in the transcript of Exhibit 6 and recordings of Exhibit 17, and as credibly testified to by Agent Holsapple), and when not read independently (out of context) as suggested by Respondent's counsel.

(a). Lasad admits in his testimony that his concern with the agent was that he simply did not want the agents to bring the purportedly stolen bottles of distilled spirits *into* the Licensed Premises and wanted to get the agents and distilled spirits *out of the store* so the purchases and receipt of stolen merchandise could take place *outside* of the Licensed Premises. Lasad's counsel asked Lasad regarding Exhibit 6, page 30, line 19, what he meant

when Lasad said "don't bring anything in here." Lasad answered that he meant, "I don't want these individuals to come back and bring the alcohol back *to the store* at all." He further testified upon direct that on February 22, 2017, his intention of going to the Licensed Premises was to get the agents *out of the store*. Upon cross-examination Lasad fully explained his intentions when he told the agents to meet him outside on January 27, 2017, "I was *trying to push them out from inside* the store to leave the store. And I told them I'm going to call Kemo to meet them and to do the deal with them—*this way I can at least have them leave the store* because I had customers come in and out, and their presence was very intimidating. When they would come in they would stay for a long period of time, like they had done previously. *I didn't want it in the store, basically.*" (Emphasis added with italics.)

(b). The context of the conversations confirms Lasad's true intentions, as found in Agent Holsapple's credible testimony, the recordings and transcript (Exhibit 17 and Exhibit 6, at pages 6, 9, 10, 22, 23, 26, 27, 42 and 49), which disprove the intentions Lasad claims. When looking at the context of the conversation, taken as a whole, between Agent Holsapple and Lasad on February 22, 2017, it clearly indicates that when Lasad said, "No, no, no, no, no, no. You guys going to get us in trouble like this. You can't be *here*, hanging out with all this stuff . . ." Lasad's "no's" related to his concern about engaging in illicit transactions *in or around* the Licensed Premises, and had nothing at all to do with his trying to tell the agents, "I don't want to do this anymore, buying the alcohol," as he claims. Lasad's location-related reply was in response to Agent Holsapple's suggestion that they conduct the transaction "*here* in the corner" just outside the Licensed Premises. (Exhibit 6, page 42, lines 24 through 26.)

(c). Over the course of several days, Lasad's statements to the agents are consistent with his true intentions that the deals not occur at the Licensed Premises. For example, on January 13, 2017, Lasad says, "I know, but we can't do it *here*, you know. Next time you want to do it, we got to do it *outside of the store*. *We can't do it here.*" (Exhibit 6, page 6, lines 19 and 20.) When Agent Holsapple asked Lasad where he wants to conduct the transaction of stolen distilled spirits, Lasad tells him, "Well, *anywhere besides the store.*" (Exhibit 6, page 9, lines 12 and 13.) Lasad again persists later, "that's why we got to do it *outside* of the store." (Exhibit 6, page 10, line 11.) On January 27, 2017, Lasad insists, "just wait for me *outside.*" (Exhibit 6, page 17, line 2.) Dude, that guy was looking at you. I mean, you should have stayed *outside* man." (Exhibit 6, page 22 line 27.) On February 3, 2017, Lasad again insists, "But I don't want to do any deals *here.*" (Exhibit 6, page 26, line 3.) "Yeah, but *not here.*" "Yeah, *not here* though." (Exhibit 6, page 27, lines 3 and 5.) ". . . then we'll do the exchange *outside.*" (Exhibit 6, page 28 line 23.) Again, on the last day, February 22, 2017, Lasad instructs the agents, "Okay meet me *at the park* down the street," and when Agent Patel says, "We're already here dude,"

Lasad replies, "I can't. I *can't do it here*. I told you that. You don't want to do it then." Agent Holsapple complains, "Dude, that's kind of far, bro," and Lasad replies, "Well, I *can't do it here*. Like I said, I told you before." Agent Holsapple suggests, "Can we go in the back here?" Lasad replies, "No. The park." Later Lasad orders, "I don't want you walking *into* the store, you know call the store . . ." (Exhibit 6, page 44, lines 5 to 7 and 11 to 14, page 49 line 9.)

(Conclusions of Law, Credibility, ¶ 20, emphasis in original.) As suggested by the ALJ's detailed citations, the record supports the conclusion that Lasad objected only to the location of the illicit transactions, and not to the purchase of stolen merchandise.

The ALJ also rejected appellant's claim that Lasad was a law-abiding (albeit "emotionally traumatized") individual induced to proceed with the purchases only because of the relentless "badgering" and "importuning" of Department agents. (See App.Br., at p. 18.) In a body of analysis that can only be described as exhaustive, the ALJ dismantled—with scrupulous citations to the evidence—Lasad's claim that he was not interested "at all" in purchasing stolen merchandise and merely yielded to the agents out of fear. Among many other facts, the ALJ highlighted Lasad's active price negotiations with the agents; his explicit instructions to the agents regarding how to proceed with future illicit transactions; his willingness to turn his back on the agents and put himself in vulnerable positions; his casual demeanor with the agents, including laughing with or even *at* them; his failure to contact police at any point during the course of these multiple transactions, despite having worked as a campus security officer; and the overwhelming inconsistencies in his testimony. (Conclusions of Law, Credibility, ¶ 21.) Ultimately she concluded that Lasad's testimony was "contradictory, self-serving and evasive" and that "[t]he abundant evidence in the record shows Lasad was, in fact, the one who was in control, in charge, and was not induced, but wanted to engage in the illegal transactions." (Conclusions of Law, ¶¶ 21, 24.)

Appellant has not alleged any evidentiary flaw or abuse of discretion whatsoever in the ALJ's analysis, let alone established grounds for reversal. Instead, appellant merely recites the very same argument it raised below—that Lasad was afraid, and repeated the word "no" six times. This one line, cherry-picked from extensive interactions, belies both its context and the broader facts. The overwhelming weight of the evidence supports the ALJ's conclusion that Lasad was neither afraid of the agents nor otherwise induced to engage in criminal activity. Instead, he willingly leapt at the opportunity, even taking the time to instruct the agents on how to conduct illicit transactions without getting caught. Appellant's entrapment defense holds no water.

II

Appellant contends that "[t]he Department failed to prove that Adam Lasad had a specific intent to receive stolen property." (App.Br., at p. 21.) Appellant claims Lasad was previously the victim of a violent robbery. (*Id.* at pp. 21-22.) While appellant is careful not to state that Lasad actually suffers from diagnosed post-traumatic stress disorder (PTSD), it alludes to Lasad's "traumatic past" and argues that "[a]n emotional condition can certainly be and certainly does include [PTSD]." (*Id.* at p. 21.) Appellant characterizes Lasad as "a mentally sensitive licensee who was then in an emotional state of fear." (*Ibid.*) It contends that "[a]ll Lasad wanted to do was get those 'dirt bags' out of his store [and] get out from under the fear he had of some sort of violent retribution if he refused what they wanted." (*Id.* at pp. 21-22.)

Appellant cites assorted cases it claims support the proposition that "an emotional state of mind [is] akin to diminished [mental] capacity" and therefore defeats specific intent. (*Id.* at p. 21.)

Diminished mental capacity no longer exists as an affirmative defense. "The diminished capacity defense, which addressed an accused's 'general capacity or ability to form a specific intent or harbor a mental element of an offense,' was abolished in 1982." (*People v. Reyes* (1997) 52 Cal.App.4th 975, 982 [61 Cal.Rptr.2d 39], citing *People v. Visciotti* (1992) 2 Cal.4th 1, 56 [5 Cal.Rptr.2d 495] and Pen. Code, §§ 22(a), 25(a), and 28(a).) The superseding statute provides:

Evidence of mental disease, mental defect, or mental disorder shall not be admitted to show or negate the capacity to form any mental state, including, but not limited to, purpose, intent, knowledge, premeditation, deliberation, or malice aforethought, with which the accused committed the act. Evidence of mental disease, mental defect, or mental disorder is admissible solely on the issue of whether or not the accused actually formed a required specific intent, premeditated, deliberated, or harbored malice aforethought, when a specific intent crime is charged.

(Pen. Code, § 28(a).) As the statute suggests, evidence of diminished mental capacity remains admissible "solely to negate an element of the crime which must be proven by the prosecution." (*Ibid.*) "[S]ection 28, subdivision (a) makes evidence of mental disorders admissible solely on the issue of whether defendant '*actually formed a required specific intent . . . when a specific intent crime is charged.*'" (*Reyes, supra*, at p. 982, emphasis in original, citing Pen. Code, § 28(a).) A court has discretion "to exclude psychiatric or psychological evidence on whether the accused had a mental disease, mental defect, or mental disorder at the time of the alleged offense." (Pen. Code, § 28(a).)

There is no case law holding that a mere "emotional state of mind" absolves a party of guilt. (See App.Br., at p. 21.)

Innocent intent, as opposed to diminished mental capacity, remains a valid affirmative defense. The burden of proving innocent intent falls on the party raising the defense:

The People, in proving the commission of the crime, have the primary obligation to establish, by substantial evidence (1) that the particular property was stolen, (2) that the accused received, concealed or withheld it from the owner thereof, and (3) that the accused knew the property was stolen [Citations].

The burden of proving each of these elements, whether by direct or circumstantial evidence, is upon the district attorney. *The burden of proving innocent intent is upon a defendant.*

(*People v. Dishman* (1982) 128 Cal.App.3d 717, 721 [180 Cal.Rptr.467] [defense presented considerable evidence, including expert testimony], emphasis added.) In *Dishman*, for example, the defendant alleged it was his intent to return the stolen property to its rightful owner—an innocent state of mind which, if proven to the jury, absolved him of guilt. (*Id.* at p. 722.)

It is unclear whether appellant is alleging Lasad suffered from diminished capacity due to a diagnosable psychiatric condition, or that his innocent intent in purchasing purportedly stolen merchandise was simply to "get those 'dirt bags' out of his store." (App.Br., at p. 21.)

In any event, we need not examine the distinction too closely. The record establishes that beyond vague allusions to PTSD and a general allegation that Lasad feared the agents, appellant presented no evidence whatsoever of either diminished capacity or innocent intent. (See generally RT; exhs. A-E.) The ALJ made a clear determination regarding this utter lack of proof:

Respondent presented no credible evidence, whatsoever, that Lasad had a diminished capacity, mental state, mental disorder, emotional condition, or PTSD. Respondent presented no diagnostic reports, expert testimony,

or credible evidence otherwise, to show that Lasad was diagnosed with or had any of the alleged conditions, which would relieve him of the specific intent crime as pled in the accusation. The entire record clearly shows that Lasad, in fact, intended to commit the crimes, of which he was accused, and that no emotional condition or mental state, whatsoever, played a part in his intentional commissions of those crimes. Lasad, on the dates in question, was not someone with a diminished capacity or fragile mental state, but was in charge and in control of the illicit transactions, fully aware of what he was engaging in. Respondent's alleged claims are disbelieved as not credible, with the preponderance of the evidence proving otherwise, as more fully described below.

(Conclusions of Law, ¶ 16.) Appellant has neither alleged nor demonstrated any error in the ALJ's conclusion on this issue.

As discussed above, the profound weight of the evidence establishes that Lasad was not remotely fearful of the agents. He not only willingly participated in each of the illicit transactions, he *directed the agents* on how to conduct them. (See Part I, *supra*.) The element of intent was duly proven.

III

Appellant contends the Department unlawfully accumulated counts in order to aggravate the penalty. (App.Br., at p. 18-20.) With regard to the slot machine, appellant argues that "[a]fter first noting the slot machine, [the Department] should have warned [appellant] or they should have filed an Accusation but they came back five additional times noting the same violation." (*Id.* at p. 20.) With regard to allowing the consumption of alcohol on the licensed premises, appellant writes, "And what did they do about it on any of those occasions? Nothing? They kept coming back and back and back." (*Ibid.*) Appellant repeats this claim with regard to the stolen property counts, noting the Department did not "notify or discipline the licensee" after the first incident. (*Ibid.*)

Appellant alleges the Department's motives were improper, and as support directs this Board to the testimony of Agent Holsapple, who stated his supervising

sergeant "ordered repeated visits until 'it was enough.'" (*Ibid.*) Appellant contends that "enough" in this context means "enough to have a basis to revoke this license." (*Ibid.*) Appellant argues the Department never intended to bring the licensee into compliance.

As support, appellant relies on *Walsh*, a decision of the California Supreme Court disapproving the Department's accumulation of counts. (See App.Br., at pp. 18-20, citing *Walsh v. Kirby* (1974) 13 Cal.3d 95 [118 Cal.Rptr. 1].) In that case, however, each of the 10 counts led a separate fine, resulting in a cumulative \$9,250 financial penalty, a sum the court described as "de facto revocation." (*Id.* at p. 99, 104.) As the court noted, it was not the accumulation of counts itself that was improper, but rather the cumulative nature of the financial penalty: "The particular vice in the instant case . . . lies in the subjective determination by the department that it would seek a *penalty* beyond that provided for a first violation in light of the licensee." (*Id.* at p. 105, emphasis added.) The court explicitly differentiated this from a circumstance in which the Department accumulates counts "in order to fortify its evidence of a violation"—a practice that "would not in itself, of course, constitute arbitrary or capricious conduct." (*Ibid.*)

The ALJ's analysis of this issue is both articulate and legally accurate:

Respondent argued the accusation should be dismissed because the Department improperly and unlawfully accumulated counts to increase the penalty, citing *Walsh v. Kirby* [citation]. Respondent argued the Department acted unreasonably in that once it had notice of the licensee's transgressions it should have acted immediately to counsel the licensee or file the accusation. This argument is without merit and rejected. *Walsh* involved a licensee selling below established "fair trade" pricing on ten occasions. The statute in that case did not provide for revocation or suspension. Instead each offense after the first offence was punishable by a \$1,000 fine. The California Supreme Court held the Department improperly accumulated counts to force the licensee into bankruptcy, resulting in "de facto revocation of the license." [Citation.] *Walsh* is inapplicable to the matter at hand. Here, the Respondent did not accumulate a separate, cumulative penalty for each individual count; the

accumulation of violations did not lead to a more severe penalty. Rule 144 recommends a standard penalty for a single offense of gambling, with a payout, at 30 days with 15 days stayed for two years. For one single incident of receiving stolen property Rule 144 recommends revocation. Drinking on premises in violation of conditions is a 5-day suspension. There is no evidence the Department intentionally prolonged its investigation to increase the penalty. In fact, the *Walsh* court observed that it is "prudent to obtain evidence of more than one sale in technical violation of the statute before filing an accusation" so as to establish a pattern of conduct and ensure the initial violations were not a misunderstanding or the rogue conduct of an employee.

(Conclusions of Law, ¶ 15.) Ultimately, the ALJ imposed a penalty of revocation—not due to the number of counts, but because revocation is the standard penalty "for one single incident of the Respondent/Licensee's receiving stolen property." (Penalty; see also Part IV, *infra*.) This is not a cumulative penalty, but rather reflects the gravity of Lasad's crime. Simply put, *Walsh* is inapplicable.

