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

AB-9825
File: 47-517688; Reg: 18088224

TODD JASON GIBBONEY,
dba Remos Stop In
2981 South La Cadena Drive
Colton, CA 92324,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Alberto Roldan

Appeals Board Hearing: February 6, 2020
Los Angeles, CA

ISSUED FEBRUARY 18, 2020

Appearances: *Appellant:* Roger Jon Diamond, as counsel for Todd Jason Gibboney,

Respondent: Sean Klein, as counsel for the Department of Alcoholic Beverage Control.

OPINION

Todd Jason Gibboney, doing business as Remos Stop In (appellant), appeals from a decision of the Department of Alcoholic Beverage Control[1] revoking its license because appellant's employees permitted patrons to possess controlled substances in the licensed premises, and permitted the sale, or negotiation for sale, of controlled substances in the licensed premises, in violation of Health and Safety Code sections 11350, 11351, and 11352.

[1]The decision of the Department, dated June 25, 2019, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general eating place license was issued on January 10, 2012. Appellant previously held an on-sale beer and wine license at the licensed premises beginning on May 1, 2005. Neither of appellant's licenses have any record of prior disciplinary action.

On October 25, 2018, the Department instituted a 14-count accusation against appellant, charging that on five separate occasions – March 2, 2018, March 9, 2018, April 4, 2018, May 22, 2018, and May 25, 2018 – appellant's employee, Kristin Joy Winant (Winant), possessed and sold[2] controlled substances in the licensed premises.

At the administrative hearing held on March 21, 2019, documentary evidence was received, and testimony concerning the violations charged was presented by Department agents Jeff Holsapple and Mehul Patel. Appellant testified on his own behalf.

Counts 1-2:

Evidence established that on March 2, 2018, Agents Holsapple and Patel arrived at the licensed premises in an undercover capacity and sat at the bar. Agent Holsapple began a casual conversation with Winant, who was serving as a bartender. Agent Holsapple asked Winant if she knew where he could get some cocaine. Winant explained that she had already sold all her cocaine earlier that day but identified another patron as someone who had cocaine. Winant walked over to the patron and spoke with him briefly.

[2] Counts 1 and 2 of the accusation alleged that, on March 2, 2018, Winant permitted another patron to possess cocaine in the licensed premises and acted as an aider and abettor in the selling of said cocaine.

After speaking with Winant, the patron approached the agents and asked if they wanted cocaine and placed a small baggie containing a white powdery substance on Agent Patel's lap. The patron told the agents they could sample it for free in the bathroom. Agent Holsapple asked Winant if it was okay to use cocaine in the bathroom of the licensed premises and she responded that it was. Agent Holsapple took the substance (later tested positive as cocaine) to the restroom and photographed it. Agent Holsapple returned to the bar and was told he could keep the cocaine by the patron. Winant later confirmed that she provided the cocaine to the patron earlier that day. Winant exchanged numbers with the agents and discussed future cocaine purchases.

Counts 3-5:

On March 9, 2018, Agent Holsapple texted Winant and agreed to purchase $180 worth of cocaine from her at the licensed premises. When agents Holsapple and Patel arrived, they sat at the bar where Winant was bartending and ordered beers. While they were waiting, Agent Holsapple placed $180 dollars under the napkin in front of him and gave it to Winant. She confirmed the money was there and took possession of it. Winant then went outside and returned a short time later. She placed a plastic bag with cocaine on Agent Holsapple's lap. The agents paid for the beers, thanked Winant, and left the licensed premises with the cocaine.

Counts 6-8:

Agents Holsapple and Patel returned to the licensed premises on April 4, 2018. Agent Holsapple told Winant the previous day that he was looking to buy more cocaine. Winant approached the undercover agents and told them that she had cocaine for

purchase. Agent Holsapple gave Winant $180 in cash and Winant returned to the fixed bar area. Agent Patel then approached the fixed bar and purchased two beers from Winant with a $20 bill. He received his beers but did not receive any change. Later, Winant approached Agent Patel and put his change, along with a clear plastic baggie containing cocaine, in his jacket pocket. The agents said goodbye to Winant and left the licensed premises.

Counts 9-11:

On May 22, 2018, the agents returned to the licensed premises and sat at the fixed bar where Winant was bartending. Winant told Agent Holsapple that she could get them cocaine if they wanted it. Agent Holsapple agreed and placed $180 in cash under a coaster on the bar. Winant exited the bar and returned a short time later. She approached the agents and placed a folded $10 bill in front of them. Agent Holsapple unfolded the bill and found a baggie with a powdery substance confirmed later to be cocaine. The agents left after thanking Winant and saying goodbye.

Counts 12-14:

Agents Holsapple and Patel returned to the licensed premises on May 25, 2018 and observed Winant to be working. She came over to the agents and hugged them, telling them that she should have cocaine shortly. The agents ordered and were served beers by Winant as they waited. Again, Agent Holsapple placed $180 beneath a coaster and showed Winant. Winant took the money and walked towards the kitchen area of the licensed premises. She returned a short time later with a clear plastic baggie and put it in Agent Holsapple’s jacket. Winant told the agents that the

substance, later confirmed to be cocaine, was provided by another employee at the licensed premises.

On April 11, 2019, the administrative law judge (ALJ) submitted his proposed decision sustaining all counts of the accusation and recommending that the license be revoked. The Department adopted the proposed decision in its entirety on June 13, 2019 and issued a Certificate of Decision on June 25, 2019.

Appellant then filed a timely appeal contending that the penalty of revocation violated the Eighth Amendment of the United States Constitution because there is no evidence appellant was involved in, or had personal knowledge of, the drug transactions at the licensed premises.

DISCUSSION

Appellant did not submit an opening brief. However, in his Notice of Appeal, appellant contends that "it was a violation of the Eighth Amendment prohibition against excessive punishment to revoke [appellant's] ABC license when there was no showing of any action on his part that would justify any discipline." (Appellant's Notice of Appeal, at p. 1:20-23.) Appellant further claims that "it is excessive for the state government to totally destroy a business and a Licensee based upon misconduct of others." (*Id*. at pp. 1:24-2:1.)

