

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

AB-9837

File: 20-434390; Reg: 19088443

QUANG HUYNH,
dba LA Market
818 East 10th Street
Long Beach, CA 90813,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Doris Huebel

Appeals Board Hearing: March 5, 2020
Los Angeles, CA

ISSUED MARCH 19, 2020

Appearances: *Appellant:* Quang Huynh, in propria persona,

Respondent: Matthew Gaughan, as counsel for the Department of
Alcoholic Beverage Control.

OPINION

Quang Huynh, doing business as LA Market, appeals from a decision of the Department of Alcoholic Beverage Control¹ suspending his license for 25 days because his employee refused to permit an inspection of the licensed premises by a Department representative, in violation of Business and Professions Code sections

¹ The decision of the Department, dated August 20, 2019, is set forth in the appendix.

25753,² 25755,³ and 25616,⁴ and; obstructed a peace officer in the discharge of his duties in violation of Penal Code section 148, subdivision (a)(1).⁵

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on January 12, 2006.

There is no record of prior departmental discipline against the license.

² Section 25753 provides:

The department may make any examination of the books and records of any licensee or other person and may visit and inspect the premises of any licensee it may deem necessary to perform its duties under this division.

(Bus. & Prof. Code, § 25753.)

³ Section 25755 provides, in pertinent part:

(b) The director, the persons employed by the department for the administration and enforcement of this division . . . while acting in the course and scope of their employment as peace officers may, in enforcing the provisions of this division, visit and inspect the premises of any licensee at any time during which the licensee is exercising the privileges authorized by his or her license on the premises.

(Bus. & Prof. Code, § 25755(b).)

⁴ Section 25616 provides that a misdemeanor is committed by:

[A]ny person who refuses to permit the department or any of its representatives to make any inspection or examination for which provision is made in this division, . . .

(Bus. & Prof. Code, § 25616.)

⁵ Penal Code § 148(a)(1) provides:

(1) Every person who willfully resists, delays, or obstructs any public officer, peace officer, . . . in the discharge or attempt to discharge any duty of his or her office or employment, when no other punishment is prescribed, shall be punished by a fine . . . or by imprisonment . . .

(Cal. Pen. Code, § 148.)

On January 8, 2019, the Department instituted a two-count accusation against appellant, which was amended on April 30, 2019, charging that on September 12, 2018, appellant's employee refused to allow an inspection of the premises and obstructed a peace officer in the discharge of his duties.

At the administrative hearing held on May 8, 2019, documentary evidence was received and testimony concerning the violation charged was presented by Department Agent Benjamin Delarosa; Long Beach Police Department (LBPd) Sergeant Stephen Stough; and appellant's clerk, Danh Cong Nguyen (the clerk).

Testimony established that on September 12, 2018, Agent Delarosa went the licenced premises with two LBPd officers — Detective Arzola and Sergeant Stough — to conduct an inspection. Det. Arzola was wearing a badge and LBPd jacket with LBPd emblems at the shoulders and the word "POLICE" on the back. Sgt. Stough was in his LBPd uniform — his shirt had the word "POLICE" on the back, and he wore his badge on a lanyard hanging from his neck. Agent Delarosa was in plain clothes and wore his police identification and badge on a lanyard hanging from his neck.

The officers and agent entered the licensed premises and waited until the clerk finished attending to customers. They identified themselves to the clerk and told him they were there to conduct an ABC inspection. The clerk said that he had to notify the owner first, and attempted, unsuccessfully, to do so on his cell phone.

The clerk informed the officers that he would not allow an inspection until he took a picture of their IDs. The officers all showed the clerk their IDs, but declined permission to photograph them because of concerns regarding compromising their identity during future undercover operations and the possibility that the photographs could be used to make illegal copies of the badges.

Det. Arzola gave the clerk her business card, which the clerk photographed with his phone and returned to the officer. Agent Delarosa provided a phone number for the clerk to call to verify his identity. They explained that the store was obligated to allow an ABC inspection by law enforcement, and they attempted to reason with the clerk over a period of about twenty minutes. At one point, the clerk indicated that he had the licensee on the phone but that he was also refusing to allow the inspection. Agent Delarosa attempted to speak to the licensee, but was prevented from doing so by the clerk.

The clerk took photographs of the officers and agent on his phone. Agent Delarosa asked if that satisfied him so that now the inspection could take place. The clerk said the police officers could conduct an inspection but not the agent since he was not in uniform. The two LBPD officers explained to the clerk that the agent was a law enforcement officer, as well as an agent with the Department of Alcoholic Beverage Control, and that they needed him to accompany them on the inspection because he was training them.

The clerk, however, continued to refuse to allow the agent to conduct the inspection, becoming agitated and argumentative. The officers and agent, by contrast, remained patient and calm throughout the encounter.

Agent Delarosa filled out a "Notice of Violation" to alert the licensee of the refusal to permit an inspection. (Exh. H.) When presented to the clerk for acknowledgment, however, the clerk refused to sign. The agent gave a copy of the notice to the clerk which indicated on it that the clerk had refused to sign the form. The agent and officers then exited the premises without conducting an inspection. At no point during the interaction did the clerk call the LBPD to verify the officers' identity, nor did he call the Department to verify the identity of the agent.

The clerk testified at the administrative hearing. He admitted that he refused to allow the inspection of the premises after being informed that the agent and officers were there to conduct an ABC inspection. He also admitted that he did not try to call the Department or LBPD while the officers and agent were at the store. Later, after they had left the premises, he did place a call to the Department. The clerk also testified that he was subsequently found guilty in a criminal court, by a jury trial, for failing to allow a peace officer to conduct an inspection of the licensed premises.

The administrative law judge (ALJ) issued her proposed decision on June 10, 2019, sustaining both counts of the accusation and recommending a 25-day suspension for each count, to be served concurrently. The Department adopted the proposed decision in its entirety on August 12, 2019 and a certificate of decision was issued on August 20, 2010.

Appellant then filed a timely appeal raising the following issues: (1) it was improper for a Penal Code violation to be considered by a Department ALJ; (2) the decision is not supported by substantial evidence, and; (3) the penalty is excessive.