IV

Appellant contends the penalty of license revocation is excessive. (App.Br., at pp. 22-24.) Appellant argues "that imposing a punishment herein of revocation is a punishment indeed out of all proportion to the offense and is extraordinarily disproportionate thus constituting cruel or unusual punishment." (App.Br., at p. 23.)

The 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, it will not disturb the Department's penalty order absent an abuse of discretion. (*Martin v. Alcoholic Bev. Control Appeals Bd.* (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].)

The California Constitution grants the Department broad disciplinary authority, including the power to revoke an alcoholic beverage license:

The department shall have the power, in its discretion, to deny, suspend or revoke any specific alcoholic beverages license if it shall determine for good cause that the granting or continuance of such license would be contrary to public welfare or morals, or that a person seeking or holding a license has violated any law prohibiting conduct involving moral turpitude.

(Cal. Const., art. XX, § 22.)

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, emphasis added.) Like the rule itself, the plain language of the penalty guidelines unequivocally entrusts the penalty to the Department's discretion.

As the ALJ observed, rule 144 "provides for revocation for one single incident of the Respondent/Licensee's receiving stolen property." (Penalty; see also Code Regs., tit. 4, § 144, Penalty Guidelines.) The ALJ was exhaustive in her analysis; as noted above, the evidence and findings indicate that Lasad, the managing member of the licensed corporation, intentionally received property he believed to be stolen.

Revocation in this case is far from cruel or unusual. Indeed, in our opinion, the violation herein is so egregious that any penalty short of revocation would be inadequate.

ORDER

The decision of the Department is affirmed.¹

MEGAN MCGUINNESS, ACTING CHAIR
PETER J. RODDY, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

1. 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 ACCUSATION
AGAINST:

NARGES.LLC
NARGES LLC
13444 CALIFORNIA ST
YUCAIPA, CA 92399-5402

OFF-SALE GENERAL - LICENSE

RIVERSIDE DISTRICT OFFICE

File: 21-561748

Reg: 17085706

AB: 9720

Respondent(s)/Licensee(s)
under the Alcoholic Beverage Control Act.

CERTIFICATION

I, Dominique Williams, do hereby certify that I am a Senior Legal Analyst for the Department of Alcoholic Beverage Control of the State of California,

I do hereby further certify that annexed hereto is a true, correct and complete record (not including the Hearing Reporter's transcript) of the proceedings held under Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code concerning the petition, protest, or discipline of the above-listed license heretofore issued or applied for under the provisions of Division 9 of the Business and Professions Code.

IN WITNESS WHEREOF, I hereunto affix my signature on July 30, 2018, in the City of Sacramento, County of Sacramento, State of California.


Office of Legal Services

2018 AUG -1 AM 10:24
RECEIVED
ABC APPEALS BOARD

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

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

NARGES, LLC
NARGES, LLC
13444 CALIFORNIA STREET
YUCAIPA, CA 92399-5402

OFF-SALE GENERAL - LICENSE

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

RIVERSIDE DISTRICT OFFICE

File: 21-561748

Reg: 17085706

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 April 26, 2018. 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, 1325 J Street, Suite 1560, Sacramento, CA 95814.

On or after July 11, 2018, a representative will contact you to arrange to pick-up the license certificate.

Sacramento, California

Dated: May 31, 2018



Matthew D. Botting
General Counsel

RECEIVED

MAY 31 2018

Alcoholic Beverage Control
Office of Legal Services

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

IN THE MATTER OF THE ACCUSATION AGAINST:

Narges, LLC
Db: Narges, LLC
13444 California Street
Yucaipa, California 92399-5402

Respondent

} File: 21-561748

} Reg.: 17085706

} License Type: 21

} Word Count: 16,666; 35,298

} Reporter:

} Shelby Maaske

} Kennedy Court Reporters

Off-Sale General License

PROPOSED DECISION

Administrative Law Judge D. Huebel, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter at San Bernardino and Riverside, California, on October 24, 2017, and January 30, 2018, respectively.

Jennifer Casey, Attorney, represented the Department of Alcoholic Beverage Control.

Joshua Kaplan, Attorney, represented Respondent, Narges, LLC. Adam Lasad, the managing member of Narges LLC, was present.

The Department seeks to discipline the Respondent's license on the grounds that, on various dates specified in the Accusation, Respondent's agents or employees, permitted alcoholic beverages to be consumed on the premises of its off-sale retail establishment in violation of Business and Professions Code section 25612.5(c)(3).¹ (Exhibit 1.)

The Department further seeks to discipline the Respondent's license on the grounds that, on various dates specified in the Accusation, (1) the Respondent's agents or employees possessed and permitted upon the premises the operation of a slot machine and as a result of the operation thereof by Agent Jeff Holsapple, he became entitled to or did receive a thing of value in violation of Penal Code section 330.1; and (2) the Respondent permitted at the licensed premises the placement and operation of an illegal slot machine or gambling device, to-wit: a coin operated video machine, in violation of Penal Code sections 330b, 330.1 and 330.4. (Exhibit 1.)

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

Finally, the Department seeks to discipline the Respondent's license on the grounds that, on various dates specified in the Accusation, the Respondent's agent or employee, Adam Al Lasad, at the premises, bought, received, withheld or concealed property, to-wit: a total of 36 bottles of various distilled spirits, believing the same to have been stolen, in violation of Penal Code sections 664/496(a). (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 January 30, 2018.

FINDINGS OF FACT

1. The Department filed the accusation on June 30, 2017.
2. The Department issued a type 21, off-sale general license to the Respondent for the above-described location on December 22, 2015 (the Licensed Premises).
3. There is no record of prior departmental discipline against the Respondent's license.
4. On December 14, 2016, the Department and law enforcement personnel from the San Bernardino County Sheriffs Department visited the Licensed Premises and conducted a minor decoy operation.² During that operation Department Agent Mehul Patel noticed the Licensed Premises contained a video slot machine. Agent Patel notified his partner, Agent Jeff Holsapple, of the presence of the video slot machine.³ Agent Holsapple then investigated and determined the managing members of Narges LLC to be Adam Lasad and his wife.

(December 15, 2016)

5. On December 15, 2016, Department Agents Patel and Holsapple entered the Licensed Premises, in a plain clothes capacity, to follow-up on whether the video slot machine complied with Department requirements. Upon entering the Licensed Premises Agent Holsapple saw two clerks behind the counter, whom he later learned were Adam Al Lasad (who also is referred to as James, but will hereinafter be referred to as Lasad) and Kamal Alkarah (who also is referred to as Kemo, and who will hereinafter be referred to as Kemo). Agent Holsapple also noticed an unidentified male patron operating the said video slot machine (Exhibit 3).

² The minor decoy attempted to purchase an alcoholic beverage at the Licensed Premises on December 14, 2016, but was successfully prevented by Respondent's employee from purchasing the alcoholic beverage. See Exhibit D1.

³ These two Department agents will be referred to throughout the decision either as Agent Holsapple and Agent Patel or as the agents (or the agent, when referring to a single agent). Despite their reference as agents herein, this will be done for ease of reference and with the understanding that no other party mentioned during the respective dates knew they were Department agents until that was revealed on February 23, 2017.

6. Agent Holsapple purchased a drink from Kemo and asked Kemo if anyone won lately on the slot machine. Kemo replied that earlier that day someone had won \$270.

7. Agent Holsapple played the slot machine. The buttons on the slot machine displayed the words "BIG," "SMALL," "TAKE," "DOUBLE," "START," and "BET." (Exhibit 4.) Agent Holsapple first inserted \$5 into the slot machine, which then displayed that he received 50 credits. He would bet an amount of credits and press the "START" button, which caused the nine squares on the screen to spin. He could not control the spinning of the squares or how they aligned. At some point the squares stopped spinning by themselves and displayed various fruits (watermelon, lemons, cherries or plums), 7's, bar symbols and bells. Agent Holsapple won no additional credits. He lost all his credits including the \$5 he initially inserted into the slot machine.

8. Agent Holsapple then inserted \$10 into the slot machine, which then displayed 100 credits. Agent Holsapple played and lost those credits and his \$10.

9. Agent Holsapple played the slot machine again, inserting \$20, betting 10 credits, losing those 10 credits, betting an additional 10 credits and winning. He noticed that if he were to get the same icons in a row, the screen determined if he won additional credits or not. If he did not win additional credits than the amount he bet or wagered would be lost. He noticed at one point that he won because there were three plum icons aligned in the middle row, and the screen displayed a message that he won 40 credits. Agent Holsapple pressed the "TAKE" button and he noticed his credits automatically increased from 180 to 220. He notified Kemo that he wanted to redeem his credits. Kemo came to the slot machine, depressed a button on the back of the video gambling machine and Agent Holsapple's credits reduced from 220 to zero credits. Kemo instructed Agent Holsapple to follow him to the cash register, from which Kemo retrieved \$22 and handed it to Agent Holsapple. After receiving his winnings of \$22 Agents Holsapple and Patel left the Licensed Premises.⁴

(December 17, 2016)

10. On December 17, 2016, Agents Patel and Holsapple returned to and entered the Licensed Premises in the evening, again in plain clothes capacity. Kemo and Lasad were behind the sales counter. Agent Holsapple purchased two beers from Kemo and asked Kemo if they could drink the beers inside the store. Kemo replied that they could not. The agents did not open their beers. When Agent Holsapple reached the slot machine (Exhibit 3) Lasad advised the agents it was okay for them to drink their beers inside the store as long as they bagged the beers in brown paper bags. Agent Holsapple turned to see as to what Lasad was referring and he saw Kemo holding up two brown paper bags. Agent Patel retrieved the two brown paper bags, which the agents used to bag their

⁴ Agent Holsapple secured the \$22 on his person and later booked it into the Riverside District Office evidence locker.

respective beers. The agents then opened their beers and consumed them inside the Licensed Premises, with Lasad and Kemo's permission. The agents raised their beers, tapped them together and said aloud, "Cheers!" The agents took a photograph of their beers. The photograph depicts an opened Bud Light beer bottle with a brown paper bag to its left and an opened Miller Lite beer can encased in a brown paper bag, all of which were placed atop the slot machine. (Exhibit 4.)

11. Agent Holsapple then inserted \$5 into the said slot machine and played it but lost. He inserted another \$20, played it and lost. He tried to insert a \$10 bill into the slot machine but it would not take the money. Agent Holsapple received from Kemo two \$5 bills as change for the \$10. Agent Holsapple asked Kemo if he was the owner, to which Kemo replied he was a partner, not a full owner. Agent Holsapple asked Kemo if he purchased distilled spirits for the Licensed Premises, to which Kemo replied he did. Agent Holsapple inserted the two \$5 bills into the slot machine and received credits, which he played. He could not control the spinning of the squares or how they aligned. He eventually won 150 credits. He pressed the "TAKE" button and the slot machine displayed an increase in his credits from 90 to 240. He got Kemo's attention and Kemo walked to the slot machine and acknowledged \$24 in winnings. Kemo retrieved \$24 from the cash register and handed it to Agent Holsapple.⁵

12. Agent Holsapple asked Kemo about the cheap vodkas, to which Kemo replied they sold well. Agent Holsapple informed Kemo that he could get bottles of distilled spirits for a cheap price because he steals them from CVS, but that he needed about a week's notice. Agent Holsapple and Kemo discussed pricing and Agent Holsapple indicated he could get the distilled spirits for about 50% off the posted prices marked on Kemo's shelves. Kemo indicated he was interested in purchasing the stolen distilled spirits. Agent Holsapple gave Kemo his name and cellular telephone number, which Kemo wrote down along with the word "liquor." Kemo said he had to ask his partner about the stolen distilled spirits. The agents left shortly thereafter.

(December 29, 2016)

13. On December 29, 2016, Agents Holsapple and Patel returned in the evening to the Licensed Premises and entered in a plain clothes capacity. Agent Holsapple recognized Kemo behind the sales counter and purchased two beers from Kemo. While purchasing the beers, an unidentified male patron told Kemo to provide the agents with brown paper bags because cops in the area are very strict about people drinking in public. Kemo gave the agents two brown paper bags for their beers. After the unidentified male patron exited the Licensed Premises Agent Holsapple asked Kemo if it was okay for them to drink their beers inside the Licensed Premises. Kemo nodded his head up and down, indicating that

⁵ Agent Holsapple secured the \$24 on his person and later booked it into the Riverside District Office evidence locker.

it was acceptable to do so. The agents opened and consumed their beers inside the Licensed Premises, with Kemo's permission.

14. Agent Holsapple put \$5 into the said slot machine, which gave him 50 credits. While Agent Holsapple played the slot machine, Agent Patel, who was initially at the slot machine with him, walked to the sales counter to look at merchandise. While at the counter Kemo asked Agent Patel, out loud, if their friend could come through with the liquor. Agent Holsapple approached Kemo and Agent Patel at the counter. Kemo indicated he was looking to buy Sailor Jerry Spiced Rum and Black Velvet Whiskey. Agent Holsapple informed Kemo he could acquire the liquor but needed a week to steal it. Agent Holsapple asked Kemo to write down the bottles he wanted, to which Kemo declined and provided to the agents the backside of a cigarette carton and a pen for them to make the notations. Agent Patel wrote down on the cigarette carton the bottle names and sizes as Kemo said them aloud. Kemo indicated what wholesale price he was willing to pay for the stolen bottles. Eventually a customer entered the Licensed Premises so Kemo and the agents changed the subject and the agents walked back to the slot machine with the cigarette carton. Agent Patel handed the cigarette carton to Agent Holsapple. At some point the agents returned to Kemo and Agent Holsapple asked Kemo to write down any additional bottles of distilled spirits Kemo wanted them to steal for him. Kemo wrote down that he wanted a 750 milliliter bottle of Fireball, which he misspelled without an "e," so that it read "Firball," and he wrote "9.99," saying he was willing to pay \$9.99 for it. (Exhibit 5.)⁶

(January 13, 2017)

15. On January 13, 2017, at approximately 7:30 p.m., Agents Patel and Holsapple returned to and entered the Licensed Premises, in a plain clothes capacity, with their skateboards. Agent Holsapple wore on his person a wire⁷ with a digital audio recording device and carried a backpack containing six bottles of distilled spirits of tequila, vodka, rum and whiskey; namely Fireball, Sailor Jerry Spiced Rum, Camarena, Smirnoff, Popov and UV. (Exhibit 7.) Some of the bottles were what Kemo had requested, and what Agent Patel and Kemo had written on the cigarette carton on December 29, 2016. Agent Holsapple recognized Lasad standing behind the sales counter. Kemo was not inside the Licensed Premises. Another individual was present, and later identified as Walid Al Lasad, also known as William, Adam Lasad's father.

⁶ Agent Holsapple retrieved the cigarette carton from Kemo and secured it on his person until he later booked it into the Riverside District Office evidence locker. (Exhibit 5.)

