

LIQUOR CONTROL ADJUDICATION BOARD
DEPARTMENT OF LIQUOR CONTROL
COUNTY OF MAUI, STATE OF HAWAII

TRANSCRIPT OF PROCEEDINGS
REGULAR MEETING

Held at the Department of Liquor Control Conference Room, David K. Trask, Jr. Office Building, 2145 Kaohu Street, Room 108, Wailuku, Maui, Hawaii, commencing at 9:00 a.m., on Thursday, December 1, 2016.

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1 BOARD MEMBERS PRESENT:

2 Donald Fujii, Chairperson

3 Wayne Pagan, Vice-Chairperson

4 Zachary Helm, Member

5 Doris Tanaka, Member

6 Bruce U`u, Member

7 STAFF PRESENT:

8 Gary Murai, Deputy Corporation Counsel

9 Peter Hanano, Deputy Prosecuting Attorney

10 Glenn Mukai, Director

11 Mark Honda, Deputy Director

12 Bill Pacheco, Chief Enforcement Officer

13 Sarah Cordeiro, Secretary to Boards/Commissions II

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(Thursday, December 1, 2016, 9:00 a.m.)

CHAIR FUJIII: (Gavel.) Good morning. The meeting of the Liquor Control Adjudication Board is now called to order pursuant to Section 281-91 of the Hawaii Revised Statutes and Section 8-13.3 of the Charter of the County of Maui to consider the matters and issues as posted on today's agenda. At this time, we would like the Board Members and staff to introduce themselves, starting with our secretary.

MS. CORDEIRO: Sarah Cordeiro, Liquor Control.

MEMBER TANAKA: Doris Tanaka, Wailuku.

MEMBER HELM: Zach Helm, Molokai.

MR. MURAI: Deputy Corporation Counsel, Gary Murai.

CHAIR FUJIII: Donald Fujii, Wailuku.

VICE-CHAIR PAGAN: Wayne Pagan, Upcountry.

MEMBER U`U: Bruce U`u, Paia.

DIRECTOR MUKAI: Glenn Mukai, Liquor Control.

DEPUTY DIRECTOR HONDA: Mark Honda, Liquor Control.

MR. HANANO: Peter Hanano on behalf of the Department of Prosecuting Attorney.

MR. PACHECO: And Bill Pacheco, Department of Liquor Control.

1 CHAIR FUJII: Thank you. Let the record show
2 that Board Members excused for today's meeting are Candace
3 Ariaga from Lanai, Jerrybeth De Mello from Lahaina, Gwen
4 Ueoka from Wailuku. And I believe there was one more I
5 missed, but, anyway --

6 MEMBER TANAKA: Ben Despins.

7 MEMBER HELM: Ben.

8 CHAIR FUJII: Oh, Ben Despins from Kihei. So --
9 but we do have a quorum so we can conduct our regular
10 business as -- that's on today's agenda.

11 We will now hear Complaint and Accusation Number
12 2017-9 against Lahaina Petroleum, LLC doing business as
13 Paia Shell. So will the Respondent please step forward,
14 state your name and in what capacity you represent the
15 Respondent?

16 MR. HUBIN: Good morning. My name is Brian
17 Hubin. I am the island manager for Lahaina Petroleum.

18 CHAIR FUJII: And would you spell your last
19 name.

20 MR. HUBIN: H-U-B-I-N.

21 CHAIR FUJII: Thank you, Mr. Hubin. At this
22 time, Mr. Hubin, you have the -- you have the option of
23 having the charge -- charges publicly read or you can
24 waive the reading.

25 MR. HUBIN: I'll waive the reading.

1 CHAIR FUJII: Thank you. Mr. Hubin, for the
2 record, do you represent the Respondent involved?

3 MR. HUBIN: Yes, I do.

4 CHAIR FUJII: Do you have legal counsel?

5 MR. HUBIN: No, I don't.

6 CHAIR FUJII: Do you understand that you have
7 the right to have your legal counsel present?

8 MR. HUBIN: Yes.

9 CHAIR FUJII: Do you understand the charges
10 against you?

11 MR. HUBIN: Yes, I do.

12 CHAIR FUJII: What is your plea to Count 1?

13 MR. HUBIN: Guilty.

14 CHAIR FUJII: And Count 2?

15 MR. HUBIN: Guilty.

16 CHAIR FUJII: Thank you. Do you understand the
17 violations the Department of Liquor Control alleges
18 against you?

19 MR. HUBIN: I do understand.

20 CHAIR FUJII: Do you understand that you have
21 the right to plead not guilty?

22 MR. HUBIN: I do.

23 CHAIR FUJII: Do you understand, by pleading
24 guilty, you waive the right of having a hearing in which
25 you could present evidence and question witnesses on your

1 behalf?

2 MR. HUBIN: I do.

3 CHAIR FUJII: Is your plea of no contest
4 voluntary and not the result of force, threats or promises
5 apart from any plea agreement? Is it voluntary?

6 MR. HUBIN: Voluntary.

7 CHAIR FUJII: Thank you. Do you understand
8 that, on each count, if the Board accepts your plea of no
9 contest or guilty, you will be found guilty and that the
10 Board may issue a reprimand, or assess and collect a
11 penalty of up to \$2,000 on each count, or revoke the
12 license at any time, or suspend the right of the licensee
13 to use the license?

