

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

AB-9988

File: 41-633472; Reg: 23092873

ASLEWIS HOLDINGS, LLC,
dba Anna's Restaurant
443 Pine Avenue
Long Beach, CA 90802-2349,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Alberto Roldan

Appeals Board Hearing: February 9, 2024
Sacramento, CA / Videoconference

ISSUED FEBRUARY 14, 2024

Appearances: *Appellant:* Jeff Augustini, as counsel for ASLewis Holdings, LLC,

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

OPINION

ASLewis Holdings, LLC, doing business as Anna's Restaurant (appellant), appeals from a decision of the Department of Alcoholic Beverage Control (Department)¹ suspending its license for a total of 25 days because it violated three different conditions on its license, in violation of Business and Professions Code² section 23804; exceeded its license privileges, in violation of sections 23300 and 23355; and failed to

¹ The decision of the Department, dated October 10, 2023, is set forth in the appendix.

² All statutory references are to the California Business and Professions Code unless otherwise noted.

produce records requested by the Department, in violation of sections 25616 and 25753. The suspension is to last indefinitely beyond the 25 days until appellant executes a revised petition for conditional license.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale beer and wine eating place license was issued on May 25, 2022. There is no record of prior departmental discipline against the license.

On January 9, 2023, the Department instituted a fourteen-count accusation against appellant charging that on three separate occasions — July 23, 2022, August 27, 2022, and September 10, 2022 — appellant violated conditions on its license and exceeded its license privileges, and, on October 19, 2022, failed to produce records requested by the Department.

At the administrative hearings held on June 13-15, 2023, documentary evidence was received and testimony concerning the violation charged was presented by Department Agent Oscar Zapata, Long Beach Police Department (LBPD) Detective Satwan Johnson, and LBPD Officer Christopher Ignacio. Elliot Lewis, CEO of Catalyst Cannabis Co., and spouse of appellant's managing member, Anna Lewis, testified on appellant's behalf.

Testimony and documentary evidence established that on April 14, 2022, appellant executed a petition for conditional license which included nine conditions.

The conditions pertinent to this matter include:

Condition 2: The quarterly gross sales of alcoholic beverages shall not exceed the quarterly gross sales of food during the same period. The licensee shall at all times maintain records which reflect separately the gross sale of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the Department on demand.

Condition 3: No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee(s) as depicted on the ABC-257 dated 11/2/21 and ABC-253 dated 11/2/21.

Condition 6: No “happy hour” type of reduced-price alcoholic beverage promotion shall be allowed.

Condition 7: The sale of alcoholic beverages for consumption off the premises is strictly prohibited.

(Exhibit D-7.)

On July 23, 2022, the licensed premises had its grand opening, which was timed to coincide with a recently established monthly street festival called the Catalyst Downtown Event. Appellant’s owner, Anna, and her husband, Elliot, were both actively engaged in the revitalization efforts on Pine Street as well as this monthly street festival — which had special event permits to block off the street and specifically prohibited alcoholic beverages. (Finding of Fact (FF) ¶ 4.)

Evidence presented suggests that Elliot Lewis refers to himself as an “owner” of the premises and acts as its representative (exhs. D-23, ASL TE-1), even though only Anna Lewis is listed as a member of ASLewis Holdings, LLC.

On July 23, 2022, Detective Johnson, and LBPD Officers Ignacio and Vasquez, went to the licensed premises in an undercover capacity. They heard the event emcee — the rapper Xzibit — announce that appellant was selling \$2 beers all day. Both Anna and Elliot were standing next to the emcee at the time, but no one clarified to the crowd that only one item on the beer menu was \$2. (FF ¶ 5.)

The undercover officers stood in line inside the licensed premises to purchase beer and heard the bartenders asking patrons if they wanted to take their beer outside. If so, the bartenders said it was necessary to pour the beer into a plastic cup. A portion of the licensed premises includes a fenced exterior patio (FF ¶ 2), and presumably this

is the “outside” being referred to. The officers observed bartenders pouring beer from bottles into plastic cups and then saw patrons carry these plastic cups outside the licensed premises, onto the exterior patio, and beyond the licensed perimeter.

The officers ordered two Pacifico beers and one Mission IPA beer. The bartender charged them \$2 each for the beers, even though this was less than the price listed on the menu. The officers then went to an interior part of the premises, overlooking the exterior patio, and took photographs of patrons carrying clear plastic cups of beer away from the licensed premises and out into the street festival. (FF ¶ 6, Exh. D-9 through D-14.) There was no evidence in the photographs that food was being served during this time. (FF ¶ 7.)

On August 27, 2022, Detective Johnson returned to the licensed premises with two LCPD officers, Detective Bun and Sergeant Kirk. All were in plain clothes. Another street festival was taking place on Pine Street, and the special event permit specifically prohibited alcohol at the event. The officers observed individuals at the street fair holding what appeared to be alcoholic beverages in clear plastic cups. (FF ¶ 8.) The officers spoke to Elliot Lewis and warned him about alcoholic beverages not being allowed beyond the railing that separated the patio from the sidewalk. Mr. Lewis acknowledged this fact. (Exh ASL TE-24.)

Later that day, Detectives Johnson and Bun returned to the licensed premises in an undercover capacity, and observed patrons leaving the premises with plastic cups containing what appeared to be alcoholic beverages. They ordered a glass of wine and a Sierra Nevada beer. Johnson asked if he could take them outside, and the bartender said she would pour them into plastic cups so they could. After paying for the drinks, the officers took them outside, beyond the patio railing, and began to consume them.

No one stopped them at the perimeter of the premises, or directed them back inside or onto the patio. (FF ¶ 10.)

Detective Bun returned later in the evening of August 27, 2022 with a hidden video camera. He ordered a Sierra Nevada beer from the bartender and asked if he could take it outside. The bartender said he could and poured the beer into a plastic cup. Bun took his beer outside and consumed it beyond the patio area and while walking on the sidewalk adjacent to the premises. No one from the licensed premises directed him back inside or onto the patio while he did so. He observed no service of food on this date. (Exhs. D-20, L-25; FF ¶ 11.)

On September 10, 2022, during another Catalyst Downtown Event, Detective Johnson and Agent Zapata visited the licensed premises in an undercover capacity. They ordered a draft beer and a Modelo bottled beer, and asked the bartender if they could take them outside. The bartender responded, "I'm supposed to be like, I don't know what you're doing when you leave the door." (Exh. D-21.) The three of them laughed, and she poured their beers into plastic cups. Johnson asked if they could order food. The bartender apologized and said that the kitchen was closed, but it would reopen the following day. Johnson and Zapata took their beer outside beyond the patio, but no one stopped them or directed them back inside or onto the patio. (*Ibid*; FF ¶ 12.)

Later on September 10, 2022, LBPD Sergeant Magallenes went to the licensed premises to give a verbal warning to appellant. He spoke to both Elliot and Anna Lewis about the conditions on the license and violations of those conditions observed by undercover officers. Elliot Lewis was argumentative and repeatedly asserted that Magallenes was sent by someone "at the top" in retaliation for him taking a public

position to redirect overtime funding away from law enforcement. Magallenes exited the premises. (Exh. D-23; FF ¶ 13.)

That evening, Johnson and Bun returned to the premises in an undercover capacity and ordered two beers. They asked the bartender if they could take them outside and the bartender told them they could drink on the patio. They took their beers and consumed them on the sidewalk beyond the patio, but no one stopped them or directed them back inside.

Approximately five minutes later, Zapata entered the premises in an undercover capacity and ordered a beer from the same bartender. He asked if he could take it outside and was also told he could drink on the patio. Zapata initially stood at the patio entrance, then moved to the sidewalk about 15 feet in front of the premises. He consumed his beer from a plastic cup while being observed on two occasions by the bartender who had served him. Neither the bartender nor any other employee asked him to return to the licensed premises with his beer. (FF ¶ 14.)

Agent Zapata and two LBPD officers approached the bartender, identified themselves, and began to explain the violations observed. Elliot Lewis entered the conversation, and Anna Lewis began recording it. A shouting match ensued, and the officers disengaged to de-escalate the situation. Because of the confrontation, Zapata was unable to obtain identifying information about the bartenders who had served alcoholic beverages to the investigators and other patrons. (Exhs. D-21, D-24, L-33, L-34, L-35, L-38; FF ¶¶ 14-16.)

On September 16, 2022, Zapata sent a notice to produce records to the premises via certified mail, requesting the identifications of the bartenders from September 10, 2022, video surveillance footage, and quarterly sales information related

to alcohol and food sales for the quarters ending March 2022 and June 2022.

Confirmation was received from the United States Postal Service that the notice had been delivered and received. (Exh. D-19; FF ¶ 17.)

After receiving no response, a second notice was sent by the Department on October 4, 2022. (Exh. D-25.) Appellant's representative, Roger Salgado, called Zapata on October 13, 2022, and explained that he was unaware of the first notice, and that the premises was not open during the quarters for which the sales information was requested. He said he could provide information about the identities of the bartenders, but was unsure of the status of the surveillance footage. No records were ultimately produced prior to the filing of the accusation in this matter. (FF ¶ 18.)

During the hearing, the Department moved to dismiss counts 5, 9, and 13, and that motion was granted. These dismissed counts charged consumption of an alcoholic beverage outside the edifice of an on-sale retail establishment in violation of section 25612.5(c)(3). This section applies only to licensees other than a retail on-sale licensee or on-sale beer and wine licensee who is licensed and operates as a bona fide public eating place, and thus did not properly apply to appellant.

The administrative law judge (ALJ) issued a proposed decision on July 14, 2023, sustaining the remaining eleven counts and recommending the license be suspended for a total of twenty-five days, with the suspension to remain in effect indefinitely until the licensee executes a revised petition for conditional license. The Department adopted the proposed decision in its entirety on October 2, 2023, and a certificate of decision was issued eight days later.