⁷ Agent Holsapple controlled the audio recorder at all times when he wore the wire on January 13, 2017, January 27, 2017, February 3, 2017, and February 22, 2017. Agent Holsapple later transcribed what was recorded on the digital surveillance device by listening to the playback of audio, and placed the transcript pages, one through 49, into a white binder, which was later marked and admitted as Exhibit 6. Agent Holsapple burned an audio CD of the recordings of the said dates, and booked the CD into an evidence locker at the Riverside District Office. The audio CD of the surveillance recording was placed into evidence as Exhibit 17. At the hearing the CD recordings were played and which correlated with the transcript pages of Exhibit 6.

16. Agents Holsapple and Patel grabbed two beers and greeted Lasad at the cash register. Agent Holsapple asked Lasad where Kemo was. Lasad said Kemo left for the night. Agent Holsapple then asked Lasad if they could play the slot machine and get two brown paper bags to drink their beers while they played. Lasad said they could play the slot machine and gave the agents two brown paper bags, with which to cover their beers once opened in the Licensed Premises. Agent Holsapple purchased the two beers from Lasad, paying \$5.50 for the beers. Inside the Licensed Premises, the agents opened and consumed their alcoholic beverages, covered by the brown paper bags, while Agent Holsapple played the slot machine.

17. Agent Holsapple placed \$5 into the said slot machine and received 50 credits. After playing the slot machine, at some point he won additional credits and lost credits, until he had reached 150 credits. He called over Lasad, who came to the slot machine, verified that Agent Holsapple had won \$15, and pressed a button on the back of the slot machine, which reduced the credits from 150 to zero. Lasad retrieved \$15 from the cash register and handed the same to Agent Holsapple.⁸

18. At some point, Agent Holsapple asked Lasad if he could “hit up Kemo” because he had placed an order for bottles. Agent Holsapple asked Lasad if he was Kemo’s partner. Lasad replied, “Hmmm?” Agent Holsapple then said that Kemo said he would talk to his partner about some bottles, Fireball, to which Lasad said, “Let’s see what you got.”

19. Agent Holsapple showed Lasad the bottles of distilled spirits he had in his backpack and said, “Camarena. It’s legit. Popov. Smirnoff.” Lasad asked, “How much you selling them for?” Agent Holsapple replied, “The Smirnoff I can do for seven. No, I can do for five. Five bucks. I can’t go any lower than that though cus’ you know like I had to steal these, so...” Lasad questioned, “Steal them? ...From where?” Agent Holsapple displayed the bottles as he replied, “From CVS. Sailor Jerry’s, Camarena, Fireball, U.V.” Lasad asked, “You don’t get in trouble?” Agent Holsapple replied, “Nah, I know someone that works there.” Lasad said, “Oh.” Agent Holsapple then showed Lasad a distilled spirit security locking device (Exhibit 8) and said, “The only thing is, I had to get off... See like I had to take this one off but it didn’t damage the bottle at all. That was on the Fireball and the Fireball is perfect. Legit bottles too. I’ll do all six of these bottles for forty bucks.” Lasad looked at the bottles and Agent Holsapple said, “Just hey, keep ‘em...I don’t want the cops rolling by and seeing these, so...keep it on the D.L. [down low] over there.” Lasad assuredly replied, “No, you’re fine.” Agent Holsapple expressed that he thought Kemo bought Camarenas for \$13, but that he would sell it to Lasad for \$9. Lasad replied, “But the problem is, you know...If I’m going to do this, I’m looking at the prices seeing how much we’re buying them for to see if it works for me.” Lasad said that Stater Brother’s sells Camarena for \$5.99. Agent Holsapple disputed the price

⁸ Agent Holsapple secured the \$15 on his person and later booked it into the Riverside District Office evidence locker.

saying it was more like \$10. They stopped negotiating when a customer came to the sale counter. After the customer left, Agent Holsapple explained that the reason the lowest he could go for the bottles was \$40 was "...because like normally my hookup he works at the store and I can get more bottles than this. But this, I had to steal myself from another CVS." Lasad replied, "Yeah, but this is a one-time deal." Agent Holsapple said, "Look, I had to take off the fucking bottles. It was a bitch." Lasad replied, "I know, but we can't do it here, you know. Next time you want to do it, we got to do it outside of the store. We can't do it here." Agent Holsapple asked Lasad if he wanted to place an order, at which point other customers came to the sales counter, which halted their discussion. After those customers left, Agent Holsapple went over the pricing of the bottles he and Kemo discussed and explained the prices Agent Holsapple was willing to sell the bottles for to Lasad. During their conversation, Agent Holsapple reiterated, "This is my price. This is the lowest I can go bro. Otherwise, I'm not making anything." To which Lasad replied, "You didn't pay nothing for it." They negotiated further on the pricing with Lasad explaining, "I can't pay you the same price for Smirnoff for Popov," and later saying, "But listen, I can't pay you...for Jack Daniel, I'll pay you ten dollars a bottle." Lasad offered \$27 for four bottles of distilled spirits. They negotiated further. Agent Holsapple asked if he could throw in \$3 to make it an even \$30, saying, "Come on bro, I went through a lot of trouble to get this shit. And he told me...He told me he was good for that." Lasad countered suggesting the agent throw in a bottle of Popov making it five bottles for \$30. Agent Holsapple said he would rather drink the Popov if Lasad was not willing to pay \$5 for the Popov. Lasad eventually paid \$30 (Exhibit 9)⁹ to Agent Holsapple for four bottles of purportedly stolen distilled spirits, which included the Fireball, Sailor Jerry's, Camarena and Smirnoff. (Exhibit 7.)

20. Agent Holsapple then asked if Lasad wanted more stolen bottles, telling Lasad he could get more because his friend works at CVS. Lasad expressed that he did not want the sales transactions to take place inside the Licensed Premises, saying he wanted them to take place, "anywhere besides the store." Lasad asked if Agent Holsapple's friend could get Jack Daniel's and Jameson, to which Agent Holsapple replied, "Anything that...If they sell it at CVS, he can get it." Agent Holsapple then asked if Lasad wanted smokes because he himself could steal the cartons of cigarettes. Lasad said, "I don't want to get in trouble though" and chuckled. Agent Holsapple replied, "I'm the one who can get in trouble." Lasad replied, "Yeah but if I know it's stolen and I'm buying it I get in trouble too." Agent Holsapple said, "Fucking...How you going to get in trouble though? How are they going to know?" Lasad replied, "Um that's why we got to do it outside of the store."

21. Lasad confirmed that he wanted Agent Holsapple to get for him 750 milliliter bottles of Jameson, Jack Daniel's, Fireball, Sauza Blanco, and added, "as many as you can get,

⁹ Agent Holsapple retained the \$30 on his person and later booked it into the evidence locker at the Riverside District office.

we can buy it.” Lasad explained, “What I’m saying is, once you get it we’ll take it as we go. So you bring ten bottles, I’ll pay you for ten bottles.” Lasad then told Agent Holsapple what he was willing to pay for the varying brands of purportedly stolen distilled spirits. Agent Holsapple said, “Okay. I’ll see what I can get. Um fucking, want to give me your number or...” Lasad answered, “No, you just...” with Agent Holsapple interjecting, “Cus I don’t want to come by with a bunch of shit and you’re like, nah, it’s not fuckin’, not good enough or it’s not what you want or I can’t....” Lasad replied, “Nah, nah, nah, nah. Once you get it, we can...you can come by the store...” When Agent Holsapple interjected again and Lasad said, “You’re not listening to me.” Agent Holsapple complied, “Okay, go ahead. Go ahead,” to which Lasad continued his instructions, “Once you get it, you come by here,” “Kemo will let me know or I’ll let him know and you can meet with him or me.” Agent Holsapple replied, “Okay.” Lasad said, “Okay?” Agent Holsapple replied, “Alright. What’s your name bro?” Lasad continued with his instructions, “Like if I’m here, you can go in the...I’ll call Kemo. I’ll send you where he’s at. You can meet up with him and he’ll pay you wherever he’s at.” Agent Holsapple complied, saying, “Okay,” to which Lasad said, “Okay?” Agent Holsapple answered, “Alright. My name’s Jeff, dude,” and Lasad said, “Jeff. Good to meet you, man.” Agent Holsapple walked back to the slot machine where Agent Patel stood and they played the slot machine.

22. Agent Holsapple later asked if Lasad wanted to buy smokes, which Lasad said he did and listed the brands he wanted and the pricing he was willing to pay. Thereafter the agents left the Licensed Premises.

(January 27, 2017)

23. On January 27, 2017, at approximately 4:00 p.m., Agents Holsapple and Patel returned to the Licensed Premises, in a plain clothes capacity. Agent Holsapple wore a wire and carried a backpack and duffle bag with purportedly stolen bottles of distilled spirits. Agent Patel also carried a bag containing purportedly stolen distilled spirits. Between the agents’ three bags the agents had 17 pre-marked bottles of purportedly stolen distilled spirits. (Exhibit 10.) The agents also both carried their skateboards.

24. Inside the Licensed Premises Agent Holsapple grabbed two beers and took them to the sales counter at which Lasad stood. Lasad greeted Agent Holsapple and rang up the two beers, for which Agent Holsapple paid \$4.50.

25. Agent Holsapple informed Lasad he had some bottles of distilled spirits. Lasad asked what he had and Agent Holsapple listed what he brought. Lasad instructed Agent

Holsapple to wait for him outside. Agent Holsapple opened his beer¹⁰ inside the Licensed Premises and Lasad said, “No, no. I got in trouble last time.” Agent Holsapple asked, “For what?” to which Lasad replied, “For opening them in here.” Lasad then told Agent Holsapple he would call Kemo. The agents went outside of the store as instructed. At some point, Agent Holsapple re-entered the Licensed Premises. Lasad told Agent Holsapple that Kemo was not answering the phone. When Agent Holsapple suggested Lasad and he should just go in the back of the store “where no one can see,” Lasad replied “No, no, no. There’s cameras everywhere. Not right here.” Agent Holsapple then suggested they meet outside behind the store. Lasad said, “Maybe I’ll meet you somewhere. But how much do you think you have?” Agent Holsapple told Lasad he had 17 bottles of distilled spirits. Lasad said, “How much they worth? I want to know the bottle price.” Agent Holsapple gave pricing on the different distilled spirits. Lasad said, “Let me add them up.” Lasad then pressed to see the price list Agent Holsapple held, which Agent Holsapple showed to Lasad. After looking over the price list Lasad questioned, “Hundred and thirty?” Agent Holsapple replied, “Bare bones minimum. I can’t go lower than that. Seventeen bottles. All legit. You know my shit’s good. It was a little hard...It took me a little harder...It was a little harder to steal this time though.”

26. Lasad led the agents outside to the northeast corner of the Licensed Premises to complete the transaction of the 17 bottles of purportedly stolen distilled spirits. At one point Lasad explained that he wanted to see the condition of the bottles and insisted to see the price list again. Lasad looked through the backpacks and duffle bag of purportedly stolen distilled spirits, counting the bottles and inspecting them. Agent Patel took photographs of Lasad inspecting the bottles. (Exhibit 11.) At one point Lasad instructed Agent Holsapple to “Just cover me up here.” Agent Holsapple held up a towel saying, “Here, I’ll put this towel up so the cops don’t see.” (Exhibit 11, page two, depicts Agent Holsapple holding up the towel.) Lasad replied, “No, no. That will make people suspicious,” and chuckled. So, Agent Holsapple set the towel aside. At one point, Agent Patel agreed to be a “lookout.”

27. Lasad insisted on counting the number of bottles of distilled spirits. Lasad questioned from where they got the bottles. Agent Holsapple replied, “I told you dude, I stole ‘em.” Lasad instructed Agent Holsapple, “You don’t have to tell me that. You bought ‘em, for cheap.” Agent Holsapple replied, “I bought them for five-finger discount, bro.” Lasad replied, “Okay,” and Agent Holsapple continued, “Free-ninety-nine.” Lasad then insisted on seeing Agent Holsapple’s price list again, and started confirming the number of the various brands of distilled spirits, “Okay, so we got five, five and J.D. We got four, four, One Sauza, three Sailor Jerry, four Fireball. One, two, three.” Lasad kept

¹⁰ On the audio recording of Exhibit 17 is heard the sound of a can opening; it appears to be Agent Holsapple opening his beer that caused Lasad to tell Agent Holsapple not to do that because Lasad got in trouble for the agents opening their beers the last time, to which Agent Holsapple replied, “Oh my bad.”

counting and said, "Okay. Three Fireball, right? Where's the fourth one?" After finding the fourth Fireball Lasad told Agent Holsapple he would go get the money.

28. Before leaving to get the money, Lasad grabbed two of the bags filled with distilled spirits, and carried them to his white, Tacoma Toyota truck. The agents observed Lasad as he carried the bags to his truck. Agent Patel took a photograph of Lasad carrying the said bags. (Exhibit 11, page three.) Lasad removed the bottles from their respective bags and placed the bottles into his truck. The agents followed after Lasad offering to assist. The agents then went back inside the Licensed Premises following Lasad in. Lasad told the agents to go outside. The agents went outside of the Licensed Premises. Lasad returned to the agents, complaining, "Dude, that guy was looking at you. I mean, you should have stayed outside man." Lasad then handed the bags back to Agent Holsapple. Lasad paid Agent Holsapple \$130 for the 17 bottles of purportedly stolen distilled spirits.¹¹

29. Agent Holsapple asked Lasad what he wanted next time, to which Lasad replied, "Just Grand Marnier." "I'll buy as many as you get." Lasad insisted that he did not want to conduct the next exchange at the Licensed Premises.

(February 3, 2017)

30. On February 3, 2017, at approximately 8:40 p.m., Agents Patel and Holsapple (the latter of whom was wearing a wire) returned to and entered the Licensed Premises, in a plain clothes capacity, carrying their skateboards. Lasad greeted the agents. Agent Patel grabbed a beer and Agent Holsapple grabbed a Monster drink, both of which they brought to the sales counter for purchase. Lasad rang them up and the agents paid for the merchandise. Agent Holsapple asked Lasad, "So those bottles selling well or?" Lasad replied, "Oh yea. It sells like every now and then it sells. You know," referring to the purportedly stolen distilled spirits Lasad had purchased from Agent Holsapple on January 27, 2017. Agent Holsapple soon thereafter said, "Yeah. Still, I got you good prices though," to which Lasad replied, "Not too bad," and reiterated, "Not too bad. That's why I didn't argue with you, you know." Lasad then said, "You keep the prices like that and we can...But I don't want to do any deals here because I got in trouble last time."

