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

AB-10003
File: 41-605140; Reg: 23094079

MARIA ELISA DOMINGUEZ CERVANTES,
dba El Rancho de la Cerveza
163 W. Alma Ave.
San Jose, CA 95110,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Department Hearing: Hon. Alberto Roldan

Appeals Board Hearing: November 8, 2024
Sacramento, CA/Videoconference

ISSUED NOVEMBER 14, 2024

Appearances: Appellant: John Crowley, as counsel for Maria Elisa Dominguez Cervantes,

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

OPINION

I. INTRODUCTION

Appellant operates a licensed premises called El Rancho de La Cerveza. The Department of Alcoholic Beverage Control ("the Department") filed a twenty-five-count accusation against appellant. Two counts charged violations

of Business and Professions Code section 24302[1]. The remaining twenty-three counts charged a drink solicitation scheme carried out in violation of section 24200.5, subdivision (b); section 25657, subdivisions (a) and (b); and California Code of Regulations, title 4, section 143. After an administrative hearing, the Administrative Law Judge issued a Proposed Decision that sustained all twenty-five counts and that recommended revoking appellant's license. The Department adopted the Proposed Decision[2], and appellant appealed. For the reasons stated below, the Department's decision is affirmed.

II. FACTS

During the Department's investigation, the Department's agents visited appellant's premises five times. The events that occurred at each visit are detailed below.

A. February 24, 2023

While working undercover, Agent Lauer and Agent Martinez visited appellant's premises as part of a drink-solicitation-scheme investigation. While sitting at the bar inside the premises, the agents ordered beers. At the same time, a woman named Julie approached Agent Lauer, and they engaged in small talk. The bartender asked Agent Lauer if he would buy a bucket of beers for Julie. Agent Lauer agreed, and the bartender served Julie a bucket that

[1] All statutory references are to the Business and Professions Code unless otherwise stated.

[2] The Department's decision, dated June 6, 2024, is set forth in the appendix.

contained three cans of beer. The bartender charged Agent Lauer $45.00 for the bucket. The bartender then handed Julie a small piece of white paper. Based on Agent Lauer's training and experience, he believed this piece of paper was a "ficha." According to Agent Lauer, a ficha is used during a drink solicitation scheme to track the number of drinks solicited each night. Typically, at the end of the night, a drink solicitor will turn in the fichas to get paid. Julie sat with Agent Lauer for about two hours. During that time, Julie told Agent Lauer she worked at appellant's premises. Also, the bartender asked Agent Lauer to buy three more buckets for Julie. Agent Lauer did so, and with each purchase, the bartender gave Julie a ficha.

B. March 23, 2023

While working undercover, Agent Martinez and Agent Valdes visited appellant's premises. They sat at the bar, and a woman named Paola introduced herself to them. The bartender asked Agent Valdes if he wanted to buy Paola a bucket of beers. Agent Valdes agreed, and he was charged $45.00. The bartender gave the bucket of beers and a small piece of white paper to Paola. Agent Valdes asked Paola about the piece of paper, and she said it was to track how many buckets were purchased for her. Based on Agent Valdes' training and experience, he believed the paper was used by a drink solicitor to get paid a percentage of the alcohol sales made each night. Paola sat with Agent Valdes for about two and a half hours. During that time, Paola asked Agent Valdes to buy her three more buckets, and Agent Valdes agreed

to do so. Each time, the bartender gave Paola a bucket of beers and a piece of white paper.

C. April 21, 2023

While working undercover, Department agents Martinez, Lauer, and Valdes visited appellant's premises. While inside the premises, a woman named Dulce introduced herself to Agent Martinez. She asked Agent Martinez if he was going to invite her to have a drink. Once Agent Martinez did so, Dulce ordered a bucket of beers from the bartender. The bartender charged Agent Martinez $45.00, and she gave a bucket with three cans of beer to Dulce. The bartender also handed Dulce a small piece of white paper. Dulce sat with Agent Martinez for about an hour and a half.

During the same visit, a woman named Tatiana introduced herself to Agent Valdes. The bartender asked Agent Valdes if he would buy Tatiana a bucket of beers. Agent Valdes agreed to do so, and he was charged $45.00. The bartender gave a bucket with three cans of beer to Tatiana. The bartender also handed Tatiana a small piece of white paper. Agent Valdes asked Tatiana about the piece of paper. Tatiana said it was used to track how many buckets were purchased for her so she could get paid at the end of the night. She also said she was appellant's employee and that her job was to hang out with people and to get them to buy her beer. Tatiana sat with Agent Valdes for about two hours. During that time, she asked Agent Valdes to buy her three

more buckets of beers. Agent Valdes did so, and each time the bartender gave Tatiana a bucket of beers and a small piece of white paper.

D. May 19, 2023

While working undercover, Agent Martinez and Agent Valdes visited appellant's premises. While inside the premises, Nicole introduced herself to Agent Martinez. During their conversation, the bartender asked Agent Martinez if he would like to buy Nicole a bucket of beers. Agent Martinez agreed to do so, and he was charged $45.00. The bartender gave a bucket of beers and a small piece of white paper to Nicole. Nicole sat with Agent Martinez for about two hours.

During the same visit, a woman named Andrea approached Agent Valdes. Andrea asked Agent Valdes to buy her a bucket of beers, and he agreed to do so. The bartender gave Andrea a bucket of beers and a small piece of white paper. Agent Valdes asked Andrea about the piece of paper. Andrea said it was used to track how many buckets had been purchased for her. Andrea also told Agent Valdes she was appellant's employee. Andrea sat with Agent Valdes for about an hour. During that time, she asked Agent Valdes to buy four more buckets of beer for her. Agent Valdes agreed to do so, and each time the bartender gave Andrea of bucket of beers and a small piece of white paper.

E. June 22, 2023

While working undercover, Agent Martinez and Agent Valdes visited appellant's premises for the final time. While inside the premises, they sat at the bar, and they ordered beers. A woman named Lissette introduced herself to Agent Martinez. The bartender asked Agent Martinez if he would buy Lissette a bucket of beers. Agent Martinez agreed to do so, and he was charged $45.00. The bartender gave Lissette a bucket of beers and a small piece of white paper.

During the same visit, Andrea and Paola approached Agent Valdes. Andrea and Paola were the same women who sat with the agents during their previous visits. Andrea and Paola asked Agent Valdez to buy them buckets of beers, and he did. The bartender gave Andrea and Paola buckets of beers and a small piece of white paper. Andrea and Paola sat with Agent Valdes for about an hour until a team of the Department's uniformed agents entered the premises.

During the Department's inspection of the premises, Supervising Agent Gutierrez interviewed a few of the women involved in the drink solicitation scheme. Paola and Lissette said they were appellant's employees and that they were paid a commission for the beers purchased for them.

III. PROCEDURAL HISTORY

Appellant has a type-41 on sale beer and wine eating place license. On December 27, 2023, the Department filed a twenty-five-count accusation against appellant. Two counts charged violations of Business and Professions

Code section 24302. The remaining twenty-three counts charged a drink solicitation scheme carried out in violation of section 24200.5, subdivision (b); section 25657, subdivisions (a) and (b); and California Code of Regulations, title 4, section 143. An administrative hearing was held on March 5 and March 6, 2024. Administrative Law Judge Alberto Roldan presided. Agents Lauer, Martinez, Valdes, and Gutierrez testified for the Department. Appellant testified on her behalf. At the conclusion of the administrative hearing, Judge Roldan issued a Proposed Decision that sustained all twenty-five counts and that revoked appellant's license. The Department adopted the Proposed Decision on May 29, 2024, and appellant appealed. Appellant raises four issues on appeal. As stated in appellant's Opening Brief, they are:

1) "Cervantes' due process guarantees were not met through the introduction of counts based on Jane Does."

