

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

AB-9852

File: 51-321908; Reg: 19088426

IBPOE ELKS of the WORLD
ARROWHEAD LODGE 896,
dba Arrowhead Elks Lodge #896
1073 North Mount Vernon Avenue
San Bernardino, CA 92411,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Doris Huebel

Appeals Board Hearing: August 14, 2020
Telephonic

ISSUED AUGUST 20, 2020

Appearances: *Appellant:* Lawrence R. Bynum, of the Law Offices of Lawrence R. Bynum, as counsel for IBPOE Elks of the World Arrowhead Lodge 896,

Respondent: John Newton, as counsel for the Department of Alcoholic Beverage Control.

OPINION

IBPOE Elks of the World Arrowhead Lodge 896, doing business as Arrowhead Elks Lodge #896 (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ revoking its license because it: 1) surrendered, abandoned, or quit its licensed premises, or closed its licensed business for a period exceeding 15 consecutive days without properly surrendering the license, in violation of California

¹ The decision of the Department, dated December 5, 2019, is set forth in the appendix.

Code of Regulations, Title 4, Division 1, section 65(a)²; 2) knowingly permitted the illegal sale, or negotiations for sales, of controlled substances or dangerous drugs upon the licensed premises, in violation of Business and Professions Code section 24200.5(a)³; 3) permitted persons to possess cannabis, a controlled substance, within the premises, in violation of Health and Safety Code section 11357; 4) permitted persons to possess cannabis, a controlled substance, for the purpose of sale within the premises, in violation of Health and Safety Code section 11359; 5) willfully resisted, delayed or obstructed a peace officer, in or about the premises, in the discharge or attempted discharge of a duty of his office, in violation of Penal Code section 148(a)(1), and; 6) no longer possessed the necessary of a bona-fide club, as defined in section 23037, in that the licensed premises operated for pecuniary interests and not for the advantages of club members, in accordance with section 23429 and Article XX, section 22 of the California Constitution.

FACTS AND PROCEDURAL HISTORY

Appellant's club license was issued on December 6, 1996. There is one prior record of departmental discipline against the license in 2016.⁴

The Department filed an accusation against appellant on January 4, 2019, and filed a First Amended Accusation (FAC) on June 19, 2019. The administrative hearing was

² All rules referenced herein are contained in title 4 of the California Code of Regulations unless otherwise noted.

³ All statutory references herein are to the California Business and Professions Code unless otherwise stated.

⁴ Appellant was previously disciplined for unlawfully selling alcoholic beverages to the public under section 23431 and for falsely threatening to place a poisonous or harmful substance into any food or drink under Penal Code section 347(b).

held on August 20, 2019. The following individuals testified for the Department:

Department Agent Mehul Patel; San Bernardino Police Department (SBPD) Officer Ryan Thornburg; San Bernardino Sheriff Office (SBSO) Criminalist Justin Troup; SBPD Officer Jose Alvarez; SBSO Criminalist II Angela Miller; SBPD Officer Sergio Alvarez; SBPD Corporal William Porch; SBPD Officer Stacy Moreno; Improved Benevolent and Protective Order of Elks (IBOE) of the World District Deputy Simmie Collins, and; SBPD Code Enforcement Officer II Rebecca Daugherty. Amos Wallace, appellant's House Chairman, and Melvin Mitchell, appellant's Exalted Ruler, testified for appellant.

Evidence offered at the administrative hearing established that on August 21, 2017, Dr. Donald P. Wilson, Grand Exalted Ruler, Grand Patriarch, of the IBPOE of the World Inc. Grand Lodge, sent a letter addressed to District Deputy Grand Exalted Ruler, Simmie Collins, instructing Collins to remove appellant's IBPOE of the World charter and all legal documents denoting its affiliation with the IBPOE of the World, Inc., as well as any signage relating to appellant's affiliation with the IBPOE of the World Inc. The letter also instructed IBPOE of the World, Inc. Grand Secretary, Richard H. Dennis, to notify all appropriate government entities regarding the revocation of appellant's charter and its affiliation with IBPOE of the World, Inc. The letter sent by Dr. Wilson was in accordance with a resolution passed by the Grand Lodge on August 10, 2017.

Sometime in September 2017, Collins executed Dr. Wilson's order and received appellant's membership charter from appellant's House Chairman, Amos Wallace. Once the charter was retrieved, appellant no longer existed as an authorized elks lodge by the IBPOE of the World, Inc. and could no longer operate under its authority. Collins did not take appellant's operational charter, which granted appellant permission to operate the

bar in the licensed premises and sell alcoholic beverages. Appellant continued to exercise its privileges under its alcoholic beverage license.

After retrieving appellant's charter, Collins gave it to Dennis, who notified the Department and other government entities in a letter dated November 1, 2017 (hereinafter referred to as the "November 2017 letter"), that appellant was no longer an auxiliary with the IBPOE of the World, Inc. Thereafter, Collins understood that appellant's license would be returned to the Department.

Sometime after November 1st, Collins provided the November 2017 letter to Code Enforcement Officer (CEO) Daugherty. CEO Daugherty was collaterally assigned to inspect the licensed premises in 2017 after receiving a citizen's complaint of activities that were occurring there. During CEO Daugherty's investigation, she was not able to contact anyone at the licensed premises and was only able to inspect the exterior because it was not open. At some unknown time, CEO Daugherty provided a copy of the November 2017 letter to the Department.

Nearly a year later, on August 15, 2018, SBPD executed search warrants at the licensed premises due to cannabis sales events being held there and seized dried green vegetable materials and golden-brown solids which were later determined to be cannabis/marijuana. Jose A. Guillen, a San Bernardino City Building & Safety Division Community Development Department inspector, after inspecting the licensed premises and finding conditions unsafe, taped a red sign to the front door stating:

UNSAFE – DO NOT ENTER OR OCCUPY. This structure has been inspected, found to be seriously damaged and is unsafe to occupy as described below: non-permitted alterations, gas lines at rear patio, no sprinklers or smoke detectors or fire extinguisher, hazardous electrical.

(Exh. 4.)

On September 13, 2018, approximately a month after the search warrants were executed, Agent Patel was assigned by the Department to investigate whether appellant had abandoned its club license pursuant to rule 65(a). Upon his arrival, Agent Patel saw the same red sign posted by Guillen on August 15, 2018 regarding unsafe conditions and took a picture of it. (Exh. 4.) Agent Patel also encountered an adult African American male who told him that the licensed premises was open on Thursday evenings. However, Agent Patel observed an eight-person seating bench placed up against the front door blocking the entrance into the licensed premises, preventing him from going inside.

At some point during his investigation, Agent Patel spoke to Mr. Collins, who confirmed that appellant's membership charter had been revoked and it was no longer an auxiliary of IBPOE of the World, Inc. Agent Patel also spoke with Ronnie Murphy, appellant's corporate officer about IBPOE of the World Inc.'s November 2017 letter. However, Murphy was uncooperative and refused to listen to Agent Patel. Murphy further claimed that the letter was untrue, and that he would provide a different letter to Agent Patel stating that the November 2017 letter was "bogus." (Findings of Fact, ¶ 12.) Agent Patel provided Murphy with his contact information; however, he never received any letter from him indicating that the November 2017 letter was false. Finally, Agent Patel questioned Murphy whether appellant held any cannabis vendor sales at the licensed premises, which Murphy denied.

Agent Patel returned to the licensed premises on September 28, 2018 to hand-deliver a Notice to Produce records, which Agent Patel had attempted to send appellant via certified mail but was returned as undeliverable. Agent Patel walked to the front door and noticed the same "UNSAFE" sign and eight-person bench blocking the main entrance

and exit door to the licensed premises. Agent Patel was able to make contact with an individual in appellant's parking lot who told him that the licensed premises had not been open for the last two months because the city "shut it down" as the result of the code violations. The individual told him that "Ronnie," the owner of the licensed premises, allows him to store his taco business supplies and equipment in the parking lot out-building.

Agent Patel visited the licensed premises again on October 5, 2018 and observed that it was not open for business. The same red "UNSAFE" sign was still posted on the front door with the same bench blocking the door. To Agent Patel's knowledge, no one had entered the licensed premises between September 13, 2018 through October 5, 2018.

A few months later, on February 16, 2019, SBPD Officer Moreno and her partner went to the licensed premises in an undercover capacity after receiving citizens' complaints that the licensed premises was selling marijuana. Officer Moreno entered the premises and saw several tables set up with large quantities of processed marijuana. Officer Moreno and her partner left the licensed premises shortly thereafter.

On February 25, 2019, another SBPD officer, Officer Alvarez, received a call for service that an individual was assaulted in the parking lot at the licensed premises by security staff. Officer Alvarez drove to the licensed premises in his marked black and white patrol vehicle with the SBPD emblem and star thereon. Officer Alvarez was in full uniform, wearing his police utility belt and firearm, with his badge displayed on the left side of his chest.

Officer Alvarez arrived just outside of the licensed premises' front gate. He observed that the premises was open and had several cars parked in the parking lot. There was heavy traffic on North Mount Vernon Avenue, the street where the licensed premises is located. Officer Alvarez attempted to pull his patrol vehicle toward the gate and into the driveway of the licensed premises, when a uniformed security guard, later identified as Julian Fuentes, immediately approached the gate and began closing it, preventing Officer Alvarez from entering. This caused Officer Alvarez' patrol vehicle to remain partially on the sidewalk, blocking pedestrian traffic, with the rear of his vehicle in the roadway, creating a hazard and blocking the entrance to the licensed premises. Officer Alvarez was unable to move his patrol vehicle safely.

Officer Alvarez exited his patrol vehicle and instructed Fuentes to open the gate. Fuentes refused and told Officer Alvarez he was not allowed on the property. Officer Alvarez identified himself as a police officer and again instructed Fuentes to open the gate. Fuentes again refused, telling Officer Alvarez that he was not allowed on the property. Officer Alvarez was unsure if Fuentes was involved in the possible assault that occurred at the licensed premises. Officer Alvarez approached Fuentes and detained him. This process occurred over approximately five minutes, and Officer Alvarez was unable to locate the victim of the alleged assault.

Fuentes did not provide a statement to Officer Alvarez regarding the assault. Fuentes told Officer Alvarez that he knew he was a police officer, but that he was closing the gate and not allowing Officer Alvarez onto the property because he was following the instructions of his employer, "Ronnie." Fuentes was a security guard with N+M Security and was hired to work for appellant on February 25, 2019. Officer Alvarez later spoke

with Fuentes' supervisor, but did not obtain his name.

Approximately two months later, on April 22, 2019, Officer Moreno and her partner returned to the licensed premises and noticed vehicles leaving the parking lot. Officer Moreno conducted traffic stops on the vehicles and contacted the occupants. The vehicle occupants informed the officers that they had purchased marijuana from the licensed premises, which they referred to as "the Sesh." The occupants did not know the licensed premises was an Elk lodge, nor did they say they were Elk lodge members.

On April 25, 2019, SBPD officers executed a second search warrant at the licensed premises. At the time of the execution, there were people in the premises' parking lot, but no one was permitted into the licensed premises. One of the officers, Officer Thornburg searched a white Chrysler 300 in the parking lot. She found approximately 10.5 pounds of processed marijuana and 1.6 pounds of THC oils and wax, as well as various marijuana edibles. When officer Thornburg entered the licensed premises, she found a bar area but did not recall seeing any alcoholic beverages. She did not see anyone drinking alcohol while she was in the licensed premises and did not find alcohol therein.

Officer Moreno was present during the warrant execution and spoke with an individual named Steve Guillen at the front of the licensed premises. Guillen advised that he was at the licensed premises to donate marijuana, but claimed he never sold marijuana at the licensed premises. Guillen stated he only donates marijuana to people with medical issues. Guillen did not state that he was an Elk lodge member.

Officer Moreno also interviewed Leonilo Hernandez outside the front entrance of the licensed premises. Hernandez advised that he worked for Green Care Solutions, a

company that sold marijuana at the licensed premises for approximately one year.

Hernandez indicated that his business usually sells marijuana out of the city of Los Angeles, so he believed it was legal to sell marijuana in San Bernardino. Hernandez also told Moreno that the licensed premises conducts cannabis sales events where vendors rent space to sell cannabis merchandise, paying appellant fees for the rental space. Hernandez did not provide the name of the persons to whom he pays the fees, nor did he say he was an Elk lodge member.

Officer Alvarez, also present during the search warrant execution on April 25, 2019, interviewed Fadi Rashi Imad. Imad said he was a marijuana vendor at the licensed premises in 2018. Imad said that he, along with other vendors, pay appellant \$150 for space to sell marijuana inside the licensed premises, in addition to paying a \$100 permit fee. Imad and the other vendors believed that appellant had obtained the proper permits to allow the vendors to set up shop inside the licensed premises and sell cannabis. Imad did not say he was an Elk lodge member.

During the warrant execution, SBPD officers entered the licensed premises and observed a small room that had two ATM machines. They walked down a hallway that had three small offices connected to it. The officers entered the first room, which was set up like a functioning office with a filing cabinet, chairs, desk, and paperwork. In the filing cabinet officers found 79 grams of marijuana and cash. On the desk officers found a daily revenue pay-owe sheet with headings of "Friday" and "Saturday" with a total number thereon. Officers also located a single sheet stating there would be a monetary increase of charges to vendors at the licensed premises.