14 MR. HUBIN: I understand.

15 CHAIR FUJII: Do you still wish to plead guilty?

16 MR. HUBIN: I do.

17 CHAIR FUJII: The Board hereby finds that the
18 licensee has entered a knowing and voluntary plea of
19 guilty. The Board accepts your plea and finds you guilty
20 on Count 1 and Count 2 reflected in Complaint and
21 Accusation Number 2017-9. At this time, we would like the
22 Department to present a summary of the case. Mr. Hanano.

23 MR. HANANO: Yes. Thank you, Chair.

24 This case involved a minor decoy operation which
25 took place on Saturday, June 13, 2015. The Minor Decoy

1 Team was comprised of Senior Investigator Jarrett
2 Kahooohanohano, Liquor Control Officers Marc Weisenfeld,
3 Amy Martin, and then trainee Cielo Molina, and a
4 19-year-old minor male decoy.

5 The Minor Decoy Checklist was reviewed with the
6 minor decoy informing him of the requirements and rules
7 pertaining to minor decoy operations. The minor decoy was
8 instructed to carry his valid Hawaii State identification
9 card at all times. The minor decoy's identification was
10 printed in a vertical format which clearly indicated that
11 the minor decoy became 21 years of age on 4-4-2017. The
12 minor decoy was instructed to answer any questions about
13 his age truthfully and to present his valid Hawaii State
14 identification card when asked by any employee of the
15 licensed premises to do so. The minor decoy reviewed and
16 signed the Minor Decoy Checklist and indicated that he
17 understood what was read to him. The minor decoy was
18 issued a 20-dollar bill for buy money.

19 On June 13th, 2015, at about 7:45 p.m., Officer
20 Molina entered the Paia Shell premises located at 68 Hana
21 Highway, Paia, Maui, Hawaii. At that time, the store was
22 busy as there were six patrons in the small store and one
23 employee later identified as Johnny Johnny working the
24 register. Johnny appeared to be flustered and under
25 stress. In order to avoid detection, Officer Molina

1 positioned herself outside the store by the back window
2 which was directly behind the register stand. From this
3 position, Officer Molina had a clear and unobstructed view
4 of the cash register and the patrons within the store.

5 At about 7:46 p.m., the minor decoy entered the
6 store and went to the cooler area and grabbed a six-pack
7 of Heineken beer bottles. The minor decoy stood in line
8 behind the two patrons and was ahead of three other
9 patrons. It appeared that Johnny was attempting to rush
10 through the customers in order to expedite each
11 transaction and cut down the waiting time in line.

12 When it was the minor decoy's turn, Johnny rang
13 up the minor decoy's six-pack of Heineken beer without
14 asking the minor decoy for his age or -- or his ID. The
15 minor decoy then paid for the six-pack of beer with the
16 20-dollar buy money, then left the premises and headed
17 back to the operations vehicle which was parked outside.

18 Subsequent to that, Officer Molina approached
19 Johnny, identified herself, and advised Johnny that he had
20 just sold liquor to a minor.

21 Furthermore, as part of the investigation,
22 Johnny Johnny was interviewed, at which time he provided
23 the following statement: Stated he had worked for Paia
24 Shell for about two years; that day, his shift was from
25 4:00 p.m. to 12:00 a.m.; stated he had never received any

1 formal training from Paia Shell for his job -- for his
2 job; Johnny acknowledged that he did have a valid employee
3 approved by the Director card, which he was able to
4 produce upon request; he also confirmed that he neither
5 asked the minor decoy for his age or for his
6 identification.

7 Nothing further. Thank you, Chair.

8 CHAIR FUJII: Thank you, Mr. Hanano. Any
9 questions by Members of the Board regarding the report as
10 submitted by the Prosecutor? Any question directed to the
11 Prosecutor? If not, I would like to have you, Mr. Hubin,
12 if you have -- you have opportunity to make a statement
13 regarding this case. You may also inform the Board of any
14 mitigating circumstances which may or may not apply to the
15 sentencing. Mr. Hubin.

16 MR. HUBIN: I would just like to read a short
17 statement. We at Lahaina Petroleum do take this violation
18 seriously. Johnny acknowledged to -- to the fact that he
19 failed to properly check this person's ID. In his
20 statement to the liquor inspector, he states that he never
21 received any formal training from Paia Shell for his job,
22 which is not true. Lahaina Petroleum does monthly
23 mandatory team meetings at all locations, of which
24 includes going over procedures on the sale of alcohol and
25 tobacco. All employees are required to sign our policy on

1 the sale of alcohol daily. We're committed to staying in
2 compliance with all applicable liquor laws and
3 regulations.

4 That's it. Thank you.

5 CHAIR FUJII: Thank you, Mr. Hubin. Members of
6 the Board, are there any questions regarding Mr. Hubin's
7 report or anything regarding this case from the Board?

8 MEMBER HELM: Yeah, I do, Chair. Is this
9 employee still employed at your --

10 MR. HUBIN: Yes, he is.

11 MEMBER HELM: -- establishment? So since then,
12 have you -- has he given any training since that mistake?

13 MR. HUBIN: Every -- every month, as I say, we
14 have team meetings going over policy and procedures of
15 alcohol sale. He did get terminated at the time of the
16 incident, which we then rehired him about three months
17 ago.