As a preliminary matter, the Appeals Board is not required to make an independent search of the record for error not pointed out by appellant. It was appellant's duty to show the Board that some error existed. Without such assistance, the Board may treat unsupported and unasserted contentions as waived or forfeited. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852 [57 Cal.Rptr.3d

363, 377] ["When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived."]; *Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 52 [183 Cal.Rptr.3d 654] ["It is the responsibility of the appellant … to support claims of error with meaningful argument and citation to authority. [Citations.] When legal argument with citation to authority is not furnished on a particular point, we may treat the point as forfeited and pass it without consideration. [Citations.] In addition, citing cases [or statutes] without any discussion of their application to the present case results in forfeiture"].)

Further, this Board disregards the arguments appellant raises in his Closing Brief, and the additional argument it raised at oral argument. Appellant's attempt to provide a complete argument in its closing brief, after failing to provide an opening brief, is "insufficient to preserve the issue for review." (*Multani v. Knight* (2018) 23 Cal.App.5th 837, 853 [233 Cal.Rptr.3d 537, 551], review denied (Aug. 8, 2018.)

Nevertheless, the Board will address appellant's narrow claim that the Eighth Amendment prohibits him from being punished for his employee's (Winant) successive cocaine sales at the licensed premises.

California Business and Professions Code section 24200.5(a) provides, in relevant part:

> [T]he department shall revoke a license upon any of the following grounds:
>
> > (a) If a retail licensee has knowingly permitted the illegal sale, or negotiations for the sales, of controlled substances or dangerous drugs upon his or her licensed premises. *Successive sales, or negotiations for sales, over any continuous period of time shall be deemed evidence of permission*.

(Bus. & Prof. Code § 24200.5(a), emphasis added.)

In *Endo v. State Bd. of Equalization*, the court of appeals interpreted the latter sentence of section 24200.5(a) as a "statutory presumption that [successive] sales over any continuous period of time shall be deemed evidence of such permission" and, therefore, furnished substantial evidence "that the licensee did 'knowingly permit' the illegal sale of narcotics upon her licensed premises." (*Endo v. State Bd. of Equalization* (1956) 143 Cal.App.2d 395, 399 [300 P.2d 366], internal quotations omitted.) In a footnote, the court emphasized that section 25200.5(a) "is in form at least a *legislative* mandate," one that the Board may not even have authority to review. (*Id.* at p. 399, fn., emphasis in original.) Ultimately, the court held that a statutory presumption — as opposed to an inference — cannot be "dispelled by evidence produced by the opposite party." (*Id.* at p. 400, citing *Engstrom v. Auburn Auto. Sales Corp.* (1938) 11 Cal.2d 64, 70 [77 P.2d 1059].)

In *Kirchhubel v. Munro* (1957) 149 Cal.App.2d 243, 249 [308 P.2d 432], the court reversed the holding in *Endo*, stating that successive sales are not conclusive, but "… merely evidence of permission which may be overcome by a contrary showing." Though the petitioners in that case presented evidence which created a conflict with the presumption, "[t]he resolving of that conflict was a matter for the Department of Alcoholic Beverage Control, whose action thereon cannot be upset … if there is substantial evidence to support it." (*Ibid.*, citing *Covert v. State Bd. of Equalization* (1946) 29 Cal.2d 125 [173 P.2d 545].)

The *Kirchhubel* court also noted the substantial policy justifications for such a presumption:[3]

> [T]here is a natural and rational evidentiary relationship between a showing that there have been successive sales of narcotics over a continuous period on licensed premises and the very natural conclusion that the sales could not have continued without the implied or express consent of the licensee. Moreover, a licensee holds his liquor license with the knowledge that he must effectively police his premises against successive sales of narcotics … . Such a situation cannot occur if the licensee is vigilant in protecting his license and is at least as interested in protecting the public welfare and morals as he is in making money.

(*Kirchhubel*, *supra*, 149 Cal.App.2d at 249.)

In sum, the Legislature provided, in the second sentence of section 24200.5(a), a statutory presumption that successive sales of controlled substances at a licensed premises establishes permission by the licensee. Although this presumption may be overcome, the Department found that appellant did not successfully rebut the presumption in this matter, primarily because appellant did not take sufficient measures to combat drug activity. (Conclusions of Law, ¶¶ 13-16.) In any event, this point is moot, as appellant does not disagree with the Department's findings. Rather,

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[3] Additionally, a licensee could escape discipline simply by absenting himself from the premises and maintaining a practiced state of ignorance. In a case involving after-hours sales, the court of appeals observed:

> The licensee, if he elects to operate his business through employees must be responsible to the licensing authority for their conduct in the exercise of his license, else we would have the absurd result that liquor could be sold by employees at forbidden hours in licensed premises and the licensee would be immune to disciplinary action by the board. Such a result cannot have been contemplated by the Legislature.

(*Mantzoros v. State Bd. Of Equalization* (1948) 87 Cal.App.2d 140, 144 [196 P.2d 657].)

appellant's Notice of Appeal implies that his sole contention on appeal is that Business and Professions Code section 24200.5(a) and its progeny are unconstitutional.

This Board has repeatedly said that it does not have the authority to nullify state statutes or disregard relevant caselaw on constitutional (or other) grounds. This Board's scope of review is limited; it may only review a Department's decision based upon "insufficiency of the evidence, excess of jurisdiction, errors of law, or abuse of discretion." (*Boreta Enterprises, Inc. v. Dept. of Alcoholic Bev. Control* (1970) 2 Cal.3d 85, 95, [84 Cal.Rptr. 113].) Appellant is asking this Board to step outside its permissible scope of review and hold, as a matter of first impression, that Business and Professions Code section 24200.5(a) is unconstitutional and violates the Eighth Amendment. Yet appellant fails to cite any authority, and this Board knows of none, that allows the Board to do so. Absent this express authority, the Board cannot act.