Corporal Porch walked down a second hallway which led to a larger room that had rows of tables set-up for sales of merchandise that evening. In that room, Corporal Porch found a backpack, which contained smaller amounts of marijuana wax oil and marijuana products in formal product-brand packaging for sale, similar to what is commonly sold in a marijuana dispensary. The owner of the backpack, Dillon Wilson, did not say whether he was an Elks lodge member. Officers also found a 12-gauge shotgun in a small closet in the same large room. Corporal Porch also saw a fixed bar; however, he saw no alcoholic beverages inside the licensed premises.

Amos Wallace, appellant's house chairman appeared and testified at the hearing. Wallace testified that appellant is an active, valid, non-profit California Corporation and that appellant's members own the licensed premises. Wallace stated that appellant leases/rents out the licensed premises to others, including event promoters who sell cannabis on the licensed premises.

Wallace further testified that on August 15, 2018 and April 25, 2019, the two dates SBPD executed search warrants, cannabis was on the licensed premises because appellant had leased the premises to a cannabis event promotor, who brought vendors to the events. Wallace confirmed that appellant does not have a cannabis license for the premises. However, Wallace testified that the cannabis event promoters presented him with cannabis licenses and claimed the vendors had cannabis licenses as well.

Finally, Wallace testified that the exalted ruler instructs members they cannot have alcohol on the premises during the time the licensed premises is leased to cannabis promoters. To his knowledge, no alcoholic beverages on the licensed premises were available when cannabis events occurred on the premises.

Melvin James Mitchell, appellant's exalted ruler or "CEO," also appeared and testified at the hearing. Mitchell testified that he was aware that appellant was working with cannabis promoters and that at least two cannabis promoter sales events took place on the licensed premises, which were set up through Wallace. Mitchell said appellant had policy and procedures in place when cannabis sales events took place at the licensed premises to have all alcoholic beverages locked up. He stated he personally removed the alcoholic beverages and locked them in a closet in the licensed premises during the two events on August 15, 2018, and April 25, 2019.

Mitchell said that appellant also leased the licensed premises for other promoter events, including a taco festival and other fundraiser events, including but not limited to, a fundraiser for a candidate running for office. Mitchell also testified that if someone desired to get married at the licensed premises, appellant would rent it to the wedding couple and permit alcoholic beverages to be served. There have also been car washes for families to raise funds to assist in burial costs for loved ones and a Thanksgiving food-give-away. At most events at the licensed premises, alcoholic beverages are served, except at the cannabis promoter events.

On October 2, 2019, the administrative law judge (ALJ) recommended that all counts in the accusation be sustained and that appellant's license be revoked. The proposed decision was adopted in full by the Department on November 18, 2019, and a certificate of decision was issued on December 5, 2019.

Appellant filed a timely appeal contending that substantial evidence does not support the Department's findings on any of the nine counts in the First Amended Accusation (FAC).

DISCUSSION

Appellant contends that none of the nine counts in the FAC are supported by substantial evidence. (AOB, at pp. 3-8.) Specifically, appellant argues that count 1 is not supported because the “evidence overwhelming[ly] proves that [appellant] was open in 2017.” (*Id.* at p. 3.) Further, appellant argues that counts 2-8 are not supported by substantial evidence because “*no liquor* was allowed to be sold during the [cannabis] events and no [club] members were involved or even present.” (*Id.* at p. 5 [emphasis in original].) Finally, appellant maintains that count 9 is not supported by substantial evidence because it is still a “club,” with the ability to sell alcoholic beverages, regardless whether its IBPOE of the World charter was revoked. (*Id.* at pp. 5-8.)

Since the Department sustained all 9 counts of the FAC, this Board is required to defer to its findings so long as those findings are supported by substantial evidence. (See *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (Southland)* (2002) 103 Cal.App.4th 1084, 1094 [127 Cal.Rptr.2d 652, 659] [citing *Kirby v. Alcoholic Beverage Control Appeals Bd.* (1968) 261 Cal.App.2d 119, 122 [67 Cal.Rptr. 628] [“In considering the sufficiency of the evidence issue the court is governed by the substantial evidence rule[;] any conflict in the evidence is resolved in favor of the decision; and every reasonably deducible inference in support thereof will be indulged. [Citations.]”]; see also *Kirby v. Alcoholic Bev. etc. Appeals Bd.* (1972) 25 Cal.App.3d 331, 335 [101 Cal.Rptr. 815] [“When two or more inferences can be reasonably deduced from the facts, the reviewing court is without power to substitute its deductions for those of the department.”].) “Substantial evidence” is “evidence of ponderable legal significance, which is ‘reasonable in nature, credible and of solid value.’ ” (*County of Los Angeles v.*

Commission on State Mandates (1995) 32 Cal.App.4th 805, 814 [38 Cal.Rptr.2d 304, 307–308], internal citations omitted.)

A. Count 1

Count 1 of the FAC alleged that appellant violated rule 65(a) on or about August 21, 2017. (Exh. 1A.) Rule 65(a) states:

Every licensee who surrenders, abandons or quits his licensed premises, or who closes his licensed business for a period exceeding 15 consecutive calendar days, shall, within 15 days after closing, surrendering, quitting, or abandoning his licensed premises, surrender his license or licenses to the department. The department may seize the license certificate or certificates of any licensee who fails to comply with the surrender provisions of this rule, and may proceed to revoke his license or licenses.

Here, the Department found that appellant abandoned its license on August 15, 2018, after a San Bernardino City inspector closed the licensed premises and posted a red sign stating, “UNSAFE – DO NOT ENTER OR OCCUPY.” (Conclusion of Law, ¶ 4.) The Department stated that “[t]he preponderance of the evidence established that the ‘UNSAFE’ sign was posted on the Respondent’s front entrance door and the Licensed Premises was not used beginning August 15, 2018, for a period of time at least through October 5, 2018.” (*Ibid.*) There are several issues with the Department’s findings.

First, the Department’s findings are inconsistent with its allegations stated in the FAC. The Department originally alleged that appellant “surrendered, abandoned, or quit his licensed premises, or closed his license [*sic*] business for a period exceeding 15 consecutive days ...” on or about August 21, 2017, nearly a year *before* the licensed premises were closed for safety concerns. (FAC, exh. 1A.) Stated in another way, the Department did not give appellant proper notice that the basis for its rule 65(a) violation would be predicated on the closure of the licensed premises in August 2018. (See Cal.

Gov. Code § 11503 [“The accusation ... shall be a written statement of charges that shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his or her defense.”].)

Presumably, the Department did not base its rule 65(a) violation on the August 21, 2017 date because there is no evidence to support a finding that appellant surrendered, abandoned, or quit the licensed premises on that date. This is because the significance of the August 21, 2017 date was the date Dr. Wilson, Grand Patriarch of the IBPOE of the World, Inc., sent a letter effectively revoking appellant’s membership charter. (Finding of Fact, ¶ 5.) There was no evidence offered by the Department that the revocation of appellant’s membership charter was akin to appellant surrendering, abandoning, quitting, or closing the licensed premises, especially since the Department found that appellant retained both its operational charter and its type-51 club licenses and continued to exercise its license privileges. (*Id.* at ¶ 6.) Further, the Department cannot support its findings that appellant surrendered, abandoned, quit, or closed the licensed premises on or about August 21, 2017 based on the testimony of CEO Daugherty, since she “could not recall what dates she conducted the two on-site exterior inspections or the drive-by cursory inspection.” (Finding of Fact, ¶ 4.) In sum, there is no substantial evidence to support a finding that appellant violated rule 65(a) on or about August 21, 2017.

Second, the Department cannot support its findings that appellant surrendered, abandoned, quit, or closed the licensed premises as the result of its closure by the City of San Bernardino on August 15, 2018. The impetus of rule 65(a) is a *voluntary* surrender, abandonment, or closure of a licensed premises, which puts the onus on a licensee to

return its license to the Department. Here, there is no evidence that appellant voluntarily closed the licensed premises on August 15, 2018, or took some affirmative act indicating it voluntarily sought to close its business.⁵ The evidence shows that the closure was involuntary as the City of San Bernardino did not allow appellant to access the licensed premises and operate its license. There is no authority or evidence from the Department that this qualifies a closure under rule 65(a). To the contrary, the evidence supports the appellant's position that it still wanted to operate the licensed premises since it: 1) appealed the notice of unsafe conditions and 2) completed the necessary repairs to re-open the licensed premises. (Finding of Fact, ¶ 22.) It would defy logic and reason to read into rule 65(a) a requirement that appellant would have needed to make the necessary repairs and re-open in less than 15 days to avoid surrendering its license.

The Department's finding regarding count 1 is not supported by substantial evidence and is hereby reversed.

B. Counts 2-6

Counts 2 through 6 involve the illegal possession, possession for sale, sale, and/or negotiations for sales, of controlled substances or dangerous drugs upon the licensed premises on two dates: August 15, 2018 and April 25, 2019. (Exh. 1A.) The Department found that appellant knowingly permitted illegal drug sales on the licensed premises while

⁵ The Department found that appellant failed to present any credible evidence that it held any meetings at the licensed premises between August 15, 2018, and October 5, 2018, stating, "[i]t was within the Respondent's power to produce stronger, more satisfactory evidence that the Respondent continued to keep the Licensed Premises open and operating between August 15, 2018 and October 5, 2018." (Conclusions of Law, ¶ 26.) However, it was not appellant's burden to prove that the licensed premises was open, but rather, the Department's burden to prove that the licensed premises was closed or abandoned, pursuant to rule 65(a). The Department may not improperly shift the burden to appellant to prove that a violation did not occur.

it was exercising its type-51 licensed privileges. (Conclusions of Law, ¶ 6.)

It is undisputed that at least two cannabis sales events were held at the licensed premises on August 15, 2018 and April 25, 2019, where marijuana and other cannabis products were possessed, sold, and/or were otherwise available for sale by third party cannabis promoters who rented the licensed premises from appellant's corporate officers. (Findings of Fact, ¶¶ 24-44.) Appellant does not deny that the possession and/or sales of cannabis at the licensed premises occurred or that they were lawful. Rather, appellant contends that the cannabis events are not attributable to appellant since the events were not held by its members and were not held during the times appellant was exercising its privileges under the license. (AOB, at pp. 4-5.)

It is well-settled in alcoholic beverage case law that an agent or employee's on-premises knowledge and misconduct is imputed to the licensee/employer. (See *Yu v. Alcoholic Bev. Control Appeals Bd.* (1992) 3 Cal.App.4th 286, 295 [4 Cal.Rptr.2d 280]; *Kirby v. Alcoholic Bev. Control Appeals Bd.* (1973) 33 Cal.App.3d 732, 737 [109 Cal.Rptr. 291].) In *Laube v. Stoh* (1992) 2 Cal.App.4th 364, 367 [3 Cal.Rptr.2d 779], the court noted:

The factual discussion involves the element of the licensee's knowledge of illegal or improper activity on his or her premises; this knowledge may be either actual knowledge or constructive knowledge imputed to the licensee from the knowledge of his or her employees.

In its decision, the Department stated:

The Licensee is responsible and has an affirmative duty for ensuring the Licensed Premises complies with the laws and regulations by which it is bound. The Respondent was fully aware that it was renting out the Licensed Premises to promoters and vendors for cannabis sales events.

(Conclusions of Law, ¶ 14.)

There are two main issues with the Department's decision, both involving appellant's actual or constructive knowledge of the unlawful nature of the cannabis events held at the licensed premises. First, the Department did not provide evidence that appellant's agents or employees had actual knowledge that they were renting the licensed premises to third party promoters for the purpose of the promoters to engage in illegal sales or possession of cannabis. To be sure, appellant's agents allowed the promoters to use the licensed premises, and those individuals used it to engage in unlawful activity. (Conclusions of Law, ¶¶ 6-14.) But as *Laube* instructs, "[t]he factual discussion involves the element of the *licensee's knowledge* of illegal or improper activity on his or her premises." (*Laube, supra*, 2 Cal.App.4th at 367 [emphasis added].) In other words, appellant must have known that the licensed premises were to be used in an unlawful manner. (*Ibid.*)

Here, the unlawful nature of commercial cannabis becomes complicated as sales are generally authorized under section 26000 *et. seq.*, known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). However, as noted in the decision, there are certain restrictions. For example, section 26038 requires a business engaged in commercial cannabis activity to have a license. While the Department noted that none of appellant's corporate officers were aware that the promoters were licensed, the Department failed to make any findings that appellant's officers knew that the promoters were *not* licensed.⁶ (See e.g., Findings of Fact, ¶ 49.) The Department must

⁶ Although the Department found Wallace's testimony not credible, a lack of witness credibility does not alleviate the Department from producing its own affirmative evidence. Even if the Department did not believe that the promoters offered proof that

make such a finding to satisfy the actual knowledge requirement.