2) "Counts related to solicitation of patrons to buy drinks are unsupported by evidence of an employment relationship."

3) "Cervantes presented substantial evidence of mitigating factors and the penalty of revocation is an abuse of discretion."

4) "The ultimate penalty of revocation is an abuse of discretion."

IV. DISCUSSION

A. STANDARD OF REVIEW

The scope of the Board's review of the Department's decisions is established by statute. (Bus. & Prof. Code, § 23084.) The nature of this review is

further governed by the California Constitution, statutes, case law, and precedential decisions of the Department. (See Cal. Const., art. XX, § 22; Bus. & Prof. Code, §§ 23083, 23085; Gov. Code, § 11425.60; *Boreta Enterprises, Inc. v. Dept. of Alcoholic Bev. Control* (1970) 2 Cal.3d. 85, 94-96; and *American Federation of Labor v. Unemployment Ins. Appeals Bd.* (1996) 13 Cal.4th 1017, 1027.)

In reviewing the Department's decision in this case, the Board's role is to determine whether the Department has proceeded in the manner required by law; whether the decision is supported by the findings; and whether the findings are supported by substantial evidence. (Bus. & Prof. Code, § 23084, subds. (b)-(d).) Substantial evidence has been defined as that which a reasonable mind might accept as adequate to support a conclusion. (*County of San Diego v. Assessment Appeals Board No. 2* (1983) 148 Cal.App.3d 548, 555 quoting *Hosford v. State Personnel Board* (1977) 74 Cal.App.3d 302, 307.) It is evidence of "ponderable legal significance ... reasonable in nature, credible, and of solid value." (*County of San Diego v. Assessment Appeals Board No. 2, supra*, 148 Cal.App.3d at 555 quoting *Ofsevit v. Trustees of the California State University and Colleges* (1978) 23 Cal.3d 773, fn. 9.)

In determining whether the Department's decision is supported by substantial evidence, the Board may not independently reweigh the evidence. (*Kirby v. Alcoholic Beverage Control Appeals Bd.* (1970) 7 Cal.App.3d 126, 129; *Reimel v. Alcoholic Beverage Control Appeals Bd.* (1967) 255 Cal.App.2d 40, 43.)

The function of the Board is "merely to determine whether the findings of the Department are supported by substantial evidence." (*Harris v. Alcoholic Beverage Control Appeals Bd.* (1963) 212 Cal.App.2d 106, 113.) Any conflicts in the evidence are to be resolved in favor of the Department's decision, and the Board must accept all reasonable inferences from the evidence which support the Department's decision. (*Ibid.*) The Board may not disregard or overturn a finding of fact by the Department simply because the Board believes a different finding would have been more reasonable. (*Id.* at p. 114.)

B. DUE PROCESS

Appellant contends she was denied her constitutionally guaranteed "full and fair hearing" because counts 2 and 6 of the Department's accusation were based on the conduct of "Jane Does." Counts 2 and 6 state that appellant employed "Jane Doe" for the purpose of procuring or encouraging the sale of alcoholic beverages. According to appellant, the inclusion of "Jane Does" prevented her from discovering their identities and from cross-examining them during the administrative hearing.

The Board finds appellant was not deprived of her constitutional rights. If appellant thought the accusation was deficient due to the inclusion of "Jane Does" in place of specific names, she could have objected to it under Government Code section 11506, subdivision (a)(3). According to this subdivision, within 15 days of service of the accusation, appellant could have objected to the form of the accusation if "it is so indefinite or uncertain that the

respondent cannot identify the transaction or prepare a defense." The record shows appellant did not make this objection, so it has been waived. Also, appellant was given the opportunity to cross-examine the witnesses against her. Agent Lauer testified that on February 24, 2023, appellant's bartender asked him to buy beer for Julie. This testimony was the basis for count 2. Agent Valdes testified that on March 23, 2023, appellant's bartender asked him to buy beer for Paola. This testimony was the basis for count 6. Appellant cross-examined Agent Lauer and Agent Valdes at length. And from the agents' testimony and appellant's cross-examination, there was substantial evidence to show both Jane Does were appellant's bartenders and employees.

Because appellant was given the opportunity to cross-examine the witnesses against her, and because she did not object to the form of the accusation, the Board finds appellant was not deprived of her constitutional rights. Thus, the Department's decision regarding counts 2 and 6 is affirmed.

C. SUBSTANTIAL EVIDENCE OF EMPLOYMENT RELATIONSHIP

Appellant contends the solicitation counts are not supported by evidence of an employment relationship. According to appellant, "the Department must prove that the person who solicited drinks was employed for that purpose alone—it is not sufficient to merely show that an employee was soliciting drinks while on duty." Appellant relies on *Garcia v. Munro* (1958) 161 Cal.App.2d 425, to support this proposition.

The Board finds the solicitation counts were supported by substantial evidence. The record shows the following. On February 24, 2023, Julie told Agent Lauer she worked for appellant. On March 23, 2023, Paola told Agent Valdes the small pieces of paper were used to track the number of beers purchased for her. On April 21, 2023, Tatiana told Agent Valdes the piece of white paper was used to track how many buckets were purchased for her so she could get paid at the end of the night. Tatiana also said she was appellant's employee and that her job was to sit with patrons and to get them to buy her beer. On May 19, 2023, Andrea told Agent Valdes she was appellant's employee and that the piece of paper was used to track how many buckets were purchased for her. On June 22, 2023, Paola and Lissette told Supervising Agent Gutierrez they were appellant's employees and that they were paid a commission for the beers purchased for them. Thus, there was more than enough evidence to show that the women who solicited the purchase of alcohol were appellant's employees.

Also, the Department does not have to show that the women who solicited drinks were employed for that purpose alone. Business and Professions Code section 25657, subdivision (b) states it is against the law to "employ or knowingly permit" someone to loiter at a licensed premises for the purpose of soliciting drinks. The case *Garcia v. Munro* determined whether a bartender could also violate section 25657, subdivision (b) if she solicited drinks while also serving them. (*Garcia v. Munro*, supra, 161 Cal.App.2d 425.) The court found,

under the facts of that case, the bartender did not loiter because she did not just sit idly at the premises to solicit drinks. (*Id.* at p. 429-430.) This case is different. None of the women named in the section 25657, subdivision (b) counts were bartenders. Rather, all the women sat idly with the agents as they drank the beers they solicited.

Because the record contains substantial evidence of an employment relationship between appellant's business and the women soliciting the purchase of alcohol, and because the Department does not have to show a solicitor was employed for that purpose alone, the Department's decision is affirmed.

D. MITIGATING FACTORS

Appellant contends that revoking her license is an abuse of discretion because she submitted substantial evidence of mitigating factors at the administrative hearing. According to appellant, "it is apparent that the ALJ unfairly disregarded [appellant's] substantial evidence in mitigation of the penalty and doubled down with complete revocation."

The Board finds Judge Roldan properly weighed appellant's mitigating evidence. "In the absence of evidence to the contrary, it must be presumed that the hearing officer properly performed his duties and considered all of the evidence introduced." (*Otash v. Bureau of Private Investigators and Adjusters* (1964) 230 Cal.App.2d 568, 574.) Appellant's evidence of mitigation came solely from her testimony. The record clearly shows Judge Roldan considered

appellant's testimony and that he found it to be not credible. As stated in his Proposed Decision, "It stretches credulity for [appellant] to assert that she was unaware of any of the conduct occurring at the Licensed Premises. Accordingly, her testimony is given little weight in this matter." Thus, the record shows Judge Roldan heard and properly considered the evidence appellant presented. Further, it would be improper for this Board to reweigh evidence. (See *Kirby* v. *Alcoholic Beverage Control Appeals Bd.* (1970) 7 Cal.App.3d 126, 129; *Reimel v. Alcoholic Beverage Control Appeals Bd.* (1967) 255 Cal.App.2d 40, 43.) Therefore, the Department's decision regarding appellant's mitigating evidence is affirmed.