31. Agent Holsapple asked Lasad if he had any friends at other stores because he could get a lot of distilled spirits. Lasad asked, "You have a lot?" Agent Holsapple asked Agent Patel, "How many did he say? Like a lot?" and Agent Patel inanelly replied, "He said a lot," which caused both Agent Holsapple and Lasad to laugh. Agent Holsapple eventually stated his buddy would get, "like maybe like a hundred bottles." Lasad

¹¹ Exhibit 10 depicts the 17 bottles of purportedly stolen distilled spirits Lasad purchased. Agent Holsapple kept the \$130 on his person and later booked it into the evidence locker at the Riverside District Office - see Exhibit 12.)

replied, "Okay that's fine." Agent Holsapple confirmed, "That's fine what?" Lasad answered, "We'll buy it." Agent Holsapple continued, "You will? ...I don't want to bring stuff you have a lot of and then, you know what I mean. I'm trying to get rid of it all. So if you have friends..." and Lasad said, "I told you already, I told you. We'll get Fireball, Jack Daniel, that...What do you call that thing? Uh, Grand Marnier," "Jameson." Agent Holsapple then said, "Okay. Yeah, yeah, yeah. Cuz' I'm going to see if I can get a ride next time, that way I can put it all in a truck." Lasad twice told Agent Holsapple, "Yeah, but not here." Lasad asked to see the paper from the last transaction so he could see what he got the last time and the pricing.

32. While Agent Holsapple and Lasad were discussing what types of stolen distilled spirits Lasad wanted, Agent Patel asked Lasad if he could play the video slot machine. Lasad said, "I don't know dude. The owner's here so..to which Agent Holsapple replied, "I thought you were the owner?" Lasad answered, "I wish" and chuckled.

33. Lasad continued to let Agent Holsapple know what other stolen distilled spirits he wanted, including Sauza Tequila, Sailor Jerry's. Lasad then confirmed the prices of the stolen distilled spirits he wanted Agent Holsapple to get for him. Agent Holsapple then said, "So, if I came with like a hundred bottles..." Lasad cut him off and instructed him saying, "Don't come with a hundred bottles. No. No, you let us know you have a hundred bottles. You come like this. No bags, no nothing. You say, 'I have a hundred bottles.' I tell you okay, we meet..." "And then I'll pay you. We'll do the deal here and then we'll do the exchange outside." Agent Patel added, "Like on the side?" Agent Holsapple asked, "Like on the side again. Yeah?" Agent Patel asked, "Is that cool? By your truck?" Lasad replied, "No, no, no. What I'm saying is, you come in, you say, 'I have a hundred bottles.' You have a list of what you have. You have the prices." Agent Holsapple obeys, "Alright." A female enters the store laughing and asks Lasad if he has a bathroom, to which he says he does not. The female jokes with Lasad, asking something to the effect of, "What if I have to go," to which Lasad jokes back with her and tells her, "Just on the side there's a tree right there." Lasad and the agents laugh heartily. Lasad does not skip a beat but continues instructing the agents, "Then we'll figure how much it's going to be and we'll go meet somewhere. You know what I mean?" Agent Holsapple answered, "Alright." Lasad continued, "And then we'll pay for it and get the bottles. Alright?" Agent Holsapple says, "Okay. That's cool. Yeah cuz' he uh, said he's going to be able to jack a big load..." Lasad interrupted, "He's going to buy a big load?" Agent Holsapple replied, "No, no. Steal a big load." Lasad said, "What?" Agent Holsapple replied, "He's going to steal a big load." Lasad directed, "We don't do that." Agent Holsapple asked, "What do you mean we don't do that?" Lasad instructed, "You got to use the right terms." Agent Holsapple replied, "Oh, I got you. Sorry. I wasn't..." Lasad said, "Yeah." Agent Holsapple said, "I was being stupid." Agent Holsapple then laughed.

34. Agent Patel chimed in, "He means 'free-ninety-nine.' Free ninety-nine." Lasad asked Agent Patel, "You do that too? You do free ninety-nine?" Agent Patel soon after asked, "How much would you pay for a carton of cigs?" Lasad asked, "What kind?" Agent Patel said, "You guys got Marlboro Reds? How much? How much for that?" Lasad answered, "I'll pay you thirty." Agent Patel asked what other cigarettes Lasad wanted, to which Lasad said, "Marlboro Reds and Marlboro Lights," "I mean that's what sells the most. Camel's, Camel filters, Camel ninety-nine, Camel Short." Lasad again instructed, "And again, don't bring anything in here." Agent Holsapple consented, "Alright." Lasad also ordered Camel Whites and said he'd pay, "Twenty-five for the Camels." Agent Patel asked if he could check if the machine was on and Lasad told them, "Just come back later." Agent Holsapple replied, "Alright, we'll hang out. We'll be back in a little bit." Agents Patel and Holsapple left the Licensed Premises.

35. On February 3, 2017, at approximately 9:12 p.m., Agents Patel and Holsapple returned to and entered the Licensed Premises. Agent Holsapple wore a wire. Agent Holsapple approached Lasad and said, "I text my boy, dude. Look." Agent Holsapple showed Lasad his cellular telephone screen shot of text threads between Holsapple and "Carlos" from "CVS," and Agent Holsapple said as he read, "I said, 'Hey how many bottles can you steal this weekend.'" Agent Holsapple read to Lasad the text thread from Carlos, "I can get u NE amount. I ordered bout 2000 bottles for the district. U let me know how much U need, and wat kind." Agent Holsapple's text reply read, "Im looking 2 get about 100-200 bottles of jameson, jack, fireball, gran mariner, sailer jerrys. Maybe more 2." Carlos' text reply read, "Ima get you ALL that soon. Shipment gonna b in for the Supa Bowl and I'm gonna steal ALL them bottles." (Exhibit 13.) Lasad replied, "Okay."

36. Agent Holsapple asked if he could play the video slot machine. Lasad told him that someone was mopping the floor for him to "Just come back later when he's done." Agent Holsapple asked, "How long you think?" to which Lasad replied, "I don't know. Ten, fifteen minutes." Agents Patel and Holsapple left the Licensed Premises.

37. On February 3, 2017, at approximately 10:30 p.m., Agents Patel and Holsapple returned to and entered the Licensed Premises, with their skateboards. Agent Holsapple wore a wire. Agent Holsapple saw and recognized Lasad and Walid Al Lasad (also known as William, Lasad's father) behind the sales counter. The agents walked over to the said video slot machine and noticed it was not working. Agent Holsapple asked William if the slot machine was broken, and William said he did not know. Agent Holsapple unplugged the machine and plugged it into the second outlet and the video slot machine turned on. The slot machine would not take Agent Holsapple's money. Agent Holsapple walked over to the sales counter and asked Lasad for change, asking for two, 10 dollar bills, which Lasad provided to him. Agent Holsapple walked back to the slot machine. Lasad walked over and asked Agent Holsapple to show him what happened to

the slot machine and Agent Holsapple explained that he plugged it into another outlet to get the machine to work. Agent Holsapple played the video slot machine and lost. While Agent Holsapple played the video slot machine Lasad watched him play.

38. Later, the agents grabbed candy and brought it to the cash register where Lasad rang them up. Lasad asked Agent Patel if he was okay, why he kept nodding his head back and forth repeatedly and why he kept saying, "Two, three, four, five." The agents told Lasad Agent Patel has Tourette's. Agent Patel then said to Lasad, "For sure though, I got you," to which Lasad replied, "Nah, I can't do deals here, dude." Agent Holsapple repeated, "Not here." Lasad, replied, "Yeah? Alright?" to which Agent Patel responded, "Yeah." The agents left the Licensed Premises.

(February 22, 2017)

39. On February 22, 2017, at approximately 2:10 p.m., Agents Patel and Holsapple returned to the Licensed Premises and entered with two backpacks full of purportedly stolen distilled spirits and a skateboard each. (Exhibit A¹².) Agent Holsapple was wearing a wire. Agent Holsapple greeted Kemo saying, "Hey, I got some of those bottles you ordered." Kemo replied, "I can't do that." Agent Holsapple asked Kemo if James (also known as Lasad) was at the store and, when he learned he was not, Agent Holsapple asked Kemo, "Why not? I got these bottles for you. You don't have the money or?" Agent Holsapple paused, then said, "We skateboarded all of the way over here. Can you call James?" Kemo said James was on vacation. Agent Patel explained that James "said he wanted those Grand Marnier bottles." Agent Holsapple, unzipped his back pack and asked to show Kemo the bottles. Kemo again said, "I can't." Agent Holsapple replied, "He ordered that. Good prices." Agent Holsapple then acquiesced, "Alright man."

40. Agent Patel then asked Kemo if they could, "Buy a beer and play the machine?" Kemo responded, "There's somebody back there." Agent Holsapple replied, "We'll wait. We'll wait for them." The agents walked to the video slot machine and found an unidentified male patron playing the said machine. Agent Holsapple politely asked the unidentified male patron, "What's up man? Winning today? No rush, but we're going to play after you, if that's okay. Yeah? You just start playing?"

41. After some time passed, Agent Patel stayed by the slot machine and Agent Holsapple grabbed two beers, which he purchased from Kemo for \$4.50 at the sales counter. Agent Holsapple asked Kemo, "You want to look at the list?" Kemo replied, "No. I can't, I can't." Agent Holsapple asked, "I thought you said you wanted them though? I know it

¹² Exhibit A depicts the interior of the Licensed Premises on February 22, 2017, with Agents Patel and Holsapple (both of whom are approximately 5'10" tall and weigh approximately 155 pounds), standing on the customer side of the counter; Agent Holsapple is standing on the left, facing Kemo, who was standing on the employee side of the sales counter. Both agents are in plain clothes capacity.

took me awhile. What happened? What changed your mind? Should we come back another time? Is that better?" Kemo replied, "No, no. I can't. I'm sorry." Agent Holsapple asked, "What changed your mind though?"¹³

42. Agent Holsapple again asked Kemo to call James. Kemo advised Agent Holsapple that he called him and James "said no." Agent Holsapple replied, "He said no what? He ordered Grand...Tell him I got Grand Marnier." Kemo said, "I know, we ordered it yesterday and got some bottles." Agent Holsapple said, "Oh, really? I can do eighteen dollars a bottle though, dude." Kemo said, "No, I can't." Agent Holsapple said, "Alright, can we play the machine though?" Agent Holsapple walked over to the slot machine and rejoined Agent Patel. After some time had passed, Kemo informed Agent Holsapple that James would be coming to the store in five to ten minutes and directed the agents to wait for James. The agents waited by the slot machine.

43. Eventually, Lasad entered the Licensed Premises and nodded his head, motioning to Agent Holsapple to meet him outside the Licensed Premises. Agents Holsapple and Patel stepped outside the Licensed Premises. Agent Holsapple proposed to Lasad, "Let's go here in the corner." Lasad reprimanded him saying, "No, no, no, no, no, no. You guys going to get us in trouble like this. You can't be here, hanging out with all this stuff...I know you don't care and you say it as it is and you're stealing it. But we care." Agent Holsapple said, "Dude, I don't want to go all..." Lasad interjected, raising his voice, "Okay? You don't want to go we're not going to do the deal anymore. This is the last time then." Agent Holsapple replied, "Why you trippin' dude?" Lasad explained, "Because! I mean you guys are making it obvious. We can't do the...This is have a license, you know what I mean? And I can't get in trouble with the owner and get fired over this shit." Agent Holsapple said in response, "I'm not trying to get jacked dude, that's my concern and..." Lasad sternly interjected, "But you're making it obvious. Like you don't care. 'I'm stealing it.' You're telling the whole world, 'I'm stealing it.' And you're selling it to me. And that...that affects me. I know it doesn't affect you. But that affects me." Agent Holsapple timidly replied, "Alright, I understand where you're coming from but here's my concern..." Lasad again interrupted, "It doesn't seem you understand because he's telling you, 'Hey, you know, this is not going to work this way. This is not going to work.' And you guys are just hanging out with the bags and stuff. That's ...doesn't look good." Agent Holsapple timidly replied, "We didn't take the bottles out or anything, James. Dude, I just don't want cops rolling by. If we're at a liquor store it makes sense that there is bottles. If we're elsewhere... We go to the corner here, then it looks weird dude." Lasad explained, "No, you have a backpack. You're not making it obvious over there neither." Agent Holsapple acquiesced saying, "Alright, you want to go to the tow yard dude?" Lasad instructed Agent Holsapple, "You got to go to the park down the street. Well, I need to know how much you have and what you have."

¹³ Both the recording (Exhibit 17) and the transcript (Exhibit 6, page 41, line 19), show Kemo made an unintelligible/inaudible comment after this last question.

44. Agent Holsapple told Lasad he had five bottles of Grand Marnier, to which Lasad replied, "That's it?" Agent Holsapple explained what he had and Lasad told him, "Okay, meet me at the park down the street." Agent Patel interjected saying, "We're already here dude," to which Lasad retorted, "I can't. I can't do it here. I told you that. You don't want to do it then." Agent Holsapple said, "Where is this park? I'm not familiar with this park." Lasad explained, "You go down the loop, and there's a park right on the corner. On the loop right here between Valero and the intersection." Agent Holsapple said, "Dude, that's kind of far bro." Lasad replied, "Well, I can't do it here. Like I said, I told you before." Agent Holsapple asked if they could just go in the back of the Licensed Premises, to which Lasad replied, "No. The park." Agent Holsapple asked, "Well are you going to buy it all or what?" Lasad answered, "That's what I'm telling you." After further conversation Agent Holsapple acquiesced to go to the park. Lasad explained how to get to the park and told Agent Holsapple how much he was willing to pay for the distilled spirits and offered to pay \$140 for all 15 bottles Agent Holsapple had in his backpacks. Lasad and the agents left the Licensed Premises separately to meet at the said park.

45. At approximately 3:00 p.m. the agents arrived at the park, which was an Equestrian Center approximately 0.3 miles north of the Licensed Premises. Lasad and his 74 year old father, William, were standing outside of a parked Toyota Camry with its trunk open in the parking lot of the Equestrian Center. The agents later determined that the said Toyota Camry was registered to Kamal Alkarah (also known as Kemo). The agents approached Lasad and his father at the Toyota Camry. Agent Holsapple said, "Alright. So one forty?" Lasad asked to see the price list again and counted the 15 bottles of purportedly stolen distilled spirits.¹⁴ Lasad instructed Agent Holsapple to place the bottles in the trunk of the Toyota Camry. Agent Holsapple did as requested, unzipped the bags and explained that he did not have time to take off the black plastic security locking devices which remained on two of the bottles of Grand Marnier and one bottle of Sky Vodka.¹⁵ Agent Holsapple attempted to remove the said security devices from the bottles but was unsuccessful, and asked Agent Patel to help. When Agent Patel removed one of the distilled bottles from the trunk to remove the security device, Lasad instructed him, "Put it in the car dude." Agent Patel removed one security device from a bottle and Agent Holsapple removed another. Agent Holsapple again had difficulty attempting to remove a security device from another bottle and Lasad instructed him to "push down or something." Agent Holsapple confirmed the manner in which to remove the black security devices from the bottles saying, "It's you twist, you push down, and you twist normally." Lasad instructed Agent Holsapple, "Do it. Do it. You know." Agent Holsapple was still not able to remove the device. At some point Agent Holsapple gave to Lasad the magnetic key, which is commonly used by retail establishments to remove

¹⁴ Exhibit 14 consists of two color photographs, which depict the 15 bottles of purportedly stolen distilled spirits.