Further, there is no evidence offered by the Department that would support the its decision that appellant's corporate officers knew, in advance, that the promoters would use the licensed premises for illegal cannabis sales or possession. Again, there is nothing inherently illegal or unlawful about commercial cannabis sales after MAUCRSA. Simply finding that unlawful cannabis sales took place at the licensed premises by individuals who leased the premises from appellant does not satisfy the actual knowledge requirement.

The second issue with the Department's decision is that there is no evidence to support the Department's decision that appellant had constructive knowledge of illegal cannabis sales or possession at the licensed premises. The Department failed to consider the nature of the license at issue when holding appellant responsible for the actions and constructive knowledge of its employees or agents. As a social club, the nature of appellant's license is different than the licenses at issue in cases involving unlawful activity imputed to the licensee, such as *Yu, Kirby, Laube, and Morell v. Department of Alcoholic Beverage Control* (1962) 204 Cal.App.2d 504, 514 [22 Cal.Rptr.405, 411]. Appellant is not a bar, restaurant, night club, or other business open to the public for the purpose of selling alcoholic beverages. It is a social club that, at best, operates on a temporary or intermittent basis and only when its members are present. (See e.g. Findings of Fact, ¶¶ 14, 57 [Licensed Premises was open on Thursday

they were licensed to sell cannabis, the Department must still offer evidence that appellant knew the promoters were not licensed. By reaching that conclusion solely on the basis that appellant failed to produce "documented proof or evidence of such licenses," the Department improperly shifted its burden of proof onto appellant. (Conclusions of Law, ¶ 30.)

evenings, first and third Tuesday, and first and third Wednesday of the month.]

In fact, this distinction is important, as a closer look at section 24200.5(a) makes it clear that it only applies to *retail* licenses:

[T]he Department shall revoke a license ... [i]f 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.

(Bus. & Prof. Code, § 24200.5(a) [emphasis added].) The Department's own website defines a retail licensee as a holder of an on-sale general, off-sale general, on-sale beer and wine, off-sale beer and wine, or on-sale beer license.⁷ A social club license is not listed on the Department's website as a retail license.

The distinction is important because a full-time business engaged in sales of alcohol to the public has employees or agents present to monitor any illegal narcotic sales or possession. That is why it makes sense to deem "[s]uccessive sales, or negotiations for sales, over any continuous period of time [as] evidence

⁷ The Frequently Asked Questions section found at www.abc.ca.gov/licensing/ states:

What are the types of retail licenses?

- On-Sale General- authorizes the sale of all types of alcoholic beverages: namely, beer, wine and distilled spirits, for consumption on the premises, and the sale of beer and wine for consumption off the premises.
- Off-Sale General- authorizes the sale of all types of alcoholic beverages for consumption off the premises in original, sealed containers.
- On-Sale Beer and Wine- authorizes the sale of all types of wine and malt beverages (e.g., beer, porter, ale, stout and malt liquor) for consumption on and off the premises.
- Off-Sale Beer and Wine- authorizes the sale of all types of wine and malt beverages for consumption off the premises in original, sealed containers.
- On-Sale Beer- authorizes the sale of malt beverages for consumption on and off the premises (Sections 23393, 23394, 23396 and 23399).

of permission.” (Bus. & Prof. Code, § 24200.5(a).) In other words, constructive knowledge can be imputed to the licensee if its agents or employees are present while unlawful activity is occurring. A club licensee is not in the same position as a retail licensee to monitor for unlawful activity.

The Department failed to find that any of appellant’s members or corporate officers were present when the illegal drug sales took place, which could have been used to establish appellant’s constructive knowledge. Instead, the Department noted that an individual named Lydia Hernandez was present at the licensed premises when officers executed search warrants on April 25, 2019, and found that she was appellant’s “employee” because: 1) “she sets up tables for the events and then takes the tables down when the events are over,” and; 2) she is “paid for her services by the Respondent, in the form of marijuana joints given to her by ‘Ronnie[.]’ ” (Findings of Fact, ¶ 32.) The Department noted that Hernandez did not say she was an Elk lodge member. (*Ibid.*)

First, the Department’s evidence does not establish that Hernandez is appellant’s employee for the purposes of imputing her knowledge of illegal drug activity at the licensed premises to appellant. Setting up tables and taking them down, in exchange for marijuana joints promised by one of appellant’s corporate officers does not, on its own, make someone an employee or agent of a company. Second, even assuming Hernandez was appellant’s “employee,” the same issues with constructive knowledge persist. Hernandez stated she was there to set tables up and take the tables down. There is no evidence she was present when the illegal sales took place.⁸ Further, as explained above, the

⁸ Even though she was present when the warrants were executed, the evidence

unlawful nature of cannabis sales is not readily apparent. The Department has not offered any evidence that Hernandez had some knowledge that the cannabis sales at the licensed premises were unlawful.

In sum, the Department has not cited any evidence that illegal drug sales or possession occurred while appellant was operating its club license, or when its members or corporate officers were present. (Findings of Fact, ¶¶ 27, 30, 31, 32, 35, 37, and 51.) The Department cannot simply shoehorn the facts of the present matter to bring it in line with *Yu*, *Kirby*, *Laube*, and *Morell*. Those cases all involved constructive knowledge of unlawful conduct that was occurring while the licensee's employees or agents were present, which is not what occurred here. For these reasons, the Department's finding that appellant knowingly permitted illegal drug sales on the licensed premises while it was exercising its type-51 licensed privileges is reversed. Counts 2-6 are not supported by substantial evidence.⁹

C. Count 7

The Department sustained count 7 of the FAC, that on or about February 25, 2019 appellant's "agent or employee, Julian Fuentes, willfully resisted, delayed or obstructed Officer Alvarez, a peace officer, in or about the premises, in the discharge or attempt [*sic*]

establishes that the cannabis sales events had not yet taken place. (See e.g., Findings of Fact, ¶ 37 [stating that officers entered a "large room, which had rows of tables set-up for sales of merchandise that evening."])

⁹ Note that this Board finds it immaterial that the alleged unlawful conduct occurred while appellant was not actively engaged in selling alcoholic beverages. While relevant to the above discussion on constructive notice, this Board makes no finding that unlawful activity must occur while a licensee is exercising the privileges of its license.

discharge of a duty of his/her office, in violation of Penal Code section 148(a)(1).” (Exh. 1A; Conclusions of Law, ¶ 16.) Appellant does not contend that a violation of Penal Code section 148(a)(1) occurred, rather, argues, again, that there is no nexus between the violation and appellant’s exercising the privileges of the license. (AOB, at pp. 4-5.)

To support its decision, the Department relied on evidence that “Fuentes was following the instructions of his employer, ‘Ronnie.’ ” (Findings of Fact, ¶ 47.) Fuentes was an employee of a third-party security company that was hired to work for appellant on February 25, 2019. (*Ibid.*) The Department found that “Ronnie” is Ronnie Murphy, appellant’s leading knight/vice president. (Conclusions of Law, ¶ 29.)

Here, there is substantial evidence to support the Department’s finding that appellant’s agent, Fuentes, a security guard working for a company hired by appellant, violated Penal Code section 148(a)(1). Section 24200(b) provides that a licensee’s violation of any penal provisions of California law are grounds for suspension or revocation of a license. Penal Code section 148(a)(1) makes it unlawful to resist, delay, or obstruct a peace officer in the “discharge or attempt to discharge any duty of his or her office”

The evidence supports that Officer Alvarez identified himself to Fuentes as a peace officer, and that he was investigating a call for service involving an assault in the parking lot of the licensed premises. (Findings of Fact, ¶¶ 45-47; Conclusions of Law, ¶ 29.) Investigating an assault is a duty of a peace officer in the normal course of his or her office and position. Fuentes’ refusal to allow Officer Alvarez into the parking lot of the licensed premises delayed and obstructed Officer Alvarez from discharging his duty. Fuentes’ actions are attributable to appellant since appellant’s corporate officer hired

Fuentes' employer, and by extension, Fuentes, to provide security at the licensed premises and the obstruction occurred while Fuentes was fulfilling those duties (providing security).

The Department's findings regarding count 7 are, therefore, affirmed.

D. Counts 8-9

The Department found that appellant no longer possesses the necessary qualifications of a bona-fide club, in that it operates for pecuniary interests and not for the advantages of its club members. (Conclusions of Law, ¶¶ 17-22.) Section 23037 defines a "club" as a "corporation or association ... operated solely for objects of a social or athletic nature but not for pecuniary gain ... as well as the advantages of which belong to the members." Section 23429 states that a "club as defined in [Article 4] is a bona fide club." Article 4 (sections 23425-23438) contains numerous types of clubs that are considered "bona fide" under section 23429.

Here, there is no evidence in the record that appellant's renting of the licensed premises for outside events was for pecuniary interests and not for the advantages of its club members. As stated above, there is no evidence that the cannabis events were held by appellant or that it profited from the sale of cannabis during these events. The evidence in the record establishes that appellant rented the licensed premises to third parties at various times. There is no evidence that these events were done at the exclusion of its members. There is also no authority offered by the Department that a social club must make the licensed premises available to its members at all times. It is certainly possible that the money earned from renting the licensed premises (\$250 for a permit fee and rental space) could have been put back into the club for the advantages of

its members (e.g., fundraising for member events, discounts on membership dues, etc.). In any event, the Department has not proven otherwise.

Finally, the Department makes much of the fact that appellant's national charter was revoked by IBPOE of the World, Inc. in 2017. However, a "national fraternal organization" under section 23425 is only one enumerated example of a bona fide club under section 23429. Appellant may still meet the requirements of a bona fide club in another section (sections 23426-23438). To establish that appellant fails to meet the criteria of a bona fide social club would require the Department to prove that it does not meet any of these enumerated sections in Article 4, which it has not done.

For each of the above reasons, counts 8 and 9 are reversed.

ORDER

Counts 1, 2, 3, 4, 5, 6, 8, and 9 are reversed. Count 7, along with the Department's penalty of a 30-day suspension, is affirmed.¹⁰

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

¹⁰ 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 APPEAL BY:

IBPOE ELKS OF THE WORLD
ARROWHEAD LODGE 896
DBA: ARROWHEAD ELKS LODGE 896
1073 N MOUNT VERNON AVE
SAN BERNARDINO, CA 92411

RIVERSIDE DISTRICT OFFICE

File: 51-321908

Reg: 19088426

AB: 9852

CLUB - LICENSE

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

CERTIFICATION

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

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

IN WITNESS WHEREOF, I hereunto affix my signature on May 8, 2020, in the City of Sacramento, County of Sacramento, State of California.



Office of Legal Services

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

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

**IBPO ELKS OF THE WORLD ARROWHEAD
LODGE 896
ARROWHEAD ELKS LODGE 896
1073 NORTH MOUNT VERNON AVENUE
SAN BERNARDINO, CA 92411**

CLUB - LICENSE

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

RIVERSIDE DISTRICT OFFICE

File: 51-321908

Reg: 19088426

CERTIFICATE OF DECISION

RECEIVED

DEC 05 2019

**Alcoholic Beverage Control
Office of Legal Services**

It is hereby certified that, having reviewed the findings of fact, determination of issues, and recommendation in the attached proposed decision, the Department of Alcoholic Beverage Control adopted said proposed decision as its decision in the case on November 18, 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 January 15, 2020, a representative of the Department will contact you to arrange to pick up the license certificate.

Sacramento, California

Dated: December 5, 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:

IBPO Elks of the World Arrowhead Lodge 896	}	File: 51-321908
Dbas: Arrowhead Elks Lodge 896	}	
1073 North Mount Vernon Avenue	}	Reg.: 19088426
San Bernardino, CA 92411	}	
	}	License Type: 51
Respondent,	}	
	}	Word Count: 26,015
	}	
	}	Reporter: Eileen Eldridge
	}	Kennedy Court Reporters
	}	
<u>Club License</u>	}	<u>PROPOSED DECISION</u>

Administrative Law Judge D. Huebel heard this matter at San Bernardino, California, on August 20, 2019.

John Newton, Attorney, represented the Department of Alcoholic Beverage Control (Department).

Lawrence R. Bynum, Attorney, represented the Respondent, IBPO Elks of the World Arrowhead Lodge 896. Present at the hearing were Melvin Mitchell (exalted ruler/president), Ronnie Murphy¹ (leading knight/vice president), and Amos Wallace (house chairman), who are listed as corporate officers for the Respondent.

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

- 1) On or about August 21, 2017, the Respondent-Licensee surrendered, abandoned, or quit its licensed premises, or closed its license business for a period exceeding 15 consecutive days without properly surrendering the Type-51 license, in violation of California Code of Regulations, Title 4, Division 1, section 65(a);²
- 2) Between on or about August 15, 2018, and on or about April 25, 2019, the Respondent-Licensee knowingly permitted the illegal sale, or negotiations for sales, of controlled substances or dangerous drugs upon the licensed premises, in violation of Business and Professions Code section 24200.5(a);³

¹ Upon return from lunch break Ronnie Murphy did not return to the hearing.

² All rules referred to herein are contained in title 4 of the California Code of Regulations unless otherwise noted.

³ All statutory references are to the Business and Professions Code unless otherwise noted.