E. ABUSE OF DISCRETION

Appellant contends that the "ultimate penalty of revocation is an abuse of discretion." The Board, however, finds the Department did not abuse its discretion in this case. California Code of Regulations, title 4, section 144, commonly referred to as Rule 144, provides penalty guidelines. According to Rule 144, the guideline penalty for violating section 25657, subdivision (a) is revocation. Also, the guideline penalty for violating section 25657, subdivision (b) may include revocation. Further, section 24200.5, subdivision (b) provides that the Department shall revoke a license if a licensee has "employed or permitted any persons to solicit or encourage other, directly or indirectly, to buy them drinks in the licensed premises under any commission, percentage, salary, or other profit-sharing plan, scheme, or conspiracy." As shown above, the

Department property found appellant violated section 25657, subdivisions (a) and (b), and section 24200.5, subdivision (b). Thus, the Department did not abuse its discretion because revoking appellant's license was proper under Rule144 and section 24200.5, subdivision (b).

V. CONCLUSION

The Department proceeded in the manner required by law, and appellant was given her due process. Further, the Department's decision was supported by substantial evidence, and appellant's mitigating evidence was properly considered. Lastly, the Department did not abuse its discretion by revoking appellant's license. Accordingly, the Department's decision is affirmed.

ORDER

Pursuant to Article XX, section 22 of the California Constitution, the Department's decision is affirmed.[3]

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

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

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

MARIA ELISA DOMINGUEZ CERVANTES
EL RANCHO DE LA CERVEZA
163 W ALMA AVENUE
SAN JOSE, CA 95110-3622

ON-SALE BEER AND WINE EATING PLACE - LICENSE

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

SAN JOSE DISTRICT OFFICE

File: 41-605140

Reg: 23094079

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 May 29, 2024. 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.

On or after July 17, 2024, a representative of the Department will contact you to arrange to pick up the license certificate.

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

Sacramento, California

Dated: June 6, 2024

Matthew D. Botting
General Counsel

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

IN THE MATTER OF THE ACCUSATION AGAINST:

Maria Elisa Dominguez Cervantes DBA: El Rancho de la Cerveza 163 W. Alma Avenue San Jose, California 95110-3632 Respondent	}	File: 41-605140 Reg.: 23094079 License Type: 41 Word Count: 36,044 Reporter: Christina Rodriguez Kennedy Court Reporters
On-Sale Beer and Wine Eating Place License	}	**PROPOSED DECISION**

Administrative Law Judge Alberto Roldan, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter via videoconference from March 5, 2024, through March 6, 2024.

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

John Kevin Crowley, Attorney, represented Maria Elisa Dominguez Cervantes (Cervantes), who was also present and is the Licensee in this matter (Respondent).

The Department seeks to discipline Respondent's license pursuant to twenty-five allegations in the Accusation on the grounds that:

(1) On or about and between February 24, 2023, and June 22, 2023, the Respondent-Licensee permitted various women to solicit or encourage others, directly or indirectly, to buy them drinks in the licensed premises under a commission, percentage, salary or other profit-sharing plan, scheme, or conspiracy, in violation of California Business and Professions Code section 24200.5(b);
(2) On or about February 24, 2023, the Respondent-Licensee employed upon the licensed on-sale premises, "Jane Doe", for the purpose of procuring or encouraging the purchase or sale of alcoholic beverages, or paid such person a percentage or commission for procuring or encouraging the purchase or sale of alcoholic beverages, on the premises, in violation of California Business and Professions Code section 25657(a);
(3) On or about February 24, 2023, the Respondent-Licensee employed or knowingly permitted "Julie" to loiter in or about said premises for the purpose of begging or soliciting patrons or customers, in such premises, to purchase alcoholic beverages for her, in violation of California Business and Professions Code section 25657(b);
(4) On or about February 24, 2023, the Respondent-Licensee employed upon the licensed on-sale premises, "Julie", for the purpose of procuring or encouraging the purchase or

sale of alcoholic beverages, or paid such person a percentage or commission for procuring or encouraging the purchase or sale of alcoholic beverages, on the premises, in violation of California Business and Professions Code section 25657(a);

(5) On or about February 24, 2023, the Respondent-Licensee permitted "Julie", an employee, to solicit upon the licensed premises, the purchase or sale of a drink intended for her consumption, in violation of California Code of Regulations, Title 4, Division 1, Section 143;

(6) On or about March 23, 2023, the Respondent-Licensee employed upon the licensed on-sale premises, "Jane Doe", for the purpose of procuring or encouraging the purchase or sale of alcoholic beverages, or paid such person a percentage or commission for procuring or encouraging the purchase or sale of alcoholic beverages, on the premises, in violation of California Business and Professions Code section 25657(a);

(7) On or about March 23, 2023, the Respondent-Licensee employed upon the licensed on-sale premises, Yury Paola Villalba Bejarano, for the purpose of procuring or encouraging the purchase or sale of alcoholic beverages, or paid such person a percentage or commission for procuring or encouraging the purchase or sale of alcoholic beverages, on the premises, in violation of California Business and Professions Code section 25657(a);

(8) On or about March 23, 2023, the Respondent-Licensee employed or knowingly permitted Yury Paola Villalba Bejarano to loiter in or about said premises for the purpose of begging or soliciting patrons or customers, in such premises, to purchase alcoholic beverages for her, in violation of California Business and Professions Code section 25657(b);

(9) On or about March 23, 2023, the Respondent-Licensee permitted Yury Paola Villalba Bejarano, an employee, to solicit upon the licensed premises, the purchase or sale of a drink intended for her consumption, in violation of California Code of Regulations, Title 4, Division 1, Section 143;

(10) On or about April 21, 2023, the Respondent-Licensee employed upon the licensed on-sale premises, "Maria Jose", for the purpose of procuring or encouraging the purchase or sale of alcoholic beverages, or paid such person a percentage or commission for procuring or encouraging the purchase or sale of alcoholic beverages, on the premises, in violation of California Business and Professions Code section 25657(a);

(11) On or about April 21, 2023, the Respondent-Licensee employed upon the licensed on-sale premises, "Tatiana", for the purpose of procuring or encouraging the purchase or sale of alcoholic beverages, or paid such person a percentage or commission for procuring or encouraging the purchase or sale of alcoholic beverages, on the premises, in violation of California Business and Professions Code section 25657(a);

(12) On or about April 21, 2023, the Respondent-Licensee employed or knowingly permitted "Tatiana" to loiter in or about said premises for the purpose of begging or soliciting patrons or customers, in such premises, to purchase alcoholic beverages for her, in violation of California Business and Professions Code section 25657(b);

(13) On or about April 21, 2023, the Respondent-Licensee permitted "Tatiana", an employee, to solicit upon the licensed premises, the purchase or sale of a drink intended

for her consumption, in violation of California Code of Regulations, Title 4, Division 1, Section 143;

(14) On or about April 21, 2023, the Respondent-Licensee employed or knowingly permitted "Dulce" to loiter in or about said premises for the purpose of begging or soliciting patrons or customers, in such premises, to purchase alcoholic beverages for her, in violation of California Business and Professions Code section 25657(b);

(15) On or about April 21, 2023, the Respondent-Licensee permitted "Maria Jose", an employee, to solicit upon the licensed premises, the purchase or sale of a drink intended for her consumption, in violation of California Code of Regulations, Title 4, Division 1, Section 143;