I

ISSUE CONCERNING PROPER FORUM

Appellant contends, “Penal Code Section 148(a)(1) is a public offense and should not be heard under Administrative Law Judge D. Huebel, Administrative Hearing Office, Department of ABC.” (AOB at p. 2.) Accordingly, he asserts that count 2 must be dismissed. (*Ibid.*) Appellant offers no explanation for his assertion, nor any authority to support his position that a Penal Code violation should not be considered by a Department ALJ — only his opinion.

“Mere suggestions of error without supporting argument or authority other than general abstract principles do not properly present grounds for appellate review. (*Dept.*

of Alcoholic Bev. Control v. Alcoholic Bev. Control Appeals Bd. (2002) 100 Cal.App.4th 1066, 1078 [123 Cal.Rptr.2d 278, 286-287].) Where a point is merely asserted without any argument of or authority for the proposition, “it is deemed to be without foundation and requires no discussion by the reviewing court.” (*Atchley v. City of Fresno* (1984) 151 Cal.App.3d 635, 647 [199 Cal.Rptr. 72].) “To demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error.” (*City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239, fn. 16 [126 Cal.Rptr.2d 178].)

The jurisdiction of the Department is very clearly defined. Both Article XX, section 22 of the California Constitution, and Business and Professions Code 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.

Business and Professions Code section 24200(b) further provides that a licensee’s 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.

We are unaware of any provision in California state law — and appellant fails to identify one — that requires a criminal conviction by a tribunal with jurisdiction over criminal matters before a licensee may be disciplined by the Department for a violation of the Penal Code. Furthermore, as the ALJ notes: “Clerk Danh acknowledged having been found guilty in a criminal court by a jury trial for failing to allow a peace officer to conduct an inspection at the Licensed Premises.” (Finding of Fact, ¶ 21.)

Clearly, both under the authority of the California Constitution and the Business and Professions Code — which specifically provides for licensee discipline when the

Penal Code is violated — the Department was authorized to discipline this licensee as a result of his employee's actions which resulted in his employee's conviction in criminal court for violating Penal Code section 148(a)(1), willfully resisting, delaying, or obstructing a peace officer in the discharge of his duties. We see no error.

II

ISSUE REGARDING SUBSTANTIAL EVIDENCE

Appellant presents a laundry list of disagreements with the findings in this case (AOB at pp. 2-4), and indirectly suggests that the decision is not supported by substantial evidence. Appellant also argues against the credibility of Department witnesses. (*Ibid.*)

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

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

(*Dept. of Alcoholic Bev. Control v. Alcoholic Bev. Control Appeals Bd. (Masani)* (2004)

118 Cal.App.4th 1429, 1437 [13 Cal.Rptr.3d 826].)

When findings are attacked as being unsupported by the evidence, the power of this Board begins and ends with an inquiry as to whether there is substantial evidence, contradicted or uncontradicted, which will support

the findings. When two or more competing inferences of equal persuasion can be reasonably deduced from the facts, the Board is without power to substitute its deductions for those of the Department — all conflicts in the evidence must be resolved in favor of the Department's decision.

(*Kirby v. Alcoholic Bev. Control Appeals Bd.* (1972) 25 Cal.App.3d 331, 335 [101 Cal.Rptr. 815]; *Harris v. Alcoholic Bev. Control Appeals Bd.* (1963) 212 Cal.App.2d 106, 112 [28 Cal.Rptr.74].)

Therefore, the Appeals Board examines the issue of substantial evidence in light of the whole record to determine whether substantial evidence exists — even if contradicted — to reasonably support the Department's findings of fact, and whether the decision is supported by the findings. The Appeals Board cannot disregard or overturn a finding of fact by the Department merely because a contrary finding would be equally or more reasonable. (Cal. Const. Art. XX, § 22; Bus. & Prof. Code § 23084; *Boreta Enterprises, Inc. v. Dept. of Alcoholic Bev. Control* (1970) 2 Cal.3d 85, 94 [84 Cal.Rptr. 113]; *Harris, supra*, 212 Cal.App at p. 114.)

In the decision, the ALJ details the interaction between the agent and officers and appellant's employee. (Findings of Fact, ¶¶ 5-16.) Based on these extensive findings, she found substantial evidence to support both counts of the accusation. (Conclusions of Law, ¶¶ 6-10.) The ALJ determined that the testimony of appellant's employee was contradictory and not credible. The testimony of the Department agents, by contrast, was found to be reliable.

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 trier of fact . . . is the sole judge of the credibility of the witnesses

[and] may disbelieve them even though they are uncontradicted if there is any rational ground for doing so . . ." (*Pescosolido v. Smith* (1983) 142 Cal.App.3d 964, 970-971 [191 Cal.Rptr. 415].) The Appeals Board may not interfere with an ALJ's credibility determinations absent a clear showing of abuse of discretion. We find none here.

Further, we find that the decision is supported by substantial evidence. We are prohibited from reconsidering the evidence and reaching a contrary conclusion when, as here, we find no abuse of discretion.

III

ISSUE REGARDING PENALTY

Appellant maintains the penalty is excessive and that it was incorrect to say he failed to present evidence of mitigation regarding positive action taken to correct the problem or employee training. (AOB at p. 3, citing Decision at p. 13.)

The Board will not disturb the Department's penalty order in the absence of an abuse of discretion. (*Martin v. Alcoholic Bev. Control Appeals Bd. & Haley* (1959) 52 Cal.2d 287, 291 [341 P.2d 296].) "Abuse of discretion" in the legal sense is defined as "discretion exercised to an end or purpose not justified by and clearly against reason, all of the facts and circumstances being considered." [Citations.] (*Brown v. Gordon* (1966) 240 Cal.App.2d 659, 666-667 [49 Cal.Rptr. 901].) 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 its discretion." (*Harris v. Alcoholic Bev. Control Appeals Bd.* (1965) 62 Cal.2d 589, 594 [43 Cal.Rptr. 633].)