ORDER

The decision of the Department is affirmed.[4]

SUSAN A. BONILLA, CHAIR
MEGAN McGUINNESS, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

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

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

APPENDIX

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

IN THE MATTER OF THE ACCUSATION AGAINST:

TODD JASON GIBBONEY
REMOS STOP IN
2981 S. LA CADENA DR.
COLTON, CA 92324

ON-SALE GENERAL EATING PLACE - LICENSE

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

RIVERSIDE DISTRICT OFFICE

File: 47-517688

Reg: 18088224

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 June 13, 2019. Pursuant to Government Code section 11519, this decision shall become effective 30 days after it is delivered or mailed.

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

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

On or after August 5, 2019, a representative of the Department will contact you to arrange to pick up the license certificate.

Sacramento, California

Dated: June 25, 2019

Matthew D. Botting
General Counsel

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

IN THE MATTER OF THE ACCUSATION AGAINST:

Todd Jason Gibboney dba: Remos Stop In 2981 S. La Cadena Dr. Colton, California 92324 Respondent	File: 47-517688 Reg.: 18088224 License Type: 47 Word Count: 24,858 Reporter: Marie C. Sanchez-CSR #13809 Kennedy Court Reporters, Inc.
On-Sale General Eating Place License	**PROPOSED DECISION**

Administrative Law Judge Alberto Roldan, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter at San Bernardino, California on March 21, 2019.

Sean Klein, Attorney, represented the Department of Alcoholic Beverage Control (Department).

Roger Jon Diamond, Attorney, represented Respondent Todd Jason Gibboney (Respondent) who was also present.

The Department seeks to discipline Respondent's license pursuant to fourteen allegations in the accusation on the grounds that:

(1) on or about March 2, 2018 the Respondent's agent or employee, Kristin Joy Winant, permitted patron(s) to possess, within the premises, a controlled substance, to wit: cocaine upon the licensed premises in violation of California Health and Safety Code section 11350;
(2) on or about March 2, 2018 the Respondent's agent or employee, Kristin Joy Winant, was, within the licensed premises, an aider and abettor, as defined in section 31 of the California Penal Code, in the selling, or furnishing, or in the offering to sell or furnish cocaine upon the licensed premises in violation of California Health and Safety Code section 11352;

(3) on or about March 9, 2018 the Respondent's agent or employee, Kristin Joy Winant, possessed, within the licensed premises, a controlled substance, to wit: cocaine upon the licensed premises in violation of California Health and Safety Code section 11350;

(4) on or about March 9, 2018 the Respondent's agent or employee, Kristin Joy Winant, possessed, within the licensed premises, a controlled substance, to wit: cocaine, for the purpose of sale, in violation of California Health and Safety Code section 11351;

(5) on or about March 9, 2018 the Respondent's agent or employee, Kristin Joy Winant, sold, furnished, or offered to sell or furnish, within the licensed premises, a controlled substance, to wit: cocaine in violation of California Health and Safety Code section 11352;

(6) on or about April 4, 2018 the Respondent's agent or employee, Kristin Joy Winant, possessed, within the licensed premises, a controlled substance, to wit: cocaine upon the licensed premises in violation of California Health and Safety Code section 11350;

(7) on or about April 4, 2018 the Respondent's agent or employee, Kristin Joy Winant, possessed, within the licensed premises, a controlled substance, to wit: cocaine, for the purpose of sale, in violation of California Health and Safety Code section 11351;

(8) on or about April 4, 2018 the Respondent's agent or employee, Kristin Joy Winant, sold, furnished, or offered to sell or furnish, within the licensed premises, a controlled substance, to wit: cocaine in violation of California Health and Safety Code section 11352;

(9) on or about May 22, 2018 the Respondent's agent or employee, Kristin Joy Winant, possessed, within the licensed premises, a controlled substance, to wit: cocaine upon the licensed premises in violation of California Health and Safety Code section 11350;

(10) on or about May 22, 2018 the Respondent's agent or employee, Kristin Joy Winant, possessed, within the licensed premises, a controlled substance, to wit: cocaine, for the purpose of sale, in violation of California Health and Safety Code section 11351;

(11) on or about May 22, 2018 the Respondent's agent or employee, Kristin Joy Winant, sold, furnished, or offered to sell or furnish, within the licensed premises, a controlled substance, to wit: cocaine in violation of California Health and Safety Code section 11352;

(12) on or about May 25, 2018 the Respondent's agent or employee, Kristin Joy Winant, possessed, within the licensed premises, a controlled substance, to wit: cocaine upon the licensed premises in violation of California Health and Safety Code section 11350;

(13) on or about May 25, 2018 the Respondent's agent or employee, Kristin Joy Winant, possessed, within the licensed premises, a controlled substance, to wit: cocaine, for the purpose of sale, in violation of California Health and Safety Code section 11351; and

(14) on or about May 25, 2018 the Respondent's agent or employee, Kristin Joy Winant, sold, furnished, or offered to sell or furnish, within the licensed premises, a controlled substance, to wit: cocaine in violation of California Health and Safety Code section 11352.

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

Oral evidence, documentary evidence, and evidence by oral stipulation on the record was received at the hearing. The matter was argued and submitted for decision on March 21, 2019.

FINDINGS OF FACT

1. The Department filed the accusation on October 25, 2018.

2. The Department issued a type 47, on-sale general eating place license to the Respondent at the above-described location on January 10, 2012 (the Licensed Premises). Todd Jason Gibboney (Gibboney), the Licensee, has held a Department License at the Licensed Premises since May 1, 2005. The initial license at the location was a type 42 license. The location has been licensed by the Department in some fashion since that date.

3. There is no record of prior departmental discipline against the Respondent's license. There has been no discipline against the Licensee against any of the licenses held at the location of the Licensed Premises.