(16) On or about May 19, 2023, the Respondent-Licensee employed upon the licensed on-sale premises, Yuly Andrea Reyes Mancera, for the purpose of procuring or encouraging the purchase or sale of alcoholic beverages, or paid such person a percentage or commission for procuring or encouraging the purchase or sale of alcoholic beverages, on the premises, in violation of California Business and Professions Code section 25657(a);

(17) On or about May 19, 2023, the Respondent-Licensee employed or knowingly permitted Yuly Andrea Reyes Mancera to loiter in or about said premises for the purpose of begging or soliciting patrons or customers, in such premises, to purchase alcoholic beverages for her, in violation of California Business and Professions Code section 25657(b);

(18) On or about May 19, 2023, the Respondent-Licensee permitted Yuly Andrea Reyes Mancera, an employee, to solicit upon the licensed premises, the purchase or sale of a drink intended for her consumption, in violation of California Code of Regulations, Title 4, Division 1, Section 143;

(19) On or about May 19, 2023, the Respondent-Licensee employed or knowingly permitted "Nichole" to loiter in or about said premises for the purpose of begging or soliciting patrons or customers, in such premises, to purchase alcoholic beverages for her, in violation of California Business and Professions Code section 25657(b);

(20) On or about June 22, 2023, the Respondent-Licensee employed upon the licensed on-sale premises, Lina Marcela Losada, for the purpose of procuring or encouraging the purchase or sale of alcoholic beverages, or paid such person a percentage or commission for procuring or encouraging the purchase or sale of alcoholic beverages, on the premises, in violation of California Business and Professions Code section 25657(a);

(21) On or about June 22, 2023, the Respondent-Licensee employed upon the licensed on-sale premises, Yenny Lissette Ortiz-Celiz, for the purpose of procuring or encouraging the purchase or sale of alcoholic beverages, or paid such person a percentage or commission for procuring or encouraging the purchase or sale of alcoholic beverages, on the premises, in violation of California Business and Professions Code section 25657(a);

(22) On or about June 22, 2023, the Respondent-Licensee employed or knowingly permitted Yenny Lissette Ortiz-Celiz to loiter in or about said premises for the purpose of begging or soliciting patrons or customers, in such premises, to purchase alcoholic

beverages for her, in violation of California Business and Professions Code section 25657(b);

(23) On or about June 22, 2023, the Respondent-Licensee permitted Yenny Lissette Ortiz-Celiz, an employee, to solicit upon the licensed premises, the purchase or sale of a drink intended for her consumption, in violation of California Code of Regulations, Title 4, Division 1, Section 143;

(24) On or about May 31, 2023, Respondent-Licensee purchased alcoholic beverages, to wit: beer, for resale from Smart & Final, who did not hold a beer manufacturers, wine growers, rectifiers, brandy manufacturers, or wholesalers license in violation of Business and Professions Code 23402; and

(25) On or about May 31, 2023, Respondent-Licensee purchased alcoholic beverages, to wit: beer, for resale from Costco Wholesale, who did not hold a beer manufacturers, wine growers, rectifiers, brandy manufacturers, or wholesalers license in violation of Business and Professions Code 23402. (Exhibit D-1)

In each of the above twenty-five allegations in the Accusation, 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) of the Business and Professions Code. The Department further alleged that the continuance of the license of the Respondent would be contrary to public welfare and/or morals as set forth in Article XX, Section 22 of the California State Constitution and sections 24200(a) and (b) of the Business and Professions Code. (Exhibit D-1)

Oral evidence, documentary evidence, and evidence by oral stipulation on the record was received at the hearing. The matter was argued and submitted for decision on March 6, 2024.

FINDINGS OF FACT

1. The Department filed the Accusation on December 27, 2023.

2. The Department issued a type 41, on-sale beer and wine eating place license to the Respondent at the above-described location on August 9, 2019 (the Licensed Premises).

3. There is no record of prior Department discipline against the Respondent's license.

February 24, 2023
(Counts 1, and 2-5)

4. On February 24, 2023, at about 9:30 in the evening, Department Agents N. Lauer (Lauer) and S. Martinez (Martinez) entered the Licensed Premises in an undercover capacity. They walked in from the back entrance adjacent to an alley and were immediately greeted by security. Lauer and Martinez were patted down and had their identifications checked. After they were cleared to enter, they walked over to the fixed bar counter and were greeted by a female bartender. They ordered two Modelo beers from this bartender. They were served the beers in bottles and charged

$8 for each of the beers by this bartender. The agents paid for the two beers. No receipt was given to them. They sat at the bar and began looking around while sipping at their beers. They noted that there were several tables and a pool table adjacent to the fixed bar. Shortly after they were seated, they were approached by a female who identified herself as "Julie" (Julie) who struck up a conversation with them. The conversation was in a mix of Spanish and English. Martinez is a state certified Spanish interpreter. Lauer had some ability to speak and understand Spanish but not at the level of a native speaker. Lauer used Martinez and a Google Translate application to assist him when there were language gaps. Julie told the agents that she was from Colombia and had been in the United States for only a few weeks. Julie also stated that a friend referred her to the Licensed Premises for work at the bar.

5. Immediately after Julie approached the agents and began speaking with them, the female bartender asked Lauer and Martinez if they wanted to buy Julie a bucket of beers. Lauer agreed to do so. The female bartender then brought over a bucket with ice and three cans of Bud Light beer inside of the bucket. Lauer and Martinez were charged $45 for the bucket by the female bartender. Lauer paid but was not given a receipt. The female bartender then delivered the bucket to Julie. Lauer also saw the female bartender hand Julie a white piece of paper after putting down the bucket of beers next to her. After receiving the piece of paper from the female bartender, Julie placed the slip of paper inside of her purse. Julie continued talking with Lauer and Martinez. After Julie finished the beers in the bucket, the female bartender approached and asked Lauer and Martinez if they wanted to buy another bucket for Julie. Lauer agreed and he was again charged $45,which he paid. The agents were not given a receipt, but they saw the female bartender hand another slip of paper to Julie after she delivered the bucket with three beers to Julie. Julie put that slip of paper in her purse. She remained and continued to talk with Lauer and Martinez while consuming the beers from the second bucket.

6. After Julie finished consuming the beers from the second bucket,[1] the female bartender approached again and asked if the agents wanted to buy another bucket for Julie. Lauer agreed to buy a third bucket and this transaction occurred in the same way as the first two. The agents were charged $45 for the three Bud Light beers delivered in the bucket. After paying, they were not given a receipt. The female bartender again delivered a slip of paper to Julie which she then placed in her purse after receiving the bucket of beers. The agents remained at the Licensed Premises talking with Julie until approximately 11:30 in the evening. The interactions with Julie throughout the evening occurred either with the direct participation of the female bartender who was working behind the fixed bar or in her immediate presence. Other employees of the Licensed Premises circulated around the immediate area during their work that evening.

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[1] The Department agents did not monitor whether Julie was actually consuming the beers in the buckets. During the course of the evening, Julie would step away to the rest room, from time to time, and it was unclear what amount of the beers Julie was actually consuming. This was also the case in all of the interactions From February 24, 2023 through June 22, 2023 when agents bought buckets of beers for women they were interacting with.

7. Based on their training and experience, both agents recognized that the interactions were entirely consistent with traditional drink solicitation enterprises. The alcohol purchased for Julie was charged at a significant premium beyond the cost of the beers the agents had bought moments earlier for their personal consumption. The bartender invited each of the solicitation transactions and then gave Julie documentation of each successful transaction even though the agents had paid for all of the drinks. The paper handed to Julie was consistent with how persons like Julie would receive compensation for their part in the transaction. In the agents' training and experience, Julie would turn in the slips of paper given to her by the female bartender and get paid a set amount of money for each slip returned. The agents remained in an undercover capacity through their departure after 11:30 p.m.