¹⁵ Agent Holsapple had placed the black plastic security locking devices on the said bottles prior to his originally transporting them to the Licensed Premise on February 22, 2017, to convey that the 15 bottles were stolen.

the black security devices, and Lasad removed one of the black security devices from a bottle. Eventually all of the black plastic security locking devices were removed from the said bottles.¹⁶

46. Lasad counted the bottles one last time and was about to shut the trunk when Agent Holsapple said, “Whoa, whoa, whoa, whoa. I want to make sure you don’t take off with my shit dude.” Lasad laughed and assured him he was not going anywhere. Agent Holsapple laughed and replied, “You’re going to close the trunk and fucking take off with my shit. Leave it open until I get my money.” Lasad laughed and asked to see the agent’s list again. Lasad pressed him, saying, “Dude, I don’t want people to see man. Come on now. Grow up. Give me the paper.” Agent Holsapple could not find his list and it turned out that Lasad still had it. After reviewing the list, Lasad gave \$140 to Agent Holsapple for the 15 bottles of purportedly stolen distilled spirits.¹⁷

47. Agent Holsapple asked Lasad what he wants for the next time. Lasad expressed, “You know what. I don’t want to do this anymore dude to be honest with you. Just too much of a risk.” “It’s just the way you guys handle it. I don’t like it.” Agent Holsapple asked, “What if we meet back here?” Lasad replied, “If you do it more properly maybe.” Lasad then asked Agent Holsapple, “Do you have a house?” to which Agent Holsapple said that he lives in an apartment. Lasad then provided instruction on how to conduct future transactions properly, and when they can contact Lasad in the Licensed Premises, saying, “Exactly, so keep your shit in the apartment. Come by the store and say hey I got some shit, do you want it? We’ll make an appointment and we’ll go and get it.” “I don’t want you walking into the store, you know call the store, call something you know what I mean? But if I’m not there you know...I’m mostly there in the mornings.” “I mean, just the way you handle it is just...Once you have a bigger amount or something keep it in your apartment. Maybe we’ll go to the apartment and get it.” Agent Holsapple acquiesced to the plan.

48. Lasad and William drove off in the Toyota Camry. Department agents followed Lasad and William to the Licensed Premises and took photographs of Lasad and William removing the bottles of distilled spirits from the trunk of the Toyota Camry, placing them into a shopping cart and taking the cart of bottles inside the Licensed Premises. (Exhibit 15, page two.)

¹⁶ Exhibit 15 consists of two pages of color photographs taken by Agent Patel on February 22, 2017. The first page contains four color photographs of portions of the said transaction at the Equestrian Center, as described. William is depicted in the red vest and black beanie; Lasad is depicted in the striped hoodie, and Agent Holsapple is depicted in a plaid shirt with the hood on his head.

¹⁷ Agent Holsapple secured the \$140 on his person and later booked it into the evidence locker at the Riverside District Office. It was later marked and admitted as Exhibit 16.

49. On February 23, 2017, Agent Holsapple and a team of Department agents executed a search warrant at the Licensed Premises. The agents seized 21 marked¹⁸ bottles of distilled spirits sold to Lasad on various dates, with four of those bottles found on the display shelf behind the sales counter and the remaining bottles found in the rear of the Licensed Premises, in the storage area.

Respondent's Witnesses

50. Adam Lasad appeared and testified at the hearing. Adam Lasad is a managing member of Narges, LLC. He completed a LEAD training program, receiving a certificate of completion dated August 8, 2017. (Exhibit C.) The Respondent received two letters from the Department, dated March 24, 2015, and December 16, 2016, for having successfully prevented the sale of alcoholic beverages to minor decoys during minor decoy operations conducted in the Licensed Premises on March 23, 2015, and December 14, 2016, respectively. (Exhibits D1 and D2.)

51. Adam Lasad claimed he did not know the slot machine was a slot machine or that it was illegal. Someone paid space rent to Respondent to have the slot machine in the Licensed Premises. Adam Lasad could not recall the first date he saw Agents Patel and Holsapple inside the Licensed Premises. Adam Lasad claimed he was "intimidated," "very nervous," and "very scared" of the agents because their physical appearance resembled that of the African American man who robbed him on July 3, 2007, at a liquor store, VIP Liquor, he once owned. (Exhibits B1 through B9.) Lasad claimed the agents, who were not African American, almost looked the same because they dressed in hoodies, baggy pants, had bags [backpacks] and skateboards. (Exhibit A.) The agents looked like "low-lifes" to Lasad. Lasad claimed he never called the police when the agents were at the Licensed Premises because he was afraid the agents would return and take revenge, key his car, damage the store, or harm him. He claimed he did not want to engage in the transactions of stolen alcoholic beverages "at all." Lasad admitted that he never told the agents to leave the Licensed Premises and not return. He admitted he could see that the agents did not have pistols. He admitted to knowing on January 13, 2017, January 27, 2017, and February 22, 2017, that the bottles of distilled spirits the agents brought to the Licensed Premises for sale were stolen. He admitted to paying Agent Holsapple \$30 on January 13, 2017, \$130 on January 27, 2017, and \$140 on February 22, 2017, for the said purportedly stolen bottles of distilled spirits.

¹⁸ Prior to bringing the purportedly stolen bottles of distilled spirits to the Licensed Premises on the various dates, Agent Holsapple pre-marked each bottle on the bar codes with the letters, "CVS" using an invisible UV ink pen. While executing the search warrant on February 23, 2017, the Department take-down team used a UV light to illuminate the pre-marked bottles on each of the 21 said bottles.

52. Adam Lasad estimated he sold his prior Department licensed premises, VIP Liquor, at which he was robbed, sometime in August 2007. Adam Lasad's name at that time was Alassaad Aktham, which he changed at the end of 2007. Between August 2007 and December 22, 2015, he did not have an alcoholic beverage licensed premises.

53. Adam Lasad worked for San Bernardino County Community College District (SBCCCD) as a campus security officer from approximately 2010 through 2015. His job duties required that he observe and report to the campus police department dispatch anything that he saw that was out of the ordinary, including, but not limited to a car accident, or a fight, or just about anything out of the ordinary. When he applied for the position he did not disclose to the SBCCCD the 2007 robbery incident at VIP Liquor, he did not advise them he was scared of anything, nervous, had difficulty functioning, or could get emotional as a result of the 2007 robbery. He did not tell SBCCCD that when he would watch television and if he saw a hold-up that he would get very emotional as a result of the 2007 robbery incident. Adam Lasad was adamant there was no reason for the 2007 robbery incident to be brought up for purposes of his employment with SBCCCD. Adam Lasad was capable of performing the job duties required of him as a campus security officer for the five years of his employment with SBCCCD. He did not get scared when he observed and reported things he saw as a campus security officer with SBCCCD. As to whether he was scared to report and observe Adam Lasad added, "I don't think that would scare anybody to report something they're seeing." Any nervousness he may have had regarding an incident he observed during his employment with SBCCCD did not prevent him from performing his job duties as a campus security officer.

54. Francis McCarron appeared and testified at the hearing. Mr. McCarron is the owner of Da' Crust Pizza & Kitchen, which opened on February 1, 2017, and is located inside the Licensed Premises. Prior to opening Mr. McCarron spent \$30,000 to put "everything" in, including an oven. Mr. McCarron's counter is approximately 15 feet from Respondent's sales counter, with an unobstructed view of Respondent's counter. Prior to February 22, 2017, Mr. McCarron was acquainted with Mr. Lasad for three months, having had conversations with Mr. Lasad prior to said date. Mr. McCarron pays rent to Mr. Lasad under a one-year lease contract with a five-year option. Mr. McCarron acknowledged that he receives a benefit if the Licensed Premises continues to operate. On February 22, 2017, Mr. McCarron worked at Da' Crust Pizza & Kitchen starting at 10:00 a.m.; his business closed at 8:00 p.m. that date. On February 22, 2017, Mr. McCarron observed the two Department agents inside the Licensed Premises. Mr. McCarron testified that his attention was drawn to the agents because they looked to Mr. McCarron "like dirt bags with skateboards." He defined a dirt bag as an "unsavory person who didn't look right, dirty." Mr. McCarron observed the two agents inside the Licensed Premises in conversation with Mr. Lasad, who appeared, to McCarron, "a little more concerned than normal" because there were "a lot of people coming in" the

Licensed Premises. Mr. McCarron assumed it was the two agents that caused Mr. Lasad to appear concerned. Mr. McCarron did not speak with Mr. Lasad after observing him with the two agents until after Mr. Lasad “got back after he was arrested.” At that time, Mr. McCarron asked Mr. Lasad why he was arrested and Mr. Lasad told him, “The two guys that came in there were selling something.”

55. 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 25612.5(c)(3) provides that “[n]o alcoholic beverages shall be consumed on the premises of an off-sale retail establishment, and no alcoholic beverages shall be consumed outside the edifice of an on-sale retail establishment.”
4. 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.”

5. Penal Code section 330.1(a) provides that it is a misdemeanor for anyone to manufacture, own, store, keep, possess, sell, rent, lease, let on shares, lend or give away, transport, or expose for sale or lease, or offer to sell, rent, lease, let on shares, lend or give away or to permit the operation of or to permit to be placed, maintained, used, or kept in any room, space, or building owned, leased, or occupied by him or her or under his or her management or control, any slot machine or device as defined. Section 330.1(a) further provides that it is a misdemeanor to make or permit to be made any agreement with reference to any slot machine or device as defined, pursuant to which agreement the user thereof, as a result of any element of hazard or chance, may become entitled to receive anything of value or additional chance or right to use that slot machine or device, or to receive any check, slug, token, or memorandum, whether of value or otherwise, entitling the holder to receive anything of value.

Section 330.1(f) provides that a “slot machine or device within the meaning of [s]ections 330.1 to 330.5, inclusive, of this code is one that is, or may be, used or operated in such a way that, as a result of the insertion of any piece of money or coin or other object the machine or device is caused to operate or may be operated or played, mechanically, electrically, automatically, or manually, and by reason of any element of hazard or chance, the user may receive or become entitled to receive anything of value or any check, slug, token, or memorandum, whether of value or otherwise, which may be given in trade, or the user may secure additional chances or rights to use such machine or device, irrespective of whether it may, apart from any element of hazard or chance, also sell, deliver, or present some merchandise, indication of weight, entertainment, or other thing of value.”

6. Penal Code section 330.4 states, “It is specifically declared that the mere possession or control, either as owner, lessee, agent, employee, mortgagor, or otherwise of any slot machine or device, as defined in Section 330.1 of this code, is prohibited and penalized by the provisions of Sections 330.1 to 330.5, inclusive, of this code. It is specifically declared that every person who permits to be placed, maintained or kept in any room, space, enclosure, or building owned, leased or occupied by him, or under his management or control, whether for use or operation or for storage, bailment, safekeeping or deposit only, any slot machine or device, as defined in Section 330.1 of this code, is guilty of a misdemeanor and punishable as provided in Section 330.1 of this code. It is further declared that the provisions of this section specifically render any slot

machine or device as defined in Section 330.1 of this code subject to confiscation as provided in Section 335a of this code.”

7. Penal Code section 496(a) provides that every person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained, shall be punished by imprisonment in a county jail for not more than one year, or imprisonment pursuant to subdivision (h) of Section 1170.

8. Penal Code section 664 criminalizes the act of attempting to commit any crime, but fails, or is prevented or intercepted in its perpetration.

9. 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 the Respondent’s agents or employees, Kamal Alkarah (on December 17, 2016, and December 29, 2016) and Adam Al Lasad (on January 13, 2017), permitted Department Agents Patel and Holsapple to consume alcoholic beverages on the Licensed Premises, an off-sale general retail establishment, in violation of section 25612.5(c)(3). In this regard, the testimony of Agent Holsapple and the record established that Kamal Alkarah and Adam Al Lasad were both aware that the said agents were consuming their alcoholic beverages inside the Licensed Premises. (Counts 3 , 4 and 7.) (Findings of Fact ¶¶ 4, 10, 13, 15, and 16.)

On December 17, 2016, Lasad advised the agents it was okay for them to drink their beers inside the store as long as they bagged the beers in brown paper bags. Kemo gave two brown paper bags to Agent Patel in which to place their opened beers. Lasad and Kemo then permitted the agents to consume their beers inside the Licensed Premises. On December 29, 2016, while the agents purchased two beers from Kemo, an unidentified male patron told Kemo to provide the agents with brown paper bags because cops in the area are very strict about drinking in public. Kemo then gave the agents two brown paper bags for their beers, and thereafter permitted the agents to consume their beers inside the Licensed Premises. On January 13, 2017, Lasad, again gave the agents brown paper bags to conceal their beers while allowing them to consume their beers inside the Licensed Premises.

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) on the basis that Respondent’s agents or employees, Kamal Alkarah (on December 15, 2016, and December 17, 2016) and Adam Al Lasad (on January 13, 2017), possessed and permitted upon the Licensed Premises Agent Holsapple to play the slot machine, thereby

becoming entitled to receive or did receive cash, a thing of value, in violation of Penal Code section 330.1. (Counts 1, 2 and 6.) (Findings of Fact ¶¶ 4 to 11, and 15 to 17.)

11. 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 December 29, 2016, and February 3, 2017, the Respondent permitted at the Licensed Premises the placement and operation of an illegal slot machine or gambling device, to-wit: a coin operated video machine, in violation of Penal Code sections 330b, 330.1, and 330.4 (Counts 5 and 10.) (Findings of Fact ¶¶ 4, 5, 13 to 14, 30, 32, 35 to 37.)

12. 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 the Respondent's agent or employee, Adam Al Lasad, the managing member of Narges, LLC, on January 13, 2017, January 27, 2017, and February 22, 2017, at the premises, bought, received, withheld or concealed property, to-wit: a total of 36 bottles of various distilled spirits, believing the same to have been stolen, in violation of section 496 of the Penal Code. (Counts 8, 9 and 11.) (Findings of Fact ¶¶ 4, 10, 12, to 16, 18 to 21, 23 to 35, and 37 to 49.)

13. Since the property was not, in fact, stolen, the question is whether the provisions of attempt pursuant to Penal Code section 664 apply. Under the facts of this case, the purchases that occurred on January 13, 2017, January 27, 2017, and February 22, 2017, were clearly attempts by Adam Al Lasad to receive stolen property. Within Adam Al Lasad's knowledge, he believed that he had completed the purchases (at discounts) of distilled spirits that were stolen from a CVS store by a purported employee or by Agent Holsapple. Beyond Adam Al Lasad's control and knowledge was the fact that these distilled spirits and the "seller" were law enforcement props in an undercover investigation.

14. The continuous course of conduct of Adam Al Lasad, as a managing member of Narges, LLC, forms the basis for counts 9 and 11 relating to January 27, 2017 and February 22, 2017. That continuous course of conduct includes, but was not limited to Adam Al Lasad's conduct which began at the Licensed Premises with Lasad meeting the agents in and at the Licensed Premises, confirming what merchandise the agents had, and negotiating what price he would be willing to pay for the said stolen merchandise.