Appellant then filed a timely appeal contending: (1) the decision is not supported by substantial evidence, (2) the penalty in regards to the failure to produce documents

is excessive and unreasonable, (3) the denial of appellant's motion to dismiss was improper, and (4) the ALJ erred in his findings on witness credibility. In addition, (5) we will address appellant's motion to augment the record.

DISCUSSION

I

SUBSTANTIAL EVIDENCE

Appellant contends the decision is not supported by substantial evidence in regards to the sustained counts. (Appellant's Opening Brief (AOB), pp. 6-17.)

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

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

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

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

When findings are attacked as being unsupported by the evidence, the power of this Board begins and ends with an inquiry as to whether there is substantial evidence, contradicted or uncontradicted, which will support the findings. When two or more competing inferences of equal persuasion can be reasonably deduced from the facts, the Board is without power to substitute its deductions for those of the Department — all conflicts in the evidence must be resolved in favor of the Department's decision.

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

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

As the Department notes in its reply brief: "appellant's complaints boil down to an argument that the sustained violations are not supported by substantial evidence." (Department's Reply Brief (DRB) at p. 10.) We agree with this assessment.

Appellant contends that counts 1, 6, and 10, alleging violations of condition 3, should be reversed. Those counts are:

Count 1: On or about July 23, 2022, respondent-licensee(s), violated condition #3 on the license which states, "No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee(s) as depicted on the ABC-257 dated 11/2/21 and ABC-253 dated 11/2/21," in that the licensee allowed alcoholic beverages to be consumed on property adjacent to the licensed premises under the control of the licensee, such being a violation of the license condition and ground for license suspension or revocation under Business and Professions Code Section 23804.³

³ Section 23804 provides: "[a] violation of a condition placed upon a license pursuant to this article shall constitute the exercising of a privilege or the performing of an act for which a license is required without the authority thereof and shall be grounds for the suspension or revocation of such license."

- Count 6: On or about August 27, 2022, respondent-licensee(s), violated condition #3 on the license which states, "No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee(s) as depicted on the ABC-257 dated 11/2/21 and ABC-253 dated 11/2/21," in that the licensee allowed alcoholic beverages to be consumed on property adjacent to the licensed premises under the control of the licensee, such being a violation of the license condition and ground for license suspension or revocation under Business and Professions Code Section 23804.
- Count 10: On or about September 10, 2022, respondent-licensee(s), violated condition #3 on the license which states, "No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee(s) as depicted on the ABC-257 dated 11/2/21 and ABC-253 dated 11/2/21," in that the licensee allowed alcoholic beverages to be consumed on property adjacent to the licensed premises under the control of the licensee, such being a violation of the license condition and ground for license suspension or revocation under Business and Professions Code Section 23804.

Condition 3 on the license states: "No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee(s) as depicted on the ABC-257 dated 11/2/21 and ABC-253 dated 11/2/21."

Appellant contends:

ASL legally could not have violated Condition #3 as alleged because a public sidewalk, as a matter of law and fact, is not a "property adjacent to the licensed premises under the control of the licensee," and under no circumstances could it be characterized as such.

(AOB at p. 2, emphasis in original.) And, in its closing brief (ACB) contends:

ASL legally could not have violated Condition #3 of its license as alleged, since under its express terms Condition #3 prohibited only the consumption of alcoholic beverages "on any property adjacent to the licensed premises **under the control of the licensee**." . . . Here, the Department alleged, and Judge Roldan erroneously found, that ASL violated Condition #3 by "facilitating" or failing to prevent the consumption of alcohol on the public sidewalk and/or public street, although neither location was ever under ASL's control.

(ACB at p. 2, emphasis in original.)

Appellant is factually incorrect that these public areas — *i.e.*, the sidewalk and street adjacent to the licensed premises — need to be under its control for a violation of condition 3 to be found. This is simply a misreading of the condition. The condition does not prohibit consumption of alcohol only on property under the control of the licensee, but on property which is adjacent to the licensed premises — as defined in the ABC forms signed by appellant and made a part of its petition for conditional license.

The decision correctly finds that appellant failed to prevent the consumption of alcohol on the sidewalk and street adjacent to its licensed premises, based on direct testimony as well as photographic and video evidence in the record. On multiple occasions, patrons were observed taking alcoholic beverages from the licensed premises and consuming them in these public areas. And, the investigating officers themselves were able to do so without being stopped by employees or being instructed to return to the properly-licensed areas. Accordingly, counts 1, 6, and 10 are supported by substantial evidence, and were properly sustained in the decision.

The same evidence also supports a finding that appellant exceeded its license privileges by permitting patrons to leave the premises with open containers of alcoholic beverages, to-wit: beer, for consumption off the premises, in violation of Business and Professions Code Sections 23300⁴ and 23355.⁵

⁴ Section 23300 states: “No person shall exercise the privilege or perform any act which a licensee may exercise or perform under the authority of a license unless the person is authorized to do so by a license issued pursuant to this division.”

⁵ Section 23355 states: “Except as otherwise provided in this division and subject to the provisions of Section 22 of Article XX of the Constitution, the licenses provided for in Article 2 of this chapter authorize the person to whom issued to exercise the rights and privileges specified in this article and no others at the premises for which issued during the year for which issued..”

The counts alleging these violations are:

- Count 4: On or about July 23, 2022, respondent-licensee, exceeded their license privileges by permitting patrons to leave the premises with open containers of alcoholic beverages, to-wit: beer, for consumption off the premises, in violation of Business and Professions Code Sections 23300 and 23355.
- Count 8: On or about August 27, 2022, respondent-licensee, exceeded their license privileges by permitting patrons to leave the premises with open containers of alcoholic beverages, to-wit: beer, for consumption off the premises, in violation of Business and Professions Code Sections 23300 and 23355.
- Count 12: On or about September 10, 2022, respondent-licensee, exceeded their license privileges by permitting patrons to leave the premises with open containers of alcoholic beverages, to-wit: beer, for consumption off the premises, in violation of Business and Professions Code Sections 23300 and 23355.

Appellant contends it should not be held responsible for people leaving its establishment with alcoholic beverages because it had no warning or pre-existing knowledge that Department agents or LBPD officers had witnessed individuals leaving the premises with alcoholic beverages. (AOB at p. 4, citing *Laube v. Stroh* (1992) 2 Cal.App.4th 364, 379 [3 Cal.Rptr.2d 779].)

Appellant's argument, however, is contrary to one of the most significant precepts found in the very case that it cites, namely:

A licensee has a general, affirmative duty to maintain a lawful establishment. Presumably this duty imposes upon the licensee the obligation to be diligent in anticipation of reasonably possible unlawful activity, and to instruct employees accordingly."

(*Ibid.*) Importantly, as the court of appeals observed in *McFaddin*:

It is not necessary for a licensee to knowingly allow its premises to be used in a prohibited manner in order to be found to have permitted its use. . . . Further, the word "permit" implies no affirmative act. It involves no intent. It is mere passivity, *abstaining from preventative action*.

(*McFaddin San Diego 1130, Inc. v. Stroh* (1989) 208 Cal.App.3d 1384, 1389-1390 [257 Cal.Rptr. 8], internal quotations omitted, emphasis in original.) Similarly, in *Reimel*, the court stated:

[A] licensee can draw no protection from his lack of knowledge of violations committed by his employees or from the fact that he has taken reasonable precautions to prevent such violations. There is no requirement . . . that the licensee have knowledge or notice of the facts constituting its violation. [Citations.]

(*Reimel v. Alcoholic Beverage Control Appeals Bd.* (1967) 252 Cal.App.2d 520, 522 [60 Cal.Rptr. 641], internal quotations omitted.

On multiple occasions, patrons were observed taking alcoholic beverages from the licensed premises and consuming them in these public areas, based on direct testimony, as well as photographic and video evidence in the record. And, the investigating officers themselves were able to do so without being stopped by employees or being instructed to return to the properly licensed areas. Accordingly, counts 4, 8, and 12 are supported by substantial evidence and were properly sustained in the decision.

Similarly, violations of condition 7 charged in counts 3, 7, and 11 are supported by this same evidence. Condition 7 on the license states: "The sale of alcoholic beverages for consumption off the premises is strictly prohibited." The counts alleging a violation of this condition are:

Count 3: On or about July 23, 2022, respondent-licensee(s), violated condition #7 on the license which states, "The sale of alcoholic beverages for consumption off the premises is strictly prohibited," in that the licensee allowed the sale of alcoholic beverages for consumption off the premises, such being a violation of the license condition and ground for license suspension or revocation under Business and Professions Code Section 23804.

- Count 7: On or about August 27, 2022, respondent-licensee(s), violated condition #7 on the license which states, "The sale of alcoholic beverages for consumption off the premises is strictly prohibited," in that the licensee allowed the sale of alcoholic beverages for consumption off the premises, such being a violation of the license condition and ground for license suspension or revocation under Business and Professions Code Section 23804.
- Count 11: On or about September 10, 2022, respondent-licensee(s), violated condition #7 on the license which states, "The sale of alcoholic beverages for consumption off the premises is strictly prohibited," in that the licensee allowed the sale of alcoholic beverages for consumption off the premises, such being a violation of the license condition and ground for license suspension or revocation under Business and Professions Code Section 23804.

As stated previously, on multiple occasions, patrons were observed purchasing alcoholic beverages from the licensed premises and consuming them in these public areas — as established by direct testimony, as well as photographic and video evidence in the record. And, the investigating officers themselves were able to do so without being stopped by employees or being instructed to return to the properly licensed areas. Accordingly, counts 3, 7, and 11 are supported by substantial evidence and were properly sustained in the decision.

Appellant maintains the violation of condition 6 in count #2 should be reversed because the \$2 beers offered were a regular price and not a promotion. Condition #6 on the license states: "No 'happy hour' type of reduced-price alcoholic beverage promotion shall be allowed. Count 2 states:

- Count 2: On or about July 23, 2022, respondent-licensee(s), violated condition #6 on the license which states, "No "happy hour" type of reduced price alcoholic beverage promotion shall be allowed," in that the licensee promoted a reduced price alcoholic beverage, such being a violation of the license condition and ground for license suspension or revocation under Business and Professions Code Section 23804.