4. On March 2, 2018, Department Agent Holsapple (Holsapple) began an assignment investigating a complaint made against the Licensed Premises that it was not operating as a bona fide eating place as required by its type 47 license. A decision was made to utilize undercover officers to investigate this allegation and to determine whether the Licensed Premises was generally in compliance with state law. Holsapple was undercover when he arrived at the Licensed Premises at approximately 8:40 p.m. He was accompanied by

Department Agent Patel (Patel) who was also undercover when they entered and took a seat at the fixed bar. Both agents had experience from their law enforcement academies, field training, subsequent training and in field investigations regarding narcotics investigations. Both agents had prior investigative experience in narcotics cases and were familiar with the appearance of narcotics substances and the street vernacular used for narcotics substances and transactions. (Exhibit D-2)

5. Holsapple watched the only bartender working, later identified as Kristin Joy Winant (Winant), as she served drinks to patrons. Winant approached Holsapple and Patel shortly after they sat and she took their drink orders. After serving Holsapple the Bud Light beer he ordered, Holsapple began a casual conversation with Winant. Holsapple told Winant that he and Patel wanted to party and he then asked Winant if she knew where they could get some "white girl" which is a slang term for cocaine. Winant asked Holsapple how much they were looking for. Holsapple responded that they were looking for "two Gs" which is slang terminology for two grams. Winant responded by saying that she had sold four grams earlier that day. Winant scanned the Licensed Premises and then pointed out a patron in a maroon shirt as someone who had cocaine. Winant then walked over to this patron and had an unknown exchange with him for about 30 seconds. During this time, the patron and Winant repeatedly looked over at Patel and Holsapple. Later in the investigation, the patron was identified as Kevin Congrave Calloway (Calloway). (Exhibit D-2)

6. Calloway then approached both agents and asked Holsapple and Patel if they wanted any "coke." Both agents responded that they did. Calloway then placed a small green baggie containing a white powdery substance on Patel's lap. Holsapple took the bag from Patel's lap and asked Calloway for the price. Calloway responded that it was free and offered Holsapple the opportunity to use some in the bathroom and then return the rest to him. Calloway asked Winant if it was alright for them to go in to the bathroom for this purpose. Winant responded that it was okay but that it was weird for both men to enter the bathroom together since it was only a one person bathroom. Holsapple then responded that he would go into the bathroom alone with the baggie and then return. (Exhibit D-2)

7. Holsapple, took the baggie into the bathroom, locked the door and then photographed the baggie. In order to appear that he had consumed some of the contents of the baggie, Holsapple dumped some of the contents into the toilet and then flushed. Holsapple exited approximately a minute later and returned to Calloway and Patel who were talking with each other casually. Holsapple tried to return the baggie to Calloway but he told Holsapple to keep it since they were friends with Winant. Patel obtained Calloway's number. While Patel was doing this, Holsapple thanked Winant for "the hookup on the coke." Winant then asked Calloway "Was it my stuff?" to which Calloway responded in the affirmative. Winant then remarked to Patel, "be prepared, that shit is bomb." Winant

then returned to her bartending duties. Holsapple later showed the baggie to Winant and confirmed that she provided it to Calloway. Holsapple asked Winant for a price for future purchases. Winant responded that she sold "an 8-ball for $160." An "8-ball" is a slang term for an eighth of an ounce of cocaine. When discussing future purchases, Winant remarked that she had sold out earlier that day. Patel and Holsapple obtained Winant's cellular number. Holsapple texted Winant and she confirmed that she received the texts from Holsapple. (Exhibit D-2)

8. Holsapple and Patel left at approximately 9:40 p.m. on March 2, 2018 after paying for their beers. After leaving, Holsapple booked the baggie he had received from Calloway and its contents into evidence in the Department's Riverside district office after the contents of the baggie were tested to be presumptive positive for cocaine with a combined weight of .36 grams. The contents of the baggie were subsequently sent to and tested by the San Bernardino County Sheriff's Department Scientific Investigations Division (SBCSD-SID) with an evidence number of 18-04936-N-01. The contents of the baggie were found to contain .05 grams of cocaine. (Exhibits D-2, D-3)

9. On March 9, 2018, Holsapple texted Winant and asked if she could provide an 8-ball of what she provided previously for $160. After a second text from Holsapple, Winant called Holsapple and told him not to text about trying to buy cocaine. Holsapple apologized. She then told him the price for an 8-ball would be $180. Winant confirmed that it was the same quality as what had been previously provided. Holsapple said he would come by that day to the Licensed Premises around 4 to 5p.m. Winant later texted at 4:28 p.m. to confirm that Holsapple was coming. Patel and Holsapple arrived at the Licensed Premises on March 9, 2018 at approximately 5:40 p.m. Winant was again the only person bartending. Holsapple and Patel sat at the fixed bar and ordered beers from Winant. While Winant retrieved their beers, Holsapple folded $180 in cash bills and placed the money under a napkin on top of the counter. When Winant returned with the beers, Holsapple said the money was there for her and he gestured towards the napkin. Winant looked under the napkin and asked if it was $180. After Holsapple confirmed that it was, Winant took possession of the napkin and the $180. Winant then returned to Holsapple and told him her "connect" was on his way. (Exhibit D-2)

10. Winant said her "connect" was there at approximately 6:24 p.m. on March 9, 2018 and that she was going to step outside. Winant returned approximately two minutes later with a plastic bag with what appeared to be cocaine inside. She then gave this to Holsapple by placing it on his lap. Holsapple thanked Winant and she responded that it was not a problem. After later paying for their beers, Holsapple and Patel left with the baggie secured in Holsapple's front pocket. (Exhibit D-2)

11. Later that same day, Holsapple worked with Department Agent Rock (Rock) to presumptively test the contents of the plastic bag and secure the evidence. The presumptive testing revealed the contents to be cocaine with a gross weight of 4.56 grams, including the packaging. The item was then booked at the Department's Riverside district office by Holsapple. The contents of the baggie were subsequently tested by the SBCSD-SID with an evidence number of 18-04936-N-02. The contents of the baggie were found to contain 3.53 grams of cocaine. (Exhibits D-2, D-3)