18 MEMBER HELM: How long has he been employed with
19 your company?

20 MR. HUBIN: Prior to this, I think it was two
21 years, and now four months since rehire.

22 MEMBER HELM: Thank you.

23 CHAIR FUJII: Any other questions? Mr. U`u.

24 MEMBER U`U: One question. What Johnny said in
25 his statement was he had no -- no training. And you're

1 saying you have monthly training. So I'm kind of confused
2 of --

3 MR. HUBIN: I -- I can't answer why he -- he
4 made that statement which is not true. We -- we do have
5 training meetings every month and they sign an
6 acknowledgment sheet reminding them of consequences to the
7 fact that --

8 MEMBER U`U: Okay.

9 CHAIR FUJII: Any other questions, Members?
10 Mr. Hubin, for any employee that -- in this -- in this
11 case, Mr. Johnny Johnny, is there a set punishment or is
12 there suspension, or what -- what -- do they know that --
13 what -- what the consequences would be?

14 MR. HUBIN: They do know the consequences.

15 CHAIR FUJII: And what would that be?

16 MR. HUBIN: Which is a zero-tolerance policy.
17 We terminate any employee that violates this rule.

18 CHAIR FUJII: Thank you. Any further questions?

19 MEMBER U`U: One more.

20 CHAIR FUJII: Bruce.

21 MEMBER U`U: One more question. How much
22 employees do you have at any given time at any of your
23 operations?

24 MR. HUBIN: Most --

25 MEMBER U`U: So like Paia?

1 MR. HUBIN: Most of the stores operate with one
2 employee. This was a smaller store. Paia Shell is a
3 smaller store. So each shift is manned with only one
4 person with the exception of the morning shift which the
5 manager is present until 3:00 to 4:00 in the afternoon.

6 MEMBER U`U: Quick question, next question.
7 How --

8 CHAIR FUJII: Go ahead.

9 MEMBER U`U: How hard is it to find employees
10 right now?

11 MR. HUBIN: It is very, very difficult to find
12 employees. We -- we -- we constantly have ads out to --
13 to hire. It's always open. And very difficult right now
14 finding any employees to even put in an application.

15 MEMBER TANAKA: So is that why you rehired this
16 employee?

17 MR. HUBIN: Well, this employee was -- was
18 rehired, he's a very good employee. With the exception of
19 this mistake that he did, he's a very good employee. And
20 we -- in my 13 years with Lahaina Petroleum, we have never
21 rehired anybody who has violated this rule. He is the
22 first person we have ever rehired in this case.

23 CHAIR FUJII: Anything else from the Board?
24 Anyway, this happened on June 13th. It's been a year --
25 over a year now, so, anyway. And he was rehired how

1 many -- how soon after this incident?

2 MR. HUBIN: He was hired about three months ago.

3 CHAIR FUJII: Three months ago?

4 MR. HUBIN: Yes.

5 CHAIR FUJII: So he was out about a year, then?

6 MR. HUBIN: Almost.

7 CHAIR FUJII: From June of 2015 and --

8 MR. HUBIN: Right. Three months.

9 CHAIR FUJII: Three months. Thank you. No
10 further questions, then, Mr. Hanano, what would be the
11 Director's argument as to penalty?

12 MR. HANANO: Yes. Thank you, Chair. The
13 original license for this licensee was issued back in June
14 of 2003. There is a prior conviction for this licensee
15 for the same offense in 2009; however, because that's
16 outside the five-year period. We're recommending, in
17 Count 1, a \$2,000 fine, 1,000 suspended on the condition
18 that there's no further violation for the same offense
19 within a year, and, in Count 2, a \$250 fine.

20 CHAIR FUJII: Thank you, Mr. Hanano. The Board
21 will take all matters that's been presented into
22 consideration. At this time, I would like to entertain a
23 motion to go into deliberation.

24 MEMBER U`U: Motion to deliberate.

25 MEMBER HELM: Second.

1 CHAIR FUJII: Moved by Bruce, seconded by Zach.
2 Any discussion? If not, all in favor of the motion, say
3 "aye."

4 (Response.)

5 CHAIR FUJII: Any opposed?

6 (No response.)

7 CHAIR FUJII: Okay. Motion carried. We will be
8 in deliberation. So if you want to leave and we'll call
9 you back.

10 (Deliberations, 9:14 a.m. to 9:32 a.m.)

11 CHAIR FUJII: The Board is back in open session.
12 Mr. Hubin, the Board -- after deliberation here, on Count
13 1, the Board is now -- the penalty for Count 1 will be
14 \$2,000 of which \$1,000 will be suspended provided there is
15 no conviction of the same offense within a period of one
16 year. It's a \$2,000 penalty but of which 1,000 will be
17 suspended provided there is no conviction of the same
18 offense within a period of one year. On Count 2, the
19 penalty for Count 2, the Board has decided to -- the
20 penalty will be \$250. No suspension on that because I
21 think it is very important that -- the Board feels it's
22 important that IDs be checked, you know, especially, I
23 think, it was a teenager, I believe, that was involved
24 with the sting. Again -- so, again, the penalty will
25 remain \$250 in Count 2. And, Mr. Hubin, thank you for

1 coming. And the Department will let you know when the
2 penalties are due, fines are due. Thank you for coming.