Evidence presented established that the emcee announced to the crowd that beer was \$2 for the grand opening. Subsequently, undercover officers ordered beers which were listed on the menu for more than \$2, but they were charged \$2 each for those beers. (FF ¶¶ 5-6; CL ¶ 9; exh. D-15.) Direct testimony and video evidence of these facts constitutes substantial evidence. Accordingly, count 2 was properly sustained in the decision.

We have reviewed the entire, voluminous record in this matter, and fail to see any error in the Department's determination. We must decline appellant's appeal to reweigh the evidence and reach a contrary conclusion — something we are prohibited from doing. We find the sustained counts to be supported by substantial evidence.

II

PENALTY REGARDING DOCUMENT PRODUCTION

Appellant contends the penalty imposed for the failure to produce documents (count 14) is “unsupported, excessive, unreasonable and a reversible abuse of discretion.” (AOB at p. 19.)

The penalty in question is for the following count:

Count 14: On or about October 19, 2022, respondent-licensee(s) failed to produce to the Department and the Department's representatives books, records, and videos of respondent-licensee(s) to wit: names of bartenders from September 10, 2022, receipts for quarterly sales records reflecting separately the gross sales of food and alcohol from January 1, 2022 to March 31, 2022 and April 1, 2022 to June 30, 2022, and video surveillance from September 10, 2022 from 8:30 PM to 9:30 PM, in violation of Business and Professions Code Sections 25616 and 25753.⁶

⁶ Sections 25616 and 25753 require licensees to keep records and produce them for inspection upon demand from the Department.

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

If the penalty imposed is reasonable, the Board must uphold it even if another penalty would be equally, or even more, reasonable. “If reasonable minds might differ as to the propriety of the penalty imposed, this fact serves to fortify the conclusion that the Department acted within its discretion.” (*Harris v. Alcoholic Bev. Control Appeals Bd.* (1965) 62 Cal.2d 589, 594 [43 Cal.Rptr. 633].)

Rule 144 provides:

In reaching a decision on a disciplinary action under the Alcoholic Beverage Control Act (Bus. and Prof. Code Sections 23000, *et seq.*), and the Administrative Procedures Act (Govt. Code Sections 11400, *et seq.*), the Department shall consider the disciplinary guidelines entitled “Penalty Guidelines” (dated 12/17/2003) which are hereby incorporated by reference. Deviation from these guidelines is appropriate where the Department in its sole discretion determines that the facts of the particular case warrant such a deviation - such as where facts in aggravation or mitigation exist.

(Cal. Code Regs., tit. 4, § 144.)

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

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

Penalty Policy Guidelines:

The California Constitution authorizes the Department, in its discretion[,] to suspend or revoke any license to sell alcoholic beverages if it shall determine for good cause that the continuance of such license would be contrary to the public welfare or morals. The Department may use a range of progressive and proportional penalties. This range will typically extend from Letters of Warning to Revocation. These guidelines contain a schedule of penalties that the Department usually imposes for the first offense of the law listed (except as otherwise indicated). These guidelines are not intended to be an exhaustive, comprehensive or complete list of all bases upon which disciplinary action may be taken against a license or licensee; nor are these guidelines intended to preclude, prevent, or impede the seeking, recommendation, or imposition of discipline greater than or less than those listed herein, in the proper exercise of the Department's discretion.

(Ibid.)

The ALJ made the following observations in regards to the 5-day suspension imposed for count 14:

The presumptive penalty for a violation of section 25616 is a 30-day suspension with a further indefinite suspension until the records are produced. The records in this matter have been produced, so there is no pending order to produce at issue. A number of the requested records did not exist at the time they were asked for. A violation occurred, but it was an isolated failure to comply. Mitigation is warranted.

(Decision at pp. 15-16.)

In short, the penalty imposed for count 14 was significantly reduced from the standard penalty of 30 days. Appellant has not established that mitigating factors should reduce the penalty on this count to zero instead of five days.

As we have said time and again, this Board's review of a penalty looks only to see whether it can be considered reasonable, and, if it is reasonable, the Board's inquiry ends there. The *extent* to which the Department considers mitigating or

aggravating factors is a matter entirely within its discretion — pursuant to rule 144 — and the Board may not interfere with that discretion absent a clear showing of abuse of discretion. Appellant has not established that the penalty here constitutes an abuse of discretion.

III

MOTION TO DISMISS

Appellant contends the denial of its motion to dismiss was improper and materially prejudiced its ability to defend itself at trial. (AOB at pp. 19-20.)

During the administrative hearing, appellant filed a motion to dismiss (exh. D-2), alleging that the accusation failed to comply with Government Code section 11503 which states, in pertinent part:

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 their defense. It shall specify the statutes and rules that the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of those statutes and rules. . . .

(Gov. Code § 11503.)

Appellant maintains, “[i]n violation of that provision, the Department filed an Accusation that consisted entirely of charges phrased in the language of the rules and conditions, and provided no facts describing the acts or omissions charged.” (AOB at p. 19.)

The Department maintains that appellant waived any objection to compliance with section 11503 when it failed to ask for a continuance after hearing the Department’s evidence, and instead went forward with its own case and witnesses. (DRB at p. 9.)

In addition, the Department refutes the allegation that the accusation did not comply with section 11503. We agree.

As noted by the Court in *Stoumen*:

The principal objective of the law is to safeguard the licensee against an accusation which does not sufficiently enable him to prepare his defense. [Citations.] Adherence to technical rules of pleading is not required. [Citation.] As stated by Mr. Justice Peters, in the case last cited: "In these administrative proceedings the courts are more interested with fair notice to the accused than they are to adherence to the technical rules of pleading. [Numerous citations.]"

In the instant case, it can hardly be said that appellant was not fully and fairly apprised of the charges with sufficient certainty to prepare his defense thereto.

(*Stoumen v. Munro* (1963) 219 Cal.App.2d 302, 306-307.)

As in the *Stoumen* case, appellant here was fully and fairly apprised of the charges with sufficient certainty to prepare his defense. We find no error in the dismissal of appellant's motion.

IV

WITNESS CREDIBILITY

Appellant contends the ALJ erred in his findings on witness credibility. (AOB *passim*; ACB at pp. 3-6.) Specifically, it maintains:

[W]ith respect to facts critical to the challenged counts, the Department's witnesses repeatedly lied, made up "facts," and intentionally exaggerated and distorted events and interactions – all of which Judge Roldan ignored when making his determinations.

On the totality of the record, Lewis' testimony repeatedly was proven correct or was not even challenged.

(ACB at p. 6.)

It is the province of the ALJ, as trier of fact, to make determinations as to witness credibility. (*Lorimore v. State Personnel Bd.* (1965) 232 Cal.App.2d 183, 189 [42 Cal.Rptr. 640].)

It is established that courts generally will defer to the broad discretion vested in administrative agencies when the evidence is conflicting, or even when reasonable men might well differ on questions of the credibility of witnesses, or upon the proper inferences to be drawn from the evidence, subject to the requirements, of course, that the finding be supported by substantial evidence.

(*Id.* at 186.)

California Evidence Code section 780 provides that a fact-finder may consider the following factors, among others, when assigning witness credibility: the extent of the witness's capacity to recollect any matter about which she or he testifies; her or his character for honesty or veracity or their opposites; the existence or nonexistence of a bias, interest, or other motive; and the existence or nonexistence of any fact testified to by her or him. (Cal. Evid. Code § 780.)

The Department accurately characterizes appellant's position on this issue as follows:

Much of appellant's argument, and perhaps the very foundation of it, rests on an attempt to support appellant's contentions based on the testimony of Elliot Lewis while asking the Board to disregard the contradictory testimony of the peace officer witnesses.

(DRB at p. 7.) As noted in the decision:

The Respondent has attacked the credibility of the law enforcement officers in this investigation and denied any wrongdoing. The Respondent presented evidence, primarily through E. Lewis, suggesting that the law enforcement officers were engaging in retaliatory behavior because of his advocacy for reducing cannabis taxes by cutting law enforcement overtime costs in the city of Long Beach. Other than his articulation of this theory during his tirades during the investigations by officers on August 27, 2022, and September 10, 2022, there is no evidence that any of the investigating officers were aware of or motivated by his advocacy.

Further, the testimony given by the law enforcement officers is significantly corroborated by photographic and videotaped evidence. . . .

(CL ¶ 13.)

The ALJ was in the best position to observe the witnesses as they testified, to consider the various factors outlined in Evidence Code section 780, and to make a informed credibility determination. As such, we find no error in the ALJs findings on witness credibility in this case, particularly having already found that the decision is supported by substantial evidence.

V

REQUEST TO AUGMENT RECORD

On December 12, 2023, appellant filed a request with the Board to augment the record with information received from a Public Records Act request to the Long Beach Police Department.

The Department objects to the augmentation of the record on the basis of section 23083(a), which states in relevant part:

The board shall determine the appeal upon the record of the department and upon any briefs which may be filed by the parties. . . . The board shall not receive any evidence other than that contained in the record of the proceedings of the department.

(Bus. & Prof. Code § 23083.)

Appellant urges the Board to consider section 23084, which states:

The review by the board of a decision of the department shall be limited to the questions:

[¶ . . . ¶]

(e) Whether there is relevant evidence, which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the department.

(Bus. & Prof. Code § 23084(e).)

Appellant also directs the Board to section 23085, which states in relevant part:

In appeals where the board finds that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the department, it may enter an order remanding the matter to the department for reconsideration in the light of such evidence.

(Bus. & Prof. Code § 23085.)

Rule 198 limits the Board to remanding the matter to the Department if it determines the newly discovered evidence should be considered. The Board does not ever hear testimony or accept evidence.