Rule 144 provides:

In reaching a decision on a disciplinary action under the Alcoholic Beverage Control Act (Bus. and Prof. Code Sections 23000, et seq.), and the Administrative Procedures Act (Govt. Code Sections 11400, et seq.), 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.

(Cal. Code Regs., tit. 4, § 144.)

Among the mitigating factors provided by the rule are the length of licensure without prior discipline, positive actions taken by the licensee to correct the problem, cooperation by the licensee in the investigation, and documented training of the licensee and employees. Aggravating factors include, *inter alia*, prior disciplinary history, licensee involvement, lack of cooperation by the licensee in the investigation, and a continuing course or pattern of conduct. (*Ibid.*)

The Penalty Policy Guidelines further address the discretion necessarily involved in an ALJ's recognition of aggravating or mitigating evidence:

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.

(*Ibid.*)

The ALJ weighed both mitigating and aggravating factors in determining the penalty, and substantially mitigated the standard penalties for each of these counts:

PENALTY

The Department requested the Respondent's off-sale beer and wine license be suspended for 30 days based on the aggravating factors of the Licensee's lack of cooperation in investigation, exhibited by Respondent employee's refusal to comply with the request to inspect the premises, telling the agent he could not conduct the investigation and despite being warned several times during the encounter that his refusal to comply would be a violation he chose not to comply. The Department mentioned the Respondent's failure to present evidence of mitigation regarding any steps the Licensee has taken in regard to preventing this type of violation in the future or what they have done in general to be compliant with ABC law. The Department did not provide a breakdown of the penalty between the two counts.

The Respondent did not recommend a penalty should the accusation be sustained in whole or in part.

The standard penalty under rule 144^[fn.] for a first-time offense of the licensee or employee not permitting inspection of the premises in violation of section 25755 is a 30-day suspension; and for not permitting inspection of records in violation of section 25616 is 30 days and indefinite until records are produced. The Penalty Guidelines recommend a 35-day suspension to revocation for a single, first-time offense of a licensee or employee resisting arrest or interfering with an investigation on the premises in violation of section 24200(a) and (b) and Penal Code section 148. Rule 144 offers guidance on adjusting the standard up or down depending on aggravating and mitigating factors. The Respondent presented no evidence of mitigation relating to positive action taken by the Licensee to correct the problem, or documented training of the licensee and his employees. The undersigned considered the Respondent's length of licensure since 2006 without discipline as a mitigating factor. The penalty recommended herein complies with rule 144.

ORDER

Counts 1 and 2 of the Accusation are sustained. In light of these violations, the Respondent's off-sale beer and wine license is hereby suspended for 25 days as to each count, with the penalties as to those counts to be served concurrently with one another.

(Decision at pp. 13-14.)

Appellant's disagreement with the penalty imposed does not mean the Department abused its discretion. This Board's review of a penalty looks only to see whether it can be considered reasonable, and, if it is reasonable, the Board's inquiry ends there. The penalty here is within the bounds of the Department's discretion, and reflects a thoughtful balancing of factors in aggravation and mitigation. Instead of the 30-day suspension which could have been imposed for count one, and the 35-day suspension which could have been imposed for count two, appellant was given a 25-day suspension for each count. This is substantially lower than the recommended penalties in rule 144. Furthermore, the suspensions are to be served concurrently, which is further mitigation of the penalty. We believe this is entirely reasonable.

The Board is simply not empowered to reach a contrary conclusion from that of the Department — and substitute its own judgment — when, as here, the penalty is reasonable and the decision is supported by substantial evidence.

ORDER

The decision of the Department is affirmed.⁶

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

⁶This 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:**

QUANG HUYNH
LA MARKET
818 EAST 10TH STREET
LONG BEACH, CA 90813

OFF-SALE BEER AND WINE - LICENSE

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

LAKWOOD DISTRICT OFFICE

File: 20-434390

Reg: 19088443

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 August 12, 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, 1325 J Street, Suite 1560, Sacramento, CA 95814.

On or after September 30, 2019, a representative of the Department will contact you to arrange to pick up the license certificate.

Sacramento, California

Dated: August 20, 2019

RECEIVED

AUG 21 2019

Alcoholic Beverage Control
Office of Legal Services



Matthew D. Botting
General Counsel

5a

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

IN THE MATTER OF THE ACCUSATION AGAINST:

Quang Huynh	}	File: 20-434390
Dbas: LA Market	}	
818 East 10 th Street	}	Reg. Nos.: 19088443
Long Beach, California 90813	}	
	}	License Type: 20
Respondent	}	
	}	Word Count: 18,217
	}	
	}	Reporter:
	}	Lynne Alonzo
	}	California Reporting
	}	
<u>Off-Sale Beer & Wine License</u>	}	<u>PROPOSED DECISION</u>

Administrative Law Judge D. Huebel, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard these matters at Cerritos, California, on May 8, 2019.

Matthew Gaughan, Attorney, represented the Department of Alcoholic Beverage Control (the Department).

Quang Huynh appeared and was not represented by counsel, representing himself, in propria persona. Also present at Mr. Huynh's side was Danh Nguyen.

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

- (1) on or about September 12, 2018, the Respondent-Licensee's agent or employee, Danh Nguyen, refused to permit the Department or its representative to make an inspection or examination of the licensed premises as authorized by Business and Professions Code sections 25753 and 25755, in violation of Business and Professions Code section 25616;
- (2) on or about September 12, 2018, Respondent-Licensee's agent or employee, Danh Nguyen, willfully resisted, delayed or obstructed ABC Agent B. Delarosa, a peace officer, in or about the premises, in the discharge or attempted discharge of a duty of his/her office, in violation of Penal Code Section 148(a)(1).
(Exhibit 1.)

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

May 8, 2019.