- 3) On or about August 15, 2018, the Respondent-Licensee permitted person(s) to possess within the licensed premises, a controlled substance, to-wit: cannabis, in violation of Health and Safety Code section 11357;
- 4) On or about August 15, 2018, the Respondent-Licensee permitted person(s) to possess within the premises, a controlled substance, to-wit: cannabis, for purpose of sale, in violation of Health and Safety Code section 11359;
- 5) On or about April 25, 2019, the Respondent-Licensee permitted person(s) to possess within the licensed premises, a controlled substance, to-wit: cannabis, in violation of Health and Safety Code section 11357;
- 6) On or about April 25, 2019, the Respondent-Licensee permitted person(s) to possess within the premises, a controlled substance, to-wit: cannabis, for purpose of sale, in violation of Health and Safety Code section 11359;
- 7) On or about February 25, 2019, the Respondent-Licensee's agent or employee, Julian Fuentes, willfully resisted, delayed or obstructed Officer Alvarez, a peace officer, in or about the premises, in the discharge or attempted discharge of a duty of his office, in violation of Penal Code section 148(a)(1);
- 8) Respondent-Licensee no longer possesses the necessary qualifications of a bona-fide club, as defined in Business and Professions Code section 23037, in that Respondent-Licensee's premises is operated for pecuniary interests, to-wit: cannabis sales events, in accordance with Business and Professions Code section 23429 and Article XX, section 22 of the California Constitution;
- 9) Respondent-Licensee no longer possesses the necessary qualifications of a bona-fide club, as defined in Business and Professions Code section 23037, in that Respondent-Licensee's premises is no longer operated for the advantages of club members, in accordance with Business and Professions Code section 23429 and Article XX, section 22 of the California Constitution. (Exhibit 1A.)

Oral and documentary evidence on the record was received at the hearing and the matter was argued and submitted for decision on August 20, 2019.

FINDINGS OF FACT

1. The Accusation was filed on January 4, 2019. A First Amended Accusation was filed on or about June 19, 2019.
2. The Department issued a type-51 club license to the Respondent at the above-described location on December 6, 1996 (the Licensed Premises).
3. The Respondent has been the subject of the following discipline:

<u>Date of Violation</u>	<u>Reg. No.</u>	<u>Violation</u>	<u>Penalty</u>
April 29, 2016	16084670	BP §23431, PC §347(b)	POIC in lieu of 10-day suspension

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

(Counts 1 and 9)⁴

4. In 2017 San Bernardino City Police Department (SBPD) Code Enforcement Officer (CEO) Daugherty was assigned to inspect the Licensed Premises based on the SBPD Code Enforcement Department receiving a citizen's complaint of activities occurring at the Licensed Premises which caused concern. CEO Daugherty's duties include performing inspections of single-family property, commercial property, vacant lots, and industrial facilities to determine whether substandard hazardous conditions exist in violation of the municipal code, development and building codes, public nuisance codes, as well as the health and safety codes. CEO Daugherty went out to inspect the Licensed Premises twice and was only able to inspect the exterior of the property because the Licensed Premises was not open, and she was not able to contact anyone on said property. CEO Daugherty also drove by the Licensed Premises and conducted cursory inspections thereof. CEO Daugherty could not recall what dates she conducted the two on-site exterior inspections or the drive-by cursory inspection.

5. On August 21, 2017, Dr. Donald P. Wilson, Grand Exalted Ruler, Grand Patriarch, of the IBPOE⁵ of the World Inc. Grand Lodge, in a letter addressed to Simmie Collins, District Deputy Grand Exalted Ruler, granted authority to and ordered Mr. Collins, in accordance with the resolution passed by the Grand Lodge on August 10, 2017,⁶ to remove the Respondent's IBPOE of the World charter and all legal documents denoting its affiliation with the IBPOE of the World, Inc., as well as to remove any and all identifying signage from the Licensed Premises relating to its affiliation with the IBPOE of the World, Inc. The letter also instructed Richard H. Dennis to notify all appropriate government entities regarding the revocation of the Respondent's charter and its affiliation with IBPOE of the World, Inc. (Exhibit 7.)

6. Simmie Collins appeared and testified at the hearing. Mr. Collins has been an IBPOE of the World member since 1986. Mr. Collins referred to his elk's title as the Grand District Deputy, a position he has held since 2005. As the Grand District Deputy, Mr. Collins supervises lodges appointed to him by the Grand Exalted Ruler, including, but not limited to the Respondent lodge. Sometime in September of 2017, Simmie Collins executed Donald P. Wilson's order and received from Respondent's House Chairman

⁴ The Findings of Fact parenthetical section headings are merely intended to assist the reader and are not a substantive part of the decision.

⁵ The Improved Benevolent and Protective Order of Elks (IBPOE) of the World; the IBPOE of the World, Inc., Grand Lodge Headquarters is located in Winton, North Carolina.

⁶ Melvin Mitchell, the Exalted Ruler/ President of the Respondent, had an opportunity to be heard and presented Respondent's case and evidence before the Grand Lodge Session in defense of the Grand Lodge's recommendation to revoke the Respondent's charter.

Amos Wallace, Respondent's IBPOE of the World membership charter. Respondent's membership charter was originally issued to the Respondent granting it the authority to become a member of the IBPOE of the World, Inc. and to operate under the authority of the IBPOE of the World, Inc. Grand Lodge. After Mr. Collins retrieved Respondent's charter, Respondent no longer existed as an elks lodge as authorized by the IBPOE of the World, Inc. and could no longer operate under the authority of the IBPOE of the World, Inc. Grand Lodge. Mr. Collins did not take the Respondent's IBPOE of the World, Inc. operational charter (Exhibit C), which was issued to the Respondent for a two-year period from January 1, 2017 through January 1, 2019, by the Grand Lodge granting the Respondent permission to operate the bar in the Licensed Premises and sell alcoholic beverages.⁷ The Respondent retained its operational charter and continued to exercise its type-51 license privileges. Mr. Collins gave the Respondent's membership charter to the Grand Secretary, Richard H. Dennis, who was then authorized to and did notify the Department of Alcoholic Beverage Control and other government entities that the Respondent lodge was no longer an auxiliary with the IBPOE of the World, Inc. (Exhibit 3.) Thereafter, Mr. Collins understood that the type-51 license would be returned to the Department of Alcoholic Beverage Control. When the Respondent's membership charter was taken the elks members of the Respondent lodge had one year to "demit" or in other words to join another IBPOE of the World, Inc. lodge. After the membership charter was taken all proceeds, pursuant to the IBPOE of the World Constitution, revert back to the Grand Lodge treasury, which holds those funds for two years to give those members the chance to reorganize and come back in to the IBPOE of the World after two years. There was no evidence that the Respondent lodge or its members reorganized and rejoined the IBPOE of the World, Inc. Grand Lodge, or that any of Respondent's members joined another IBPOE of the World, Inc. affiliated lodge.

7. On November 1, 2017, Richard H. Dennis, Grand Secretary of IBPOE of the World, Grand Lodge Headquarters in Winton, North Carolina, sent a letter addressed to the California Department of Alcoholic Beverage Control, at 3737 Main Street, San Bernardino, CA 92501. The address inadvertently included the wrong city of San Bernardino rather than Riverside, California. Due to the incorrect mailing address the Department did not receive the said letter as mailed. The letter attempted to advise the Department that as of July 21, 2017, the Arrowhead Elks Lodge #896 located in San Bernardino, California, was no longer an auxiliary of the IBPOE of the World and that the charter for said lodge was revoked and the Internal Revenue Service was instructed to delete said lodge from the IBPOE of the World's exemption listing. The letter further noted the type-51 license number 321908, with primary owner listed as IBPOE of the World Arrowhead Lodge #896, located at 1073 North Mount Vernon Avenue, in San

⁷ When an IBPOE of the World, Inc, lodge has a bar on the premises the Grand Lodge/IBPOE of the World, Inc. must issue an operational charter to the lodge to grant it permission to operate the bar and sell alcoholic beverages on the lodge's premises.

Bernardino, CA 92411, in census tract 00047.00. (Exhibit 3.) Simmie Collins received a copy of said letter.

8. Sometime after November 1, 2017, Simmie Collins, Grand District Deputy with the IBPOE of the World, provided said letter (Exhibit 3) to CEO Daugherty. At some unknown time, CEO Daugherty delivered a copy of the said letter to the Department of Alcoholic Beverage Control's Riverside District Office.

9. On August 15, 2018 at 3:00 p.m. Jose A. Guillen, a San Bernardino City Building & Safety Division Community Development Department inspector, after having inspected the Licensed Premises and found unsafe conditions thereon, taped to the front door of the Licensed Premises a red sign stating, "UNSAFE – DO NOT ENTER OR OCCUPY. This structure has been inspected, found to be seriously damaged and is unsafe to occupy, as described below: non-permitted alterations, gas lines at rear patio, no sprinklers or smoke detectors or fire extinguisher, hazardous electrical." (Exhibit 4.)

10. In September of 2018, Department Agent Patel was assigned to investigate whether the Respondent had abandoned its type-51 club license pursuant to rule 65(a), after the Department received from Code Enforcement Officer Daugherty the afore-described November 1, 2017, letter intended for the Department's Riverside District Office. (Exhibit 3.) CEO Daugherty further advised Agent Patel that on August 15, 2018, the Licensed Premises had been "red-tagged" and the SBPD executed search warrants at the Licensed Premises due to cannabis events being held at the location.

11. Agent Patel spoke by telephone with Simmie Collins, who confirmed the veracity of the November 1, 2017 letter, and that the Respondent's membership charter had been revoked and the Respondent was no longer an auxiliary of the IBPOE of the World, Inc, Grand Lodge.

12. Agent Patel spoke with Ronnie Murphy, the Leading ~~Knight~~/Vice President (corporate officer) for the Respondent about the said November 1, 2017 letter and its contents. Mr. Murphy was uncooperative, refused to listen to Agent Patel, and claimed the said letter was not true. Mr. Murphy claimed he would provide a letter to Agent Patel from the IBPOE of the World Grand Lodge stating that the November 1, 2017 letter was "bogus." Agent Patel provided Mr. Murphy with the agent's contact information and the Riverside District Office's mailing address. Neither Mr. Murphy nor the Respondent provided to the Department any such letter from the Grand Lodge stating that the said letter of November 1, 2017 was false.

13. Agent Patel further questioned Mr. Murphy whether the Respondent held any events at the Licensed Premises, referring to the cannabis vendor sales at the Licensed Premises. Mr. Murphy claimed the Respondent did not hold any cannabis sales events at the Licensed Premises, which statement was found to be untrue. Agent Patel asked Mr.

Murphy whether the Respondent sells alcoholic beverages at the Licensed Premises, to which Mr. Murphy replied that the Respondent does sell alcohol in the evenings.

14. On Thursday, September 13, 2018, Agents Patel and Rock arrived at the Licensed Premises at approximately 1:10 p.m. They encountered an African American adult male in the parking lot, who advised the agents that the Licensed Premises was open on Thursday evenings. Agent Patel walked to the front entrance door and saw the said red "UNSAFE – DO NOT ENTER OR OCCUPY" sign posted on the front entrance door notifying the public of the premises' unsafe conditions. Agent Patel took a picture of the red sign, which reflected it was posted as of August 15, 2018. (Exhibit 4.)

15. Agent Patel observed an eight-person seating bench up against the front door blocking entrance into the Licensed Premises. The agents were never able to enter the Licensed Premises and left shortly thereafter.

16. Agent Patel sent, by certified mail with return receipt, a Notice to Produce Records letter to the Respondent at the mailing address on file with the Department for the Licensed Premises. The notice requested the Respondent produce its lease agreement and sales receipts of alcoholic beverages for a period of time. Agent Patel received in the mail as undeliverable the original envelope with the Notice to Produce Records letter returned from the United States Postal Service along with a notice that the Respondent had no mail receptacle.

17. On Friday, September 28, 2018, Department Agents Patel and Holsapple went to the Licensed Premises to attempt to hand-deliver the same Notice to Produce Letter Agent Patel had originally mailed to the Respondent. Agent Patel walked to the front door and saw the same red sign (Exhibit 4) on the door to the Licensed Premises, and the same eight-person seating bench still blocking the main entrance and exit door to the Licensed Premises. Agent Patel took a photograph of the Licensed Premises front entrance/exit door which contained the red "UNSAFE" sign and bench. (Exhibit 5.)

18. In the Licensed Premises' parking lot Agent Patel made consensual contact with Villa Senor-Aburto, to whom Agent Patel identified himself as a police officer and displayed his Department issued badge. Villa Senor-Aburto had been putting up cones to block off the entrance to the premises. Agent Patel asked Villa Senor-Aburto if the Licensed Premises was open for business. Villa Senor-Aburto informed Agent Patel that the Licensed Premises had not been open for the last two months because the City of San Bernardino "shut it down" due to some code violations.

19. Villa Senor-Aburto further advised Agent Patel that the owner of the Licensed Premises, "Ronnie," allows him to store his Taco business supplies and equipment in the Licensed Premises' parking lot in an out-building.