Rule 198 provides:

(a) When the board is requested to remand the case to the department for reconsideration upon the ground that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced at the hearing before the department, the party making such request must, in the form of a declaration or affidavit, set forth:

- (1) The substance of the newly-discovered evidence;
- (2) Its relevancy and that part of the record to which it pertains;
- (3) Names of witnesses to be produced and their expected testimony;
- (4) Nature of any exhibits to be introduced;
- (5) A detailed statement of the reasons why such evidence could not, with due diligence, have been discovered and produced at the hearing before the department.

(b) Merely cumulative evidence shall not constitute a valid ground for remand.

(4 Cal.Code Regs, § 198.)

After consideration of the request, we find that the requirements of rule 198, subdivisions (a)(2) and (a)(5) have not been met, and therefore appellant has not met the threshold requirements for the Board to remand this matter to the Department for consideration of the “new evidence” it seeks to introduce. The request admittedly seeks only to discredit the testimony of Detective Johnson, rather than being relevant. (Request at p. 2.) And, appellant fails to establish that such evidence could not have been produced at the administrative hearing or that it was improperly excluded. The request to augment the record is denied.

ORDER

The decision of the Department is affirmed.⁷

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

⁷ This final order is filed in accordance with Business and Professions Code section 23088, and shall become effective 30 days following the date of the filing of this order as provided by section 23090.7 of said code.

Any party, before this final order becomes effective, may apply to the appropriate court of appeal, or the California Supreme Court, for a writ of review of this final order in accordance with Business and Professions Code section 23090 *et seq.* Service on the Board pursuant to California Rules of Court (Rule 8.25) should be directed to: 400 R Street, Ste. 320, Sacramento, CA 95811 and/or electronically to: abcboard@abcappeals.ca.gov.

APPENDIX

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

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

ASLEWIS HOLDINGS, LLC
ASLEWIS HOLDINGS, LLC
443 PINE AVENUE
LONG BEACH, CA 90802-2349

ON-SALE BEER AND WINE EATING PLACE -
LICENSE

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

LAKWOOD DISTRICT OFFICE

File: 41-633472

Reg: 23092873

CERTIFICATE OF DECISION

It is hereby certified that, having reviewed the findings of fact, determination of issues, and recommendation in the attached proposed decision, the Department of Alcoholic Beverage Control adopted said proposed decision as its decision in the case on October 2, 2023. 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. The appeal must be filed within 40 calendar days from the date of the decision, unless the decision states it is to be "effective immediately" in which case an appeal must be filed within 10 calendar days after the date of the decision. Mail your written appeal to the Alcoholic Beverage Control Appeals Board, 400 R St, Suite 320, Sacramento, CA 95811. For further information, and detailed instructions on filing an appeal with the Alcoholic Beverage Control Appeals Board, see: <https://abcab.ca.gov> or call the Alcoholic Beverage Control Appeals Board at (916) 445-4005.



https://abcab.ca.gov/abcab_resources/

On or after November 20, 2023, a representative of the Department will contact you to arrange to pick up the license certificate.

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

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

ASLEWIS HOLDINGS, LLC
ASLEWIS HOLDINGS, LLC
443 PINE AVENUE
LONG BEACH, CA 90802-2349

ON-SALE BEER AND WINE EATING PLACE -
LICENSE

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

Sacramento, California

Dated: October 10, 2023

LAKWOOD DISTRICT OFFICE

File: 41-633472

Reg: 23092873

CERTIFICATE OF DECISION



Matthew D. Botting
General Counsel

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

IN THE MATTER OF THE ACCUSATION AGAINST:

ASLewis Holdings, LLC
DBA: ASLewis Holdings, LLC
443 Pine Avenue
Long Beach, CA 90802-2349

Respondent

On-Sale Beer and Wine Eating Place License

} File: 41-633472
}
} Reg: 23092873
}
} License Type: 41
}
} Word Count: 96,200
}
} Reporters:
} Savauna Ramirez & Hanna Jenkin
} Kennedy Reporters
}
} **PROPOSED DECISION**

Administrative Law Judge Alberto Roldan, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter, via videoconference, on June 13, 2023, through June 16, 2023.

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

Jeff Augustini, Attorney, represented Respondent, ASLewis Holdings, LLC (Respondent).

In an eleven count Accusation¹, the Department seeks to discipline the Respondent's license on the grounds that,

1. On or about July 23, 2022, respondent-licensee violated license condition #3 which states, "No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee as depicted on the ABC-257 dated 11/2/21 and ABC-253 dated 11/2/21," in that the licensee allowed alcoholic beverages to be consumed on property adjacent to the licensed premises under the control of the licensee, such being a violation of the license condition and grounds for a license suspension or revocation pursuant to section 23804²;
2. On or about July 23, 2022, respondent-licensee violated license condition #6 which states, "No "happy hour" type of reduced-price alcoholic beverage promotion shall be allowed," in

¹ The Accusation, as originally filed, contained fourteen counts. During the hearing in this matter, the Department moved to dismiss counts 5, 9, and 13, alleging violations of section 25612.5(c)(3). That motion was granted. The original numbering of counts is retained to avoid confusion.

² All statutory references are to the California Business and Professions Code unless otherwise noted.

- that the licensee promoted a reduced-price alcoholic beverage, such being a violation of the license condition and grounds for a license suspension or revocation pursuant to section 23804;
3. On or about July 23, 2022, respondent-licensee violated license condition #7 which states, "The sale of alcoholic beverages for consumption off the premises is strictly prohibited," in that the licensee allowed the sale of alcoholic beverages for consumption off the premises, such being a violation of the license condition and grounds for a license suspension or revocation pursuant to section 23804,
 4. On or about July 23, 2022, respondent-licensee exceeded their license privileges by permitting patrons to leave the premises with open containers of alcoholic beverages, to-wit: beer, for consumption off the premises, in violation of sections 23300 and 23355,
 5. ~~On or about July 23, 2022, respondent licensee permitted consumption of an alcoholic beverage outside the edifice of an on-sale retail establishment, in violation of section 25612.5(e)(3);~~
 6. On or about August 27, 2022, respondent-licensee violated license condition #3 which states, "No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee as depicted on the ABC-257 dated 11/2/21 and ABC-253 dated 11/2/21," in that the licensee allowed alcoholic beverages to be consumed on property adjacent to the licensed premises under the control of the licensee, such being a violation of the license condition and grounds for a license suspension or revocation pursuant to section 23804,
 7. On or about August 27, 2022, respondent-licensee violated license condition #7 which states, "The sale of alcoholic beverages for consumption off the premises is strictly prohibited," in that the licensee allowed the sale of alcoholic beverages for consumption off the premises, such being a violation of the license condition and grounds for a license suspension or revocation pursuant to section 23804,
 8. On or about August 27, 2022, respondent-licensee exceeded their license privileges by permitting patrons to leave the premises with open containers of alcoholic beverages, to-wit: beer, for consumption off the premises, in violation of sections 23300 and 23355,
 9. ~~On or about August 27, 2022, respondent licensee permitted consumption of an alcoholic beverage outside the edifice of an on-sale retail establishment, in violation of section 25612.5(e)(3);~~
 10. On or about September 10, 2022, respondent-licensee violated license condition #3 which states, "No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee as depicted on the ABC-257 dated 11/2/21 and ABC-253 dated 11/2/21," in that the licensee allowed alcoholic beverages to be consumed on property adjacent to the licensed premises under the control of the licensee, such being a violation of the license condition and grounds for a license suspension or revocation pursuant to section 23804,
 11. On or about September 10, 2022, respondent-licensee violated license condition #7 which states, "The sale of alcoholic beverages for consumption off the premises is strictly prohibited," in that the licensee allowed the sale of alcoholic beverages for consumption off the premises, such being a violation of the license condition and grounds for a license suspension or revocation pursuant to section 23804,

12. On or about September 10, 2022, respondent-licensee exceeded their license privileges by permitting patrons to leave the premises with open containers of alcoholic beverages, to-wit: beer, for consumption off the premises, in violation of sections 23300 and 23355, and
- ~~13. On or about September 10, 2022, respondent-licensee permitted consumption of an alcoholic beverage outside the edifice of an on-sale retail establishment, in violation of section 25612.5(e)(3), and~~
14. On or about October 19, 2022, respondent-licensee failed to produce to the Department and the Department's representatives, books, records, and videos of respondent-licensee to-wit: names of bartenders from September 10, 2022, receipts for quarterly sales records reflecting separately the gross sales of food and alcohol from January 1, 2022 to March 31, 2022 and April 1, 2022 to June 30, 2022, and video surveillance from September 10, 2022 from 8:30 p.m. to 9:30 p.m., in violation of sections 25616 and 25753. (Exhibit D-1)

As to the eleven remaining counts, the Department further alleged that there is cause for suspension or revocation of the license of the Respondent, in accordance with section 24200 and sections 24200(a) and (b). The Department further alleged that the continuance of the license of the Respondent would be contrary to public welfare and/or morals as set forth in Article XX, Section 22 of the California State Constitution and sections 24200(a) and (b). (Exhibit D-1)