FINDINGS OF FACT

1. The Department filed the Accusation on January 8, 2019, and filed a First Amended Accusation on or about April 30, 2019.
2. The Department issued a type 20, off-sale beer and wine license to the Respondent for the above-described location on January 12, 2006 (the Licensed Premises).
3. There is no record of prior departmental discipline against the Respondent's license.
4. During the hearing the Respondent requested to have marked and admitted a flash drive containing bits and pieces of video surveillance footage of incomplete duration depicting portions of the officers' visit in the Licensed Premises on September 12, 2018. The flash drive was marked as Exhibit H and admitted with the disclaimer that the undersigned would give it the appropriate weight it deserved based on the Department's objection that the video clips were not a complete depiction, from start to finish, of the entire time the officers were in the Licensed Premises because all of the videos were cut off and not allowed to run until the end. The parties stipulated to allowing the undersigned to view, after the hearing, only all the video files with the file extension of ".MP4." After the hearing, the undersigned viewed each of the said ".MP4" video files at length. The videos are not time-stamped. While their individual file titles have a time listed, that time is not accurate; the same time is repeated on the same camera angle in different video files, when the videos are clearly a different time occurrence as each scene and audio is different, despite having the same time reference in the title of the video file. As such, the time on the video files is not found to be accurate or reliable on Exhibit H. Much of the video confirms the testimony of the Department's two witnesses. The facts below incorporate witness testimony and some of the video files, with footnotes inserted to reference when a scene or audio from a video file is referenced and/or included along with the witness testimony.

(Counts 1 and 2)

5. On September 12, 2018, Department Agent Delarosa worked with Detective Arzola and Sergeant Stough, both with the Long Beach Police Department (hereinafter LBPD). Agent Delarosa planned to train the two LBPD officers how to conduct Impact inspections at Department licensed premises that date. The Licensed Premises was on the list of such inspections for the day. Detective Arzola was wearing a badge and LBPD jacket with the LBPD emblems at the shoulders and the word, "POLICE" on the back. Sergeant Stough was in his LBPD uniform. His black shirt had the word, "POLICE" written on the back, and on the front of the shirt an embroidered badge over the left breast

and his name embroidered over the right breast, with sergeant striping and City of Long Beach patches at the shirt shoulders. Sergeant Stough wore his dome badge on a lanyard hanging from his neck, and a police belt upon which hung his weapon, ammunition and handcuffs. Agent Delarosa was in plain clothes and wore his police identification (ID) and dome badge on a lanyard hanging from his neck like Sergeant Stough. Agent Delarosa's police ID was on the flip side of his domed badge, with the dome badge showing at all times while inside the Licensed Premises.

6. At approximately 2:30 p.m., Detective Arzola and Agent Delarosa entered the Licensed Premises and waited until the on-duty clerk, Danh Nguyen (hereinafter referred to as clerk Danh), who appeared to be in charge of the premises, finished attending to customers. At one point, Agent Delarosa exited the store. Detective Arzola opened and walked through an employee half-door to enter into the employee side of the counter. Detective Arzola informed clerk Danh that the officers were at the premises to conduct an ABC inspection. Clerk Danh informed Detective Arzola he had to call the owner to advise him of the ABC inspection. Clerk Danh proceeded to use his cellular telephone to call the owner, Quang Huynh.

7. In the meantime, Agent Delarosa and Sergeant Stough both entered the Licensed Premises. Agent Delarosa walked through the employee half-door, entered into the employee side of the counter, and waited for clerk Danh as he made the phone call. Detective Arzola interjected and asked clerk Danh to see the store's ABC license, and clerk Danh motioned for her to look on the wall. Detective Arzola found the ABC license hanging on a clipboard on the wall and examined the license.¹ While on the telephone clerk Danh learned Mr. Huynh was not available to speak on the telephone because he was working elsewhere, so the clerk hung up the phone. Agent Delarosa then identified himself to clerk Danh as an agent with the Department of Alcoholic Beverage Control, and showed clerk Danh his police ID and badge, which were still hanging from a lanyard around the agent's neck. Agent Delarosa also advised clerk Danh that the officers were at the premises to conduct an ABC inspection. Clerk Danh informed Agent Delarosa that they could not conduct the inspection until the clerk was allowed to verify who they were. All officers agreed and showed their badges to the clerk. Sergeant Stough showed to clerk Danh his badge on the lanyard around his neck. The shortest distance Sergeant Stough was from clerk Danh was three to four feet. Agent Delarosa showed clerk Danh, from one to two feet away, his badge and flipped it over to show his police ID, which remained on the lanyard around his neck. Clerk Danh could clearly see the agent's badge and police ID. Detective Arzola showed her badge to clerk Danh. Detective Arzola asked clerk Danh if he wanted her business card, which the clerk acquiesced. Detective Arzola handed to clerk Danh her business card, of which clerk

¹ See Exhibit H, video file, VCU19807, depicts Detective Arzola and Agent Delarosa enter, Detective Arzola go behind the counter, and the audio reveals Detective Arzola asking, "Where is your ABC License?"

Danh took a picture with his cellular telephone and then returned the card back to the detective.²

8. Clerk Danh then asked to take a picture of Agent Delarosa's badge and police ID to send the same to the owner so the owner could give the clerk permission to conduct the inspection or not. Agent Delarosa said that he could not allow a photo to be taken of his badge and ID. Agent Delarosa considered taking a photo thereof an officer safety issue because if a picture was taken of his dome badge and police ID, since Agent Delarosa conducted undercover operations in the City of Long Beach, he was concerned it could be duplicated or used to identify him in future undercover operations. Clerk Danh gave his ID to Agent Delarosa. Clerk Danh was insistent upon taking a picture of the agent's badge and ID to verify the agent was who he said he was, stating that the clerk had no way to know whether the agent's credentials were fake nor not. At some point, Sergeant Stough asked clerk Danh how he could question whether Delarosa was an agent when the sergeant was vouching for the agent. Clerk Danh began raising his voice and arguing with the officers.³

9. At some point clerk Danh was again on his cellular telephone, speaking with his wife, who is the sister of the Licensee, Mr. Huynh. Clerk Danh told the officers he was talking to the owner. Agent Delarosa overheard clerk Danh say on the phone he was confirming that since Sergeant Stough was in uniform and Detective Arzola had let him take a picture of her card, they could stay and conduct the inspection but not the agent since he would not let the clerk take a picture of his ID, and the clerk would ask the agent to leave. Agent Delarosa then asked to speak to the person on the phone, believing it was the Licensee, so the agent could identify himself to the owner and explain their purpose and request to inspect the premises. Clerk Danh refused to permit Agent Delarosa to speak on the phone and told Agent Delarosa that "I'm the store manager," and reiterated if the agent did not allow the clerk to take a picture of his badge and ID the agent could not conduct the investigation.⁴ Agent Delarosa understood by clerk Danh's words, actions, and continued refusal to allow the inspection that clerk Danh was saying, as the store manager, he was the person with authority and the agent had to go through him not the person on the telephone.