12. Patel and Holsapple returned to the Licensed Premises on March 30, 2018 at approximately 5:35 p.m. They remained in an undercover capacity. Winant was again the only person bartending. Holsapple and Patel sat at the fixed bar and each ordered beers from Winant who subsequently served them their beers. (Exhibit D-2)

13. Later, Holsapple asked Winant if she was able to hook them up with some "white girl" again. Winant told Holsapple to "hold on" while she made a phone call. After getting off the phone, Winant said that her connection was in Los Vegas. Holsapple asked Winant if she had other connections and she said that she would try but that she could not guarantee anything. Holsapple asked Winant if she was successful with another connection she had described. Winant stated that she had not received a response from that person. Holsapple asked if it would be better to contact Winant next week. Winant gave Holsapple her Instagram handle and instructed him to reference "snowboarding" and to use direct messaging. Holsapple confirmed that Winant would be working on April 4, 2018. On April 3, 2018 Holsapple texted Winant that he was looking to go "snowboarding" on April 4, 2018 and whether she had someone who could "come thru" for him. Winant responded that she was working on obtaining "tickets" and asked Holsapple how much he wanted to spend in a direct message response. Holsapple wrote "$180 for the same lift tickets as last time" to which Winant responded "Okay for sure" through the direct message function on Instagram. (Exhibit D-2)

14. Holsapple and Patel went to the Licensed Premises on April 4, 2018 at about 4:15 p.m. Because the Licensed Premises was full, they were unable to get seats at the fixed bar and instead stood along the north wall of the interior. Winant and two other bartenders were working. Winant approached them and asked if they could stay or if they had to leave. Holsapple said they would stay and have a beer. Winant told Holsapple that she had "it" which Holsapple understood to be the cocaine they had communicated about. Holsapple then handed her $180 in cash. Winant walked back behind the fixed bar counter and performed some bartender duties. Patel approached the bar counter and ordered two beers from Winant. Patel and Holsapple were served their ordered beers by Winant before Patel returned to where they were originally standing. Patel gave her a $20 bill with the order but did not get change at that time. (Exhibit D-2)

15. Winant later approached Patel and placed cash bills into his left jacket pocket. When Patel looked at the bills there was also a clear plastic baggie containing a powdery, white substance that Winant had placed in his pocket with the bills. Patel and Holsapple left at approximately 4:30 p.m. after saying goodbye to Winant. (Exhibit D-2)

16. After leaving, Holsapple booked the baggie Patel had received from Winant and its contents into evidence in the Department's Riverside district office. The contents of the baggie were tested to be presumptive positive for cocaine with a combined weight of 4.59 grams. The contents of the baggie were subsequently tested by the SBCSD-SID with an evidence number of 18-04936-N-03. The contents of the baggie were found to contain 3.46 grams of cocaine. (Exhibits D-2, D-3)

17. Between May 4, 2018 and May 22, 2018 Holsapple and Winant exchanged multiple communications via the instant messaging application in Instagram in response to Holsapple's attempts to meet with Winant to secure cocaine. Winant's last communication to Holsapple on May 22, 2018 indicated that her "lift ticket" source had not "re uped" which Holsapple understood to be an indication that Winant did not have a supply of cocaine to sell. (Exhibit D-2)

18. Holsapple and Patel returned to the Licensed Premises on May 22, 2018 at approximately 3:25 p.m. in an undercover capacity. Winant was again bartending. Holsapple and Patel sat at the fixed bar. Holsapple made small talk with her. Winant expressed surprise that they were there because her guy had not "re-upped". Holsapple stated that they had planned to come by regardless. Holsapple and Patel both ordered beers from Winant. Winant served the beers and Holsapple paid for them. During a casual conversation about vaping, Winant told Holsapple that her "connect" was likely not immediately available to drive to the Licensed Premises and that she would likely be able to get some by that Friday, a day she was working at the Licensed Premises. At 4:25 p.m. Winant approached Holsapple and Patel and told them she could get them cocaine if they still wanted it. Holsapple said that they did. Winant told them that she would seek a connection with one of the patrons in the Licensed Premises since her regular connection could not provide it. (Exhibit D-2)

19. A short period of time later, Holsapple saw Winant talking with a male and a female sitting at another section of the fixed bar. After their exchange, Winant returned and told Holsapple that she could obtain cocaine from the female who would return with it. Holsapple placed $180 in cash under a coaster and asked Winant if it would be $180 for an "8-ball." Winant replied that she would try to get it for cheaper. Holsapple had Winant take the $180 and instructed her to return change if the sale was for less. Winant agreed and took the money. (Exhibit D-2)

20. Holsapple saw the female leave the Licensed Premises and then later return. Winant then exited with the female and the male. Patel watched the three get into a vehicle parked outside of the Licensed Premises. Winant returned to the Licensed Premises from the vehicle and went behind the fixed bar counter. She then approached where Patel and Holsapple were sitting and placed a folded $10 bill on the counter between where Patel and Holsapple were sitting. Holsapple unfolded the bill and found a baggie inside with a powdery substance. Holsapple moved the baggie into his pocket. Winant came back after dropping off the baggie and described the cocaine as being good but "methy" which Holsapple understood to be a reference to it containing methamphetamine. Holsapple asked how she knew this and Winant remarked that she had tried some when she retrieved it in the car from the male and the female. Holsapple asked Winant about the cost and determined that it was $150. Holsapple then had Winant give him an additional $20 since he had originally paid $180. Winant got the additional $20 from the tip jar next to the register. Holsapple and Patel left at 6:25 p.m. after Holsapple thanked Winant and said good bye. (Exhibit D-2)