3 MR. HUBIN: Thank you, Mr. Chairperson.

4 CHAIR FUJII: We will now hear Complaint and
5 Accusation Number 2017-8 against Mid Pac Petroleum, LLC
6 doing business as Mako's Mart. Will the Respondent or
7 representative please step forward, state your name and in
8 what capacity you represent the Respondent?

9 MR. ICHIKAWA: Good morning, Mr. chairman, Vice
10 Chairman, Members of the Board. My name is Robert
11 Ichikawa, attorney for Mid Pac Petroleum, LLC doing
12 business as Mako's Mart. To my right is Mr. Mark Arakawa,
13 the retail area manager.

14 CHAIR FUJII: Thank you. Before we continue,
15 Mr. Hanano, are we -- on these -- we were gonna -- we have
16 listed here Count 1 and 2. We're still on that, yeah?

17 MR. HANANO: Yes. There is a plea agreement
18 wherein Count 2 will be dismissed with prejudice.

19 CHAIR FUJII: Okay. So, Members, we're
20 dismissing Count 2 at this point. Mr. Ichikawa,
21 Mr. Arakawa, at this time you have the option of having
22 the charge, Count 1, publicly read or you can waive the
23 reading.

24 MR. ICHIKAWA: We can waive the reading. Thank
25 you.

1 CHAIR FUJII: Again, for the record, again,
2 Mr. Ichikawa and Mr. Arakawa, so are you the Respondent
3 involved?

4 MR. ICHIKAWA: Yes.

5 MR. ARAKAWA: Yes.

6 CHAIR FUJII: And are you the legal counsel?

7 MR. ICHIKAWA: Yes, I am.

8 CHAIR FUJII: Do you understand -- you are
9 already here, so do you understand the charge against you
10 on Count 1?

11 MR. ICHIKAWA: Yes, we do.

12 CHAIR FUJII: What is your plea to Count 1?

13 MR. ICHIKAWA: No contest.

14 CHAIR FUJII: Do you understand the
15 violations -- violation the Department of Liquor Control
16 alleges against you?

17 MR. ICHIKAWA: Yes, we do.

18 CHAIR FUJII: Do you understand that you have a
19 right to plead not guilty?

20 MR. ICHIKAWA: Yes.

21 CHAIR FUJII: Do you understand, by pleading no
22 contest, you waive the right to a hearing in which you
23 could present evidence and question witnesses on your
24 behalf?

25 MR. ICHIKAWA: Yes, we do.

1 CHAIR FUJII: Is your plea of no contest
2 voluntary, and not the result of threats, promises apart
3 from any plea agreement?

4 MR. ICHIKAWA: Yes, it is.

5 CHAIR FUJII: Do you understand, on Count 1, if
6 the Board accepts your plea of no contest, you will be
7 found guilty, and the Board may issue a reprimand, or
8 assess and collect a penalty up to \$2,000, or revoke the
9 license at any time, or suspend the right of the licensee
10 to use the license?

11 MR. ICHIKAWA: Yes, we do.

12 CHAIR FUJII: Do you still wish to plead no
13 contest?

14 MR. ICHIKAWA: Yes.

15 CHAIR FUJII: The Board hereby finds that the
16 licensee has entered a knowing and voluntary plea of no
17 contest. The Board accepts your plea and finds you guilty
18 on Count 1 reflected in Complaint and Accusation Number
19 2017-10 [sic].

20 At this time, Mr. Hanano, we would like the
21 Department to present a summary of the case.

22 MR. HANANO: Yes. Thank you, Chair. This case
23 involved a minor decoy operation which took place on
24 Friday, June 12th, 2015. The Minor Decoy Team was
25 comprised of Senior Investigator Jarrett Kahooohanohano,

1 Liquor Control Officers Marc Weisenfeld, Amy Martin, and
2 then trainee Cielo Molina, and, also, a 19-year-old male
3 minor decoy.

4 The Minor Decoy Checklist was reviewed with the
5 minor decoy informing him of the requirements and rules
6 pertaining to minor decoy operations. The minor decoy was
7 instructed to carry his valid Hawaii State identification
8 card at all times. The minor decoy's identification was
9 printed in a vertical format which clearly indicated that
10 the minor decoy became 21 years of age on 4-4-2017. The
11 minor decoy was instructed to answer any questions about
12 his age truthfully and to present his valid Hawaii State
13 ID card when asked by any employee of the licensed
14 premises to do so. The minor decoy reviewed and signed
15 the Minor Decoy Checklist indicating he understood what
16 was read to him. The minor decoy was also issued a
17 20-dollar bill for buy money.