(a). Lasad further controlled the circumstances of the transactions, telling the agents how and where they would conduct the illicit transactions. Ensuring all the while to keep the purportedly stolen merchandise and illegal transactions out of the Licensed Premises. On January 27, 2017, when Agent Holsapple suggested he and Lasad go in the back of the store "where no one can see," Lasad replied "No, no, no. There's cameras everywhere. Not right here." Agent Holsapple then suggested they meet outside behind the store.

Lasad said, "Maybe I'll meet you somewhere. But how much do you think you have?" when Agent Holsapple responded he had 17 bottles of distilled spirits, Lasad said, "How much they worth? I want to know the bottle price," "Let me add them up." Lasad pressed to see the price list. Lasad then led the agents outside to the northeast corner of the Licensed Premises to complete the transaction, where he thoroughly inspected and paid for the 17 bottles of purportedly stolen distilled spirits.

(b). Lasad continued to control the illicit transactions. On February 3, 2017, Lasad instructed Agent Holsapple, "Don't come with a hundred bottles. No. No, you let us know you have a hundred bottles. You come like this. No bags, no nothing. You say I have a hundred bottles. I tell you okay, we meet..." "And then I'll pay you. We'll do the deal here and then we'll do the exchange outside." Agent Patel added, "Like on the side?" Agent Holsapple asked, "Like on the side again. Yeah?" Agent Patel asked, "Is that cool? By your truck?" Lasad replied, "No, no, no. What I'm saying is, you come in, you say, 'I have a hundred bottles.' You have a list of what you have. You have the prices," "Then we'll figure how much it's going to be and we'll go meet somewhere. You know what I mean?"

(c). Lasad's control of the illegal transactions continued on February 22, 2017. As Lasad entered the Licensed Premises he directed Agent Holsapple to meet him outside. Once outside, Lasad reprimanded Agent Holsapple for coming to the Licensed Premises with the stolen merchandise. He was clearly frustrated with the agents when he had just, on February 3, 2017, given them explicit instructions on how future transactions were to proceed. Lasad's course of conduct continued by providing specific instructions and directions to the agents to deliver the stolen merchandise at the park (Equestrian Center). Lasad then met the agents at the park and again inspected the stolen distilled spirits, assisted in removing a security locking device from one of the bottles, and paid for the said bottles. Lasad then completed the transaction by bringing the purportedly stolen bottles of distilled spirits back to the Licensed Premises' storage room, with some of the bottles (from his purchases) eventually making it on the display shelves for sale.

(d). Lasad claimed he did not put the stolen bottles on the display shelves for sale. Even if the undersigned gave Lasad the benefit of the doubt that he did not place the said bottles on the display shelves, Lasad knew the bottles placed in the storage room would end up on the sale display shelving. Lasad admitted that he was well aware that store procedure was to replenish the sale display shelving with bottles from the storage room. When Lasad placed the purportedly stolen bottles of distilled spirits in the storage room, with the full knowledge of the store procedure, he knew, by doing this, the bottles would end up on the sale display shelving. Lasad was ultimately responsible for those four bottles ending up on the sale display shelves.

15. Respondent argued the accusation should be dismissed because the Department improperly and unlawfully accumulated counts to increase the penalty, citing *Walsh v. Kirby* (1974) 13 Cal. 3d 95 [118 Cal. Rptr.1]. Respondent argued the Department acted unreasonably in that once it had notice of the licensee's transgressions it should have acted immediately to counsel the licensee or file the accusation. This argument is without merit and rejected. *Walsh* involved a licensee selling below established "fair trade" pricing on ten occasions. The statute in that case did not provide for revocation or suspension. Instead each offense after the first offense was punishable by a \$1,000 fine. The California Supreme Court held the Department improperly accumulated counts to force the licensee into bankruptcy, resulting in "de facto revocation of the license." (*Walsh, supra* at pp. 105, 106.) *Walsh* is inapplicable to the matter at hand. Here, the Respondent did not accumulate a separate, cumulative penalty for each individual count; the accumulation of violations did not lead to a more severe penalty. Rule 144 recommends a standard penalty for a single offense of gambling, with a payout, at 30 days with 15 days stayed for two years. For one single incident of receiving stolen property Rule 144 recommends revocation. Drinking on premises in violation of conditions is a 5-day suspension. There is no evidence the Department intentionally prolonged its investigation to increase the penalty. In fact, the *Walsh* court observed that it is "prudent to obtain evidence of more than one sale in technical violation of the statute before filing an accusation" so as to establish a pattern of conduct and ensure the initial violations were not a misunderstanding or the rogue conduct of an employee. (*Walsh, supra* at p. 105.)

16. Respondent also argued that Mr. Lasad lacked the specific intent to commit the violations set out in the accusation; that "Mr. Lasad, accused of a specific intent crime, can demonstrate that a mental disorder or an emotional condition can overbear that specific intent." The Respondent argued that the unusual circumstances arising from the robbery at VIP Liquor in 2007, resulted in Lasad's being susceptible to fear and emotional trauma when approached in his own premises by people dressed the same as the robbers of 2007. Respondent opined that an emotional condition can include Post Traumatic Stress Disorder (PTSD). Respondent cited several cases and their holdings as follows: *People v. Reyes* (1997) 52 Cal.App.4th 975 "holding that an emotional state of mind akin to diminished capacity defeats a specific intent crime like receiving stolen property in Penal Code section[s] 664 or 496(a) as pled in this accusation;" *People v. Dishman* (1982) 128 Cal.App. 3d 717 "holds that it is a complete defense to receive stolen property if the accused can demonstrate that his mental state or emotional state was such that he was not intending to commit the crime, but rather was intending to relieve himself of that emotional distress. That is the diminished capacity defense codified in California Penal Code section 28(a);" *People v. Molina* (1988) 202 Cal.App.3d 1168 "holds that if a criminal charge requires a particular mental state, ...the accused cannot be

convicted of such if he can raise doubt as to that element of the charge based on his emotional condition.”

Respondent’s argument in whole is rejected. Respondent presented no credible evidence, whatsoever, that Lasad had a diminished capacity, mental state, mental disorder, emotional condition, or PTSD. Respondent presented no diagnostic reports, expert testimony, or credible evidence otherwise, to show that Lasad was diagnosed with or had any of the alleged conditions, which would relieve him of the specific intent crime as pled in the accusation. The entire record clearly shows that Lasad, in fact, intended to commit the crimes, of which he was accused, and that no emotional condition or mental state, whatsoever, played a part in his intentional commissions of those crimes. Lasad, on the dates in question, was not someone with a diminished capacity or fragile mental state, but was in charge and in control of the illicit transactions, fully aware of what he was engaging in. Respondent’s alleged claims are disbelieved as not credible, with the preponderance of the evidence proving otherwise, as more fully described below.

17. The Respondent further argued Lasad was not culpable for his acts because he was entrapped by the agents’ overbearing conduct of badgering, cajoling, importuning to induce an otherwise law-abiding person to commit the crimes as alleged, citing *People v. Barraza* (1979) 23 Cal.3d 675. Respondent argued that “the crux of the case” is found in Exhibit 6, at page 42, line 25, when Lasad says “no” six, consecutive times, and at other times says “no.” This argument is rejected.

(a). In applying *Barraza’s* test for entrapment, the conduct of the Department agents was not likely to induce a normally law-abiding person to commit the offense(s). The agents did not make an appeal to induce Lasad (or Kemo, for that matter) to commit the act(s) because of friendship or sympathy. Instead, the evidence abundantly makes clear it was Lasad’s desire for personal gain in obtaining the best deal he could get using his strong negotiating skills, as more fully discussed below. Additionally, the agents’ conduct did not guarantee the act was not illegal, the offense would go undetected, or offer an exorbitant consideration, or any similar enticement. In fact, it was the opposite. Agent Holsapple continuously made statements to Lasad and Kemo ensuring they were aware the acts would be illegal, saying that the bottles were “stolen,” “jacked,” and saying, “I just don’t want cops rolling by.”

(b). It was Lasad who tried to ensure the offenses go undetected. Lasad tried to avoid detection, by telling the agents what language to use, to avoid using words that reference the merchandise as stolen, instructing the agents where and how the illicit transactions should take place, most importantly that they occur *away* from and *not in or near* the Licensed Premises. On January 13, 2017, Lasad’s comments include, “I know, but we can’t do it here, you know. Next time you want to do it, we got to do it outside of the store. We can’t do it here,” “anywhere besides the store” “that’s why we got to do it

outside of the store.” (Exhibit 6, page 6 lines 19 to 20, page 9 line 13, page 10 line 11.) On January 27, and February 3, 2017, Lasad instructs the agents to use the right terminology like “bought ‘em for cheap” not “stole ‘em,” and “buy a big load,” not “jack a big load” or “steal a big load.” On January 27, 2017, Lasad directs the agents to a location where there are no cameras in or around the store, “No, no, no. There’s cameras everywhere. Not right here;” he instructs Agent Holsapple to, “Just cover me up here,” and when Agent Holsapple holds up a towel to hide Lasad from inspecting the stolen merchandise Lasad orders, “No, no. That will make people suspicious.” On January 27, February 3 and 22, 2017, Lasad tells the agents they should not come into the store with the stolen merchandise, suggesting to go to a park or the agent’s apartment. He makes other comments, again to keep the deals out of the Licensed Premises, “Okay, just wait for me outside,” “Let’s go to the side, right here,” “Dude, that guy was looking at you. I mean, you should have stayed outside man.” (Exhibit 6 page 17 line 2, page 19 line 12, page 22, line 27.) On February 22, 2017, Lasad instructs Agent Patel, “Put it in the car dude,” trying to conceal one of the distilled bottles Agent Patel removed from the trunk while trying to remove the security device.

(c). The agents’ conduct was not overbearing. In fact, as Department counsel points out, Agent Holsapple was a “polite, fake criminal.” In hearing Agent Holsapple’s credible testimony, reading the transcript, and listening to the recordings, the agents come off as polite and inexperienced, when in fact, it is Lasad who controls the scenarios, as described. (See also paragraphs 14, and 18, through 21.)

- i. On December 17, 2016, after Agent Holsapple purchased two beers from Kemo, he politely asks Kemo if they can drink the beers in the store. Kemo replies no, and the agents comply. It was not until Lasad told them they could drink their beers inside the store as long as they bagged the beers in brown paper bags, that they did so.
- ii. On January 13, 2017, Agent Holsapple courteously helped an unidentified patron, “You dropped your money, bro.” (Exhibit 6, page 6, line 12.)
- iii. On January 27, 2017, Lasad tells the agents, “Okay, just wait for me outside,” while he called Kemo. The agents comply by going outside of the store as instructed, with Agent Patel replying, “Alright, okay,” and Agent Holsapple asking for permission, “We’re going to wait right out front here, okay?” (Exhibit 6, page 17, lines 2, 10 to 11.) Later Lasad says, “Yes, yes. Alright brother, I’m going to get you the money, okay?” Agent Holsapple replies and requests permission again, “Okay. You want me to stay out here, or?” Lasad, “Yeah.” (, Exhibit 6, page 21, lines 14 to 16.)

- iv. On February 3, 2017, Agent Patel asks Lasad for permission to use the slot machine, “can I check if the machine’s on?” Lasad instructs, “Just come back later,” and the agents comply with Agent Holsapple replying, “Alright, we’ll hang out. We’ll be back in a little bit.” (Exhibit 6, page 31 line 26 through page 32 lines 1 to 3.) When the agents return to the Licensed Premises Agent Holsapple almost child-like asks Lasad if they can play the slot machine, “Can we go play now?” Lasad replies that someone is mopping, Agent Holsapple asks Lasad for permission again, “let me play dude,” and Lasad instructs him, “Just come back later when he’s done,” and the agents end up leaving as they are told. (Exhibit 6, page 33 lines 16 to 26.)
- v. On February 22, 2017, when Kemo says he’s not interested in the stolen bottles, Agent Holsapple timidly asks Kemo, “Why not? I got these bottles for you. You don’t have the money or? We skateboarded all the way over. Can you call James?” (Exhibit 6, page 40, line 16 to 17.) The agents then go to the slot machine and Agent Holsapple politely asks an unidentified male patron, “What’s up man? Winning today? No rush, but we’re going to play after you, if that’s okay. Yeah?” (Exhibit 6, page 41, line 5.) What is of import, is that despite Agent Holsapple’s further and continued questioning of Kemo, there is no evidence Kemo found the agent overbearing, as Kemo had no problem rejecting the polite, fake criminal and refusing the opportunity to engage in the illicit transaction. This shows that the conduct of the Department agents was not likely to induce a normally law-abiding person to commit the offense.

(d). Respondent’s counsel pointed out the following conversation on January 13, 2017, as overbearing: Lasad says, “I don’t want to get in trouble though,” and Agent Holsapple replies, “I’m the one who can get in trouble,” with Lasad saying, “Yeah but if I know it’s stolen and I’m buying it I get in trouble too,” and the agent replying, “Fucking...How you going to get in trouble though? How are they going to know?” Despite Agent Holsapple’s statements, the agent does not guarantee the offense will go undetected. Yet, after Agent Holsapple’s statements, Lasad still clearly knows he can get in trouble and still tries to find a way to complete the illicit transactions by suggesting, “that’s why we got to do it outside of the store.” (Exhibit 6, page 10, lines 6 through 11.) Respondent’s further reliance on pointing out six or more “no’s,” which were taken out of context, is without merit and rejected as more fully discussed below.

(e). There are no enticements. In fact, Agent Holsapple refuses to give the pricing Lasad wants for the stolen merchandise, and Lasad himself engages in strong negotiation tactics. On January 13, 2017, the agent offers the Camarenas for \$9.00, and Lasad claims they sell for \$5.99 at Stater Brothers Market, with the agent replying, “No, it’s more than that. It’s like ten bucks.” The agent sticks to his pricing on the various bottles, “I can’t go that low bro,” and later says, “This is my price. This is the lowest I can go bro. Otherwise

I'm not making anything," to which Lasad retorts, "You didn't pay nothing for it." Agent Holsapple replies, "But I got to make something. You're a business man, I'm a business man too," to which Lasad exhorts, "Yeah but alcohol for five bucks? If you compare Popov with Smirnoff," with Agent Holsapple continuing to make the negotiations difficult, "Well fine, if you don't want to take that, you don't have to take that," and Lasad pressing, "I can't pay you the same price for Smirnoff for Popov." Then Lasad continues to negotiate better pricing. (Exhibit 6, page 5 lines 25 to 26, pages 6 to 9 up to line 4.) On January 27, 2017, Lasad again presses, "How much they worth? I want to know the bottle price" (Exhibit 6, page 18, line 25), "Let me add them up," "I want to see the prices dude. Hundred and thirty?" "All the liquor here?" "I just want to see the condition, that's all," "That's three. Let me see your paper again." (Exhibit 6, page 19, lines 1, 5, 21, 23, and 27.)