FINDINGS OF FACT

1. The Department filed the Accusation on January 9, 2023. Since being licensed, the Respondent has not suffered any prior departmental discipline. (Exhibit D-1)
2. On May 25, 2022, the Department issued Respondent a type-41 on-sale beer and wine eating place license for the premises at 443 Pine Avenue, Long Beach, CA 90802-2349 (Licensed Premises). The Licensed Premises is on the ground floor of a building located at the corner of Pine Street and 5th Avenue in the city of Long Beach, California. The Licensed Premises does business as Anna's Restaurant. The interior of the Licensed Premises is approximately 49 feet wide and 19 feet deep. The width of the Licensed Premises faces Pine Street. The doors to enter the Licensed Premises also open onto Pine Street closest to the intersection of 5th Avenue. The façade and doors of the Licensed Premises have clear glass panels that allow for views onto the exterior patio and the adjacent public streets from the interior licensed area. Immediately upon entering is a counter for ordering food and beverages at a register area. As you face the register area, to the left is a small interior location for patrons to consume food and alcoholic beverage purchases. As viewed from the interior, there is a fenced exterior patio that extends to the left of the front doors wrapping around to 5th Avenue, and to the right of the front doors along Pine Street. Like the interior, the patio is also a designated area, on the ABC-253, where patrons can consume alcoholic beverage purchases. The exterior patio is defined by a low fence and is approximately 9 feet deep along the width and side of the Licensed Premises. The patio does not have a roof and is viewable from the interior because of the extensive clear glass façade. (Exhibits D-8 and L-5)
3. On April 14, 2022, Anna Lewis (A. Lewis), of AS Lewis Holdings, LLC executed the Petition for Conditional License that became the license in this matter. The type-41 conditional license had

nine specific conditions. In accepting these conditions, the Respondent acknowledged the overconcentration of licenses in the census tract and that the Licensed Premises is in a high crime reporting district. The conditional license A. Lewis signed established conditions on how and where privileges could be exercised. The relevant conditions to this inquiry are as follows:

- Condition 2-“The quarterly gross sales of alcoholic beverages shall not exceed the quarterly gross sales of food during the same period. The licensee shall at all times maintain records which reflect separately the gross sale of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the Department on demand”
- Condition 3-“No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee(s) as depicted on the ABC-257 dated 11/2/21 and ABC-253 dated 11/2/21.”
- Condition 6-“No ‘happy hour’ type of reduced-price alcoholic beverage promotion shall be allowed.”
- Condition 7-“The sale of alcoholic beverages for consumption off the premises is strictly prohibited.” (Exhibit D-7)

4. On July 23, 2022, the Licensed Premises had its grand opening. The grand opening was timed to coincide with a recently established monthly street festival. A. Lewis and her husband Elliot Lewis (E. Lewis) were involved in revitalization efforts taking place on the Pine Street corridor in the immediate vicinity of the Licensed Premises. In addition to the Licensed Premises, A. Lewis had also invested in a type 21 licensed location adjacent to the Licensed Premises, and E. Lewis had opened a cannabis dispensary on the Pine Street corridor on the same block as the Licensed Premises. Each of the businesses occupied business spaces that had previously been vacant for extended periods. While A. Lewis was the principal behind AS Lewis Holdings, LLC and was the signatory on the conditional license, E. Lewis was also actively involved in the operation of the Licensed Premises. E. Lewis’s cannabis business was also an active participant in the monthly street festival which was known as “The Catalyst Downtown Event”. The street festival involved the closure of Pine Street to vehicle traffic to allow for outdoor vending and displays. The Long Beach special event permit for the street festival explicitly prohibited alcoholic beverages. E. Lewis was involved in obtaining the special event permits for the monthly events during the period at issue and he was aware of the prohibition.

5. On the day of the July 23, 2022, grand opening of the Licensed Premises, A. Lewis and E. Lewis stood next to a rapper while he served as an emcee for the grand opening event. The rapper went by the moniker, “Exhibit”. During the course of his presentation to the crowd over an amplified speaker, “Exhibit” announced that the Licensed Premises would be serving “2-dollar beers” when they opened that day. “Exhibit” did not mention that only one beer on the menu was \$2, his statement explicitly referenced the general service of beer. While the crowd cheered, A. Lewis and E. Lewis stood by, smiled and clapped. E. Lewis later addressed the crowd, but made no effort to clarify that the \$2 beer was only one item on the beer menu. A. Lewis also did not challenge or clarify the assertion by “Exhibit”, even though she was present during his statement that the

Licensed Premises would be serving \$2 beers and had the opportunity to use the microphone.
(Exhibits D-15, L-10 and L-45)

6. On July 23, 2022, Long Beach Police Department (LBPd) officers C. Ignacio (Ignacio), F. Vazquez (Vasquez) and S. Johnson (Johnson) were present at the festival and heard the announcement made by "Exhibit" about the \$2 beers. Subsequent to hearing the announcement, the officers went and stood in a line extending from the Licensed Premises to purchase beers. All three officers were undercover. While standing in line, they watched the female bartender repeatedly pour beer from bottles into clear plastic disposable cups and serve them to patrons. The officers observed some of the patrons then take those beers and walk out of the Licensed Premises beyond the interior and beyond the fenced patio area where on-sale consumption of alcoholic beverages was allowed at the Licensed Premises. Johnson heard the female bartender ask a patron if he wanted to take his beer outside of the premises. She said she needed to know this so she could place his beer in a cup rather than hand him a bottle. The patron asked for a cup and the female bartender then poured it into a clear plastic disposable cup and handed it to the patron. When Johnson got to the bar, he told the bartender that he wanted two Pacifico beers and one Mission IPA beer. Neither of these beers were the \$2 beer offered on the Licensed Premises menu. Despite this, the female bartender charged Johnson \$2 each for the beers. After paying for the beers, the three officers moved to the interior location of the Licensed Premises that overlooked the patio on Pine Street. Ignacio took photographs of multiple individuals walking out of and away from the Licensed Premises, then heading into the street festival with their beers in clear disposable cups. The areas where they were photographed were, in each instance, beyond the exterior patio area that was licensed. In most of the exhibits, the individuals with beers from the Licensed Premises were walking into the street festival area, despite the prohibition on alcoholic beverages in the event permit. (Exhibits D-9, D-10, D-11, D-12, D-13, D-14)

7. Exhibits D-11 and D-13 were two separate photographs of a man in a black shirt standing beyond the rail and holding a beer in a clear plastic disposable cup. In Exhibit D-11, the individual appears to be carrying on a conversation with A. Lewis while drinking from the cup. The Respondent presented testimony in this matter that at the time D-11 was taken, A. Lewis directed the man in the black shirt to move to inside of the rail of the patio since he was standing with his beer outside of the exterior patio. This testimony is at odds with Exhibit D-13. This exhibit shows other persons standing across from the man in the black shirt and A. Lewis standing off to the left. The man in the black shirt remains standing in the exact location in Exhibit D-13, even though there is a passage of time depicted by both photographs. Exhibits D-11 and D-13 also show that alcohol beverage service was occurring in glasses and bottles for people who were utilizing the patio area. Both photos depict wine glasses, partially full draft beer glasses, and partially consumed beer bottles on the tables in the patio area. (Exhibits D-11 and D-13) In total, the photos taken by Ignacio depicted 7 different individuals with various types of beers visible through the identical clear plastic cups that were being used to serve beers in the Licensed Premises. All of these photos showed individuals with the beers in areas beyond the patio, but visible from the Licensed Premises. (Exhibits D-9, D-10, D-11, D-12, D-13, D-14) During their investigation, none of the officers observed any agents or employees of the Licensed Premises stopping these individuals or directing them back into the Licensed Premises. After documenting these observations, the officers remained

undercover and left. While the photographic evidence established that alcoholic beverage service was occurring on July 23, 2022, there was no evidence that food service was occurring in these images.

8. On August 27, 2022, Johnson returned to the Licensed Premises location along with LBPD Detective R. Bun (Bun) and Sergeant J. Kirk (Kirk). The officers were in plain clothes. The Catalyst Downtown Event was again taking place and Pine Street was closed to vehicle traffic in front of the Licensed Premises. The Long Beach special event permit again explicitly prohibited alcohol at the event. The officers approached the Licensed Premises by walking along Pine Street, through the event, from 4th Avenue to 5th Avenue. While walking, they observed multiple persons, in the event area, holding what appeared to be alcoholic beverages in clear plastic cups. As they walked up to the Licensed Premises, the officers noticed additional persons in front of the Licensed Premises on the sidewalk and within the licensed patio area drinking what appeared to be alcoholic beverages from clear plastic cups. The officers mistakenly believed the patio area was not part of the Licensed Premises. After making these observations, they departed and contacted dispatch requesting uniformed officers so that the officers could contact the owners of the Licensed Premises. LBPD Officers K. Esparza (Esparza) and J. Calise (Calise) responded and met with Johnson. Johnson asked Esparza and Calise to advise the owner or manager of the concerns. Johnson provided Esparza and Calise with the event permit and the Department license information. The information provided by Johnson included the erroneous information that the patio area was unlicensed.

9. Esparza and Calise contacted E. Lewis at the Licensed Premises. E. Lewis elected to represent the Licensed Premises during the contact with the uniformed officers and he communicated that he was A. Lewis' husband and involved with the business. During the conversation, Esparza incorrectly asserted that the patio behind the fence was an area that patrons could not consume alcoholic beverages. E. Lewis responded that it was a licensed area and that he would patrol outside of the patio area, but that the patio area was allowed and it was not wrong for patrons to consume alcohol there. Esparza continued to assert that patrons could not consume alcoholic beverages outside of the interior, including the patio. Esparza also raised the concern about the proximity of the Licensed Premises to an event that prohibited alcohol consumption. At this point, E. Lewis accused the officers of "muscling" him. E. Lewis then went on to assert that the presence of the officers was a "flex" in response to E. Lewis' prior public advocacy before the Long Beach City Council to reduce cannabis taxes by cutting law enforcement and fire department overtime expenditures. Esparza and Calise elected to leave, rather than engaging with E. Lewis further. (Exhibit L-24) They reported to Johnson that E. Lewis had been uncooperative. (Exhibits L-25 and L-26)

10. On August 27, 2022, at approximately 8 p.m., Johnson and Bun returned to the Licensed Premises in an undercover capacity. As they walked in, they observed patrons leaving the Licensed Premises with red plastic cups with what appeared to be alcoholic beverages in them. Johnson and Bun entered and went up to the counter area to order. A white, female bartender let them know that the Licensed Premises was out of draft beers and that they could only purchase wine or Sierra Nevada beer in a bottle. Johnson interacted with the bartender and he ordered one glass of wine and

one bottle of Sierra Nevada. Prior to the bartender pouring the wine, Johnson asked if he could take the drinks outside. She responded that he could. She then told Johnson that if he wanted to do this, she would pour the drinks into plastic cups. Johnson paid for the drinks and the bartender poured the wine and Sierra Nevada beer into red plastic cups for them. Bun and Johnson then walked out of the Licensed Premises with the drinks. Johnson and Bun stood on the sidewalk, beyond the patio, with their drinks and began to take sips. Johnson and Bun could see inside of the Licensed Premises to where the bartenders were. Despite the unobstructed view, no one directed them inside or onto the patio. Johnson and Bun also observed E. Lewis and A. Lewis sitting on the patio of the Licensed Premises drinking from red cups. Johnson and Bun were not stopped or directed into the Licensed Premises boundary by either of them or any other representatives of the Respondent. After lingering while holding their drinks, Johnson and Bun left the Licensed Premises area.