10. Clerk Danh became adamant, raising his voice, stating that in order for him to verify the agent the clerk had to take a photograph of the agent's badge and ID, and if the agent did not allow him to "verify" him by taking a photo of his badge and ID he would ask him to leave.⁵ At which point, Detective Arzola explained to clerk Danh that the clerk

² See Exhibit H, video file, HWZM6447.

³ See Exhibit H, video file UYYE6021.

⁴ See Exhibit H, video file VWAB5303.

⁵ See Exhibit H, video file WIUW4336, which confirms this testimony, it depicts clerk Danh raising his voice stating, "I have to take your picture," "if you won't let me verify you," and repeating three times "I'm going to ask

does not want to do that.⁶ It was explained to the clerk that a Notice of Violation would be issued for his failure to permit the agent to conduct the investigation.

11. Both Detective Arzola and Sergeant Stough assured clerk Danh that Delarosa was an agent with the Department of Alcoholic Beverage Control. From two feet away, Agent Delarosa showed clerk Danh his badge and police ID, holding the badge out from his chest pointing to where the dome badge read, "Agent" and "Alcoholic Beverage Control", and flipping the badge over, showing his police ID depicting his photograph, name, the words, "Agent," "POLICE," and the Director's signature. Clerk Danh could clearly see the Agent's badge and photo ID. Clerk Danh continued to be obstinate in demanding to take a photo of the Agent's badge and ID. Sergeant Stough explained to clerk Danh that Delarosa was an Agent with the Alcoholic Beverage Control and they were there to conduct an ABC Impact Inspection. Clerk Danh stated that both Sergeant Stough and Detective Arzola could stay and conduct the inspection because the sergeant was in uniform and the detective had been "verified." Sergeant Stough explained to clerk Danh that Agent Delarosa was training Sergeant Stough and Detective Arzola on how to conduct an ABC inspection so Agent Delarosa had to remain to conduct the investigation.

12. Agent Delarosa gave clerk Danh the telephone number for the Department so the clerk could call to verify who the agent was. Clerk Danh did not call the Department to verify that Agent Delarosa was assigned to inspect the premises. Agent Delarosa again explained to clerk Danh that he was an agent with the Department of Alcoholic Beverage Control and then went on to explain that since LA Market has an ABC license, pursuant to Business and Professions Code section 25755 as long as the market is open for business any ABC officer, peace officer, or police officer may perform an ABC inspection and if clerk Danh refused to permit the agent to do the inspection the agent would have to issue him a Notice of Violation.

13. In between clerk Danh's combative conversations with the officers he continued to assist customers at the clerk window.⁷ While clerk Danh was assisting another customer, Agent Delarosa took a picture of clerk Danh (Exhibit 3). Clerk Danh stopped assisting the customer and began arguing again with Sergeant Stough telling Sergeant Stough he could stay but not the agent, with Sergeant Stough repeating his explanation that Agent Delarosa was training the LBPD officers how to conduct the inspection and the agent had

you to leave," while the clerk uses his hands in a gesture of moving the Agent outside, again stating that Detective Arzola could stay but he would ask the agent to leave.

⁶ See Exhibit H, video file WFMS8544, which confirms the testimony, audio depicts clerk Danh saying that Sergeant Stough, he is ok because he is in uniform and Detective Arzola is ok because he already checked her record [by showing clerk Danh her badge and letting him take a picture of her business card], but if the agent "doesn't let me check his record I'm going to ask you to leave," Detective Arzola tells clerk Danh, "You don't want to do that because..." While the audio of Detective Arzola gets cut off, from the preponderance of the evidence and record it is apparent therefrom that Detective Arzola, or one of the peace officers, informed clerk Danh that he will be issued a Notice of Violation for refusing to permit the inspection.

⁷ See Exhibit H, including, but not limited to, video file UYYE6021.

to be present. Clerk Danh interrupted Sergeant Stough, took a photograph of Sergeant Stough, who was on the customer side of the counter, and then turned and took a photograph of Agent Delarosa, whose badge remained displayed on his chest while he stood on the employee side of the counter. Agent Delarosa explained again he would have to issue a violation for the clerk's refusal of the inspection. Clerk Danh told the agent "that's fine you do what you do," and repeated "you do what you do." Agent Delarosa misunderstood that clerk Danh meant that the agent could proceed with the inspection since the clerk had just taken their photograph with the agent's badge displayed. Agent Delarosa then asked clerk Danh, "So we're good, we're good," giving the clerk another chance to allow the inspection, and clerk Danh responded "No! No! No!" and again stated that he wanted to verify the agent. Clerk Danh returned to assisting the customer. Agent Delarosa stood still waiting for the clerk.⁸

14. After more back and forth with the clerk, Agent Delarosa continued to wait as clerk Danh assisted other customers. Approximately 20 minutes passed since the officers first sought permission to inspect the premises. Agent Delarosa had given clerk Danh several opportunities to visually inspect his badge and police ID. Sergeant Stough told Agent Delarosa "we're at a stalemate." Agent Delarosa and the two LBPB officers exited the premises where Agent Delarosa obtained and filled out the Notice of Violation ABC-756 form.⁹

15. The three peace officers re-entered the Licensed Premises and Agent Delarosa stood on the customer side of the clerk's window and presented the Notice of Violation to clerk Danh, who remained on the employee side of the clerk's window, continuing to be mulish, unyielding and obstinate, interrupting the agent as he tried to explain the notice. Agent Delarosa asked clerk Danh to sign the notice, and clerk Danh refused to sign the said notice. (Exhibit 2.)¹⁰

16. At all times, while inside the Licensed Premises, all three peace officers were calm, exhibited patience and respect toward clerk Danh. Clerk Danh did not provide the officers with the same courtesy. Clerk Danh instead was uncooperative, mulish, combative and unyielding in his demeanor.¹¹ At no point while the officers were in the Licensed Premises did clerk Danh call the LBPB to verify the LBPB officers were who they claimed, and clerk Danh did not write down any of the peace officers' information on a log sheet or paper as he claimed he was required to do in order to allow them behind

⁸ See Exhibit H, video file UYYE6021; Department witness testimony is incorporated with the audio and visual depiction from this video file.