21. Later that same day, Holsapple turned over the baggie to Rock to document the contents of the plastic bag and secured the evidence. The presumptive testing revealed the contents to contain cocaine and methamphetamine with a gross weight of 2.91 grams, including the packaging. The item was then booked under the case number for the overall investigation at the Department's Riverside district office by Rock. The contents of the baggie were subsequently tested by the SBCSD-SID with an evidence number of 18-04936-N-04. The conclusive testing found the contents of the baggie to weigh 2.41 grams and to contain cocaine and methamphetamine. (Exhibits D-2, D-3)

22. Between May 22, 2018 and May 25, 2018 Holsapple and Winant exchanged multiple communications via the instant messaging application in Instagram. One subject they communicated about was vaping liquids. Holsapple also communicated that the cocaine he received on May 22, 2018 was not as good as the "first lift tickets" in response to Winant's inquiry about the cocaine she had procured for him earlier that day. Winant communicated to Holsapple that she would try to get some product from the original source "ASAP." On May 25, 2018 at 7:17 p.m. Winant direct messaged Holsapple through Instagram that she "Got it" and in a subsequent message said the price would be $180. Holsapple responded via direct message that he would be there in one hour. (Exhibit D-2)

23. Patel and Holsapple returned to the Licensed Premises on May 25, 2018 at approximately 8:10 p.m. Winant was observed to be working that day. She came from the bartender side of the fixed bar and hugged Holsapple and Patel. While engaging in casual conversation, Winant remarked that "it should be here in 40 minutes" which Holsapple understood from the context of the direct messages to be the cocaine he had negotiated

for. Patel and Holsapple ordered and were served beers by Winant while they waited. At 8:17 p.m. Winant told Holsapple "its almost here" so Holsapple prepared the cash payment for [illegible] by putting $180 in cash bills folded in half under a coaster. When Winant returned, Holsapple lifted the coaster slightly. Winant then stated, "We'll wait on that." At approximately 8:34 p.m. Winant took possession of the money and the coaster. She then walked into the kitchen of the Licensed Premises. She returned and placed a clear baggie into Holsapple's jacket pocket. Holsapple asked if this was the original and Winant responded that it was different but to let her know what they thought of it. (Exhibit D-2)

24. Prior to leaving, Holsapple and Patel went to Winant to say good bye. During this conversation, Winant indicated that the source of the cocaine was a person named Wheaton who Holsapple understood to be another employee of the Licensed Premises based on a prior interaction. Patel asked Winant to vouch for them with Wheaton in the future and she said she would. (Exhibit D-2)

25. After leaving, Holsapple booked the baggie he had been given by Winant and its contents into evidence in the Department's Riverside district office. Before booking, the contents of the baggie were tested to be presumptive positive for cocaine with a combined weight of 3.7 grams. The contents of the baggie were subsequently tested by the SBCSD-SID with an evidence number of 18-04936-N-05. The contents of the baggie were found to weigh 3.34 grams and to contain cocaine. (Exhibits D-2, D-3)

26. In testimony in this matter, Gibboney denied being aware that Winant or any employees of the Licensed Premises were involved in narcotics transactions in or around the Licensed Premises. None of the agents involved in the investigation ever saw Gibboney present during any of the transactions. Gibboney did not become aware of the investigation until the filing of the accusation against the Licensed Premises. Winant vanished shortly after May 25, 2018 and did not return to work at the Licensed Premises. (Exhibit D-2)

27. Gibboney testified that he did not tolerate drug activity and that narcotics activity was unacceptable to him. Subsequent to becoming aware of this incident, Gibboney had employees of the Licensed Premises drug tested. The Licensed Premises did not employ any persons in management positions. Gibboney spent approximately 4 hours a week, on average, physically at the Licensed Premises. The Licensed Premises operated from 10 a.m. to approximately 11 p.m. 7 days a week. No evidence was presented that the Licensed Premises had any written policies regarding narcotics use or activities during the events of the investigation. No particular evidence was presented that employees were screened before being employed at the Licensed Premises. Winant was hired on the word of mouth of another employee who vouched for her, according to Gibboney. Despite

becoming aware of the investigation after the filing of the accusation in this matter, no evidence was presented that Gibboney had implemented any hiring, management or policy practices to establish that the Licensed Premises would enforce the alleged no tolerance policy described by Gibboney.

28. 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. Business and Professions Code 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. Business and Professions Code section 24200.5(a) provides that notwithstanding the provisions of Section 24200, the department shall revoke a license upon any of the following grounds:

> (a) If a retail licensee has knowingly permitted the illegal sale, or negotiations for the sales, of controlled substances or dangerous drugs upon his or her licensed premises. Successive sales, or negotiations for sales, over any continuous period of time shall be deemed evidence of permission. As used in this section, "controlled substances" shall have the same meaning as is given that term in Article 1 (commencing with Section 11000) of Chapter 1 of Division 10 of the Health and Safety Code, and "dangerous drugs" shall have the same meaning as is given that term in Article 2 (commencing with Section 4015) of Chapter 9 of Division 2 of this code.

4. With respect to counts 2, 5, 8, and 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 the Respondent's agent or employee Winant not only permitted, but participated in, and on four different occasions as established in counts 2, 5, 8, and 11 negotiated for the sale of cocaine and sold or furnished cocaine inside the Licensed Premises in violation of section 24200.5(a). As an agent or employee, under the circumstances of this case, her actions and knowledge are imputed to the Respondent. (Findings of Fact ¶¶ 2-27)

5. Health & Safety Code section 11350 makes it a felony to possesses any controlled substance

(1) specified in
(a) subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054,
(b) paragraph (14), (15), or (20) of subdivision (d) of Section 11054,
(c) subdivision (b) or (c) of Section 11055, or
(d) subdivision (h) of Section 11056 or
(2) classified in Schedule III, IV, or V which is a narcotic drug,

unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state.

6. With respect to counts 1, 3, 6, 9, and 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, Winant, secreted cocaine inside the Licensed Premises in violation of section 11350 as either the principal or as an aider and abettor. As an agent or employee, her actions and knowledge, under the circumstances of this case, are imputed to the Respondent. (Findings of Fact ¶¶ 2-27)

7. Health & Safety Code section 11351 states that:

> Except as otherwise provided in this division, every person who possesses for sale or purchases for purposes of sale (1) any controlled substance specified in subdivision (b), (c), or (e) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, three, or four years.