11. They decided to video record another purchase in the Licensed Premises that day. Bun returned later in the evening of August 27, 2022, and entered the Licensed Premises. He had a hidden video camera activated. Bun contacted the same female bartender from earlier. Bun ordered a Sierra Nevada beer. When she brought the bottle, Bun asked "can I take it outside?" The female bartender responded, "Yeah, let me give you a plastic cup." She then poured the bottle of beer into a red plastic cup. Bun paid for the beer and he walked outside and stood beyond the patio area with his beer. Bun lingered while holding the cup and then walked on the public sidewalk adjacent to the patio while remaining visible through the Licensed Premises windows. During this period, no one directed Bun into the patio area or the interior of the Licensed Premises. After the investigation, Bun retained the video as evidence. (Exhibits D-20 and L-25) It did not appear that any food service was occurring on this date at the Licensed Premises even though alcoholic beverages were being served.

12. On September 10, 2022, at approximately 5 p.m., Johnson returned to the Licensed Premises accompanied by Department Agent O. Zapata. Both law enforcement officers were undercover. The monthly Catalyst Downtown Event was in process during this portion of the investigation. They walked up to the counter and contacted a female bartender to order beers. Zapata order a draft and Johnson ordered a Modelo beer, which was in a bottle. When the bartender returned with the bottle, Johnson asked if he could take it "outside?" The bartender responded, "I'm supposed to be like, I don't know what you're doing when you leave the door." She then continued the theme of this remark with additional related comments. After she finished, both the bartender and Johnson laughed in response to her remarks. Johnson's beer was poured from the bottle into a red plastic cup and Zapata's draft was served in a red plastic cup. Johnson asked the female bartender if he could purchase food. She apologized and responded that the kitchen was closed that day and that it would reopen the next day. After receiving their beers and finishing the discussion with the female bartender, both men took them outside and beyond the patio area. Zapata and Johnson lingered and sipped the beers where they could be seen through the windows of the Licensed Premises. Despite this, no one directed them onto the patio or into the Licensed Premises' interior. (Exhibit D-21)

13. Zapata and Johnson left the Licensed Premises location. At approximately 6:35 p.m. on September 10, 2022, LBPD Sergeant Magallenes (Magallenes) responded to the Licensed Premises to review the license conditions with whoever was managing the property at the time. Magallenes

met with E. Lewis and A. Lewis. and he read from the conditions on the license from a printout. E. Lewis pointed out that Magallenes was in error regarding the patio. E. Lewis showed Magallenes a printout of the premises diagram showing that the patio was licensed and that alcoholic beverage consumption was allowed there. As Magallenes spoke with E. Lewis, the three of them walked from 5th Avenue around to the front of the Licensed Premises on Pine Street. As the group arrived, a patron was standing beyond the patio area and consuming a beer. E. Lewis had to direct the patron from the public sidewalk into the Licensed Premises. The video captures extensive service of alcoholic beverages at the Licensed Premises but no evidence of any food service occurring. During the discussion between Magallenes and E. Lewis in front of the Licensed Premises, E. Lewis raised his voice significantly and again asserted that the visits by officers was a “flex” and a response to E. Lewis and his advocacy of reducing the cannabis tax rate by taking away overtime funding from law enforcement. E. Lewis angrily and repeatedly asserted that Magallenes was sent by someone “at the top” in retaliation for E. Lewis taking a public position to redirect overtime funding away from law enforcement. E. Lewis continued the theme of these assertions for a number of minutes. As E. Lewis became angrier, his wife A. Lewis attempted to calm him down. Magallenes ultimately disengaged and left the Licensed Premises with two other uniformed officers who had responded to stand by. (Exhibit D-23)

14. At approximately 8:30 p.m. on September 10, 2022. Johnson and Bun returned to the Licensed Premises in an undercover capacity. They spoke with a male bartender and ordered two beers. They asked if they could take the beers outside and the male bartender told them they could drink on the patio. After paying for the drinks and receiving the beers, Johnson and Bun walked outside and stood on the public sidewalk beyond the patio area with their beers. Even though they were visible through the front door and windows, no one from the Licensed Premises stopped them or directed them to stand inside of the Licensed Premises area where alcohol consumption was allowed. About five minutes after Johnson and Bun purchased their beers, Zapata entered the Licensed Premises in an undercover capacity. He also purchased a beer from the male bartender. Zapata asked if he could take the beer outside and he was also told that he could take it on the patio. Zapata took his beer and initially stood at the patio entrance. Zapata then took his beer, which was served in a red plastic cup, and stood on the public sidewalk beyond the patio and about 15 feet from the front of the Licensed Premises. Zapata remained there while the male bartender, on two occasions, came outside. At no time was Zapata directed to return into the Licensed Premises by the male bartender or any other employee. Zapata remained outside holding the beer until he was later joined by two uniformed LBPD officers. Zapata then reentered the Licensed Premises, approached the male bartender, and identified himself as a Department agent.

15. While speaking with the male bartender, E. Lewis approached and began asking questions of Zapata. A. Lewis walked up and began recording the interaction between Zapata and E. Lewis. Zapata told them that he was aware of multiple prior occasions from LBPD investigations that patrons had taken drinks out of the Licensed Premises and onto the public sidewalks. During Zapata’s explanation of his concerns, Zapata erroneously asserted that the patio was not part of the Licensed Premises. E. Lewis became visibly irate and stated to Zapata and the uniformed officers that he was being picked on. E. Lewis engaged in a loud, profanity laced tirade for several minutes. At one point, Zapata disengaged from E. Lewis and spoke with the male bartender about his

concerns about the lack of food service. Zapata was shown the food menu and he then went into the kitchen area where the male bartender showed him the food inventory. When Zapata returned from the kitchen to the area in front of the register, E. Lewis engaged him again and quickly transitioned back to a profanity laced tirade directed primarily at Zapata. E. Lewis again returned to the theme of him being picked on because of his efforts before the Long Beach City Council and publicly to reduce police overtime to pay for a reduction in the cannabis tax rate. (Exhibits D-21, D-24, L-33, L-34, L-35, and L-38)

16. Zapata elected to leave since E. Lewis was not showing any signs of de-escalating and the crowd appeared to be getting riled up. A. Lewis continued to videotape the confrontation and Zapata was followed out to the police vehicle he left in while continuing to be videotaped. Because of the confrontation with E. Lewis, Zapata was unable to document identifying information for the bartenders who had served alcoholic beverages to the investigators and other patrons in the Licensed Premises. (Exhibits D-21, D-24, L-33, L-34, L-35, and L-38)

17. On September 16, 2022, Zapata mailed, via certified mail to the Respondent's address of record, a notice to produce records. The notice was on Department letterhead requesting the identifications of the bartenders from September 10, 2022, video surveillance footage, and quarterly sales information related to alcohol and food sales for the quarters ending March 2022 and June 2022. On September 23, 2022, Zapata received written confirmation from the United States Postal Service (USPS) indicating the letter had been delivered and received. At the time of receipt of the notice to produce, the only records in existence were the identifications of the bartenders. The Licensed Premises did not open until July 2022 and the surveillance video had been automatically written over prior to the delivery date. The letter identified Zapata as a point of contact and provided a number and written address for response. The letter explicitly stated that the Respondent was required to respond and that it would be a violation of section 25753 to refuse to respond. Despite the warning, no response of any kind was received by the Department through October 4, 2022. (Exhibit D-19)

18. On October 4, 2022, the Department sent a second notice to produce records, via certified mail to the Respondent's address of record, requesting the same information. It referenced the prior September 15, 2022, order to produce. It again provided contact information for Zapata to facilitate a response. The letter reiterated that the Respondent was facing discipline against its license if it did not respond and it gave a compliance date of October 14, 2022. (Exhibit D-25) A person named Roger Salgado (Salgado) called Zapata, at the provided number, on October 13, 2022, and left a message. Salgado later spoke directly with Zapata on October 14, 2022. He stated that he had recently taken over accounting responsibilities for the Respondent. He stated he was not aware of the prior notice to produce. Salgado told Zapata that the Licensed Premises was not open during the period identified in the quarterly report requests. He stated he was unsure if the surveillance footage existed still. He told Zapata he would be able to provide the identifying information requested regarding the two employees. After this phone call, Zapata waited until October 19, 2022, to finalize his investigative report. He did not hear from any representatives of the Respondent through that date. The Department did not receive any further information requested in the two

notices to produce through the January 9, 2023, filing of the Accusation in this matter. The information was produced to the Department prior to the hearing in this matter.

19. E. Lewis testified in this matter and asserted that the investigation was driven by his advocacy for the reduction of cannabis taxes through the reduction of overtime expenditures on behalf of law enforcement and fire personnel. E. Lewis denied the legitimacy of the investigation and the conclusion that violations had occurred. The Respondent introduced video of E. Lewis appearing before a public session of the Long Beach City Council vigorously advocating this position. This appearance occurred prior to the period of the investigations in this matter. (Exhibit L-6) E. Lewis asserted in his prior interactions with law enforcement during the investigations and in his testimony that Zapata and the LBPD officers were working in coordination with “higher ups” and “people at the top” to punish his advocacy. While the Respondent offered extensive footage of E. Lewis’ own assertions of a broad-based conspiracy, no evidence was offered establishing that any of the investigating officers were motivated by, or even aware of, E. Lewis’ public advocacy.