March 23, 2023
(Counts 1, and 6-9)

8. On March 23, 2023, at about 9:00 in the evening, Department Agents E. Valdes (Valdes) and Martinez entered the Licensed Premises in an undercover capacity. They walked in from the back entrance and were again patted down by security before being allowed into the Licensed Premises. Valdes and Martinez walked over to the fixed bar counter and ordered Modelo beers from the female bartender. They were served the beers in bottles and charged $8 for each of the beers. The agents paid for the two beers. While they sat at the bar, a female who identified herself as "Paola" struck up a conversation with Valdes from an adjacent bar stool. On a later date in the investigation, Department agents identified "Paola" as Yury Paola Villalba Bejarano (Paola) through identification and her agreeing to complete an affidavit. (Exhibit D-16) The conversation was in Spanish. Like Martinez, Valdes is a state certified Spanish interpreter and fully conversant in the Spanish language. Almost immediately after Paola began speaking with Valdes, the female bartender approached and asked Valdes if he wanted to buy a bucket of beer for Paola.

9. Valdes agreed to do so. The female bartender then prepared a bucket with ice and placed three cans of Bud Light beer inside of the bucket. She then charged Valdes $45 for the bucket. Valdes paid but was not given a receipt. The female bartender delivered the bucket to Paola. Valdes also saw the female bartender hand Paola a white piece of paper after putting down the bucket of beers next to her. Valdes asked Paola if they were going to share the beers. Paola laughed and said the beers were for her. Valdes then remarked if the paper she was handed by the female bartender was a receipt for him since he paid for the beers. Paola responded that it was for her to keep track of the beers bought for her. Paola retained the slip of paper. After Paola finished the beers in the bucket, the female bartender approached and again asked Valdes if he wanted to buy another bucket for Paola. Valdes agreed and he was again charged $45 for the bucket of three Bud Light beers. Valdes paid and was not given a receipt. He subsequently saw the female bartender hand another slip of paper to Paola after she was delivered the bucket with three beers. Paola remained and continued to talk with Valdes while consuming the beers from the second bucket.

10. During the course of the evening, A total of four buckets were purchased on Paola's behalf. The final two transactions followed the pattern of the first two. When the beers were finished from the prior bucket, the female bartender would ask Valdes if he wanted to purchase another for Paola's consumption. He would pay $45, and the bucket with the beers would be delivered to Paola and she would be handed a slip of paper. No receipts were given to Valdes even though he paid for the beer buckets on four occasions that evening. During his conversations with Paola, she never outright said she worked at the Licensed Premises, but Paola said she was there consistently from Thursday through Saturday nights.

11. Based on his training and experience, Valdes recognized that the interactions were entirely consistent with traditional drink solicitation enterprises. The beer buckets purchased for Paola were charged at a significant premium beyond the cost of the beers the agents had bought earlier that evening for their personal consumption. The bartender invited each of the solicitation transactions and then gave Paola documentation for each transaction even though Valdes had paid for each of the beer buckets. The paper handed to Paola by the female bartender was consistent with how persons like Paola would receive compensation. This was also consistent with Paola's remark about the purpose of the slip of paper. In the agents' training and experience, Paola would turn in the slips of paper given to her by the female bartender and get paid a set amount of money for each slip returned. The agents remained in an undercover capacity through their departure later that evening.

April 21, 2023
(Counts 1, and 10-15)

12. On April 21, 2023, at about 9:30 p.m., Agents Valdes, Martinez and Lauer returned to the Licensed Premises in an undercover capacity. Like on previous occasions, they were screened by security before being allowed to enter. The three agents went to the fixed bar counter and sat. One of the agents bought Modelo beers for each of them and they were charged $7 or $8 dollars for each of the beers. A woman approached Valdes and the other agents while they sat and drank their beers. She identified herself as "Tatiana" (Tatiana) and sat next to Valdes. Their conversation that evening was in Spanish. Shortly after Tatiana began talking with Valdes, a female bartender approached from behind the fixed bar and asked Valdes if he wanted to buy a bucket for Tatiana. Valdes agreed. The female bartender charged Valdes $45 for the bucket, which he paid. Valdes was not given a receipt. The female bartender brought a bucket with three Bud Light beers and placed it next to Tatiana. She then handed Tatiana a slip of paper after she was given the bucket of beers. After Tatiana received the slip of paper, Valdes asked her for it since he had paid for the beers. Tatiana said it was for her. Tatiana then remarked that it was so she could be paid at the end of the evening. Valdes asked Tatiana if she worked there. Tatiana responded that her job is what she is doing.

13. While he was seated at the fixed bar, a female bartender, who introduced herself as "Maria Jose" (Maria Jose), spoke with Martinez and asked him if he wanted to buy a bucket for her for $45. Martinez asked Maria Jose if she could sit with him and consume the beer. She declined and said she had to work behind the bar. Martinez declined to buy Maria Jose the requested bucket.

Maria Jose returned later and again asked Martinez to buy a bucket for her. He again declined to buy a bucket, but he later agreed to buy one beer for her. Maria Jose retrieved one Bud Light beer for herself and then charged Martinez $15 for the can. Martinez paid the $15 for the can of Bud Light beer that Maria Jose was consuming. She continued to consume the beer while she carried on with bartender duties behind the bar.

14. Later in the evening, after the interaction between Martinez and Maria Jose, the agents and Tatiana moved from the fixed bar to a table area. On three subsequent occasions, Tatiana initiated asking Valdes to buy beers for her. On each occasion, a waitress was called over by Tatiana and an order was placed for a $45 bucket of Bud Light beers for Tatiana's consumption. The waitress took payment for the bucket from Valdes. After payment, the bucket was placed next to Tatiana. The waitress then handed Tatiana a slip of paper after each transaction for a bucket. During the course of the evening, Valdes and the agents ordered a bucket of beers for their consumption. They were charged $45 for a six-pack of Modelo Especial beer bottles.

15. After they moved from the fixed bar to a table, a woman who identified herself as "Dulce" (Dulce) approached Martinez where he was sitting and began to make small talk with him. Dulce specifically asked Martinez if he was going to invite her to sit and drink with him. After Martinez said yes, Dulce got the attention of a waitress in the Licensed Premises. The waitress then brought over a bucket with three Bud Light cans of beer on ice. Martinez was charged $45 dollars for the beers and he paid. Martinez watched the waitress hand Dulce a white slip of paper which she then put away. Dulce sat with Martinez for the remainder of the time they were in the Licensed Premises which was approximately 1½ hours. During the course of the evening, Martinez purchased 2 additional buckets for Dulce. The transaction was handled in the same manner as the first bucket purchased for Dulce. He paid $45 each time for the beer buckets and each time, Dulce was handed a slip of paper at the end of the transaction. During the evening, Dulce told Martinez that she was the only Mexican girl working there and that the other women were generally Colombian.

16. Based on their training and experience, the agents recognized that the interactions were entirely consistent with traditional drink solicitation enterprises. The beer buckets purchased for Tatiana at the bar and Tatiana and Dulce when they were at the table were charged at a significant premium beyond the cost of the beers the agents had bought that evening for their personal consumption. Maria Jose, the bartender, Dulce, or Tatiana herself invited each of the solicitation transactions. Maria Jose or the waitresses each gave Tatiana and Dulce documentation for each transaction even though they did not pay for any of the drinks. The paper handed to Tatiana or Dulce during each transaction was consistent with how persons like Tatiana and Dulce would receive compensation. Tatiana also explicitly said the slip of paper was how she would be paid at the end of the evening. The agents remained in an undercover capacity through their departure later that evening.