18 On June 12, 2015, at about 5:30 p.m., Officer
19 Molina entered the Mako's Mart located at 129 Ma`a Street,
20 Kahului, Maui, Hawaii. At that time, there were two
21 patrons in the store and two employees working. Officer
22 Molina positioned herself about 15 to 20 feet away from
23 the cash register stand where she had a clear and
24 unobstructed view of the register. And about one minute
25 later, after Officer Molina's entry, the minor decoy

1 entered the premises. Upon entry, the minor decoy headed
2 for the beer section, grabbed a six-pack of Bud Light
3 beer, then headed to the line at the cashier's stand.
4 There were two other patrons ahead of the minor decoy, and
5 more patrons entered the premises while the minor decoy
6 stood in line. The cashier, later identified as LeeAnn
7 Kuuleimomi Tamura, rang up the minor decoy's six-pack of
8 Bud Light beer on the register without asking the minor
9 decoy for his ID or of his age. The minor decoy then paid
10 for the six-pack of beer with the 20-dollar buy money,
11 then left the premises and headed back to the operations
12 vehicle outside.

13 Subsequent to that, Officer Molina approached
14 Tamura, identified herself, and advised Tamura that she
15 had just sold liquor to a minor.

16 As part of the investigation, LeeAnn Kuuleimomi
17 Tamura was interviewed, at which time she provided the
18 following statement: Stated that she worked for Mako's
19 Mart for about a year; on the day of incident, her shift
20 was from 3:00 to 11:00 p.m.; stated that she had never
21 received any formal training from Mako's Mart for her job;
22 she acknowledged that she did have a valid employee
23 approved by the Director card, which she was able to
24 produce upon request; stated that she neither asked the
25 minor decoy for his age nor for his identification; Tamura

1 admitted that she was not paying attention and made a
2 mistake by selling liquor to a minor.

3 Nothing further, Chair.

4 CHAIR FUJII: Thank you, Mr. Hanano. Mr.
5 Ichikawa or -- you now have an opportunity to make a
6 statement regarding the case. You may also inform the
7 Board of any mitigating circumstances which may or may not
8 apply to the hearing -- to the sentencing. Mr. Ichikawa
9 or --

10 MR. ICHIKAWA: Yeah. I'll start and I'll have
11 Mark jump in. I apologize for the jacket. It's kind of
12 cold.

13 CHAIR FUJII: No.

14 MR. ICHIKAWA: It's colder than Honolulu. Yeah.
15 So we believe that Mid Pac Petroleum takes every situation
16 very seriously. They work very hard in training their
17 employees. And it's a continual type of training. In
18 this case as well, we're not clear why the statement was
19 made that there was no training because each employee gets
20 trained at the beginning and there's periodic updates and
21 reminders and training. And there was one, actually,
22 right before that time and she was present at the meeting
23 and, basically, signed off at the meeting. So, again, we
24 want to assure you that there are a lot of training and
25 responsibility that goes into these operations.

1 CHAIR FUJIII: Mr. Arakawa, do you have a
2 statement to make?

3 MR. ARAKAWA: Yes. Actually, I do have a
4 document, if the Commission [sic] would like to see that,
5 with the meeting topic and what that covers. It also has
6 her signature on the meeting attendance agenda. So if you
7 guys want to see that, I have that available. On top of
8 that -- so this monthly meeting that we hold happened
9 eight days prior to the violation.

10 And we also have another program that -- so Par
11 Petroleum purchased the Mid Pac stores on April 1st, which
12 is about two months prior to -- or prior to the violation.
13 And there was a lot of, you know, integration that we were
14 doing for a lot of departments. But one thing that we
15 were really concerned and made sure we wanted to cover was
16 a program that the Hawaii Retail -- or HIE retail stores
17 has been doing for a very long time. That program is
18 called the BARS program. And, basically, what that
19 acronym stands for is being a responsible store.
20 Basically, it's a mystery shop program where we contract
21 with a vendor to come out and do mystery shops on
22 age-restricted sales. Okay. That happens twice a month
23 every month.

24 There is a two-strike rule for that, for the
25 company. So the first time they fail, they go through

1 remedial training. They sign an acknowledgment form
2 saying that they understand and they will -- they will
3 comply with the law for that.

4 So that was -- we did that.

5 MR. ICHIKAWA: That's for the individual.

6 MR. ARAKAWA: This is for, actually, all of the
7 employees in Maui for the Mid Pac stores. So that was
8 held in -- let's see here -- June 19, 2015. So -- which
9 is just a little bit after the violation. But we felt it
10 was important to arm our people with, you know, as much
11 information and trying to keep them on their toes so
12 they'll always be ready for, you know, making sure they do
13 it the right way.

14 CHAIR FUJIII: Okay. Are you complete with your
15 presentation?

16 MR. ARAKAWA: Yes.

17 CHAIR FUJIII: Thank you. Members of the Board,
18 any questions for Mr. Ichikawa or Mr. Arakawa?

19 MEMBER HELM: I do, Chair. Your meetings that
20 you provide, do they all meet from all of these stores all
21 at one time?

22 MR. ARAKAWA: They have individual store
23 meetings. So the manager of the store would -- would be
24 the person conducting the meeting for that store. So
25 in --

1 MEMBER HELM: And the things that you discuss at
2 these trainings, what is the kinds of things that you
3 discuss for your employees that you expect of them?

4 MR. ARAKAWA: It's a safety-related meeting. So
5 we cover things like hurricane preparedness, robbery
6 prevention, age restricted sales is something we cover
7 from time to time, anything else that relates to the
8 customer service interaction for the company.

9 MEMBER HELM: So do you explain to them that if
10 they do sell to minors what their -- what the
11 circumstances are gonna be?