⁹ See Exhibit H, video file MDES2761; confirms witness testimony with video depiction incorporated therein.

¹⁰ See Exhibit H, video file VZVZ0471 [video clearly depicts Agent Delarosa's badge hanging from a lanyard around his neck, confirming the testimony; video also depicts Agent Delarosa patiently handing through the clerk's window and explaining the Notice of Violation to clerk Danh, with clerk Danh continuing to be combative, disrespectful and speaking over Agent Delarosa.]

¹¹ See Exhibit H, majority of above-referenced video files.

the counter. Clerk Danh did not appear to wear eye glasses in the videos in which he was depicted in Exhibit H.

(Respondent's Witness)

17. Danh Nguyen appeared and testified at the hearing. His full name is Danh Cong Nguyen.¹² Clerk Danh is the Licensee's brother-in-law. The Licensee hired clerk Danh "to run the premises until [the Licensee] can resell it." Clerk Danh holds several positions at the Licensed Premises including that of clerk, store manager, bookkeeper as well as personal and financial advisor to the Licensee.

18. On September 12, 2018, clerk Danh recognized both Sergeant Stough and Detective Arzola and knew they were LBDP officers because they had been inside the Licensed Premises prior to September 12, 2018.

19. Clerk Danh admitted that Detective Arzola was the first to speak to him and advise him they were conducting an ABC inspection. He further admitted to telling the officers there is a store policy that requires he keep a log of people behind the counter and must verify them. He further admitted that he "argue[d] back and forth" with Agent Delarosa, "I try to *convince* him to give me his ID,"¹³ "we are going back and forth [*sic*] few times, I excuse him [*sic*] few times." Clerk Danh acknowledged attending to customers while the peace officers were in the store. Clerk Danh understood that if he refused the inspection it would be considered a violation. He admitted to refusing to allow Agent Delarosa to perform the inspection. He further acknowledged speaking to all three peace officers, that all three informed him they were there for an ABC inspection and that both Detective Arzola and Sergeant Stough informed him Agent Delarosa was the one who conducted the inspection, not them. Clerk Danh admitted that as soon as Detective Arzola informed him of the latter "at that point I know [*sic*] he [Agent Delarosa] is from ABC."

20. Clerk Danh signed a Clerk's Affidavit when he was first hired and signed another Clerk's Affidavit on January 1, 2017.¹⁴ Clerk Danh was aware he signed the Clerk's Affidavit on his own behalf and knew the purpose for his signing the form was "to conform with ABC law." He admitted to never trying to call the Department of Alcoholic Beverage Control while the officers were in the store on September 12, 2018, and only called the Department after the officers left, having already issued him a violation.

¹² Hereinafter referred to as clerk Danh to be consistent throughout the proposed decision.

¹³ Emphasis added.

¹⁴ See Exhibit G, ABC-333 Investigative Report, page 6 of 6, where it states, "On 10-02-2018, I received a Response Letter from Huynh that consisted of 10 pages (Attachment #4). This letter contained all of my requested documents, including a Clerks Affidavit signed by Nguyen on 01-01-2017."

21. Clerk Danh acknowledged having been found guilty in a criminal court by a jury trial for failing to allow a peace officer to conduct an inspection at the Licensed Premises.

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

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

5. Business and Professions Code section 25755 provides:

- a) The director and the persons employed by the department for the administration and enforcement of this division are peace officers in the enforcement of the penal provisions of this division, the rules of the department adopted under the provisions of this division, and any other penal provisions of law of this state prohibiting or regulating the sale, exposing for sale, use, possession, giving away, adulteration, dilution, misbranding, or mislabeling of alcoholic beverages or intoxicating liquors, and these persons are authorized, while acting as peace

- officers, to enforce any penal provisions of law while in the course of their employment.
- b) The director, the persons employed by the department for the administration and enforcement of this division, peace officers listed in Section 830.1 of the Penal Code, and those officers listed in Section 830.6 of the Penal Code while acting in the course and scope of their employment as peace officers may, in enforcing the provisions of this division, visit and inspect the premises of any licensee at any time during which the licensee is exercising the privileges authorized by his or her license on the premises.
 - c) Peace officers of the Department of the California Highway Patrol, members of the University of California and California State University police departments, and peace officers of the Department of Parks and Recreation, as defined in subdivisions (a), (b), (c), and (f) of Section 830.2 of the Penal Code, may, in enforcing this division, visit and inspect the premises of any licensee located on state property at any time during which the licensee is exercising the privileges authorized by his or her license on the premises.
 - d) Any agents assigned to the Drug Enforcement Narcotics Team by the director shall have successfully completed a four-week course on narcotics enforcement approved by the Commission on Peace Officer Standards and Training. In addition, all other agents of the department shall successfully complete the four-week course on narcotics enforcement approved by the Commission on Peace Officer Standards and Training by June 1, 1995.

6. Cause for suspension or revocation of the Respondent's license exists under Article XX, section 22 of the California State Constitution and sections 24200(a) and (b), for the violation of Business and Professions Code section 25616 as alleged in Count 1 of the Accusation. On September 12, 2018, the Respondent-Licensee's agent or employee, Danh Nguyen, refused to permit the Department or its representative to make an inspection or examination of the Licensed Premises as authorized by Business and Professions Code sections 25753 and 25755, in violation of Business and Professions Code section 25616. (Findings of Fact ¶¶ 5 - 21.)