May 19, 2023
(Counts 1 and 16-19)

17. On May 19, 2023, at approximately 10:30 in the evening, Valdes and Martinez returned to the Licensed Premises in an undercover capacity. They walked in from the back entrance and were screened before entering. The agents noted that there were significantly more women than men in the Licensed Premises that evening. Almost immediately after entering, Martinez was approached by a female who introduced herself as "Nichole" (Nichole). As Martinez walked up to the fixed bar, Nichole asked Martinez if he would invite her to drink. Martinez said yes. Maria Jose was the bartender at that area of the fixed bar and Nichole ordered a bucket of beers from her. Maria Jose asked Martinez if he was buying a bucket of beer for Nichole. Martinez told her that he was. Maria Jose left and then returned with a bucket with ice and three cans of Bud Light beer inside of the bucket. She then charged Martinez $45 for the bucket. Martinez paid with a $50 and Maria Jose said she was keeping the remaining $5 as a tip. Maria Jose then delivered the bucket to Nichole and handed her a white piece of paper. Nichole remained with Martinez while she consumed the beers and she made small talk with him. Their conversation was in Spanish and she told Martinez that she was from Colombia. Nichole finished the beers in the first bucket, Maria Jose approached and Nichole asked to buy another bucket. Martinez was again charged $45 for the bucket of three Bud Light beers. Martinez paid. He subsequently saw Maria Jose hand another slip of paper to Nichole after she was delivered the bucket with three beers. Nichole remained with Martinez and continued to talk with him while consuming the beers from the second bucket. During the evening, Martinez bought beers for himself and Valdes. He was charged $45 for 6 Modelo beer bottles.

18. Shortly after Martinez was approached by Nichole, Valdes was approached by a female who identified herself as "Andrea." She was on a later date identified as Yuly Andrea Reyes Mancera (Andrea). Valdes and Martinez stood at the fixed bar while Nichole and Andrea made small talk with them. Andrea then asked Valdes to buy a bucket of beer for her. Valdes agreed to this. Andrea then spoke with a female bartender behind the fixed bar and ordered a bucket of beer. The female bartender returned with the prepared bucket and charged Valdes $45 for it, which he paid. Valdes was not given a receipt. The female bartender placed the bucket next to Andrea and handed her a slip of paper. After Andrea received the slip of paper, Valdes asked her about it. Andrea said it was a way of keeping track of bucket sales. Valdes asked Andrea if she waitressed. Andrea responded that her work was outside of the fixed bar. During the course of the evening, Andrea made a total of four bucket requests. Valdes agreed to purchase them and each subsequent transaction was processed in the same way as the first one. The female bartender charged $45 for the buckets. They were delivered to Andrea. After Valdes paid, the female bartender would hand Andrea a slip of paper.

19. Valdes and Martinez remained at the Licensed Premises for approximately 1½ hours. Nichole and Andrea remained with them during the time they were there. Based on their training and experience, they recognized that the interactions were entirely consistent with traditional drink solicitation enterprises. The beer buckets purchased for Nichole and Andrea were charged at a significant premium beyond the cost of the beers the agents had bought earlier that evening

for their personal consumption. The bartenders, Nichole, or Andrea invited each of the solicitation transactions. Nichole and Andrea were given documentation for each transaction even though Valdes or Martinez had paid for each of the beer buckets. The papers handed to Nichole and Andrea after each transaction were consistent with how persons would receive compensation in a solicitation scheme. This was also corroborated by Andrea's remark about the purpose of each slip of paper to keep track of bucket sales. In the agents' training and experience, Nichole or Andrea would turn in the slips of paper given to them by the female bartender and get paid a set amount of money for each slip returned. The agents remained in an undercover capacity through their departure later that evening.

May 31, 2023, and June 22, 2023
(Counts 1 and 20-25)

20. On June 22, 2023, at approximately 7:05 p.m., Valdes and Martinez returned to the Licensed Premises in an undercover capacity. While walking up to the fixed bar, Valdes was approached by Andrea, who he had interacted with on May 19, 2023. She greeted Valdes and welcomed him back to the Licensed Premises. Valdes sat at the fixed bar and made small talk with Andrea. Paola, who Valdes interacted with on March 23, 2023, approached and sat at the bar directly to the right of Valdes. Valdes began to make small talk with both of them. A female bartender, later identified as Lina Marcella Losada (Lina), approached and asked if Valdes wanted something to drink. Valdes ordered a bucket of six Modelo beers and was charged $45 for them. After he received and paid for the Modelos, Lina asked if he would be buying buckets of beer for Andrea and Paola. Lina asked for confirmation as to whether they would each get their own bucket. After Valdes agreed to buy them each their own bucket, Lina prepared two buckets with each containing three Bud Light beers. Lina charged Valdes $90 for both buckets, which Valdes paid. Lina subsequently handed both Andrea and Paola slips of paper. Both women put away their slips of paper and remained seated with Valdes while all three consumed their beers and made small talk.

21. While standing at the fixed bar, Martinez was approached by a female who identified herself as Lissette and was later identified as Yenny Lissette Ortiz-Celiz (Lissette). Martinez sat at the fixed bar and made small talk with Lissette. Lina approached them and asked if he would be buying a bucket of beer for Lissette. Martinez said he would. After Martinez agreed to buy her a bucket, Lina prepared a bucket with three Bud Light beers. Lina charged Valdes $45 for the bucket, which Martinez paid. Lina subsequently handed Lissette a slip of paper. Lissette remained with Martinez while she consumed one of the beers and made small talk.

22. The Department closed the undercover portion of the ongoing investigation that day. On June 22, 2023, at approximately 7:30 p.m., Department agents entered the Licensed Premises, identified themselves, and secured the location for investigative purposes. Martinez and Valdes remained in an undercover capacity and were asked to leave. Lina, Lissette, Andrea and Paola were all detained during the investigation.

23. Paola was interviewed by Department agents on June 22, 2023, and she prepared an affidavit that described her work at the Licensed Premises. She stated that she had been working in the Licensed Premises for approximately one month. Her work for the Licensed Premises was commission based and she described getting a commission based on buckets sold. She received a receipt for each sale and her commission was based on the number of receipts she collects. (Exhibit D-16)

24. Lissette was also interviewed by Department agents on June 22, 2023, and she also prepared an affidavit that described her work at the Licensed Premises. She stated that she had been working in the Licensed Premises for approximately one month. She described her work for the Licensed Premises as commission based. She also described getting a commission based on buckets of beers sold. She received a receipt for each sale and her commission was based on the number of receipts she collected. (Exhibit D-17)

25. Department Agent K. Johnson (Johnson) assisted in the on-site investigation at the Licensed Premises on June 22, 2023. Her primary role was as a finder documenting observations that had potential evidentiary value. She entered immediately after the Licensed Premises was secured. While searching behind the fixed bar, Johnson noted that there were 12-ounce Corona Extra and Modelo Especial beer bottles in a refrigerator directly accessible from the fixed bar. (Exhibit D-14) The Modelo Especial bottles were of the same types purchased by the Department agents during their investigations. There was also an open top refrigerated cooler under the fixed bar. containing cans of Bud Light of the same type used in the buckets purchased during the solicitations in this matter. (Exhibit D-15)