8. With respect to counts 4, 7, 10, and 13, cause for suspension or revocation of the Respondent's license exists under Article XX, section 22 of the California State Constitution and sections 24200(a) and (b) on the basis that the Respondent's agent or employee, Winant, possessed, on four different occasions, for purposes of sale, cocaine inside the Licensed Premises in violation of Health & Safety Code section 11351. As an agent or employee, her actions and knowledge, under the circumstances of this case, are imputed to the Respondent. (Findings of Fact ¶¶ 2-27)

9. Health & Safety Code section 11352 makes it a felony to transport, import into this state, sell, furnish, administer, or give away, or offer to transport, import into this state,

sell, furnish, administer, or give away, or attempt to import into this state or transport any controlled substance

(1) specified in
(a) subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054,
(b) paragraph (14), (15), or (20) of subdivision (d) of Section 11054,
(c) subdivision (b) or (c) of Section 11055, or
(d) subdivision (h) of Section 11056, or

(2) classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state.

10. With respect to counts 2, 5, 8, 11, and 14, 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, Winant, on five different occasions, personally participated in the sale or furnishing of cocaine to Holsapple inside the Licensed Premises, as a principal or aider and abettor, in violation of section 11352. As an agent or employee of the Respondent, her actions and knowledge, under the circumstances of this case, are imputed to the Respondent. (Findings of Fact ¶¶ 2-27)

11. In this matter, Respondent has argued that the Department's reliance upon Business and Professions Code section 24200.5(a) to call for outright revocation is misplaced. This argument is rejected because this statute is directly applicable to the circumstances proven in this matter. A pattern of illegal sales of controlled substances, to wit, cocaine, was established to have occurred in the Licensed Premises and by an employee. Imputed knowledge of this pattern of drug sales is established by these four instances of sales that occurred inside of the Licensed Premises. The four instances of sales were preceded by a furnishing that was actively facilitated by employee Winant who was the seller in each of the alleged sales. Winant was the actual seller in that she accepted the money from and provided the cocaine to Holsapple in all of the transactions after the one completed by Calloway. The incidents occurred over the course of several months between March 2, 2018 and May 25, 2018. These furnishings and sales occurred directly as a result of the lax oversight of the Respondent regarding the actions of employees and agents of the Licensed Premises. (Findings of Fact ¶¶ 2-27)

12. The initial incident of furnishing and the four subsequent sales were finalized within the Licensed Premises. Winant was the prime facilitator in all of the transactions. Multiple incidents involved patrons of the Licensed Premises who operated without fear of detection because Winant allowed them to operate openly in the Licensed Premises without repercussions. Winant obtained first obtained cocaine for Holsapple through

Calloway who was a patron. The unidentified male and female Licensed Premises patrons who provided Winant the cocaine she sold to Holsapple on May 22, 2018 operated under circumstances that made it clear that they were not concerned that employees of the Licensed Premises would stop them or impede their actions because they acted in coordination with the Respondent's employee. The final incident on May 25, 2018 even appeared to involve a second employee of the Licensed Premises given that Winant indicated that Wheaton, a kitchen employee, was the source of the drugs she sold to Holsapple. (Findings of Fact ¶¶ 2-27)

13. The Respondent presented evidence that the Licensee-Respondent was not present for any of the transactions and that he was not aware of the drug dealing that was taking place. Gibboney testified that he would not tolerate such behavior and that Winant's actions were contrary to his expectations as her employer. Based on this, the Respondent argued that the Department improperly imputed knowledge of the drug transactions to the Respondent and that Business and Professions Code section 24200.5(a) should not apply.

14. The Respondent likened its circumstances to the petitioner in *McFaddin San Diego 1130 Inc. v. Stroh* (1989) 208 Cal.App.3d 1384. In *McFaddin*, the Court of Appeal granted the petition and reversed the order of the Board and the decision of the Department. The Court of Appeals found that the licensee did not know of the drug transactions at issue, and further, that the licensee had taken extensive preventive measures to combat such activity. It held that such evidence did not support the imputed inference that the licensee "permitted" the illicit activity.

15. It is true that, like the licensee in *McFaddin*, the evidence failed to establish that the Respondent-Licensee was aware of the actions of Winant, the patrons, or any other employees involved in drug transactions. However, that is only the first prong of the test established in *McFaddin*. The failure of the Respondent to enact any significant, preventive measures to combat drug activity in the Licensed Premises make the comparison to the circumstances in *McFaddin* unwarranted. The evidence showed a failure on the part of the Respondent to comply with its responsibility to enact preventive measures to combat drug activity in its Licensed Premises, where warranted.

16. In this case, drug sales activity was pervasive in the Licensed Premises over several months. The Respondent did not screen employees or have any established, enforceable policies or procedures in place to curtail drug activity. There was no evidence of security personnel or monitoring equipment to discourage drug activity. Employees acted with little to no oversight in the Licensed Premises. Gibboney was present approximately 4 hours a week and he did not employ any managers to provide oversight when he was not there. Hiring was done in a haphazard fashion. Winant was hired at the recommendation of another employee. While Gibboney may have been credible in testifying that the

conduct that occurred was unacceptable to him, the manner in which he ran the Licensed Premises invited exactly the behavior that occurred and his lack of oversight allowed it to occur, undetected and over an extended period.

Holsapple found during his investigation that when one person was unavailable to complete a drug transaction, Winant was able to readily arrange other persons as the drug sources to complete the sought transactions. This reinforces that the Licensed Premises had become a location where narcotics could be possessed and sold with impunity and little fear of repercussion from the Respondent. Given this, the Respondent cannot establish that "extensive preventive measures" took place evincing an effort to curtail drug activity by employees, as were shown in *McFaddin*. The Respondent allowed this behavior by not taking reasonable steps to prevent it from occurring and a finding of imputed knowledge is supported in this case.