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

8. Cause for suspension or revocation of the Respondent's license exists under Article XX, section 22 of the California State Constitution, and sections 24200(a) and (b) for the violations of Penal Code section 148(a)(1) alleged in count 2. Respondent's employee, Danh Nguyen, willfully resisted, delayed, or obstructed Department Agent Delarosa, a peace officer, in or about the Licensed Premises, on September 12, 2018, in the discharge or attempted discharge of a duty of his office, including, but not limited to, the ABC

Impact Inspection. Clerk Danh admitted that on September 12, 2018, he knew Detective Arzola and Sergeant Stough were LBDP Officers, recognizing them from their having visited the premises prior to September 12, 2018. Clerk Danh admitted that as soon as Detective Arzola informed him that Agent Delarosa was the officer who would conduct the ABC inspection, not the LBDP officers, clerk Danh said "at that point I know he [Agent Delarosa] is from ABC." Yet despite this knowledge and despite both LBDP Officers' repeated assurances to clerk Danh that Agent Delarosa was whom he, his badge and police ID, said he was, clerk Danh repeatedly and wilfully, for approximately 20 minutes, mulishly and unrelentingly refused and resisted to permit the inspection of the premises as required by law, thereby delaying, or obstructing all three peace officers in the discharge of their duties. The two LBDP officers and Agent Delarosa were patient and respectful toward clerk Danh in attempting, over an extended period of time, to convince clerk Danh to allow them to inspect the premises and gave clerk Danh multiple opportunities to avoid a violation. (Findings of Fact ¶¶ 5-21.) The videos and audio of Exhibit H confirm the foregoing, as well as depict clerk Danh becoming obstinate and continuing that course of stubbornness and combative behavior throughout the time the officers were present, despite all three officers, on multiple occasions, assuring clerk Danh that Delarosa was an agent with the Department of Alcoholic Beverage Control and was present at the Licensed Premises to conduct an ABC inspection.

9. 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 demeanor of the witness while testifying, 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 consistent or 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.

10. In the balancing the factors listed in Evidence Code section 780, Respondent and clerk Danh's following contentions are disbelieved and found to be self-serving statements for the following reasons. Clerk Danh presented conflicting, evasive and inconsistent testimony. Clerk Danh exhibited a bias in the presentation of his testimony as the brother-in-law to the Licensee subject to discipline. The undersigned will list each contention first and address each of the following contentions individually: (a) Detective Arzola did not ask clerk Danh to see the ABC license but the "licenses," she requested to see all of the premises licenses. Clerk Danh made this false claim while claiming he did not know the officers were present for an ABC Inspection until much later. However, these claims conflict with the credible testimony of Agent Delarosa and Sergeant Stough that clerk Danh was informed up-front and multiple times they were there to conduct an

ABC inspection. Clerk Danh's contention is also contradicted by the video/audio file VCU19807 (Exhibit H), in which can be heard Detective Arzola asking to see the store's ABC license; (b) Agent Delarosa never showed his badge or ID to clerk Danh at the Licensed Premises on 9/12/18; (c) clerk Danh could not clearly see Agent Delarosa's badge and police ID when the Agent showed it to him; (d) clerk Danh never saw Agent Delarosa's badge or ID; The contentions listed in (b),(c), and (d) are contradicted by the credible testimony of both Agent Delarosa and Sergeant Stough, whose testimonies were found to be more credible than clerk Danh's testimony; (e) clerk Danh did not know Agent Delarosa was an agent with the ABC. This is contradicted by the credible testimony of both Agent Delarosa and Sergeant Stough, whose testimonies were found to be more credible and which included, but were not limited to, Agent Delarosa identifying himself immediately after clerk Danh got off the cellular telephone, both the agent and sergeant testifying that clerk Danh could clearly see the agent's badge hanging around his neck, in addition to their testimony that both LBPD officers verified and vouched that Delarosa was an agent with the ABC. Even clerk Danh contradicted his own testimony later admitting to knowing Agent Delarosa was an agent with the ABC after Detective Arzola vouched that he was; (f) clerk Danh did not say there was no way for the clerk to know whether the agent's credentials were fake or not. This is contradicted by the credible testimony of Agent Delarosa and Sergeant Stough, whose testimonies were found to be more credible. Furthermore, clerk Danh's repeated insistence to "verify" the agent's ID by taking a photograph of it, despite seeing it before him and the assurances of the LBPD officers, relayed the inference that clerk Danh thought the Agent's credentials were fake and he was not whom all three officers said he was; (g) Sergeant Stough never talked to clerk Danh, except one time when clerk Danh asked the sergeant to make a report and he said no and turned away. This is contradicted by the credible testimony of Agent Delarosa and Sergeant Stough, whose testimonies were found to be more credible. Clerk Danh even contradicted his own testimony when he later testified that Sergeant Stough "only said Agent Delarosa is doing the inspection not us." Furthermore, the video depicts Sergeant Stough speaking to clerk Danh on several occasions; (h) clerk Danh never told Agent Delarosa he could not conduct the inspection unless he, Clerk Danh, could take a photo of the agent's credentials. This is contradicted by the credible testimony of Agent Delarosa and Sergeant Stough, and the video which depicts clerk Danh's repeated insistence to "verify" the agent's ID by taking a photograph of it. See Exhibit H video/audio file WIUW4336, where clerk Danh can be heard saying, "I have to take your picture if you won't let me verify you." At one point, during clerk Danh's testimony he contradicted his contention by admitting that what he meant by "verify" was to take a "photo." He testified, "all I ask for the whole time is for him to show me his id and his badge with his ID number and badge. I can call ABC directly to verify who he is, if he refuse to show - to let me take a photo, he can just let me write it down, taking photo is easier, but he refuse, he let me know that." Clerk Danh's testimony that it would be much easier to just take a photo of the badge and ID than write down the information are consistent with the testimony of the peace officers who said the clerk was adamant about