20. The agents were not able to gain entrance into the Licensed Premises and left shortly thereafter.

21. On Friday, October 5, 2018, at approximately 6:05 p.m., Agents Patel and Holsapple returned to the Licensed Premises. The agents observed that the Licensed Premises was not open for business, and the said red "UNSAFE" sign was still posted on the front entrance door with the same bench still blocking the Licensed Premises' door. To Agent Patel's knowledge, no one had entered the Licensed Premises between September 13, 2018, through to October 5, 2018. The agents left the Licensed Premises shortly thereafter.

22. At some unknown date, the Respondent appealed the notice of unsafe conditions. The City of San Bernardino permitted the Respondent and its contractors to enter the Licensed Premises to make the required repairs, which the Respondent performed. Eventually the city lifted the unsafe conditions, and the premises was permitted to open its doors. There was no evidence as to when the Respondent made the repairs and when the unsafe conditions were lifted after October 5, 2018. There was no evidence that Agent Patel or any other Department representative made any subsequent visits to the Licensed Premises after October 5, 2018, to see if the "UNSAFE" sign was removed or remained for a period of time thereafter. The Respondent did not notify the Department of Alcoholic Beverage Control that the City of San Bernardino had posted the "UNSAFE" notice at the Licensed Premises and closed its premises from August 15, 2018, through at least until October 5, 2018. The Respondent did not surrender its type-51 license to the Department.

23. On October 17, 2018, Agent Patel spoke on the telephone with Richard H. Dennis, the Grand Secretary for the IBPOE of the World Grand Lodge in Winton, North Carolina.⁸ Mr. Dennis informed Agent Patel that the Respondent's membership charter had been revoked for the location at 1073 North Mount Vernon Avenue in San Bernardino and the Respondent was no longer affiliated with the IBPOE of the World, Inc. Grand Lodge. Mr. Dennis agreed to and did, on October 18, 2018, e-mail Agent Patel confirming their conversation of October 17, 2018. (Exhibit 6.) The e-mail also included a copy of the said letter dated August 21, 2017, from Dr. Donald P. Wilson, Grand Exalted Ruler, Grand Patriarch, addressed to Simmie Collins. (Exhibit 7.)

(Counts 2, 3, 4, 8, and 9)

24. On Wednesday, August 15, 2018, due to cannabis sales events being held at the Licensed Premises, the SBPD executed search warrants at the Licensed Premises, and seized evidence of dried green vegetable material(s) and golden-brown solids which

⁸ Agent Patel dialed the telephone number listed at the top left of Exhibit 3, to reach Richard H. Dennis.

appeared to be cannabis/marijuana⁹. The seized evidence was booked and placed in the San Bernardino County Sheriff's Central Property and Evidence Unit.

25. On or about September 11, 2018 Angela Miller, Criminalist II, with the San Bernardino County Sheriff's Department Scientific Investigation Division, published a report of her findings after analyzing the substances she retrieved from the San Bernardino County Sheriff's Central Property and Evidence Unit, in a taped, sealed brown paper bag, the contents of which she identified as A.1 - a dried green vegetable material, and A.2 - a golden brown solid.¹⁰ (Exhibit 9) These substances were from the said evidence seized by the SBPD during the search warrant executed on August 15, 2018. Criminalist Miller works in the forensic chemistry unit and performs controlled substance analysis and identification. She used a stereo microscope¹¹ to examine the structure of the plant material of A.1 looking for cysto-lithic hairs with a bit of resistance on the base of the hair and fine hairs on the back side of the plant. She then conducted a color test on A.1. Criminalist Miller determined the substance A.1, the dried green vegetable material, contained cannabis/marijuana, 842 grams net weight. Criminalist Miller performed two tests on substance A.2, a color test where she added chemical re-agents to the substance which resulted in a purple over purple color scheme, and a Thin Layer Chromatography (TLC) test. Criminalist Miller determined the substance A.2, the golden brown solid, contained concentrated cannabis, 0.56 grams net weight.¹²

26. On Saturday, February 16, 2019, SBPD Officer Moreno and her partner went to the Licensed Premises in an undercover capacity, based on citizens' complaints that the Licensed Premises was selling marijuana. Officer Moreno entered the premises and saw several tables set up with large quantities of processed marijuana. Sometime thereafter Officer Moreno and her partner left the premises.

27. On Monday, April 22, 2019, Officer Moreno and her partner were driving by the Licensed Premises and noticed vehicles leaving the parking lot of the premises. Officer Moreno and her partner conducted traffic stops on the vehicles and contacted the occupants therein. The vehicle occupants informed the officers they had purchased marijuana from the Licensed Premises, which they did not refer to as the Elks Lodge, or any derivative thereof, but rather as "the Sesh," pointing in the direction of 1073 North

⁹ The witnesses used the term marijuana and cannabis interchangeably and therefore these terms will be used throughout the decision and as interchangeable.

¹⁰ There were other items in the said sealed bag which Criminalist Miller did not analyze.

¹¹ The stereo microscope was properly within its maintenance cycle when Criminalist Miller tested said substances.

¹² The methods Criminalist Miller used to conduct the tests upon substances A.1 and A.2 are generally accepted within the scientific community.

Mount Vernon Avenue in San Bernardino. The occupants did not know the Licensed Premises was an elks lodge nor did they say they were elks lodge members. The occupants showed the officers the marijuana product they purchased from “the Sesh.” There is no other business on the Licensed Premises than the Respondent’s premises.

(Counts 2, 5, 6, 8, and 9)

28. On Thursday, April 25, 2019, SBPD Officer Thornburg assisted other SBPD officers in executing a search warrant at the Licensed Premises. At the time the SBPD Officers executed the search warrant there were people in the premises’ parking lot and no one was permitted into the Licensed Premises. Officer Thornburg searched a white Chrysler 300 in the premises’ parking lot. She found in the trunk approximately 10.5 pounds of processed marijuana and 1.6 pounds of THC¹³ oils and wax, as well as various marijuana edibles. Based on Officer Thornburg’s training and experience identifying marijuana and controlled substances she recognized the distinctive appearance of marijuana in the green leafy substance consisting of the buds, stems and seeds of the marijuana plant and the dried honey appearance of the wax. She also recognized the distinctive odor of the THC oils, wax and edibles. Based on her training and experience, Officer Thornburg believed the wax, oils and edibles contained THC because of their distinctive marijuana odor, and the fact it is common to find THC wax and edibles with processed marijuana, in addition to the amount of processed marijuana found in the trunk of the vehicle. Officer Thornburg also found a Physician’s Statement¹⁴ for Steve Guillen.

29. Officer Thornburg, with other officers, executing the search warrant, entered the Licensed Premises. Officer Thornburg found a bar area but did not recall seeing any alcoholic beverages. She did not see anyone drinking alcohol while she was in the Licensed Premises and did not find alcohol therein.

30. Officer Moreno contacted and interviewed Steve Guillen, at the front of the Licensed Premises. Mr. Guillen advised that he was at the Licensed Premises to donate marijuana, which he referred to as “shake.” Mr. Guillen claimed he had never sold marijuana at the Licensed Premises, but only donates marijuana to people who have medical issues. Mr. Guillen did not say that he was an elk lodge member.

31. Officer Moreno also interviewed Leonilo Hernandez outside the front entrance of the Licensed Premises. Mr. Hernandez advised that he worked for Green Care Solutions, a company that has been selling marijuana at the Licensed Premises for approximately one year. Mr. Hernandez indicated that his business usually sells marijuana out of the city of Los Angeles, so he believed it was legal to sell marijuana in the city of San Bernardino.

¹³ Tetrahydrocannabinol.

¹⁴ A Physician’s Statement is also known as a medical marijuana card, which is a recommendation from a doctor authorizing a person to use marijuana for medicinal purposes.

He also informed Officer Moreno that the Licensed Premises conducts cannabis sales events where vendors rent space at the Licensed Premises to sell cannabis merchandise, paying the Respondent host fees for the rental space. Mr. Hernandez did not provide the name of the persons to whom he pays the said fees. Mr. Hernandez did not say he was an elk lodge member.

32. Officer Moreno also interviewed Lydia Hernandez, outside the front entrance of the Licensed Premises. Ms. Hernandez indicated she was an employee of the Respondent at the Licensed Premises, and that she sets up tables for the events and then takes the tables down when the events are over. Ms. Hernandez advised she is paid for her services by the Respondent, in the form of marijuana joints given to her by "Ronnie," who she described as a black male adult in his late 50's. Ms. Hernandez did not say she was an elk lodge member.

33. On April 25, 2019, SBPD Officer Alvarez¹⁵ also assisted in executing the search warrant at the Licensed Premises. Officer Alvarez interviewed Fadi Rashi Imad (hereinafter Mr. Imad) on the west side of the Licensed Premises' parking lot. Mr. Imad was curious what was happening with his friend, Leo, who had been detained within the Licensed Premises. Mr. Imad said that in 2018 he was a marijuana vendor at the Licensed Premises. Mr. Imad said that he, along with other vendors, pay the Respondent \$150 for space to sell marijuana inside the Licensed Premises, in addition to paying the Respondent a \$100 permit fee for such sales. Mr. Imad and other vendors believed that the Respondent had obtained the proper permits to allow the vendors to set up shop inside the Licensed Premises to sell cannabis products. Mr. Imad did not say he was an elk lodge member.

34. On April 25, 2019, SBPD Corporal Porch, Officer Rodriguez, and Corporal Vega with his K-9 unit, also assisted in executing the same search warrant at the Licensed Premises.

35. A red Cyan XB vehicle attempted to exit the parking lot of the Licensed Premises. Corporals Porch, Vega and Officer Rodriguez blocked the vehicle and prevented it from leaving. Corporal Porch searched the red, Cyan XB vehicle, belonging to Susan Lamberth. Corporal Porch found in the vehicle additional brand packaging for marijuana, and other marijuana products such as marijuana waxes and oils, money, business cards for the sales of marijuana, and a license to sell marijuana in the city of Hemet. Officer Moreno, another assisting officer, spoke to Ms. Lamberth, who claimed she stopped at the Licensed Premises to use the restroom and was looking for a Navy Federal Bank in the area. The closest Navy Federal Bank was nowhere near the Licensed Premises, but was in the next city over, Riverside. Ms. Lamberth informed Officer Moreno that she was

¹⁵ Badge number 50925.

aware the Licensed Premises was known to sell marijuana. Ms. Lamberth did not say she was an elk lodge member.

36. The SBPD officers¹⁶ entered the Licensed Premises and immediately came upon a small room that had two ATM machines therein. They walked north down a hallway that had three small offices connected to it. The hallway was difficult to get through because there was a lot of trash and debris in the hallway. The officers entered the first room, which was set up like a functioning office with a filing cabinet, chairs, desk and paperwork on the desk. Corporal Vega's K-9 unit alerted the officers to the filing cabinet, within which they found 79 grams of marijuana, and cash. Based on Corporal Porch's training and experience in recognizing different types of narcotics, including marijuana, he found the amount of marijuana and cash found together consistent with drug sales. On the desk was a daily revenue pay-owe sheet with headings of "Friday" and "Saturday" with a total number thereon, along with a single sheet stating there would be a monetary increase of charges to vendors at the Licensed Premises.

37. Corporal Porch walked down a second hallway which led south through the Licensed Premises to a large room, which had rows of tables set-up for sales of merchandise that evening. In that room Corporal Porch found a backpack, within which were smaller amounts of marijuana wax oil and marijuana products, in differing amounts of the same product, in formal product-brand packaging for sale similar to what is commonly sold in a marijuana dispensary; not something one person would keep for themselves for personal use. Corporal Porch spoke to the owner of the backpack, Dillon Wilson, who did not say whether or not he was an elks lodge member. Corporals Porch, Vega and Officer Rodriguez found a 12-gauge shot gun in a small closet in the same large room, which was deemed the "sales room." Firearms are not permitted in elks lodges. In that sales room Corporal Porch saw a fixed bar, however he saw no alcoholic beverages inside the Licensed Premises.

38. Corporal Porch continued to work his way in a circle around to where he started at the entrance of the Licensed Premises. Based on Corporal Porch's extensive training and experience all the marijuana found in the Licensed Premises and in the Cyan XB vehicle appeared to him to be prepared for sales.

39. Officer Moreno packaged approximately 89.2 pounds of the cannabis,¹⁷ THC edibles and amber solid wax, along with the 12-gauge shot gun, and large amounts of currency seized by the SBPD officers during the execution of the search warrant. Officer Moreno transported all the said evidence to the San Bernardino County Sheriff's Central Property and Evidence Unit and placed it into secured narcotics lockers. Officer Moreno thereafter

¹⁶ Corporal Porch, Officer Rodriguez, and Corporal Vega with his K-9 unit.

¹⁷ Officer Moreno testified that the overwhelming majority of cannabis found on the Licensed Premises was found during the vehicle searches.

packaged approximately two-pound samples of the cannabis and transported that along with the amber solid wax to the San Bernardino County Sheriff's Department Crime Lab for testing. (See Exhibit 8.)

40. On April 25, 2019, a San Bernardino City Building & Safety Division Community Development Department inspector, after having inspected the Licensed Premises and found unsafe conditions thereon, taped to the front door of the Licensed Premises another red sign stating, "UNSAFE – DO NOT ENTER OR OCCUPY." There was no evidence whether these unsafe conditions were lifted or how long they remained in effect.