26. During the search for evidence, a Department agent pointed out to Johnson a clipboard on a countertop behind the fixed bar. (Exhibit D-13) The clipboard was in close proximity to the two coolers that contained the Corona, Modelo and Bud Light beers described above. Johnson determined that there were various receipts in the clipboard. Johnson documented two of the receipts found adjacent to each other in the clipboard showing purchases from Costco Wholesale and Smart & Final. (Exhibit D-12) The evidence in this matter established both locations as off-sale retail license holders. The Costco receipt showed a cash purchase on May 31, 2023, of 15 separate 36 packs of Bud Light beer with a cost of $356.36. The receipt also showed the purchase of multiple units of Modelo Especial beer for $236.11 and multiple units of Pacifico beer for $50.98. The remainder of the $790.72 purchase on the Costco receipt appeared to be multiple units of Coca Cola and Squirt branded soft drink cans. The Smart and Final receipt showed the purchase of 5 boxes of Corona Extra bottles each containing 24 individual bottles for a total of $129.95. The receipt was partially degraded in the area showing the date. The date appears to be the 31st and the year appears to end in "23" but the month portion was unreadable. (Exhibit D-12)

27. Maria Elisa Dominguez Cervantes, the Licensee-Respondent (Respondent) testified in this matter. She testified she was unaware of any of the alleged violations until after the investigation. Respondent obtained the license in August 2019 and had no prior discipline until the Accusation in this case. The Respondent testified that the business was very slow and shut

down for extended periods during the pandemic. The Respondent testified that subsequent to the pandemic, she made efforts to improve the business. The Respondent testified that in 2022, she hired a manager who she identified as Ms. Camacho (Camacho). The Respondent testified that she understood Camacho to be an experienced manager. She testified that she instructed Camacho to be attentive to security and what was being charged for domestic and imported beers. The Respondent testified that during the period after she hired Camacho, the Respondent's health deteriorated and she was repeatedly hospitalized. The Respondent testified that she relied on Camacho, who she described as being "in charge" of the Licensed Premises.

28. The Respondent testified that in January and February 2023, she went to Mexico for extended treatment of her health issues. The Respondent testified that she did not go into the Licensed Premises during the period of the Department's investigation after returning to the United States in February 2023. The Respondent testified that she was hospitalized during multiple periods after her return to the United States after February 2023, including an extended hospitalization for over a month that ended in July 2023. The Respondent testified that her health has improved, but she does rely on a colostomy bag as a result of the health issues.

29. The Respondent was specifically asked about her awareness of the facts of the investigation and the persons involved. The Respondent denied knowing any of the persons identified in the investigation. She testified that she did not consent to or know about any of the conduct described. According to the Respondent, the Department did not contact her on, or after, any of the nights they visited the Licensed Premises during the course of the investigation that led to the filing of the Accusation in this matter. The Respondent first learned of the alleged conduct after the Accusation was filed.

30. Despite being aware of the allegations in the Accusation for several months, as of the hearing in this matter, Camacho is still employed as the manager running the Licensed Premises on behalf of the Respondent. Camacho was not called to testify as to what knowledge she had of the incidents described by the investigating agents in this matter. The only reform described by the Respondent was that Camacho stated to the Respondent that she could get another person to help her. The Respondent also testified that her brother is helping, but she did not describe in what manner he was assisting in the operation.

CONCLUSIONS OF LAW

1. Article XX, section 22 of the California Constitution and Business and Professions Code section 24200(a)[2] provide that a license to sell alcoholic beverages may be suspended or revoked if continuation of the license would be contrary to public welfare or morals.

2. Section 24200(b) provides that "a licensee's violation, or causing or permitting of a violation, of any penal provision of California law prohibiting or regulating the sale of alcoholic beverages is also a basis for the suspension or revocation of the license."

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

3. California Code of Regulations, Title 4, section 143 states "no on-sale retail licensee shall permit any employee of such licensee to solicit, in or upon the licensed premises, the purchase or sale of any drink, any part of which is for, or intended for, the consumption or use of such employee, or to permit any employee of such licensee to accept, in or upon the licensed premises, any drink which has been purchased or sold there, any part of which drink is for, or intended for, the consumption or use of any employee."

4. Section 25657(a) states "it is unlawful for any person to employ, upon any licensed on-sale premises, any person for the purpose of procuring or encouraging the purchase or sale of alcoholic beverages, or to pay any such person a percentage or commission on the sale of alcoholic beverages for procuring or encouraging the purchase or sale of alcoholic beverages on such premises."

5. Section 25657(b) states "in any place of business where alcoholic beverages are sold to be consumed upon the premises, [it is unlawful] to employ or knowingly permit anyone to loiter in or about said premises for the purpose of begging or soliciting any patron or customer of, or visitor in, such premises to purchase any alcoholic beverages for the one begging or soliciting."

6. Section 23402 states, "[n]o retail on- or off-sale licensee, except a daily on-sale general licensee holding a license issued pursuant to Section 24045.1, shall purchase alcoholic beverages for resale from any person except a person holding a beer manufacturer's, wine grower's, rectifier's, brandy manufacturer's, or wholesaler's license."

7. In *Mumford v. Department of ABC* (1968) 258 Cal.App.2d 49, the court considered whether there was sufficient evidence to uphold a conviction for the licensee violating Section 23402. The court affirmed the conviction citing an affidavit the licensee executed, wherein he admitted to purchasing cases of beer "for resale by my business" from an unlicensed serviceman from El Toro Marine Corps Air Station. This case highlights the requirement that the Department must provide substantial evidence of the purchase being "for resale."

8. Cause for suspension or revocation of the Respondent's license exists under Article XX, section 22 of the California State Constitution, and sections 24200(a) and (b) for each of the violations alleged in all 25 counts in the Accusation. (Findings of Fact ¶¶ 1-30)

9. As alleged in Count 1, on or about and between February 24, 2023, and June 22, 2023, the Respondent-Licensee permitted various women to solicit or encourage others, directly or indirectly, to buy them drinks in the licensed premises under a commission, percentage, salary or other profit-sharing plan, scheme, or conspiracy, in violation of California Business and Professions Code section 24200.5(b). The evidence established that the Licensed Premises had an ongoing drink solicitation business enterprise that was openly carried out in the presence of and with the active participation of the Respondent's bartenders, waitresses, and security staff. The evidence established that entrance to the Licensed Premises was through security, so the Respondent's staff had active control of who was allowed to be in the Licensed Premises. The

evidence also established that on each date of the investigation, the women actively involved in the solicitation scheme were allowed and encouraged to loiter and seek out targets of the solicitation enterprise. The targets in the investigation were undercover Department agents. Once these targets were established, the women worked in active coordination with the bartenders and waitresses of the Licensed Premises to receive payment for the alcoholic beverages purchased on their behalf. The drink solicitations aimed at the undercover agents always led to purchases of alcoholic beverages that were charged at a significant premium above the standard cost of an alcoholic beverage. In each instance, the women who were central to the solicitation scheme were delivered the alcoholic beverages and given a slip of paper to document each transaction. From the agents' experience with similar enterprises and also from the statements of multiple women involved in the scheme, it was established that the women receiving the buckets of beer for $45 were receiving a percentage commission for each of the transactions they facilitated. The evidence established that the bartenders and waitresses who took payments and handed the slips of paper were the employees or agents of the Respondent. So were the security personnel who allowed the enterprise to play out openly in the Licensed Premises. (Findings of Fact ¶¶ 1-30)

10. Counts 2-5 occurred on the date of February 24, 2023. The Respondent-Licensee employed upon the licensed on-sale premises a bartender who was identified as "Jane Doe." The evidence established that she actively facilitated the sale of multiple buckets, for $45 each, of Bud Light beer to "Julie", in the Licensed Premises, in violation of California Business and Professions Code section 25657(a). The evidence also established that "Julie" loitered in the Licensed Premises that date for the purpose of begging or soliciting patrons or customers to purchase alcoholic beverages for her, in violation of California Business and Professions Code section 25657(b). The evidence established that she was paid a percentage or commission for procuring or encouraging the purchase or sale of alcoholic beverages, on the premises, in violation of California Business and Professions Code section 25657(a). The evidence established that the Respondent permitted, and in fact encouraged, "Julie", a commission-based employee, to solicit upon the Licensed Premises, the purchase or sale of a drink intended for her consumption, in violation of California Code of Regulations, Title 4, Division 1, Section 143. (Findings of Fact ¶¶ 4-7)