12 MR. ARAKAWA: Yes, in our new hire orientation
13 that every employee goes through.

14 MEMBER HELM: You said two strikes, yeah, or
15 something?

16 MR. ARAKAWA: That is for our mystery shop
17 program. Yes. Yeah. So our -- if it's -- if it's a
18 County type of sting, it's a one-strike rule.

19 MR. ICHIKAWA: Just to clarify that -- that
20 internal, I guess, training is to -- if they -- they miss
21 that, then, within the internal training, they have two
22 strikes, they get retrained and reminded again. But if
23 it's outside of the company, let's say in this situation,
24 then it's not a two-strike, it's a one-strike. And then
25 the reminders of the training is on 21 years and older

1 type of sale. So it's both tobacco and liquor sales that
2 they constantly train them on.

3 MR. ARAKAWA: So our -- our company policy is
4 that we ID or ask for identification for anybody that's --
5 that looks 40 years of age or younger. Yeah. So that's
6 -- that's actually worked fair -- fairly well for us so
7 far.

8 CHAIR FUJII: Any other question by Members of
9 the Board? Again, back to this mystery shopper, how often
10 is it done?

11 MR. ARAKAWA: It's done twice monthly for each
12 store.

13 CHAIR FUJII: And it's, like you said, not only
14 for liquor, but for cigarettes and --

15 MR. ARAKAWA: Yes. Yes. Any age-restricted
16 sale.

17 CHAIR FUJII: And has any of the cashiers, if
18 they're long enough, would they be able to identify these
19 mystery shoppers?

20 MR. ARAKAWA: They actually rotate and change
21 out their personnel fairly frequently, so they're not able
22 to identify who the people are. And a lot of times, they
23 actually hire our regular customers. So some of them have
24 failed because of that.

25 CHAIR FUJII: Getting back to Ms. Tamura, how

1 long was she an employee there?

2 MR. ARAKAWA: Approximately a year.

3 CHAIR FUJII: A year?

4 MR. ARAKAWA: Yes.

5 CHAIR FUJII: Okay. Any other questions any --
6 any Member of the Board regarding this case? If not,
7 Mr. Hanano, what would be the Director's argument as to
8 penalty?

9 MR. HANANO: Yes. Thank you, Chair. Original
10 license for this licensee was issued back in April of
11 2013. There are no prior convictions for this licensee.
12 In light of that, we're recommending, in Count 1, a \$2,000
13 fine with \$1,000 suspended on the condition that there are
14 no further violations for the same offense within a
15 one-year period.

16 CHAIR FUJII: Thank you, Mr. Hanano. The Board
17 will take this matter into consideration. I would like to
18 have a motion to go into deliberation.

19 MEMBER TANAKA: I so move.

20 CHAIR FUJII: Moved by Doris.

21 MEMBER HELM: Second.

22 CHAIR FUJII: Seconded by Zach. Any discussion?
23 All in favor of the motion say "aye."

24 (Response.)

25 CHAIR FUJII: Any oppose?

1 (No response.)

2 CHAIR FUJII: Motion carried. We will be in
3 deliberation.

4 (Deliberations, 9:48 a.m. to 10:04 a.m.)

5 CHAIR FUJII: The Board is back in open session.
6 Mr. Ichikawa, Mr. Arakawa, on Count 1, the Board has
7 assessed a penalty of \$2,000 of which 1,000 will be
8 suspended provided there is no violation -- no conviction
9 for the same offense for a period of one year. And the
10 Department will notify you when payment is due. Thank you
11 for your presence today.

12 MR. ICHIKAWA: Thank you, Mr. Chairman. Thank
13 you, Members of the Board.

14 CHAIR FUJII: We will now hear Complaint and
15 Accusation Number 2017-10 against -- how do you say --
16 J-U-B-E?

17 MR. MELLO: Jube.

18 CHAIR FUJII: Jube. Again, Jube Enterprises
19 Inc. doing business as Paradise Grill K.B. Again, so will
20 the Respondent please step forward and state your name and
21 in what capacity you represent the Respondent?

22 MR. JIMENEZ: Good morning. Frank Jimenez,
23 manager.

24 CHAIR FUJII: Mr. Jimenez, with you is --

25 MR. MELLO: Dave Mello, owner, also known as

1 Jube.

2 CHAIR FUJII: Jube. How do you spell your last
3 name, sir?

4 MR. MELLO: M-E-L-L-O.

5 CHAIR FUJII: Mr. Jimenez and Mr. Mello, at this
6 time you have the option of having the charges publicly
7 read or you may waive the reading. What is your
8 preference?