41. On or about May 31, 2019, Justin Troup, San Bernardino County Sheriff's Department Crime Lab Criminalist III, received a taped, sealed brown paper bag from the San Bernardino County Sheriff's Central Property and Evidence Unit, which consisted of some of the said evidence seized by the SBPD during the search warrant executed on April 25, 2019. Criminalist Troup examined and tested the substances therein, which he marked as C.1 – 452.07 grams gross weight of a dried green vegetable material and C.2 – 1.10 grams gross weight of an amber solid.

42. Criminalist Troup used a stereo microscope to determine the physical characteristics of C.1. He found specific characteristics in the plant material, including cysto-lithic hairs on one side shaped like a bear claw, and on the flip side of the plant material he found fine hairs, which are characteristic of cannabis. He then conducted a chemical test using a three-step process; as the chemicals were added sequentially he observed a color change of purple which indicated the presence of cannabinoids, which are the classification under which THC falls. In the final step of the test there was a separation of colors with purple over purple, which indicated a positive for the presence of THC. Using the physical examination combined with the chemical exam Criminalist Troup positively identified substance C.1 to contain cannabis/marijuana, 452.07 grams gross weight.

43. Criminalist Troup used the same three-step chemical process to test the C.2 substance, with the same results and the separation of colors with purple over purple. Thereafter, he used the Gas Chromatography Mass Spectrometry (GCMS), a highly specific instrumentation method which allows for the separation and identification of unknown compounds based on a library of standards maintained in the lab. The results of his testing positively identified substance C.2 as containing concentrated cannabis, 1.10 grams gross weight.

44. Criminalist Troup published a report of the substances C.1. and C.2 which he tested. (Exhibit 8.) All of the testing methods Criminalist Troup used are generally accepted in the scientific community and are reliable methods for testing cannabis.¹⁸

¹⁸ At the time Criminalist Troup used the stereo microscope it had received its annual servicing and was in good working order, and the GCMS had received its recommended calibration and

(Count 7)

45. On Monday, February 25, 2019, SBPD Officer Alvarez¹⁹ received a call for service that the reporting party's boyfriend had been assaulted in the parking lot at the Licensed Premises by the security staff. Officer Alvarez drove to the Licensed Premises in his marked black and white patrol vehicle with the SBPD emblem and star thereon. Officer Alvarez was in full uniform, wearing his police utility belt and firearm, with his badge displayed on the left side of his chest.

46. Officer Alvarez arrived on North Mount Vernon Avenue just outside the front gate of the Licensed Premises in his patrol vehicle. He observed the premises was open and had several cars parked in the parking lot. There was heavy traffic on North Mount Vernon Avenue. Officer Alvarez attempted to pull his patrol vehicle toward the gate and into the driveway of the Licensed Premises, when a uniformed security guard, later identified as Julian Fuentes, with a firearm on his duty belt, immediately approached the gate and began closing it, preventing Officer Alvarez from entering through the gate and into the parking lot of the Licensed Premises. Officer Alvarez' patrol vehicle was partially on the sidewalk, blocking pedestrian traffic, with the rear of his vehicle in the roadway, obstructing traffic on North Mount Vernon Avenue, creating a hazard to the roadway and blocking the entrance to the Licensed Premises. Officer Alvarez was unable to move his patrol vehicle safely.

47. Officer Alvarez exited his patrol vehicle and instructed Fuentes to open the gate. Fuentes refused to open the gate and told Officer Alvarez he was not allowed on the property. During this exchange Officer Alvarez observed Fuentes permit several people to walk in and out through the gate to the Licensed Premises' parking lot. Officer Alvarez identified himself as a police officer to Fuentes and again instructed Fuentes to open the gate. Fuentes again refused to open the gate. Fuentes told Officer Alvarez that the Licensed Premises was private property and that the officer was not allowed on the property. Officer Alvarez was not sure if Fuentes was involved in the assault about which he had been called to the location. Officer Alvarez left his patrol vehicle while he cautiously approached Fuentes, who remained armed.²⁰ Officer Alvarez made contact with Fuentes, removed Fuentes' firearm and detained him. This process occurred over approximately five minutes. Fuentes did not provide a statement to Officer Alvarez related to the assault. Officer Alvarez was unable to locate the victim of the assault. Fuentes informed Officer Alvarez that he knew he was a police officer, but that he was closing the gate and not allowing Officer Alvarez onto the property because Fuentes was following the instructions of his employer, "Ronnie." Officer Alvarez did not learn the

servicing. The calibration and servicing on all equipment used ensured that the instrumentation was accurate in its results.

¹⁹ Badge number 50977.

²⁰ It was later determined that Fuentes was not permitted to carry a firearm.

last name of “Ronnie.” Fuentes was a security guard with N+M Security and was hired to work for the Respondent that date. Officer Alvarez did speak to Fuentes’ supervisor, whose name Officer Alvarez did not obtain. There were no other businesses behind the closed gate other than the Respondent’s Licensed Premises.²¹

**(Respondent’s Witnesses)
(Amos Wallace)**

48. Amos Wallace appeared and testified at the hearing. Mr. Wallace said he is the house chairman of the Respondent, with which he has been affiliated approximately five years. Mr. Wallace said that his understanding was that the Respondent’s type of organization is for the members and the community. Mr. Wallace said the Respondent is an active, valid, non-profit California corporation and that the members of the Respondent own the real estate property located at 1073 North Mount Vernon Avenue in San Bernardino and that the IBPOE of the World, Inc. headquartered in North Carolina has “zero interest in the property.”

49. Mr. Wallace testified that the Respondent leases/rents out the Licensed Premises to others, including event promoters who sell cannabis on the Licensed Premises. Mr. Wallace acknowledged it has been more than a year since the Licensed Premises was leased to the first cannabis event promoters. Mr. Wallace further testified that on the two dates when SBPD officers executed search warrants at the Licensed Premises on August 15, 2018, and April 25, 2019, cannabis was on the Licensed Premises because the Respondent had leased the premises for those two days to a cannabis event promoter, who brought vendors to the events. There was no evidence the cannabis event promoters or any of the vendors had licenses to sell cannabis at the Licensed Premises on any of the dates in question. The Respondent did not present at the hearing any documented proof or evidence of such licenses. Mr. Wallace confirmed the Respondent does not have a cannabis license for the Licensed Premises. Mr. Wallace acknowledged he is “responsible to some extent for leasing out the property for other’s uses...under the guidance of the exalted ruler, - Melvin Mitchell.” Mr. Wallace knows of a cannabis event promoter known as Mc Lyfe.²²

50. Mr. Wallace testified that the exalted ruler instructs members they cannot have alcohol on the premises during the time the Licensed Premises is leased out to the said

²¹ Officer Alvarez prepared a report on February 25, 2019, relating to the above-described incident, which report was reviewed by his supervisor, Sergeant Thomas on May 28, 2019. (Exhibit B.)

²² The Respondent produced Meeting Minutes for August 22, 2017, which listed a member by the name of Lyfe who was present at the said meeting.

cannabis sales promoters, and to his knowledge there were no alcoholic beverages on the Licensed Premises available when the cannabis events occurred on the premises.

51. Mr. Wallace was present at the hearing, including, but not limited to, during the testimony of all officers. After hearing the officers testify about the make, model and colors of the vehicles searched at the Licensed Premises on the respective dates, Mr. Wallace could not recall the makes or colors of the said vehicles to which the officers testified. Mr. Wallace claimed that the cars described did not belong to any of Respondent's lodge members.

(Melvin James Mitchell)

52. Melvin James Mitchell appeared and testified. Mr. Mitchell has been associated with the Respondent for close to 30 years and said he currently holds the position of the exalted ruler, which he described as, "If it's a corporation" it is comparable to the president or CEO of the corporation. Mr. Mitchell said that as the exalted ruler he oversees "the fraternal part of the organization and also the running of the lodge, the day-to-day operations." Mr. Mitchell said the Respondent is a California non-profit corporation. He further said that the real property at 1073 North Mount Vernon Avenue in San Bernardino is owned by the members of the lodge, who also own the ABC type-51 license.

53. Mr. Mitchell acknowledged that the IBPOE of the World, Inc. headquarters in North Carolina provided the Respondent with written notice of a hearing to take place at the 2017 Convention on the matter of the revocation of the Respondent's membership charter. The hearing was postponed to the next full session where Mr. Mitchell was asked to present his case on behalf of the Respondent in relation to the revocation of its charter, with "all the other members of all the other elk lodges there in full session."

54. Mr. Mitchell was aware the Respondent was working with cannabis promoters and that at least two cannabis promotor sales events took place on the Licensed Premises, which were set up through the house chairman, Amos Wallace. Mr. Mitchell claimed that at the two said cannabis promotor events on August 15, 2018, and April 25, 2019, it was the promotor who had cannabis not the Respondent elks. Mr. Mitchell said the Respondent had policy and procedures in place when cannabis sales events took place on the Licensed Premises to have all alcoholic beverages "locked in the alcohol closet." Mr. Mitchell said that for the two cannabis promotor events held on the Licensed Premises on August 15, 2018, and April 25, 2019, he personally removed the alcoholic beverages²³ and put them in the locked closet in the Licensed Premises because he has the only key.

²³ There was no evidence from where Mr. Mitchell removed the alcoholic beverages, however, it was assumed from the fixed bar in the Licensed Premises.

55. Mr. Mitchell said that the Respondent has leased the Licensed Premises for other promotor events, including a Taco Festival promotor. The Respondent has leased the premises for fundraiser events, including, but not limited to, a fundraiser by a candidate running for office. If someone desired to get married at the Licensed Premises the Respondent would rent the Licensed Premises out to the wedding couple and permit alcoholic beverages service therein. There have also been car washes for families to raise funds to assist in burial costs for loved ones and a Thanksgiving food-give-away at the Licensed Premises. At most of the events held at the Licensed Premises alcoholic beverages are served, except at the cannabis promoter events.

56. Mr. Mitchell was aware that the SBPD had executed search warrants on the Licensed Premises on August 15, 2018, and April 25, 2019, during which officers seized cannabis from the Licensed Premises.

57. Mr. Mitchell said the Respondent lodge was open and operating in August of 2017. The Respondent produced Exhibit D, a two-page document, with the first page stating "Meeting Minutes" for August 22, 2017 at 7:00 p.m., and the second page referring to "Meeting Minutes" for September 5, 2017 at 7:00 p.m., with both meetings discussing updating the lodge. Mr. Mitchell said the Respondent's male members meet every first and third Tuesday, with the "Daughters²⁴" meeting every first and third Wednesday of the month.

58. Mr. Mitchell said that as the exalted ruler of the Respondent Licensed Premises he, to his knowledge, has never surrendered the Respondent's type-51 license.

59. 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. California Code of Regulations, Title 4, Division 1, section 65(a) provides,
a) Every licensee who surrenders, abandons or quits his licensed premises, or who closes his licensed business for a period exceeding 15 consecutive calendar days,

²⁴ Mr. Mitchell said the "Daughters" are the female elks lodge members of Respondent lodge.

shall, within 15 days after closing, surrendering, quitting, or abandoning his licensed premises, surrender his license or licenses to the department. The department may seize the license certificate or certificates of any licensee who fails to comply with the surrender provisions of this rule and may proceed to revoke his license or licenses.

- b) Upon the voluntary request by any licensee, on such form as the department may prescribe, the department may cancel his license or licenses.
- c) A surrendered license may be reinstated upon request made at least 10 days prior to the date of reinstatement upon certification by the licensee that there has been no change of ownership of the licensed business, and that the premises possess the same qualifications required for the original issuance of the license.
- d) Any license voluntarily surrendered under paragraph (a) of this rule shall be revoked if it is not transferred to another person or for use at another premises, or redelivered and the licensed activity resumed, within one year from the date of such surrender. There shall be no extension of such surrender period except when the department finds good cause exists where:
 - 1) an application is pending for transfer of the surrendered license; or
 - 2) litigation other than that involving disciplinary action by the department is pending; or
 - 3) the premises for which the license had been issued and for which the license is sought to be redelivered were destroyed due to circumstances beyond the control of the licensee by fire, flood, or other natural catastrophe, or as part of an urban renewal program, and the licensee makes an affirmative showing of good faith efforts that he is attempting to obtain reconstruction of such destroyed premises; or
 - 4) the Director in his judgment finds a case of undue hardship exists which would warrant an extension.

4. Cause for suspension or revocation of the Respondent's license exists under Article XX, section 22 of the California State Constitution and sections 24200(a) and (b) in violation of California Code of Regulations, Title 4, Division 1, section 65(a), on the basis that on August 15, 2018 at 3:00 p.m. Jose A. Guillen, a San Bernardino City Building & Safety Division Community Development Department inspector, closed the Licensed Premises for a period through October 5, 2018, after having inspected the Licensed Premises and found unsafe conditions thereon, taping to the front door of the Licensed Premises a red sign stating, "UNSAFE – DO NOT ENTER OR OCCUPY." The preponderance of the evidence established that the "UNSAFE" sign was posted on the Respondent's front entrance door and the Licensed Premises was not used beginning August 15, 2018, for a period of time at least through October 5, 2018. The Respondent therefore closed its licensed business for a period exceeding 15 consecutive days without properly surrendering its type-51 license in violation of section 65(a). (Count 1.)