11. Counts 6-9 occurred on the date of March 23, 2023. The Respondent-Licensee employed upon the licensed on-sale premises a bartender who was identified as "Jane Doe." The evidence established that she actively facilitated the sale of multiple buckets, for $45 each, of Bud Light beer to Yury Paola Villalba Bejarano, in the Licensed Premises, in violation of California Business and Professions Code section 25657(a). The evidence also established that Yury Paola Villalba Bejarano loitered in the Licensed Premises that date for the purpose of begging or soliciting patrons or customers to purchase alcoholic beverages for her, in violation of California Business and Professions Code section 25657(b). The evidence established that she was paid a percentage or commission for procuring or encouraging the purchase or sale of alcoholic beverages, on the premises, in violation of California Business and Professions Code section 25657(a). The evidence established that the Respondent permitted, and in fact encouraged, Yury Paola Villalba Bejarano, a commission-based employee, to solicit upon the Licensed Premises,

the purchase or sale of a drink intended for her consumption, in violation of California Code of Regulations, Title 4, Division 1, Section 143. (Findings of Fact ¶¶ 8-11)

12. Counts 10-15 occurred on the date of April 21, 2023. The Respondent-Licensee employed upon the licensed on-sale premises a bartender who was identified as "Maria Jose." The evidence established that she actively facilitated the sale of multiple buckets, for $45 each, of Bud Light beer to "Tatiana" and "Dulce", in the Licensed Premises, in violation of California Business and Professions Code section 25657(a). The evidence also established that "Tatiana" and "Dulce" loitered in the Licensed Premises that date for the purpose of begging or soliciting patrons or customers to purchase alcoholic beverages for them, in violation of California Business and Professions Code section 25657(b). The evidence established that they were paid a percentage or commission for procuring or encouraging the purchase or sale of alcoholic beverages, on the premises, in violation of California Business and Professions Code section 25657(a). The evidence established that the Respondent permitted, and in fact encouraged, "Tatiana" and "Dulce", commission-based employees, to solicit upon the Licensed Premises, the purchase or sale of a drink intended for their consumption, in violation of California Code of Regulations, Title 4, Division 1, Section 143. (Findings of Fact ¶¶ 12-16)

13. Counts 16-19 occurred on the date of May 19, 2023. The Respondent-Licensee employed upon the licensed on-sale premises a bartender who was identified as "Maria Jose" and another unknown bartender. The evidence established that they actively facilitated the sale of multiple buckets, for $45 each, of Bud Light beer to "Nichole" and Yuly Andrea Reyes Mancera, in the Licensed Premises, in violation of California Business and Professions Code section 25657(a). The evidence also established that "Nichole" and Yuly Andrea Reyes Mancera loitered in the Licensed Premises that date for the purpose of begging or soliciting patrons or customers to purchase alcoholic beverages for them, in violation of California Business and Professions Code section 25657(b). The evidence established that they were paid a percentage or commission for procuring or encouraging the purchase or sale of alcoholic beverages, on the Licensed Premises, in violation of California Business and Professions Code section 25657(a). The evidence established that the Respondent permitted, and in fact encouraged, "Nichole" and Yuly Andrea Reyes Mancera, commission-based employees, to solicit upon the Licensed Premises, the purchase or sale of a drink intended for their consumption, in violation of California Code of Regulations, Title 4, Division 1, Section 143. (Findings of Fact ¶¶ 17-19)

14. Counts 20-23 occurred on the date of June 22, 2023. The Respondent-Licensee employed upon the licensed on-sale premises a bartender who was identified as Lina Marcella Losada. The evidence established that she actively facilitated the sale of a bucket, for $45, of Bud Light beer to Yenny Lissette Ortiz-Celiz, in the Licensed Premises, in violation of California Business and Professions Code section 25657(a). The evidence also established that Yenny Lissette Ortiz-Celiz loitered in the Licensed Premises that date for the purpose of begging or soliciting patrons or customers to purchase alcoholic beverages for her, in violation of California Business and Professions Code section 25657(b). The evidence established that she was paid a percentage or commission for procuring or encouraging the purchase or sale of alcoholic beverages, on the Licensed Premises, in violation of California Business and Professions Code section 25657(a).

The evidence established that the Respondent permitted, and in fact encouraged, Yenny Lissette Ortiz-Celiz, a commission-based employee, to solicit upon the Licensed Premises, the purchase or sale of a drink intended for her consumption, in violation of California Code of Regulations, Title 4, Division 1, Section 143. (Findings of Fact ¶¶ 20-26)

15. Counts 24 and 25 occurred on or about May 31, 2023. The evidence showed that, on or about May 31, 2023, the Respondent purchased alcoholic beverages, to wit: Corona, Modelo and Bud Light beers, from Smart & Final and Costco Wholesale. This was demonstrated by the presence of the two receipts showing their purchase on that date, adjacent to the coolers where the identical types of beers were stored. The receipts were saved in such a way that they appeared to be retained as business records of the ongoing enterprise taking place inside of the Licensed Premises. The beers in the coolers on June 22, 2023, were the same types of beers as shown on the receipts. The evidence established that Smart & Final and Costco Wholesale are off sale retailers and that they did not hold a beer manufacturer, wine grower, rectifier, brandy manufacturer, or wholesalers license. The evidence established that the beers purchased on May 31, 2023, were for the purpose of resale in the Licensed Premises. This was demonstrated by their storage in coolers adjacent to the fixed bar inside of the Licensed Premises. The evidence also established that Modelo and Bud Light beers were commonly sold in the Licensed Premises. Given this, the evidence established the two violations of Business and Professions Code 23402 alleged in these counts.

16. The Respondent-Licensee testified in this matter. She denied knowing any of the persons identified in the investigation or being aware of the enterprise presented by the Department. The Department's investigation covered a period of about four months. The unlawful conduct uncovered by the Department was an entrenched and central part of the ongoing enterprise taking place in the Licensed Premises during the entirety of the investigation. It stretches credulity for the Respondent-Licensee to assert that she was unaware of any of the conduct occurring at the Licensed Premises. Accordingly, her testimony is given little weight in this matter.

17. 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 requested that the Respondent's license be revoked given the number and severity of the violations and the presumption of revocation called for as a result of these violations. The Respondent argued that revocation was too harsh a penalty and that a suspension, with a suspended revocation would be appropriate.

In this matter, outright revocation is appropriate under the circumstances. The evidence established an ongoing unlawful enterprise that appeared to be central to the business operation of the Licensed Premises. The Respondent denied knowledge of the solicitation enterprise that had taken hold in the Licensed Premises. Her assertion was found not to be credible.

Even if, for the sake of argument, her testimony was accepted as credible, the decision of the Respondent to allow Ms. Camacho to remain "in charge" of the Licensed Premises shows a lack of effort to address the solicitation enterprise that was uncovered by the Department's investigation. Upon receiving the Accusation in this matter and the accompanying discovery, the Respondent was on notice that her manager had allowed serious misconduct to occur in the business. Despite this, as of the hearing, Ms. Camacho was the ongoing manager of the Licensed Premises. Revocation is needed to prevent the unlawful conduct from continuing.

The penalty recommended herein complies with rule 144.

ORDER

The Accusation is sustained as to all 25 counts. For these violations, the Respondent's On-Sale Beer and Wine Eating Place License is hereby revoked.

Dated: April 10, 2024

Alberto Roldan
Administrative Law Judge

☒ Adopt

☐ Non-Adopt: _____

_____

By: J. McCullough

Date: 05/29/24