20. The Respondent, in the testimony of E. Lewis and in the cross examination of Department witnesses, challenged the assertion that they had offered a promotion in violation of condition 6 of their conditional license on July 23, 2022. The Respondent established in its evidence that they did list one draft beer on their alcoholic beverage menu for \$2 and that this was well known and not a promotion. (Exhibit L-11) The remaining beers and wines, of which there were several, were listed for significantly more than \$2. E. Lewis testified that “Exhibit” the rapper was referring to this when he referred to \$2 beers during the opening event. E. Lewis testified that the \$2 beer on the menu was the only one being sold at that price on July 23, 2022.(Exhibit D-15)

21. Consistent with the evidence received from the Department, the evidence presented by the Respondent established that the LBPD officers and Department agent repeatedly erred by referencing the patio as being unlicensed in their discussions with representatives of the Respondent. The uniformed LBPD officers who responded for advisements to E. Lewis and A. Lewis during the investigations repeatedly focused on the patio as a significant area of concern. Zapata, just prior to the tirade by E. Lewis on September 10, 2022, also made this error while discussing the Respondent’s lack of compliance with license conditions. (Exhibits D-20, D-21, D-23, and D-24)

CONCLUSIONS OF LAW

1. Article XX, section 22 of the California Constitution and section 24200, subdivision (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 23300 provides that no person shall exercise the privilege or perform any act which a licensee may exercise or perform under the authority of a license unless the person is authorized to do so by a license issued pursuant to this division.

3. Section 23355 provides that, except as otherwise provided in this division and subject to the provisions of Section 22 of Article XX of the Constitution, the licenses provided for in Article 2 of this chapter authorize the person to whom issued to exercise the rights and privileges specified in this article and no others at the premises for which issued during the year for which issued.
4. Section 24200, subdivision (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.
5. Section 23804 provides that the violation of a condition placed upon a license constitutes the exercise of a privilege or the performing of an act for which a license is required without the authority thereof and constitutes grounds for the suspension or revocation of the license.
6. Section 25616 provides that any person who knowingly or willfully files a false license fee report with the department, and any person who refuses to permit the department or any of its representatives to make any inspection or examination for which provision is made in this division, or who fails to keep books of account as prescribed by the department, or who fails to preserve such books for the inspection of the department for such time as the department deems necessary, or who alters, cancels, or obliterates entries in such books of account for the purpose of falsifying the records of sales of alcoholic beverages made under this division is guilty of a misdemeanor and shall be punished by a fine of not less than two hundred dollars (\$200) nor more than one thousand dollars (\$1,000), or by imprisonment in the county jail for not less than one month nor more than six months, or by both such fine and imprisonment.
7. Section 25753 provides that the department may make any examination of the books and records of any licensee or other person and may visit and inspect the premises of any licensee it may deem necessary to perform its duties under this division.
8. As to the eleven remaining counts in the Accusation, cause for suspension or revocation of Respondent's license exists under Article XX, section 22 of the California State Constitution and section 24200, subdivision (a). The evidence in this matter established:

Count 1. On July 23, 2022, the Respondent violated license condition #3 which states, "No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee as depicted on the ABC-257 dated 11/2/21 and ABC-253 dated 11/2/21," in that the Respondent allowed alcoholic beverages to be consumed on property adjacent to the Licensed Premises, including beyond the outer patio, in violation of section 23804,

Count 2. On July 23, 2022, the Respondent violated license condition #6 which states, "No "happy hour" type of reduced-price alcoholic beverage promotion shall be allowed," in that the Respondent, during its grand opening event, promoted and sold \$2 beers at a discount from their regular pricing to patrons in violation of section 23804;

Count 3. On July 23, 2022, the Respondent violated license condition #7 which states, "The sale of alcoholic beverages for consumption off the premises is strictly prohibited," in that

the licensee allowed the sale of alcoholic beverages for consumption off the premises, in violation of section 23804,

Count 4. On July 23, 2022, the Respondent exceeded its license privileges by permitting patrons to leave the Licensed Premises with open containers of alcoholic beverages, to-wit: beer, for consumption off the Licensed Premises, in violation of sections 23300 and 23355,

Count 6. On August 27, 2022, the Respondent violated license condition #3 which states, "No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee as depicted on the ABC-257 dated 11/2/21 and ABC-253 dated 11/2/21," in that the Respondent allowed alcoholic beverages to be consumed on property adjacent to the Licensed Premises, including beyond the outer patio, in violation of section 23804,

Count 7. On August 27, 2022, the Respondent violated license condition #7 which states, "The sale of alcoholic beverages for consumption off the premises is strictly prohibited," in that the licensee allowed the sale of alcoholic beverages for consumption off the premises, in violation of section 23804,

Count 8. On August 27, 2022, the Respondent exceeded their license privileges by permitting patrons to leave the premises with open containers of alcoholic beverages, to-wit: beer, for consumption off the premises, in violation of sections 23300 and 23355,

Count 10. On September 10, 2022, the Respondent violated license condition #3 which states, "No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee as depicted on the ABC-257 dated 11/2/21 and ABC-253 dated 11/2/21," in that the Respondent allowed alcoholic beverages to be consumed on property adjacent to the Licensed Premises, including beyond the outer patio, in violation of section 23804,

Count 11. On September 10, 2022, the Respondent violated license condition #7 which states, "The sale of alcoholic beverages for consumption off the premises is strictly prohibited," in that the licensee allowed the sale of alcoholic beverages for consumption off the premises, in violation of section 23804,

Count 12. On September 10, 2022, the Respondent exceeded its license privileges by permitting patrons to leave the Licensed Premises with open containers of alcoholic beverages, to-wit: beer, for consumption off the Licensed Premises, in violation of sections 23300 and 23355, and

Count 14. On or about October 19, 2022, the Respondent failed to produce to the Department and the Department's representatives, records of the Respondent to-wit: the names of bartenders from September 10, 2022, in violation of sections 25616 and 25753 (Findings of Fact ¶¶ 1-21)

9. On July 23, 2022, a representative, acting on behalf of the Respondent, announced that the Licensed Premises would be selling \$2 beers at the grand opening that day. A. Lewis, the principal of the LLC holding the license, and her husband E. Lewis, who was actively involved in its operation, both clapped and smiled at the announcement and made no corrections, even though they had the opportunity to do so. The announcement did not reference one beer on the menu, it was a general announcement. LBPD officers in an undercover capacity were

subsequently sold two different varieties of beer for \$2 each beer. Neither of the beers were the draft offered on the Respondent's posted menu for \$2. The sale price was consistent with the announced \$2 promotion for the grand opening made while A. Lewis and E. Lewis stood by, smiled and clapped. This discount was in direct violation of condition 6 of the conditional license of the Licensed Premises. (Findings of Fact ¶ ¶ 1-7)

10. The investigating officers, while in line to order their beers, overheard the female bartender offer to pour a patron's bottled beer into a disposable plastic cup so he could take it outside. The officers, after receiving their discounted beers, moved to a window where they were able to watch additional patrons depart the Licensed Premises, beyond the patio area, and walk onto the public streets, into the festival, with beers that were purchased from the Licensed Premises and poured into identical plastic cups. The officers photographed multiple individuals doing this on July 23, 2022, including a man in a black shirt who spoke directly with A. Lewis while standing on the public sidewalk outside of the patio with his beer. The Respondent went beyond just "allowing" alcoholic beverages to be consumed on property adjacent to the Licensed Premises as alleged in Count 1. The Respondent's agents actively facilitated this activity by pouring the beers of patrons from bottles into plastic cups, knowing that the patrons were going to walk out of the Licensed Premises and onto the public sidewalk beyond the exterior patio. The evidence established that patrons of the Licensed Premises were freely able to take wine glasses and beer glasses onto the exterior patio, so the use of plastic cups by the staff was for a different purpose. The pouring of beers into plastic cups by the Respondent's staff was for the purpose of allowing patrons to depart with the alcoholic beverages they were served. In doing this, the staff sold these beverages for consumption, off of the premises, in violation of condition 7, as alleged in Count 3. The evidence established that the Respondent elected not to provide food service on the three days that the Catalyst street festival was occurring and that it focused on serving alcoholic beverages on those dates. The volume of drink service was large enough that date that it is unlikely the patrons served alcoholic beverages by the Respondent's staff would even safely fit in the Licensed Premises had there been an effort to keep them in the Licensed Premises while they consumed their drinks, as required by the Respondent's on sale license. The Respondent, by facilitating the consumption of alcoholic beverages outside of the Licensed Premises, exceeded its explicit privileges as a type 41, on-sale beer and wine eating place by engaging in off-sale activities. (Findings of Fact ¶ ¶ 1-8)

11. Despite the explicit conditions in the conditional license described above, the same scheme of facilitating the consumption of alcoholic beverages outside of the Licensed Premises occurred again on August 27, 2022. Johnson and Bun returned to the Licensed Premises during the following monthly Catalyst event. They observed patrons walking out with plastic, disposable cups containing alcoholic beverages. There was no food service that day. After entering undercover, Johnson and Bun purchased beers and asked if they could take them outside. The female bartender said "yeah" and then poured their beers from bottles into plastic, disposable cups. Bun later returned alone and the bartender engaged in the identical form of transaction that had occurred earlier. During both investigations that day, the officers went beyond the exterior patio after their requests to take the beers "outside" then lingered in an area where they could be seen by the Respondent's agents. No employees of the Respondent stopped them or directed them into the Licensed Premises. In addition

to violating conditions 3, 6, and 7, the Respondent's bartender exceeded the explicit privileges of a type 41, on-sale beer and wine eating place. (Findings of Fact ¶¶ 1-11)