5. However, there was evidence that the City of San Bernardino lifted the unsafe conditions, and the closure was not indefinite as the Respondent was permitted to make the requested repairs and continued to be open and operating thereafter. While the Respondent's membership charter was taken by the IBPOE of the World, Inc. Grand Lodge, the Respondent refused to abandon its type-51 license and there was evidence the Respondent continued to exercise its type-51 license privileges and to be open and operating. The Respondent's male members conducted meetings every first and third Tuesday of the month, and its "Daughters"²⁵ met every first and third Wednesday of the month at the Licensed Premises. Mr. Murphy informed Agent Patel that alcoholic beverages were served in the Licensed Premises in the evenings. The record revealed that at most of the events held at the Licensed Premises alcoholic beverages are served in the Licensed Premises, except at the cannabis promoter events. As such, the Respondent Licensed Premises was still open and operating and the Respondent was exercising the privileges of its type-51 license at some point after the city's "UNSAFE" notice was lifted. While, on April 25, 2019, a San Bernardino City Building & Safety Division Community Development Department inspector, after having inspected the Licensed Premises and found unsafe conditions thereon, taped to the front door of the Licensed Premises another red sign stating, "UNSAFE – DO NOT ENTER OR OCCUPY," there was no evidence how long these unsafe conditions remained in effect. (Count 1.) (Findings of Fact ¶¶ 4, 9-10, 14-22, 48, 52-53, 57-58.)

6. While the Respondent was exercising its type-51 licensed privileges the Respondent knowingly permitted illegal drug sales on the Licensed Premises. Cannabis sales events were taking place at the Licensed Premises since, at least, April 25, 2018²⁶; SBPD Officers conducted search warrants on August 15, 2018, and April 25, 2019, seizing a myriad of processed cannabis and related items, including marijuana edibles, THC wax and oils and other related marijuana and THC products/items consistent with drug sales on the Licensed Premises; on February 16 and April 22, 2019, SBPD officers conducted undercover investigations which revealed evidence consistent with drug sales and cannabis sales events occurring at the Licensed Premises. This leads to the following counts.

7. Business and Professions Code section 24200.5 provides, in part, 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

²⁵ Mr. Mitchell said the "Daughters" are the female elks lodge members of Respondent lodge.

²⁶ On April 25, 2019, Officer Moreno interviewed Leonilo Hernandez outside the front entrance of the Licensed Premises. Mr. Hernandez advised that he worked for Green Care Solutions, a company that has been selling marijuana at the Licensed Premises for approximately one year.

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.

8. With respect to count 2, 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 between August 15, 2018, and April 25, 2019, Respondent-Licensee knowingly permitted the illegal sale, or negotiations for sales, of controlled substances or dangerous drugs upon the Licensed Premises, in violation of Business and Professions Code section 24200.5(a). (Findings of Fact ¶¶ 4, 6, 10, 13, 24-39, 41-44, 49, 54, and 57.)

9. California Health and Safety Code section 11357 states, in part,

(a) Except as authorized by law, possession of not more than 28.5 grams of cannabis, or not more than eight grams of concentrated cannabis, or both, shall be punished or adjudicated as follows:

(1) Persons under 18 years of age are guilty of an infraction and shall be required to:

(A) Upon a finding that a first offense has been committed, complete four hours of drug education or counseling and up to 10 hours of community service over a period not to exceed 60 days.

(B) Upon a finding that a second offense or subsequent offense has been committed, complete six hours of drug education or counseling and up to 20 hours of community service over a period not to exceed 90 days.

(2) Persons at least 18 years of age but less than 21 years of age are guilty of an infraction and punishable by a fine of not more than one hundred dollars (\$100).

(b) Except as authorized by law, possession of more than 28.5 grams of cannabis, or more than eight grams of concentrated cannabis, shall be punished as follows:

(1) Persons under 18 years of age who possess more than 28.5 grams of cannabis or more than eight grams of concentrated cannabis, or both, are guilty of an infraction and shall be required to:

(A) Upon a finding that a first offense has been committed, complete eight hours of drug education or counseling and up to 40 hours of community service over a period not to exceed 90 days.

(B) Upon a finding that a second or subsequent offense has been committed, complete 10 hours of drug education or counseling and up to 60 hours of community service over a period not to exceed 120 days.

(2) Persons 18 years of age or older who possess more than 28.5 grams of cannabis, or more than eight grams of concentrated cannabis, or both, shall be punished by imprisonment in a county jail for a period of not more than six months

or by a fine of not more than five hundred dollars (\$500), or by both that fine and imprisonment.²⁷

10. California Health and Safety Code section 11359 states, in part, “Every person who possesses for sale any cannabis, except as otherwise provided by law, shall be punished as follows:

(a) Every person under the age of 18 who possesses cannabis for sale shall be punished in the same manner provided in paragraph (1) of subdivision (b) of Section 11357.

(b) Every person 18 years of age or over who possesses cannabis for sale shall be punished by imprisonment in a county jail for a period of not more than six months or by a fine of not more than five hundred dollars (\$500), or by both such fine and imprisonment.²⁸

11. With respect to counts 3, 4, 5, and 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) on the basis that on August 15, 2018, and April 25, 2019, Respondent-Licensee permitted person(s) to possess within the licensed premises, a controlled substance, to-wit: cannabis, in violation of Health and Safety Code section 11357, and permitted person(s) to possess within the premises, a controlled substance, to-wit: cannabis, for purpose of sale, in violation of Health and Safety Code section 11359, respectively. (Findings of Fact ¶¶ 4, 6, 10, 13, 24-39, 41-44, 49, 54, and 57.)

12. The Respondent argued there was no testimony whatsoever the Respondent lodge was involved in the conduct alleged, including the direct sale or possession of cannabis, and no lodge members were implicated in the cannabis related issues.

13. This argument is rejected. The weight and preponderance of the evidence established that the Licensed Premises was used and set up for cannabis and drug sales since August of 2018. SBPD Officers found the interior of the premises set up with tables for cannabis sales, which Respondent’s employee, Lydia Hernandez was hired to set up and take down for such events. Large quantities of cash, cannabis and a 12-gauge shotgun were found together inside the Licensed Premises, all evidence consistent with drug sales. Inside the premises’ functioning office was a sheet with headings of “Friday” and “Saturday” with a

²⁷ Amended by Stats. 2017, Ch. 253, Sec. 15. (AB 133) Effective September 16, 2017. Note: This section was amended on Nov. 4, 2014, by initiative Prop. 47, and on Nov. 8, 2016, by initiative Prop. 64.

²⁸ Amended by Stats. 2017, Ch. 27, Sec. 124. (SB 94) Effective June 27, 2017. Note: This section was amended on Nov. 8, 2016, by initiative Prop. 64.

total number thereon, along with a single sheet indicating there would be a monetary increase of charges to vendors at the Licensed Premises. This is consistent with the record that cannabis vendors paid the Respondent \$150 for a space to sell cannabis inside the Licensed Premises, in addition to a \$100 permit fee for such sales. Additionally, the Licensed Premises was known to the community to engage in and conduct cannabis sales. In fact, some in the community referred to the Licensed Premises as “the Sesh.” Finally, both Mr. Wallace and Mr. Mitchell, corporate officers of the Respondent, admitted the Respondent has been leasing/renting out the Licensed Premises to cannabis event promoters and vendors to sell cannabis at the Licensed Premises since August of 2018.

14. The types of misconduct historically imputed to a licensee are those that are foreseeable in the operation of a licensed premises. One such traditional ground is for the illegal sale of drugs. “The holder of a liquor license has the affirmative duty to make sure that the licensed premises are not used in violation of the law.”²⁹ Mr. Wallace claimed he did not know what “the Sesh” was or whether “the Sesh” was a promotor of cannabis events at the Licensed Premises. The Licensee is responsible and has an affirmative duty for ensuring the Licensed Premises complies with the laws and regulations by which it is bound. The Respondent was fully aware that it was renting out the Licensed Premises to promoters and vendors for cannabis sales events. To not hold licensees responsible in this fashion would only encourage licensees to be absentee operators and subvert proper regulation and accountability of the licensees and their businesses. If this were not the case, a licensee could profit from the illegal conduct yet be immune to discipline by claiming ignorance. The licensee would have no incentive to ensure that a premise was operated in an orderly and legal manner.³⁰

²⁹ *Morell v. Department of Alcoholic Beverage Control* (1962) 204 Cal. App. 2d 504, 514, [22 Cal. Rptr. 405, 411].

³⁰ While the Department did not amend the accusation to include any counts alleging the Respondent violated the following code sections, the undersigned included these sections for informational purposes only, since the issues arose during the hearing: (1) Business and Professions Code section 26054(a) provides that the holder of a license issued under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”), “shall not sell alcoholic beverages or tobacco products on or at any premises licensed under this division.” (2) Section 26038 provides that any person engaging in commercial cannabis activity without a license is in violation of the MAUCRSA and subject to criminal and civil penalties. (3) Section 5026(c) of the Bureau of Cannabis Control (“BCC”) regulations (Title 16, Cal. Code of Regs., section 5026) provides: “A premises shall not be in a location that requires persons to pass through a business that sells alcohol or tobacco to access the licensed premises, or that requires persons to pass through the licensed premises to access a business that sells tobacco or alcohol.” (4) Commercial cannabis may only be cultivated, processed, stored, or sold at premises licensed pursuant to the MAUCRSA. Due to the restrictions on licensing and permissible activities, premises may not be licensed with both an ABC license and a license issued under MAUCRSA, even though a licensee may hold licenses (at separate premises) under both statutory schemes.

15. 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.

16. Cause for suspension or revocation of the Respondent's license does exist under Article XX, section 22 of the California State Constitution, and sections 24200(a) and (b) for the violation of Penal Code section 148(a)(1) alleged in count 7. Specifically, on February 25, 2019, the Respondent-Licensee's agent or employee, Julian Fuentes, willfully resisted, delayed or obstructed Officer Alvarez, a peace officer, in or about the premises, in the discharge or attempted discharge of a duty of his office, in violation of Penal Code section 148(a)(1). Fuentes knew Officer Alvarez was a police officer, yet, repeatedly, willfully resisted to comply with Officer Alvarez' multiple requests to allow him entrance onto the Licensed Premises, preventing, delaying and obstructing Officer Alvarez in or about the premises in the discharge of his duties relating to the call for service involving an assault in the parking lot of the Licensed Premises. Fuente's willful resistance and obstruction further caused Officer Alvarez to leave his patrol vehicle partially on the sidewalk, blocking pedestrian traffic, with the rear of his vehicle in the roadway, obstructing traffic on North Mount Vernon Avenue, creating a hazard to the roadway and preventing Officer Alvarez from safely moving his patrol vehicle. (Findings of Fact ¶¶ 45 through 47.)

17. Business and Professions Code section 23037 provides that, "'Club' means a corporation or association which is the owner, lessee, or occupant of an establishment operated solely for objects of a social or athletic nature but not for pecuniary gain, having a bona fide membership list, and the majority of the members of which pay dues at least once in every year, and the property as well as the advantages of which belong to the members, and which sells alcoholic beverages only to its members and its bona fide guests. A guest is defined as a person who is actually a houseguest, or a person whose presence as a guest is in response to a specific invitation for the special occasion."

18. Business and Professions Code section 23425 provides that, "For the purposes of this article a 'club' means: (a) Any chapter, aerie, parlor, lodge, or other local unit of an American national fraternal organization which has as the owner, lessee, or occupant thereof operated an establishment for fraternal purposes. An American national fraternal organization as used in this subdivision shall actively operate in not less than 20 states of the Union and have not less than 175 local units in those 20 states and shall have been in active continuous existence for not less than 20 years. (b) Any hall or building association of a local unit mentioned in subdivision (a), all of the capital stock of which is owned by the local unit or the members thereof, and which operates the clubroom facilities of the local unit."

19. Business and Professions Code section 23429 provides, "A club as defined in this article is a bona fide club within the meaning of Section 22 of Article XX of the Constitution."

20. With respect to counts 8 and 9, cause for suspension or revocation of the Respondent's license exists under Article XX, section 22 of the California State Constitution and sections 24200(a) and (b) on the basis that (1) Respondent-Licensee no longer possess the necessary qualifications of a bona-fide club, as defined in Business and Professions Code section 23037, in that Respondent-Licensee's premises is operated for pecuniary interests, to wit: cannabis sales events, in accordance with Business and Professions Code section 23429, et al., and (2) Respondent-Licensee no longer possess the necessary qualifications of a bona-fide club, as defined in Business and Professions Code section 23037, in that Respondent-Licensee's premises is no longer operated for the advantages of club members, in accordance with Business and Professions Code section 23429, et al. (Findings of Fact ¶¶ 4-8, 10-13, 19, 23-39, 41-44, 49, 53-55, and 57.)