taking a photograph of the agent's ID and badge. Yet, on September 12, 2018, despite the agent giving the clerk the Department's number to call the clerk does not call the number when the agent is present; (i) clerk Danh claimed he never stated that the agent had to go through the clerk, but merely "I am a store manager I am fully authorized to run the business." Clerk Danh's own testimony is consistent with Agent Delarosa's testimony and the video/audio of Exhibit H at VWAB5303, when the agent asks to speak to the owner on the telephone and clerk Danh refuses by pulling the phone away and stating that he is the store manager. Clerk Danh effectively informed the agent that the agent can go through clerk Danh, the store manager who has full authority to run the business and answer the agent's questions, and therefore does not need to speak to the person on the telephone; (j) clerk Danh's claim at the hearing that he could not see without wearing his eyeglasses, and even with his eye glasses the object has to be close, while motioning with his hands within inches of his eye eyes/eye glasses, thereby implying that despite the agent showing clerk Danh repeatedly his badge and ID, that clerk Danh could not clearly see the agent's badge and ID. This is disbelieved. In the video of Exhibit H the clerk was not wearing eye glasses the entire time he was depicted in the videos, including, but not limited to, while he was ringing up merchandise, providing change, looking at Detective Arzola's business card and the agent's badge/ID, taking photographs of the peace officers, dialing numbers on his cellular telephone. See Exhibit 3. During the hearing the undersigned observed clerk Danh kept his eyeglasses on his head the entire time, including while pointing out to the Respondent which questions to ask on a piece of paper Respondent held. Clerk Danh appeared to be quite capable of reading the document in the Respondent's hand from a distance-- at a distance further than what he claimed he could not see while on the witness stand. Clerk Danh did not put on his eye glasses at the hearing until he made the claim on the witness stand that he could not see anything without his eye glasses and motioning with his hand to indicate he could only see if the object was within inches of his eye glasses. The undersigned is aware that the aforementioned undersigned's observations were not made on the record and therefore the Director and any appellate reviewer will not be privy to this except for the undersigned's reference to it at this moment. These are mentioned as part of the undersigned's observations of clerk Danh's demeanor and manner of testifying during the hearing pursuant to Evidence Code section 780; (k) clerk Danh's claim he only signed one Clerk's Affidavit 14 years ago and therefore did not know what the "ABC" was when the officers said they would do an ABC Inspection on September 12, 2018. During cross-examination clerk Danh admitted to being aware he signed the Clerk's Affidavit on behalf of himself for the purpose "to conform with ABC law," and that he did know what the "ABC" was when he signed the Clerk's Affidavit. However, on page six of six of the police report there is a reference by Agent Delarosa that clerk Danh signed a Clerk's Affidavit, "On 10-02-2018, I received a Response Letter from Huynh that consisted of 10 pages (Attachment #4). This letter contained all of my requested documents, including a Clerks Affidavit signed by Nguyen on 01-01-2017." (Exhibit G); (l) clerk Danh's claim he had no idea why the two LBPD officers were at the Licensed Premises. This is

contradicted by clerk Danh's later admission that when the peace officers first entered they said they were there to conduct an ABC inspection. This is also contradicted by the credible testimony of Agent Delarosa and Sergeant Stough. Detective Arzola was the first of the three peace officers to inform clerk Danh they were there to conduct an ABC inspection; (m) as a further illustration of clerk Dan's evasiveness and willingness to provide false testimony on the stand, clerk Danh claimed he was not aware of the criminal charges filed against him in the Superior Court matter, or of what count he was found guilty in his four day criminal jury trial, and that he "never see [*sic*] complaint" against him. Upon cross-examination clerk Danh initially acknowledged he appeared in criminal court on failure to allow inspection. He then back-peddled in his testimony and thereafter finally admitted he did see the complaint after the trial, and "I believe the charge is related to I don't [*sic*] let him do the inspection."

PENALTY

The Department requested the Respondent's off-sale beer and wine license be suspended for 30 days based on the aggravating factors of the Licensee's lack of cooperation in investigation, exhibited by Respondent employee's refusal to comply with the request to inspect the premises, telling the agent he could not conduct the investigation, and despite being warned several times during the encounter that his refusal to comply would be a violation he chose not to comply. The Department mentioned the Respondent's failure to present evidence of mitigation regarding any steps the Licensee has taken in regard to preventing this type of violation in the future or what they have done in general to be compliant with ABC law. The Department did not provide a breakdown of the penalty between the two counts.

The Respondent did not recommend a penalty should the accusation be sustained in whole or in part.

The standard penalty under rule 144¹⁵ for a first-time offense of the licensee or employee not permitting inspection of the premises in violation of section 25755 is a 30-day suspension; and for not permitting inspection of records in violation of section 25616 is 30 days and indefinite until records are produced. The Penalty Guidelines recommend a 35-day suspension to revocation for a single, first-time offense of a licensee or employee resisting arrest or interfering with an investigation on the premises in violation of section 24200(a) and (b) and Penal Code section 148. Rule 144 offers guidance on adjusting the standard up or down depending on aggravating and mitigating factors. The Respondent presented no evidence of mitigation relating to positive action taken by the Licensee to correct the problem, or documented training of the licensee and his employees. The undersigned considered the Respondent's length of licensure since 2006 without

¹⁵ All rules referred to herein are contained in title 4 of the California Code of Regulations unless otherwise noted.

discipline as a mitigating factor. The penalty recommended herein complies with rule 144.

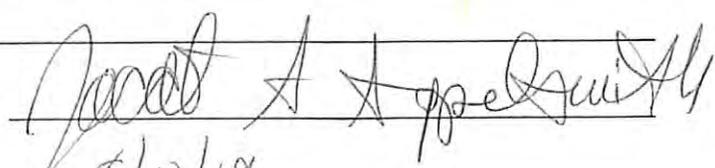
ORDER

Counts 1 and 2 of the Accusation are sustained. In light of these violations, the Respondent's off-sale beer and wine license is hereby suspended for 25 days as to each count, with the penalties as to those counts to be served concurrently with one another.

Dated: June 10, 2019



D. Huebel
Administrative Law Judge

<input checked="" type="checkbox"/> Adopt
<input type="checkbox"/> Non-Adopt: _____
By: 
Date: <u>8/12/19</u>