(f). In the matter at hand, the sworn, direct testimony of Agent Holsapple was corroborated by the recordings and transcript thereof, along with Lasad's own admissions. The preponderance of evidence established that Department Agents Holsapple and Patel's conduct was permissible, in that it did "no more than offer [an] opportunity to" Lasad (and Kemo) to commit a crime. The overwhelming evidence establishes that Lasad was a more than willing partner to the crime(s), and his claims otherwise are disbelieved, as discussed more fully below.

(Credibility)

18. In determining the credibility of a witness, as provided in section 780 of the Evidence Code, the administrative law judge may consider any matter that has any tendency in reason to prove or disprove the truthfulness of the testimony at the hearing, including the manner in which the witness testifies, the extent of the capacity of the witness to perceive, to recollect, or to communicate any matter about which the witness testifies, a statement by the witness that is inconsistent with any part of the witness's testimony at the hearing, the extent of the opportunity of the witness to perceive any matter about which the witness testifies, the existence or nonexistence of any fact testified to by the witness, and the existence or nonexistence of a bias, interest, or other motive.

19. Adam Lasad's contentions that (1) he was "intimidated," "very nervous," "very scared" of the agents because their physical appearance resembled that of the African American men who robbed him on July 3, 2007, at a liquor store, VIP Liquor, he once owned, and it gave him a flashback of the robbery - and that he is emotionally susceptible in similar contexts as the 2007 robbery such "as in this case," (2) he never called the police when the agents were in the Licensed Premises because he was afraid the agents would return and take revenge, key his car, damage the store, or harm him, (3) he did not want to engage in the transactions of stolen alcoholic beverages "at all," (4) the reason he

never told the agents to “get out of his store” was because he was “scared to say it,” because he was “scared of them getting pissed off and do something to [him],” (5) in his opinion the agents induced and badgered him, and their overbearing conduct caused him, to purchase the purportedly stolen bottles of distilled spirits, (6) he would have “never” purchased the purportedly stolen bottles of distilled spirits “unless they acted in way [he] described,” (7) he bought the said distilled spirit bottles, despite the fact he did not need or want them, to get the agents to leave the Licensed Premises, (8) he was indirectly saying things to the agent (such as “no, I don’t want it here,” “just wait for me outside,” “I’m going to call Kemo,”) because either he meant “no” he did not want to engage in the “deals at all,” or wanted them to leave, or was trying to make it more difficult on them so they would leave, (9) that when he said, “You don’t have to tell me that. You bought ‘em for cheap,” he meant he “wasn’t comprehending the fact [Agent Holsapple was] stealing [the distilled spirits],” (Exhibit 6, page 21, lines 3 to 8), (10) his response “We don’t do that,” meant “we don’t buy stolen property,” (Exhibit 6, page 29, lines 10 to 15 and 17), (11) on February 22, 2017, when he said, “No, no, no, no, no. You guys going to get us in trouble like this. You can’t be here, hanging out with all this stuff...I know you don’t care and you say it as it is and you’re stealing it. But we care,” he was trying to tell the agents, “I don’t want to do this anymore, buying the alcohol,” (Exhibit 6, page 42, line 25), (12) on January 27, 2017, when he said, “No, no, no. There’s cameras everywhere. Not right here” he meant, “I don’t want to buy the alcohol from [the agents],” “I was trying to scare them off that there is cameras in here and you are being watched too,” (Exhibit 6, page 18, line 21) (13) he negotiated the pricing of the purportedly stolen bottles of distilled spirits on January 13, 2017, with Agent Holsapple because he felt he “had no option than to buy them to get them out,” if he offered unreasonably low prices “they would lose interest in selling it to me and they would leave the store,” (14) Lasad did not attempt to remove one of the black security devices from a bottle, are disbelieved for the following reasons, which disprove the truthfulness of Lasad’s testimony at the hearing. Lasad presented evasive, inconsistent, self-serving testimony, could not recall material matters about which he testified, and exhibited a bias in the presentation of his testimony as the managing partner of the Licensed Premises subject to revocation. Mr. Lasad used the evasive tactic of repeating portions of the questions posed by Department counsel upon cross-examination and was evasive in his responses.

20. Respondent and Adam Lasad’s various asserted theories, as to why Lasad engaged in the illegal sales transactions, or what he meant by what he said, are contradicted by Lasad’s own admissions and are inconsistent with the clear record and the context of the conversations when read or listened to as a whole (in the transcript of Exhibit 6 and recordings of Exhibit 17, and as credibly testified to by Agent Holsapple), and when not read independently (out of context) as suggested by Respondent’s counsel.

(a). Lasad admits in his testimony that his concern with the agents was that he simply did not want the agents to bring the purportedly stolen bottles of distilled spirits *into* the Licensed Premises and wanted to get the agents and distilled spirits *out of the store* so the purchases and receipt of stolen merchandise could take place *outside* of the Licensed Premises. Lasad's counsel asked Lasad regarding Exhibit 6, page 30, line 19, what he meant when Lasad said "don't bring anything in here." Lasad answered that he meant, "I don't want these individuals to come back and bring the alcohol back *to the store* at all." He further testified upon direct that on February 22, 2017, his intention of going to the Licensed Premises was to get the agents *out of the store*. Upon cross-examination Lasad fully explained his intentions when he told the agents to meet him outside on January 27, 2017, "I was *trying to push them out from inside* the store to leave the store. And I told them I'm going to call Kemo to meet them and to do the deal with them – *this way I can at least have them leave the store* because I had customers come in and out, and their presence was very intimidating. When they would come in they would stay for a long period of time, like they had done previously. *I didn't want it in the store, basically.*" (Emphasis added with italics.)

(b). The context of the conversations confirms Lasad's true intentions, as found in Agent Holsapple's credible testimony, the recordings and transcript (Exhibit 17 and Exhibit 6, at pages 6, 9, 10, 22, 23, 26, 27, 42 and 49), which disprove the intentions Lasad claims. When looking at the context of the conversation, taken as a whole, between Agent Holsapple and Lasad on February 22, 2017, it clearly indicates that when Lasad said, "No, no, no, no, no, no. You guys going to get us in trouble like this. You can't be *here*, hanging out with all this stuff..." Lasad's "no's" related to his concern about engaging in illicit transactions *in or around* the Licensed Premises, and had nothing at all to do with his trying to tell the agents, "I don't want to do this anymore, buying the alcohol," as he claims. Lasad's location-related reply was in response to Agent Holsapple's suggestion that they conduct the transaction "*here* in the corner" just outside the Licensed Premises. (Exhibit 6, page 42, lines 24 through 26.)

(c). Over the course of several days, Lasad's statements to the agents are consistent with his true intentions that the deals not occur at the Licensed Premises. For example, on January 13, 2017, Lasad says, "I know, but we can't do it *here*, you know. Next time you want to do it, we got to do it *outside of the store*. We can't do it *here*." (Exhibit 6, page 6, lines 19 and 20.) When Agent Holsapple asked Lasad where he wants to conduct the transaction of stolen distilled spirits, Lasad tells him, "Well, *anywhere besides the store*." (Exhibit 6, page 9, lines 12 and 13.) Lasad again persists later, "that's why we got to do it *outside* of the store." (Exhibit 6, page 10, line 11.) On January 27, 2017, Lasad insists, "just wait for me *outside*." (Exhibit 6, page 17, line 2.) "Dude, that guy was looking at you. I mean, you should have stayed *outside* man." (Exhibit 6, page 22 line 27.) On February 3, 2017, Lasad again insists, "But I don't want to do any deals *here*." (Exhibit 6, page 26 line 3.) "Yeah, but *not here*." "Yeah, *not here* though." (Exhibit 6, page 27, lines

3 and 5.) "...then we'll do the exchange *outside*" (Exhibit 6, page 28 line 23.) Again, on the last day, February 22, 2017, Lasad instructs the agents, "Okay meet me *at the park* down the street," and when Agent Patel says, "We're already here dude," Lasad replies, "I can't. I *can't do it here*. I told you that. You don't want to do it then." Agent Holsapple complains, "Dude, that's kind of far bro," and Lasad replies, "Well, I *can't do it here*. Like I said, I told you before." Agent Holsapple suggests, "Can we go in the back here?" Lasad replies, "No. The park." Later Lasad orders, "I don't want you walking *into* the store, you know call the store..." (Exhibit 6, page 44, lines 5 to 7 and 11 to 14, page 49 line 9.)

21. In contrast to Lasad's claims, his own words and actions over the multiple day investigation reveal that Lasad was not induced to commit the crimes, and not "intimidated," "very nervous," or "very scared" of the agents. His statements and actions conflict with his claim he did not want to engage in the illicit transactions "at all." The abundant evidence in the record shows Lasad was, in fact, the one who was in control, in charge, and was not induced, but wanted to engage in the illegal transactions. Lasad showed himself to be a strong negotiator, and willing partner in crime. On each occasion Lasad pressed Agent Holsapple on the pricing, made sure he was getting the best deal he could by negotiating down the pricing, inspected the merchandise, counted the number of bottles over and over again (at one point asking where the fourth bottle was), repeatedly insisted on seeing the price list, and controlled how the deals went down, including, but not limited to planning the locations for the payment and receipt of stolen merchandise. Examples overflow in the record:

(a). On January 13, 2017, Lasad says, "If I'm going to do this, I'm looking at the prices seeing how much we're buying them for to see if it works for me." After Lasad is told the Camarena will cost \$9, Lasad says Stater Brother's sells Camarena for \$5.99. When Agent Holsapple explains that he cannot go any lower on the price, "Otherwise, I'm not making anything," Lasad replies, "You didn't pay nothing for it." Lasad further negotiates, "I can't pay you the same price for Smirnoff for Popov," and later negotiates, "But listen, I can't pay you.. .for Jack Daniel, I'll pay you ten dollars a bottle." When Lasad allegedly does not want to participate in the illicit transactions "at all," just after Lasad purchases four bottles of purportedly stolen distilled spirits, Agent Holsapple asks Lasad if he wants more stolen bottles because his friend works at CVS. Lasad replies, "If he can get Jack Daniel's. Jameson. Can he get Jameson?" Again, on January 27, 2017, when Lasad allegedly does not want to participate in the illicit transactions "at all," he says, "Maybe I'll meet you somewhere. But how much do you think you have?" "How much they worth? I want to know the bottle price." Then after Agent Holsapple gave pricing on the different distilled spirits Lasad says, "Let me add them up," then pressed to see the price list. At another point Lasad wants to see the condition of the bottles and insists to see the price list again. Lasad looks through the backpacks and duffle bag of purportedly stolen distilled spirits, inspecting the bottles and counting them over and over

again. After paying for the 17 bottles of various distilled spirits Lasad puts in an order for Grand Marnier, saying “I’ll buy as many as you get.” He then insists the next exchange will take place somewhere other than at the Licensed Premises. On February 3, 2017, Lasad tells Agent Holsapple that the prices he gave him for the stolen merchandise was “Not too bad,” and tells him he’s willing to do future deals if, “You keep the prices like that.” Lasad later tells the agents he’s willing to pay \$30 for a carton of Marlboro Reds cigarettes and \$25 for a carton of Camel cigarettes. After Lasad finishes putting in his order for distilled spirits with Agent Holsapple and correcting Agent Holsapple on what terminology to use, Agent Patel chimes in, “He means ‘free-ninety-nine.’ Free ninety-nine.” Lasad then asks Agent Patel, “You do that too? You do free ninety-nine?” Lasad then places an order for varying cigarettes with Agent Patel and tells him what he is willing to pay for them. This is not the conduct of someone who does not want to engage in the illegal transactions “at all.”

(b). Lasad was clearly in charge telling the agents how the illicit deals would proceed, with the agents submitting to Lasad’s demands. On January 13, 2017, Agent Holsapple says, “Okay. I’ll see what I can get. Um fucking, want to give me your number or..,” Lasad answers, “No, you just...,” Agent Holsapple, like a child complains, “Cus I don’t want to come by with a bunch of shit and you’re like, nah, it’s not good enough or it’s not what you want or I can’t...,” Lasad directs the agent, “Nah, nah, nah, nah. Once you get it, we can...you can come by the store...,” Agent Holsapple interjects and Lasad rebukes him, “You’re not listening to me” and Agent Holsapple complies, “Okay, go ahead. Go ahead,” to which Lasad instructs, “Once you get it, you come by here,” “Kemo will let me know or I’ll let him know and you can meet with him or me,” Agent Holsapple says, “Okay,” and Lasad makes sure he understands saying, “Okay?” to which Agent Holsapple again submits “Alright. What’s your name bro?” and Lasad continues his instructions, “Like if I’m here, you can go in the...I’ll call Kemo. I’ll send you where he’s at. You can meet up with him and he’ll pay you wherever he’s at.” Again, Agent Holsapple, complies, “Okay,” to which Lasad makes sure Agent Holsapple understands, “Okay?” and Agent Holsapple answers, “Alright. My name’s Jeff, dude,” and Lasad says, “Jeff. Good to meet you, man.” Lasad is clearly not afraid of these agents and is the one taking control.¹⁹ On February 3, 2017, Lasad again instructs Agent Holsapple, “Don’t come with a hundred bottles. No. No, you let us know you have a hundred bottles. You come like this. No bags, no nothing. You say I have a hundred bottles. I tell you okay, we meet...” “And then I’ll pay you. We’ll do the deal here and then we’ll do the exchange outside.” Agent Patel added, “Like on the side?” Agent Holsapple asks, “Like

¹⁹ (Exhibit 6, page 6 lines 1 to 9, 19 to 21, page 7 lines 5 to 27, page 8 lines 1 to 9, 13 to 27, page 9 lines 1 to 4, 7, 8, 12 to 17, page 10 16 to 17, page 11 lines 11 to 27, page 12 lines 1 to 21, page 17 line 2 to 3, page 18 lines 16 to 23, 25, page 19 line 1, 3, 5, 11 to 15, 23, 27, page 20 lines 4 and 5, 8 to 12, 22 to 24, page 21 lines 3 to 12, page 22 line 27, page 23 line 14, page 24 lines 1 to 16, page 26 line 3, page 27 lines 3 to 7, page 28 lines 16, 19 to 27, and continuing to page 29, lines 1 to 22, page 30 lines 13, 17 to 20, page 32 lines 1 and 2, page 42 lines 24 to 27, page 43 lines 1 to 27, page 44 lines 3 to 26, page 45 lines 1 to 25, page 46 lines 26 and 27, page 47 lines 12, 23 to 25, page 48 line 12, page 49 lines 1 to 18.)

on the side again. Yeah?” Agent Patel asks for permission, “Is that cool? By your truck?” Lasad directs them, “No, no, no. What I’m saying is, you come in, you say, ‘I have a hundred bottles.’ You have a list of what you have. You have the prices,” “Then we’ll figure how much it’s going to be and we’ll go meet somewhere. You know what I mean?”