21. The Respondent argued that since Arrowhead Elks Lodge 896 was incorporated on May 21, 1959, it has been in existence separate and apart from the IBPOE of the World North Carolina Grand Lodge, which Grand Lodge the Respondent does not need to conduct business. The Respondent further argued since the premises are owned by the corporation as a non-profit mutual benefit corporation it is not an organization for pecuniary gain due to its own definition in its articles or incorporation which states it is a non-profit. This argument is rejected. Regardless that Respondent may be, on paper, in the form of a non-profit corporation, the preponderance of the evidence established Respondent-Licensee no longer possessed the necessary qualifications of a bona-fide club, in that Respondent-Licensee's premises is operated for pecuniary interests and is no longer operated for the advantages of club members. The criteria for a club license should be construed narrowly and not broadly, otherwise it would defeat the purpose of the statute. The type-51 club license was originally issued to a "lodge, or other local unit of an American national fraternal organization which has as the owner, lessee, or occupant thereof operated an establishment for fraternal purposes." Once the Respondent's membership charter with the IBPOE of the World, Inc. Grand Lodge was revoked the Respondent no longer was a lodge or unit of an American national fraternal organization, aka the IBPOE of the World, Inc. Grand Lodge. In other words, the type-51 club license was issued to a local lodge who was supposed to be part of the IBPOE of the World, Inc. Grand Lodge. When their IBPOE of the World membership charter was taken, the Respondent no longer existed as an Elks lodge as authorized by the IBPOE of the World, Inc. and could no longer be operated under the authority of the IBPOE of the World, Inc. Grand Lodge. There was no evidence that the Respondent lodge or its members reorganized and rejoined the IBPOE of the World, Inc. Grand Lodge, or that any of Respondent's members joined another IBPOE of the World, Inc. affiliated lodge.

22. Furthermore, while the Licensed Premises was open for cannabis sales events, the Licensed Premises was not open for the advantage of club members; the property as well as the advantages of which should have belonged to the members during these cannabis sales events, but in fact belonged to the cannabis event promoters, vendors and their customers; whom the Respondent pointed out were not Respondent's elk lodge members. Large quantities of cannabis, cash, and a 12-gauge shot gun were found together inside the Licensed Premises, all consistent with drug sales, as well as rows of tables set up for sales. On August 15, 2018, April 25, 2019, February 16 and April 22, 2019, SBPD officers executed search warrants and undercover investigations, respectively, which revealed evidence consistent with drug sales and cannabis sales events occurring at the Licensed Premises. Since April 25, 2018, the Licensed Premises has been leased and/or rented to cannabis promoters and vendors, who pay \$250 each to the Respondent (for a permit fee and rental space at the Licensed Premises) to sell their cannabis merchandise. Tables are set up and taken down for each event inside the building of the premises by Respondent's employee Lydia Hernandez, who is paid for her services by the Respondent, in the form of marijuana joints, by "Ronnie." Based on the credibility finding below, it is found that the "Ronnie" referred to by Lydia Hernandez is Ronnie Murphy, the Respondent's leading knight and corporate officer.

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

24. If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust. (Evidence Code, section 412.)³¹

25. The Respondent's contentions that, (1) the Respondent elk lodge did not stop operating at the Licensed Premises, and was not closed between August 15, 2018 and

³¹ Although a defendant is not under duty to produce testimony adverse to himself, if he fails to produce evidence that would naturally have been produced, he must take the risk that the trier of facts will infer that if the evidence had been produced it would have been adverse. *Breland v. Traylor Engineering & Manufacturing Co.* (App. 1 Dist. 1942) 52 Cal.App.2d 415, 126 P.2d 455. Where defendant, refuses to produce evidence which would overthrow case made against him if not founded on fact, presumption arises that evidence, if produced would operate to defendant's prejudice. *Dahl v. Spotts* (App. 1932) 128 Cal.App. 133, 16 P.2d 774.

October 5, 2018, (2) security guard, Julian Fuentes, was not hired or employed by the Respondent and that the promoters provided their own security at which event Fuentes worked, (3) the IBPOE of the World, Inc., Grand Lodge in North Carolina had some financial difficulty and was wrongfully revoking the Respondent's charter for deceptive/improper motives, (4) the cannabis event promoters and vendors had cannabis licenses, and (5) Respondent and its members did not participate in any cannabis-related events on the Licensed Property, are disbelieved for the following reasons. Mr. Wallace and Mr. Mitchell presented inconsistent and evasive testimony as well as both exhibited a bias in the presentation of their testimony as the house chairman and exalted ruler, respectively, with longstanding affiliation with the Respondent, which is subject to discipline up to and including revocation. As such it disproves the truthfulness of their testimony at the hearing.

26. The Respondent only presented evidence of its last meeting minutes on August 22, 2017, and September 5, 2017. There was no credible evidence that the Respondent had held any meetings at the Licensed Premises between August 15, 2018 and October 5, 2018. It was within the Respondent's power to produce stronger, more satisfactory evidence that the Respondent continued to keep the Licensed Premises open and operating between August 15, 2018 and October 5, 2018. As such the evidence offered is viewed with distrust. (Evidence Code section 412.)

27. Mr. Mitchell presented inconsistent testimony. Initially and repeatedly Mr. Mitchell claimed the Respondent was "never" given an opportunity to be heard regarding the IBPOE of the World, Inc., Grand Lodge's decision to revoke Respondent's charter. At one point, Mr. Mitchell claimed, "We never had a hearing." Yet, thereafter, Mr. Mitchell admitted that the Grand Lodge, not only gave the Respondent written notice of its intent to revoke the charter, but an opportunity for a hearing, at which Mr. Mitchell was present, specifically at the "next full session" with "all the other members of all the other elk lodges there in full session." Mr. Mitchell acknowledged he was aware the Respondent was working with cannabis promoters and that cannabis events were occurring on the Licensed Premises, and yet then claimed he was "surprised" about it.

28. There was no reliable, credible evidence presented as to Respondent's speculation about the IBPOE of the World, Inc., Grand Lodge in North Carolina having some financial difficulty and wrongfully revoking the Respondent's charter for deceptive/improper motives. (Evidence Code section 412.) Both Mr. Mitchell and Mr. Wallace based their testimony in that regard on speculation and their belief.

29. Mr. Wallace claimed he *believed* the said security officer, Julian Fuentes, worked for the promotor and was not hired or employed by the Respondent. He further claimed the cannabis event promoters are required to provide their own security. However, the

Respondent presented no evidence of any contractual agreement as to the latter.³² In balancing Evidence Code section 780, Officer Alvarez' testimony was found to be the more credible. Officer Alvarez presented no bias in the presentation of his testimony and credibly maintained that he determined that Fuentes was working on February 25, 2019, for the Respondent. At the beginning of the hearing Ronnie Murphy,³³ leading knight/vice president for the Respondent, was present for the majority of the Department's case in chief, in particular relating to the witnesses' testimony relating to persons interacting with "Ronnie," their employer or the owner at the Licensed Premises. It is more probable than not, that Lydia Hernandez' and Julian Fuentes' employer "Ronnie" is Ronnie Murphy; and that when Villa Senor-Aburto advised Agent Patel that the owner of the Licensed Premises, "Ronnie," allows him to store his Taco business supplies and equipment in the Licensed Premises' parking lot in an out-building, he was speaking of Ronnie Murphy. There is no other business on the Licensed Premises than the Respondent's premises. It is too coincidental otherwise that all three persons would be dealing with a "Ronnie," described as an employer or owner at the Licensed Premises, when Ronnie Murphy is one of the persons in charge at the Respondent premises as the leading knight and corporate officer (vice president) of the Respondent.

30. Mr. Wallace claimed the cannabis event promoters presented him with cannabis licenses, of which he took a photograph for August 15, 2018, April 25, 2019, and other dates when such events were permitted by the Respondent on the Licensed Premises. Mr. Wallace also claimed that the vendors had cannabis licenses as well. The Respondent did not present at the hearing any documented proof or evidence of such licenses. It was within the Respondent's power to produce stronger, more reliable evidence thereof, and therefore these claims are viewed with distrust. (Evidence Code section 412.)

31. Mr. Wallace also presented inconsistent, conflicting testimony. He initially claimed the Respondent had no control over the promoters or vendors when they came to the Licensed Premises, and then acknowledged that the Respondent is "responsible to some extent for leasing out the property for other's uses...under the guidance of the exalted ruler, - Melvin Mitchell." Mr. Wallace claimed the Respondent did not participate in any cannabis-related events on the Licensed Property. Yet both he and Mr. Mitchell admitted the Respondent leased/rented the Licensed Premises to cannabis event promoters and vendors for cannabis sales at the Licensed Premises. He then said he knew of a cannabis event promoter known as Mc Lyfe, whom he claimed was not affiliated with the Respondent. Yet, in Exhibit D, the unique name of "Lyfe" is listed as one of the attending members in Respondent's Meeting Minutes of August 22, 2017. Mr. Wallace's testimony is viewed with distrust. (Evidence Code section 412.)

³² Evidence Code section 412.

³³ Upon return from lunch break Ronnie Murphy did not return to the hearing.

32. As evidence of Mr. Wallace's further inconsistent testimony, after hearing the officers testify about the make, model and colors of the vehicles searched at the Licensed Premises on the respective dates, Mr. Wallace testified that he could not recall the makes or colors of the said vehicles to which the officers testified. Mr. Wallace then later claimed that the cars described by the officers did not belong to any of Respondent's lodge members. It is implausible that if Mr. Wallace cannot recall the makes or colors of the cars about which were testified that he would be able to testify that none of them belonged to Respondent's lodge members.

33. As evidence of Mr. Wallace's evasive testimony, when Respondent's counsel questioned Mr. Wallace about the search warrants executed on the two dates in question (August 15, 2018, and April 25, 2019) Mr. Wallace had a clear recollection and had no problem recalling those dates and events relating to the search warrants thereon. However, upon cross-examination Mr. Wallace became evasive in his answers relating to the same line of questioning and claimed he could not recall. Later upon cross-examination, Mr. Wallace recalled one of the events occurring about a year ago, which would be around the time of the August 15, 2018 event in question.

34. In balancing the conflicting evidence it is found that, (1) the Respondent did stop operating at the Licensed Premises, which premises was closed between August 15, 2018 and October 5, 2018, (2) security guard Julian Fuentes was hired and employed by the Respondent and the promoters did not provide their own security at the cannabis sales event at which Fuentes worked, (3) the IBPOE of the World, Inc., Grand Lodge in North Carolina did not wrongfully revoke the Respondent's charter for deceptive/improper motives, (4) there was no evidence the cannabis event promoters or any of the vendors had cannabis licenses to sell cannabis or cannabis related merchandise at the Licensed Premises on any of the dates in question, and (5) the Respondent and its members did participate in the cannabis-related events on the Licensed Property.

PENALTY

The Department requested the Respondent's club license be revoked based on the aggravating factors of the continuing course or pattern of conduct of the Licensee having abandoned the purpose of its type-51 license, with no intention to operate as a club, including the prior disciplinary action involving serving to non-club members. The Department did not provide a breakdown of the penalty among the counts.

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

The standard penalty under rule 144³⁴ for a violation of Rule 65 – Chapter 1, Title 4 of the CCR, is revocation stayed for 180 days, to permit transfer, or reactivation of license. However, this penalty is more typical for circumstances when a licensee is no longer operating their licensed premises. In this case, the Respondent remedied the unsafe conditions, which were lifted by the city, the Respondent reopened its doors and continued to operate and exercise its licensed privileges at the Licensed Premises for a period of time. Under these unusual circumstances, a lesser penalty is warranted.

Rule 144 does not have a penalty recommendation for certain offenses listed in the First Amended Accusation. Rule 144 does recommend revocation for a violation of section 24200.5 which involves actual drug sales on the licensed premises. It also recommends a revocation, stayed for 3 years, including a 20-day suspension for possession for sale of drug paraphernalia. Those penalties are comparatively high when measured against the other offenses and penalties listed in Rule 144. However, illegal drug dealing is a serious offense, especially with the continuing course or pattern of such conduct over an extended period of time, and indicia of drug sales present with the volume of cannabis and currency found.

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 problems (relating more to the drug-related offenses and not for remedying the unsafe conditions after the first posted “UNSAFE” notice), documented training, or cooperation by the licensee. In fact, there was evidence the Respondent willfully failed to cooperate in the investigation when Agent Patel questioned Ronnie Murphy. The penalty recommended herein complies with rule 144.

ORDER

Count 1 is sustained. In light of this violation the Respondent’s club license is hereby suspended for 5 days.

Counts 2, 3, 4, 5, and 6 are sustained. In light of these violations the Respondent’s club license is hereby revoked.

Count 7 is sustained. In light of this violation the Respondent’s club license is hereby

³⁴ All rules referred to herein are contained in title 4 of the California Code of Regulations unless otherwise noted.

suspended for 30 days.

Counts 8 and 9 are sustained. In light of these violations the Respondent's club license is hereby revoked.

All penalties as to the counts to be served concurrently with one another.

Dated: October 2, 2019



D. Huebel
Administrative Law Judge

<input checked="" type="checkbox"/> Adopt
<input type="checkbox"/> Non-Adopt: _____
By: <u>Joan A. Huel Smith</u>
Date: <u>11/18/19</u>