9 MR. MELLO: Waive the reading.

10 CHAIR FUJII: Again, Mr. Jimenez and Mr. Mello,
11 for the record, do you represent the Respondent involved?

12 MR. JIMENEZ: Yes.

13 MR. MELLO: Yes.

14 CHAIR FUJII: Do you have legal counsel?

15 MR. MELLO: I do have legal counsel, but not
16 here because I don't feel it's needed.

17 CHAIR FUJII: Do you understand you have the
18 right to have legal counsel present?

19 MR. MELLO: Yes.

20 CHAIR FUJII: Do you understand the charges
21 against you, alleged against you?

22 MR. MELLO: Yes.

23 CHAIR FUJII: What is your plea to each count?

24 MR. MELLO: Guilty.

25 CHAIR FUJII: Okay. And that's Count 1 and

1 Count 2?

2 MR. MELLO: Correct.

3 CHAIR FUJII: Do you understand the violations
4 the Department of Liquor alleges against you?

5 MR. MELLO: Yes, I do.

6 CHAIR FUJII: Do you understand that you have a
7 right to plead not guilty?

8 MR. MELLO: Yes, I do.

9 CHAIR FUJII: Do you understand, by pleading no
10 contest, you waive the right to a hearing at which you
11 could present evidence and question witnesses on your
12 behalf?

13 MR. MELLO: Yes, I do.

14 CHAIR FUJII: Is your plea of no contest
15 voluntary, and not the result of force, threats or
16 promises apart from any plea agreement?

17 MR. MELLO: Correct.

18 CHAIR FUJII: Do you understand, on each count,
19 if the Board accepts your plea of no contest, you will be
20 found guilty, and that the Board may issue a reprimand or
21 assess a penalty of up to \$2,000, or revoke any license at
22 any time and -- or suspend the right of licensee to use
23 the license?

24 MR. MELLO: Yes, I do.

25 CHAIR FUJII: Do you still wish to plead no

1 contest?

2 MR. MELLO: Yes, I do.

3 CHAIR FUJII: The Board hereby finds that the
4 licensee has entered a knowing and voluntary plea of no
5 contest. The Board accepts your plea and finds you guilty
6 on Counts 1 and Count 2 reflected in Complaint and
7 Accusation Number 2017-10. At this time, we wanna hear
8 from the Prosecutor, present a summary of the case.
9 Mr. Hanano.

10 MR. HANANO: Yes. Thank you, Chair.

11 On August 5th [sic], 2016, Liquor Control
12 Officer Cielo Molina was assigned to conduct inspections
13 of the liquor licensed premises on Maui's west side which
14 included Kaanapali area.

15 At about 12:25 a.m., Officer Molina conducted an
16 inspection at the Paradise Grill and Mello's Bar in
17 Kaanapali, Maui, Hawaii. Upon entering Paradise Grill,
18 Officer Molina was greeted by a male bouncer. At that
19 time, there are approximately 85 patrons within the
20 premises. Officer Molina observed one female bartender
21 working behind the bar, a female at the front door
22 entrance who was collecting the entry fee, checking IDs
23 and issuing wristbands.

24 At about 12:29 a.m., Officer Molina proceeded
25 downstairs to the Mello's Bar. At that time, Officer

1 Molina observed a DJ playing music, patrons on the dance
2 floor, three bartenders working behind the counter, and a
3 bouncer checking IDs and another bouncer on the floor.

4 At about 12:34 a.m., Officer Molina finished her
5 inspection and determined that there were no violations
6 observed, then left the premises. Officer Molina went on
7 to conduct inspections of other liquor licensed premises
8 in the area.

9 At about 1:05 a.m., Officer Molina returned to
10 the Paradise Grill and Mello's Bar after receiving
11 information that there possibly may be underage patrons on
12 the premises. While there, Officer Molina conducted an
13 inquiry regarding three individuals who looked possibly
14 underage. However, after an investigation, she determined
15 that all three were at least 21 years of age.

16 Officer Molina then entered the Mello's Bar and
17 headed towards the dance floor area where she scanned the
18 dance floor area and observed three females standing next
19 to a corner table between the DJ booth and the bar
20 counter. Each of the female patrons was holding the
21 drinks while standing next to the table. One of the
22 females, later identified as Shania Isabel K. Arvizu,
23 appeared to be in her early twenties and possibly
24 underage. As part of her investigation, Officer Molina
25 asked one of the bouncers for assistance in obtaining

1 Arvizu's identification. However, the bouncer returned
2 without the ID and advised Officer Molina that Arvizu said
3 she did not have an ID on her and claimed that she left it
4 in her friend's car.

5 After receiving this information, Officer Molina
6 continued with her investigation by approaching and
7 speaking directly to Arvizu. At that time, Officer Molina
8 asked Arvizu if she would follow Officer Molina outside so
9 that they could have a conversation without the noise and
10 the music, to which Arvizu agreed.

11 Once outside, Arvizu voluntarily answered some
12 questions posed by Officer Molina, but was evasive on
13 others. Arvizu stated that her date of birth was
14 7-16-1996, which made her about 20 years old at the time.

15 When asked how she was able to enter the
16 premises, Arvizu explained that she just walked in front
17 of the entrance with her friends, walked in the front
18 entrance with her friends.

19 When asked what she had to drink, Arvizu replied
20 that it was just a cranberry juice, but later admitted
21 that it was a vodka cranberry, but that she had had only
22 one. Arvizu also could not remember which bartender
23 served her the drink.

24 At one point during the interview, Officer
25 Molina observed Arvizu pull out what appeared to be her

1 State of Hawaii identification card, then quickly put the
2 card back in her pocket. After seeing that, Officer
3 Molina confronted Arvizu about it and asked Arvizu to
4 produce the ID to her, which Arvizu complied. Arvizu
5 stated that she forgot -- she forgot that she had it in
6 her pocket. Upon inspection of Arvizu's State of Hawaii
7 ID card, Officer Molina was able to obtain Arvizu's full
8 name, the ID number and Arvizu's date of birth, which was,
9 as earlier stated, 7-16-1996.