11. One month later, at the next Catalyst street festival on September 10, 2022, officers found the Respondent engaged in the same practices documented the two prior dates. There again was no food service, just a focus on serving alcoholic beverages. The Respondent's bartender again facilitated the consumption of alcoholic beverages outside of the Licensed Premises. Johnson ordered an alcoholic beverage in the Licensed Premises on September 10, 2022, and then asked if he could take it "outside." The bartender responded, "I'm supposed to be like, I don't know what you're doing when you leave the door." She then laughed about her remarks of making believe she didn't know what was happening. Johnson then left the Licensed Premises with his beer without any of the representatives of the Licensed Premises stopping him or directing him back into the boundaries of the Licensed Premises. The Respondent's bartender again violated conditions 3, 6, and 7 and her actions exceeded the explicit privileges of a type 41, on-sale beer and wine eating place. Later that same day, Zapata entered the Licensed Premises in an undercover capacity. Zapata ordered a beer and the male bartender told him he could go on the patio when Zapata asked to go outside with his beer. It is noted this exchange occurred shortly after a uniformed LBPD officer again advised A. Lewis and E. Lewis about concerns by law enforcement that license violations were occurring. Despite articulating the proper limits of where Zapata could go with his beer, this bartender made no effort to have Zapata come back into the Licensed Premises when Zapata instead stood with the beer on the public sidewalk, instead of on the patio. (Findings of Fact ¶¶ 1-11)

12. Because of the disruption caused by E. Lewis repeatedly engaging in profanity laced tirades against Zapata, the agent was unable to get identifying information from the two bartenders. Section 25753 authorizes the department to make any examination of the books and records of any licensee. The request for the identifying information of these employees from the Respondent was authorized by this section. Clearly it was relevant to the investigation being conducted by the Department since these individuals were actively involved in the service of the alcoholic beverages at issue in the Department's investigation. The evidence establishes that the Respondent failed to provide this information, despite being given notice, on two occasions, that this information was being sought, and an extended period of time to comply through October 19, 2022. The Department has established violations of sections 25616 and 25753. (Findings of Fact ¶¶ 1-21)

13. The Respondent has attacked the credibility of the law enforcement officers in this investigation and denied any wrongdoing. The Respondent presented evidence, primarily through E. Lewis, suggesting that the law enforcement officers were engaging in retaliatory behavior because of his advocacy for reducing cannabis taxes by cutting law enforcement overtime costs in the city of Long Beach. Other than his articulation of this theory during his tirades during the investigations by officers on August 27, 2022, and September 10, 2022, there is no evidence that any of the investigating officers were aware of or motivated by his advocacy. Further, the testimony given by the law enforcement officers is significantly corroborated by photographic and videotaped evidence. Some of this videotaped and photographed evidence is at odds with the version of events presented by the Respondent. For example, "Exhibit" announces,

without limitation, that the Respondent will be selling \$2 beers during the grand opening. That is what the officers find when they buy two different types of beer at the \$2 discount. The Respondent's employees are recorded, on videotape, facilitating the removal of alcoholic beverages from the Licensed Premises by pouring bottled drinks into disposable plastic cups, which is consistent with the officers' reports and testimony. Multiple patrons are photographed standing or walking beyond the curtilage of the Licensed Premises carrying cups of beer towards or into the Catalyst event on July 22, 2022. A. Lewis was photographed standing and talking with someone holding a beer in a disposable plastic cup outside of the Licensed Premises on July 23, 2022. Testimony was presented by the Respondent that she directed this person to reenter the patio. This testimony is undermined by photos taken at different times, showing a different mix of people standing next to the same man remaining in the same spot. Given that the physical evidence is consistent with the testimony of the Department witnesses and at odds with the Respondent's version of events, the Respondent's evidence is given little weight. (Findings of Fact ¶¶ 1-21)

14. Based upon the above, there is sufficient evidence to sustain the remaining eleven counts in the Accusation. (Findings of Fact ¶¶ 1-21)

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

PENALTY

The Department's penalty guidelines are in California Code of Regulations, title 4, section 144. (Rule 144) Rule 144 declares: "It is the policy of this Department to impose administrative, non-punitive penalties in a consistent and uniform manner with the goal of encouraging and reinforcing voluntary compliance with the law." Rule 144 adds that: "Higher or lower penalties from this schedule may be recommended based on the facts of individual cases where generally supported by aggravating or mitigating circumstances."

The presumptive penalty for a violation of section 23804 is a 15-day suspension with 5 days stayed for one year. There are three dates in which the seven sustained counts involving section 23804 occurred. July 23, 2022, involves the additional violation of condition 6 which prohibited happy hour type promotions. The remaining counts on July 23, 2022, August 27, 2022, and September 10, 2022, mirror each other and address the Respondent's repeated violations surrounding the sale of beers in disposable plastic cups so they could be consumed outside of the Licensed Premises.

There are also related allegations involving the Respondent exceeding its privileges pursuant to sections 23300 and 23355 on the three dates involving alcohol sales. These counts are supported by the identical conduct establishing the above violations of section 23804. Sections 23300 and 23355 have a presumptive penalty of five days to revocation for each violation.

The presumptive penalty for a violation of section 25616 is a 30-day suspension with a further indefinite suspension until the records are produced. The records in this matter have been produced,

so there is no pending order to produce at issue. A number of the requested records did not exist at the time they were asked for. A violation occurred, but it was an isolated failure to comply. Mitigation is warranted.

The Department sought a total penalty of 25 days and advocated for additional conditions on the Respondent's conditional license. In particular, the Department requested that the Respondent be ordered to execute a revised conditional license with the original conditions and the following two additional conditions:

- When the said patio/terrace/other area of the premises is being utilized for the sales, service, and consumption of alcoholic beverages, a premises employee shall be in attendance and maintain continuous supervision at all times of said area.
- A sign shall be posted in a conspicuous space at the entrance/exit point of said patio, which shall state, "NO ALCOHOLIC BEVERAGES BEYOND THIS POINT". Said sign shall measure no less than seven inches by eleven inches (7" x 11"), and contain lettering no less than one (1) inch height.

Even though there is no prior discipline against the license, the Department argued against mitigation because of the short period of licensure, and the ongoing pattern of non-compliance and non-cooperation in this matter. The period of licensure was only a period of months before the first incident of sustained discipline and Counts 1-4 occurred on the very first day the Respondent actually opened for business.

The evidence in this matter shows that the Respondent consistently ignored its conditional license obligations and knowingly exceeded its privileges. The repeated violations occurred after the Respondent was reminded of the duty to comply with these conditions by LBPD officers on repeated occasions. However, the aggravation of these violations is blunted somewhat by the repeated errors made by the law enforcement officers in their communications with the Respondent's representatives. The LBPD officers and the Department agent repeatedly fixated on drinking in the patio area as a supposed violation of the Respondent's license. This error negatively impacted the accuracy of information communicated to the Respondent and the legitimacy of what was being communicated. Despite the errors of law enforcement, the Respondent was aware of its obligations, ignored them, and knowingly exceeded its privileges on three separate dates.

The proposed signage would add to the clear delineation of areas where the Respondent can exercise privileges on the exterior patio. Given the relatively small size of the venue and the extensive windows that allow interior employees to view the exterior patio, the additional proposal to require a premises employee to be in attendance on the patio is unduly excessive and burdensome.

In line with the penalty guidelines of rule 144 and balancing the aggravating and mitigating factors, the penalty recommended herein complies with rule 144.

ORDER

Counts 1, 2, 3, 4, 6, 7, 8, 10, 11, 12, and 14 of the Accusation are sustained. The Respondent's On-Sale Beer and Wine Eating Place License is suspended for 5 days for each sustained count.

The penalties for Counts 1, 3 and 4 are to run concurrently to each other to address related conduct that occurred on July 23, 2022. The aggregate penalty for these three counts is 5 days. The penalty for count 2, which also occurred on July 23, 2022, is a 5-day penalty consecutive to the other counts.

The penalties for Counts 6, 7 and 8 are to run concurrently to each other to address related conduct that occurred on August 27, 2022. The aggregate penalty for these three counts is 5 days.

The penalties for Counts 10, 11 and 12 are to run concurrently to each other to address related conduct that occurred on September 10, 2022. The aggregate penalty for these three counts is 5 days.

The penalty for Count 14 which occurred on or about October 19, 2022, is a 5-day penalty consecutive to the other counts.

The aggregate penalty for all eleven counts of the Accusation is a 25-day suspension. In addition to the 25-day suspension, the license shall remain suspended indefinitely until the Respondent executes a revised petition for conditional license.

The revised petition for conditional license is to contain the existing "WHEREAS" language and existing conditions.

The revised petition for conditional license shall contain the following additional "WHEREAS" language:

- "WHEREAS, the petitioner intends to exercise privileges of the license in or on an exterior patio; and"

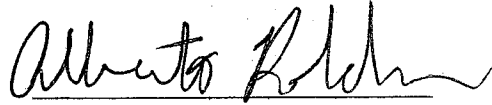
and the following condition:

- "A sign shall be posted in a conspicuous space at the entrance/exit point of said patio, which shall state, "NO ALCOHOLIC BEVERAGES BEYOND THIS POINT". Said sign shall measure no less than seven inches by eleven inches (7" x 11"), and contain lettering no less than one (1) inch height."

ASLewis Holdings, LLC
DBA: ASLewis Holdings, LLC
File: 41-633472
Reg. 23092873
Page 18

The Department is ordered to prepare the revised conditional license for presentation to the Respondent for signature, prior to the effective date of the imposition of the suspension in this matter.

Dated: July 14, 2023


Alberto Roldan
Administrative Law Judge

<input checked="" type="checkbox"/> Adopt
<input type="checkbox"/> Non-Adopt: _____
By: <u>J. McCullers</u>
Date: <u>10/02/23</u>