PENALTY

The Department requested that the Respondent's license be revoked given the severity of the violations and the statutory requirement set forth in section 24200.5. The Respondent's argument initially focused on the defense of lack of imputed knowledge. Respondent further argued that if the narcotics related counts were sustained, the court should consider the mitigating circumstances of the Respondent's lack of knowledge of the conduct alleged and the Respondent's lack of prior discipline during his period of licensure. The Respondent sought a suspended revocation and a period of suspension that would allow him to transfer the license.

The Respondent argued that an outright revocation would be a violation of the Eighth Amendment's protection from excessive fines because the loss of the license, a thing of value, would be out of proportion to the Respondent's conduct. The Respondent cited the recent decision of the United States Supreme Court in *Timbs v. Indiana*, 586 U.S. ___ (2019) as support for his position. In February 2019, the Court unanimously ruled that the Eighth Amendment's prohibition of excessive fines is an incorporated protection applicable to the states under the Fourteenth Amendment. It is noted that the *Timbs* decision did not, in itself, define excessive fines that violate the Eight Amendment, it extended the protections of existing Eighth Amendment jurisprudence to fines imposed by state governments.

United States v. Bajakajian, 524 U.S. 321 (1998) is the most instructive case providing guidance on whether a fine is excessive in violation of the Eighth Amendment. In *Bajakajian*, the Supreme Court ruled that it was unconstitutional to confiscate $357,144 from Hosep Bajakajian, who failed to report possessing over $10,000 while leaving the United States. The Supreme Court ruled, for the first time, that a fine violated the

Excessive Fines Clause. The Court held that it was "grossly disproportional" to take all of the money Mr. Bajakajian had attempted to take out of the United States in violation of a federal law that required that he report amounts in excess of $10,000. In describing what constituted "gross disproportionality", the Court could not find guidance from Excessive Fines Clause jurisprudence so it relied on Cruel and Unusual Punishment Clause case law:

> "We must therefore rely on other considerations in deriving a constitutional excessiveness standard, and there are two that we find particularly relevant. The first, which we have emphasized in our cases interpreting the Cruel and Unusual Punishments Clause, is that judgments about the appropriate punishment for an offense belong in the first instance to the legislature. See, e.g., *Solem v. Helm*, 463 U.S. 277, 290 (1983) ("Reviewing courts ... should grant substantial deference to the broad authority that legislatures necessarily possess in determining the types and limits of punishments for crimes"); see also *Gore v. United States*, 357 U.S. 386, 393 (1958) ("Whatever views may be entertained regarding severity of punishment, ... these are peculiarly questions of legislative policy"). The second is that any judicial determination regarding the gravity of a particular criminal offense will be inherently imprecise. Both of these principles counsel against requiring strict proportionality between the amount of a punitive forfeiture and the gravity of a criminal offense, and we therefore adopt the standard of gross disproportionality articulated in our Cruel and Unusual Punishments Clause precedents. See, e.g., *Solem v. Helm*, supra, at 288; *Rummel v. Estelle*, 445 U.S. 263, 271 (1980).

The ultimate holding of *Bajakajian* was that, within the context of judicial deference to the legislature's power to set punishments, a fine would not offend the Eighth Amendment unless it was "grossly disproportional" to the gravity of an offense.

Business and Professions Code section 24200.5(a) is a legislatively enacted statutory section that establishes revocation as a penalty under the circumstances of this case. It is inherently an expression of the legislative policy of the state and should be given deference unless it is shown to be a grossly disproportionate punishment. That is not the case in this matter. There is a direct proportion between the penalty, specifically the potential revocation of a liquor license, and the gravity of the offense, specifically, the Respondent-Licensee knowingly permitting the illegal sale of cocaine in its Licensed Premises on multiple occasions and over the course of months. The conduct that was allowed directly demonstrated that the Respondent is an unsuitable license holder. The potential penalty in this matter is the revocation of the Respondent's type 47 license. The Respondent has failed to demonstrate how this penalty would be "grossly disproportional" to the proven conduct.

Section 24200.5 provides that "the [D]epartment shall revoke a license" for any violation thereof. The Department has consistently construed this section as requiring some form of revocation although not necessarily outright revocation.[1] Outright revocation[2] or stayed revocation[3] can be appropriate depending upon the circumstances.

In the present case, outright revocation is warranted. The Respondent had an affirmative obligation to ensure that the Licensed Premises was operated in full compliance with the law. The Respondent did not. The illegal activity at issue here—repeated drug sale negotiations by an employee of the Licensed Premises that resulted in repeated sales of cocaine to an undercover officer, by that employee, in the Licensed Premises, clearly warrants revocation given the lax approach to management of the Licensed Premises evinced in this case. The Respondent's poor oversight facilitated the circumstances that developed in the Licensed Premises. There is no indication that the Respondent took the appropriate steps that were within its means to prevent such activity. Further, since learning of the accusation, the Respondent has continued to operate the Licensed Premises while doing little to change the culture of the Licensed Premises that allowed this conduct to take root.

The penalty recommended herein complies with rule 144.[4]

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[1] Cal. Code of Regs., tit. 4, §144.
[2] See, e.g., *Greenblatt v. Martin*, 177 Cal. App. 2d 738, 2 Cal. Rptr. 508 (1960) (outright revocation imposed for violations of section 24200.5).
[3] See, e.g., *Harris v. Alcoholic Beverage Control Appeals Board*, 244 Cal. App. 2d 468, 36 Cal. Rptr. 697 (1964) (revocation stayed coupled with suspension imposed for violations of section 24200.5).
[4] All rules referred to herein are contained in title 4 of the California Code of Regulations unless otherwise noted.

ORDER

The Respondent's on-sale general eating place license is hereby revoked.

Dated: April 11, 2019

Alberto Roldan
Administrative Law Judge

☒ Adopt

☐ Non-Adopt: _____

_____

By: _____

Date: 6/13/19