(c). Lasad’s statements to the agents contradict his claims he was induced or had no other option than to engage in the illegal transactions. For example, on February 3, 2017, when Agent Holsapple asked Lasad if he had any friends at other stores who might be interested in purchasing the stolen distilled spirits, it is as if Lasad does not want to lose out on acquiring the stolen bottles. Lasad inquires, “You have a lot?” to which Agent Holsapple says his buddy would get, “like maybe like a hundred bottles.” Lasad tells Agent Holsapple, “We’ll buy it.” Agent Holsapple replies, “You will? ...I don’t want to bring stuff you have a lot of and then, you know what I mean. I’m trying to get rid of it all. So if you have friends...” and Lasad perseveres, “I told you already, I told you. We’ll get Fireball, Jack Daniel, ...” This was Lasad’s opportunity, yet again, to say no, of which he was fully capable of doing. He was not induced by the agent, but wanted to take full advantage of the stolen merchandise offered rather than his friends getting in on the deal. Lasad persists by placing his order, “We’ll get Fireball, Jack Daniel,...What do you call that thing? Uh, Grand Marnier,” “Jameson.” (Exhibit 6, page 26, lines 12 to 25.) Agent Holsapple then says, “Okay. Yeah, yeah, yeah. Cus’ I’m going to see if I can get a ride next time, that way I can put it all in a truck.” Lasad twice tells Agent Holsapple, “Yeah, but *not here*” (Exhibit 6, page 27, lines 1 to 5.) This shows Lasad controlling the circumstances to make sure future transactions occur at a location other than the Licensed Premises. If Lasad was afraid of the agents and did not want to purchase the stolen bottles, he would not pursue further illicit purchases, as he did.

(d). Further examples Lasad was not induced, was, in fact, in control and unafraid of the agents, occur on February 22, 2017. It is incredulous that Lasad would bring his 74 year old father with him to a secluded park to meet with two “low-lives,” of whom Lasad is supposedly “very scared” of and thinks will harm him. Lasad’s claims are simply not credible. Then when Agent Holsapple tells Lasad to leave the trunk open because he is worried Lasad will take off with the bottles without paying, Lasad laughs at and rebukes the agent, saying, “Let me see your paper. Dude I don’t want people to see man. Come on now. Grow up. Give me the paper.” Lasad’s conduct of laughing at and reprimanding the agent, telling him to “grow up” does not reflect someone who is afraid or scared. Lasad’s actions and statements wholly conflict with his claim he is “very nervous,” “very scared” of and intimidated by the agents. Again, on that same date, Lasad continues to be in charge, not afraid to order the agents around, when he asks Agent Holsapple, “Do you have a house?” and then provides instruction on how future transactions should take place and when they can contact Lasad in the Licensed Premises. “Exactly, so keep your shit in the apartment. C ome by the store and say hey I got some shit, do you want it?”

We'll make an appointment and we'll go and get it." "I don't want you walking *into the store*, you know call the store, call something you know what I mean? But if I'm not there you know...I'm mostly there in the mornings." "...Once you have a bigger amount or something keep it in your apartment. Maybe we'll go to the apartment and get it." (Exhibit 6, page 49, lines 4 through 13.)

(e). The record is replete with examples of conflicts with Lasad's claims that he is afraid of the agents or thought they would hurt him. In fact, not only is Lasad in charge ordering the agents around, he places himself in vulnerable positions, and either laughs at or with the agents while in their presence. On January 13, 2017, it is unconvincing that Lasad is afraid of Agent Holsapple when near the end of their conversation Lasad tells him, "Jeff. Good to meet you, man." On January 27, 2017 and February 22, 2017, when Lasad bends down with his head down, and turns his back on the agents, respectively, in both instances, he puts himself in a vulnerable position, to thoroughly inspect the stolen merchandise. The photographs depict Lasad in close proximity with the agents. (Exhibits 11 and 15.) When Agent Holsapple offers to hold up a towel "so the cops don't see," (Exhibit 11) Lasad replies, "No, no. That will make people suspicious," and chuckles. (Exhibit 17.) The January 27, 2017, photographs depict Lasad taking the bags of bottles to his truck (Exhibit 11), turning his back on the agents, the two persons of whom he is allegedly terrified. Again, on February 3, 2017, Lasad was clearly not afraid of the agents telling them to "Just come back later when he's done" mopping the floor, about 10 to 15 minutes, then they can play the slot machine. Later that evening Lasad watches as Agent Holsapple plays the slot machine. This is not the conduct of someone who is "intimidated" and "very scared" of the agents, thinking they might harm him or the store.

(f). On February 3, 2017, while Lasad is giving instructions to the agents how the next transaction will proceed, a female enters the premises requesting a bathroom. Lasad is so comfortable with himself and the agents around him that he jokes with the lady, telling her she can use the tree outside if she has to go to the bathroom, and Lasad laughs heartily with the agents. (Exhibit 17.) At one point Lasad laughs with Agent Holsapple at an inane response Agent Patel made, "He said a lot." (Exhibit 17, in conjunction with Exhibit 6 page 26 line 17.) On February 22, 2017, Lasad laughs at and makes fun of Agent Holsapple, while at the park, after Lasad counted the bottles one last time and was about to shut the trunk Agent Holsapple says, "Whoa, whoa, whoa, whoa. I want to make sure you don't take off with my shit dude." Lasad laughs and assures him he was not going anywhere. Agent Holsapple laughs and replies, "You're going to close the trunk and fucking take off with my shit. Leave it open until I get my money." Lasad laughs again and, undaunted by the agent's comment, asks to see the agent's list again. (Exhibit 17.) Lasad makes fun of Agent Holsapple at another point, telling him to grow up. This is not the conduct of a man afraid of the agents, but someone who is clearly comfortable around them.

(g). Lasad's claims he was "intimidated," "very nervous," "very scared" of the agents, which was also the reason he did not tell the agents to leave the Licensed Premises and did not call the police are disproved by the entire record, his own actions, and admissions as discussed above. If Lasad was as afraid of these two agents as he claimed, he had ample opportunity (from December 17, 2016, to February 22, 2017) to notify the police of his fears and concerns about the illegal transactions that he claimed he did not want to engage in "at all." Lasad testified it took the police 20 to 30 minutes to arrive after being called. With Lasad telling the agents how and where he wanted to proceed with the transactions, he could have easily informed the police when and where the illegal transactions would take place to have these two "low-lives," of whom he was allegedly afraid, arrested. Based on Lasad's own testimony, it would not have been difficult for Lasad to alert the police to the agents' actions, with his five years' experience serving as a campus security officer observing and reporting *anything* out of the ordinary without fear or being scared and despite any potential nervousness related to the incident. Lasad admitted, "I don't think that would scare anybody to report something they're seeing." On February 22, 2017, when Lasad was not at the Licensed Premises and Kemo called him to notify him that the agents were at the store, the agents were instructed to wait for Lasad, and wait they did, for quite a while. Lasad had ample time to call the police and arrange for the police to apprehend the "low-lives" he was supposedly "very afraid" of and with whom he did not want to engage in illegal sales transactions "at all."

(h). Lasad's claims that he did not need or want the stolen product "at all," did not want to engage in the illicit transactions "at all," that he was "shocked" the agents brought stolen product to him for sale, that "We don't do that," meant "we don't buy stolen property," are further contradicted by his own testimony. Lasad admitted under cross-examination that he knew the bottles of distilled spirits offered to him for sale on January 13, 2017, January 27, 2017, and February 22, 2017, were all stolen. Despite his conflicting testimony that he did not want or need the stolen product, on January 13, 2017, in relation to Agent Holsapple's question, "How many bottles you want?" Lasad admitted upon cross-examination to encouraging the agents to get, "As many as you can get, we can buy it. What can you get?" (see Exhibit 6, page 11, line 6 & 7). Lasad soon after that admission contradicted himself again when Department counsel queried, "You're telling them as many as you can get, we will buy them, even though you didn't need these bottles?" to which Lasad replied, "No." Lasad simply could not keep track of his inconsistencies, which multiplied with the giving of his testimony. Upon cross-examination when directed to page 25, lines 19 and 20, of Exhibit 6 (at which point Agent Holsapple had asked Lasad, "So those bottles selling well or?" and Lasad replied, "Oh yeah. It sells like every now and then it sells. You know,") Lasad was asked whether the bottles referred to in those statements were the bottles he purchased from Agent Holsapple, and Lasad replied, "No." Yet, shortly thereafter, Lasad contradicted himself and admitted that the referred to bottles were, "The ones [Agent Holsapple] brought me" and then added a self-serving statement, "or just the sales in general." Again, all one

needs to do is look at the context of the conversations, which are clear in and of themselves (as corroborated through the agent's credible testimony, the transcript and recordings). Just a few sentences further in the same conversation where Lasad said, "You keep the prices like that and we can...", when asked by Department counsel to what Lasad was referring, Lasad admitted, "I don't know, the prices he[Agent Holsapple] offered me or the prices I negotiated." This confirms that Lasad's statement at page 25, line 20 referred to the purportedly stolen bottles of distilled spirits. Lasad then claimed he did not remember. In looking at the context of the conversations, each time Agent Holsapple spoke to Lasad about bottles they spoke of the stolen merchandise the agent was offering for sale. It makes no sense, given the context of the conversations, that Agent Holsapple would be asking Lasad about the general sales of the bottles in the store rather than the sales of the stolen bottles Lasad purchased.

22. There are numerous other examples of Mr. Lasad's inconsistent testimony. For example, upon cross-examination, when Mr. Lasad claimed he told the agents to leave "on several occasions," the Department attorney pressed him whether he used those words, and he admitted he did not use those words and did not tell the agents to leave. At another point, Lasad admitted that in his earlier testimony he claimed he bought the distilled spirits despite the fact he did not need them. Immediately thereafter, Lasad presented conflicting testimony saying, "I didn't need them because I have that product. I need these product to have extra product in the store. I didn't look for them. I didn't search for stolen bottles, that's what I mean." Department counsel then had Lasad review the transcript (Exhibit 6, page 46 lines 20 to 21, and page 47, lines 19 and 25) of part of the conversation at the park on February 22, 2017, between Lasad and the agents. Lasad admitted the conversation related to using a device to remove the security caps from the bottles; that he asked the agents if it had instructions, "Because they had difficulties – both agents, they had difficulties removing the security devices. And we were waiting for, I guess, a long period of time, maybe, like 10 minutes or more. I don't remember. And they were battling with the bottles to open them between both of them." Lasad then admitted to saying, "Do it. Do it. You know." Upon further cross Lasad explained what he meant by, "Do it. Do it," - that "I was telling them to – one of them was using the device and the other one was watching, so I asked the other one, you know, do it, why don't you do it." Department counsel then asked why Lasad was encouraging the agents to remove the security caps, to which Lasad replied, "What else do you want me to do?" When asked again why he was encouraging the agents to remove the security caps, Lasad changed his testimony and said he was not.

23. Lasad could not recall material matters about which he testified. Upon cross-examination, despite reading the transcript of Exhibit 6, at page 25, lines 19, 20 and page 26, line 3, and admitting the conversation referred to the purportedly stolen bottles of distilled spirits, he claimed he could not remember. He could not recall how much money he gave to Agent Holsapple for the purchase of the purportedly stolen bottles of distilled

spirits, that he did not want or need. While he did not want or need the distilled spirits, he engaged in these illegal transactions, not once, not twice, but on three separate dates. When asked upon direct examination whether Lasad ever put the purportedly stolen bottles on the Licensed Premises' shelving display for sale, Lasad replied that he did not recall. He then acknowledged that the said bottles "perhaps" ended up on the display shelves. He then changed his testimony, with a self-serving statement, when asked again by his attorney whether he placed them on the display shelves, and Lasad allegedly remembered, and responded, "No." Lastly, when Lasad was asked by his own counsel whether he recalled the date he first saw the agents in the Licensed Premises, Lasad said he did not recall. This is extremely telling, because if Lasad was so traumatized by the presence of the agents, that it made such an emotional impact on him as he claimed, then it is more probable he would recall the date he first saw the agents in the Licensed Premises who so fiercely traumatized him.

24. Agent Holsapple's testimony is found to be the more credible over Lasad's contradictory, self-serving and evasive testimony. Agent Holsapple had a clear recollection of material matters about which he testified. He presented clear, consistent, sworn, direct testimony that was corroborated by the recordings and transcript, as well as Lasad's own admissions. Furthermore, Agent Holsapple credibly testified that on February 22, 2017, he did nothing to intimidate Kemo, he did not raise his voice at him, make any menacing gestures toward him, display any weapons, threaten him with future harm or threaten to destroy the store; his tone of voice when speaking with Kemo was a pleasant, soft, low, conversational tone. Agent Holsapple further credibly testified that during all of his interactions with Lasad, Agent Holsapple never threatened him, made any menacing gestures toward Lasad, never displayed a weapon to Lasad, and never threatened to destroy the Licensed Premises. Agent Holsapple further credibly maintained that his tone of voice while speaking with Lasad was a pleasant, low, conversational tone. When Agent Holsapple interacted with Lasad on the various above-referenced dates, Lasad was, at some point while inside the Licensed Premises, standing behind the sales counter, which is depicted in Exhibit A, and Agent Holsapple was on the customer side of the sales counter.

PENALTY

The Department requested the Respondent's license be revoked based on his receiving purportedly stolen property, Respondent's short licensure and the fact that Mr. Lasad, managing member of Narges, LLC, lied under oath at the hearing.

The Respondent argued the accusation should be dismissed based on the Department's improper accumulation of counts, entrapment and Respondent's lack of specific intent to commit the alleged violations. The Respondent argued that should the accusation be sustained, a mitigated penalty is appropriate given Mr. Lasad's documented Lead's

training, and Respondent's discipline free history for a few years with three successful preventions of sales of alcoholic beverages to minor decoys (two at the Licensed Premises and one at Lasad's former licensed premise, VIP Liquor).

Rule 144²⁰ provides for a 5-day suspension for first-time violations of section 25612.5(c)(3). For possession of a slot machine, the recommended penalty is 15 days. Rule 144 provides for a 30-day suspension, with 15 days stayed for a period of two years, for violations of 330.1 which include a payoff. It further provides for revocation for one single incident of the Respondent/Licensee's receiving stolen property. The penalty recommended herein complies with rule 144.

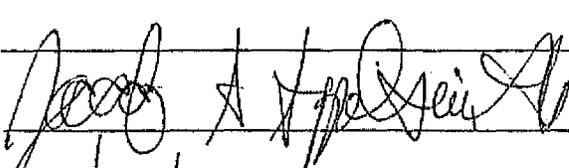
ORDER

Counts 1 through 11 are sustained. In light of these violations, the Respondent's off-sale general license is hereby revoked.

Dated: March 9, 2018



D. Huebel
Administrative Law Judge

<input checked="" type="checkbox"/> Adopt
<input type="checkbox"/> Non-Adopt: _____
By: 
Date: <u>4/20/18</u>

²⁰ All rules referred to herein are contained in title 4 of the California Code of Regulations unless otherwise noted.