10 During the investigation, Arvizu insisted that
11 she needed to go back into the bar to get her credit card
12 from the bar. In response, Officer Molina volunteered to
13 get Arvizu's card back and advised Arvizu to wait outside.
14 Officer Molina then inquired with one of the bartenders,
15 Kevin Dowd, to see if there was a credit card for Arvizu
16 at the bar. At that time Dowd handed Officer Molina three
17 unclaimed credit cards, one of which belonged to Arvizu.
18 During that time, Arvizu came up to the bar and paid her
19 tab in cash, which Dowd estimated to be about \$30. After
20 paying for her tab, Arvizu attempted to give bartender
21 Rachael Rodemich a 20-dollar tip, but Rodemich refused and
22 called a bouncer to escort Arvizu out of the premises.

23 When Officer Molina requested a printout of
24 Arvizu's bar tab, both bartenders indicated that all cash
25 transactions were rung into one tab and was already closed

1 and could not be opened until the next day. Both
2 bartenders were asked if they recalled serving any drinks
3 to Arvizu. Both could not recall serving any drinks to
4 Arvizu.

5 That's all I have. Thank you.

6 CHAIR FUJII: Thank you, Mr. Hanano. Any
7 questions by Members of the Board regarding the summary
8 that presented by Prosecutor? Any questions? Okay.
9 Mr. Jimenez and Mr. Mello, you now have an opportunity to
10 make a statement regarding this case. You may also inform
11 the Board of any mitigating circumstances which may or may
12 not apply to the sentencing. Mr. Mello.

13 MR. MELLO: I would like to say thanks to the
14 Board for taking time to listen to my side of the story,
15 which is, basically, we're guilty.

16 We -- I don't condone any of this. I have major
17 preventions for this to happen. As he had stated, I have
18 bouncers at the door that do check every ID. That's why I
19 do believe this girl did not come in through the front
20 door, because my bouncers check every ID.

21 There is a back door that I believe she snuck in
22 through. Can't prove any of that stuff. But she came in
23 through there, and my bartend -- bartenders are guilty of
24 being complacent that, if they come through the door, they
25 think every bouncer checks every ID. We have hints, told

1 them that they're still responsible because there's ways
2 of getting in and they -- as this -- whatever her name is,
3 Shania, snuck in, got in.

4 I am a nondrinker. I do not drink. My sister
5 was killed by a drunk driver. I don't condone any of this
6 stuff. I take these actions very seriously.

7 And this happened in the time that I'm back in
8 California, taking care of my parents. They are 91 and
9 87. And this happened on my watch. And, still, I take
10 full responsibility, but I'm taking measures to prevent
11 this from happening again. I can't guarantee it's gonna
12 happen again, but I can promise you I'm gonna do
13 everything possible for it never to happen again.

14 And we hired -- we got rid of our former
15 security, have new security that Frank got that we put in
16 place.

17 We also put in place a wristband policy. That
18 everybody comes through, we'll put a wristband on now so
19 that, that way, anybody does sneak in, they have to have
20 that wristband, we know they have to be 21.

21 We have an alarm on the back door so there's no
22 way of entering, sneaking in or whatever. And if they do
23 sneak in, there's still no wristband on them, they have to
24 be checked by our bouncers.

25 We have on order an ID checker that has been

1 over six weeks where we've still been waiting on to get --

2 MR. JIMENEZ: On back order.

3 MR. MELLO: -- has not shown up. It's -- like I
4 said, it's a situation, I believe, in being proactive, not
5 reactive. This happened, it was very unfortunate. Like I
6 said, I do not believe any of this stuff. I have Frank
7 taking control of this stuff. I've replaced a couple
8 bartenders. I replaced the security. New general
9 manager. I having problems -- everybody likes to go to
10 Mello's Bar, I realize this, we are doing everything we
11 can to prevent this from ever happening again. Okay.

12 Last time I was in front of this Board was to
13 get my license. I like you all, but I don't want to come
14 back here again. This is not what I want, you know what I
15 mean.

16 So I just wanted you guys to understand my
17 situation, to let you -- and let you understand that this
18 is very serious to me. I opened that place like five
19 years ago. And that's like -- it took all my retirement
20 money, everything, to put into this business. And last
21 year was the first year that it did show a profit. And
22 this year, hopefully, it will show another one, depending
23 how well he does and then -- it's my livelihood, like I
24 said, my mercy just thrown at you guys. If you have any
25 suggestions, any ideas that you think I can prevent this,

1 I'm -- I'm willing to listen. And like I said, I do not
2 want this to happen again.

3 MR. JIMENEZ: Just to add --

4 CHAIR FUJIII: Thank you, Mr. --

5 MR. JIMENEZ: Just to add what Dave was saying,
6 not only have we taken preventative measures to prevent
7 this from happening again, we're taking all
8 recommendations from the Liquor Control agents as they
9 come in.

10 I live in Makawao, but I have committed to be on
11 property every Friday and Saturday night from 10:00 p.m.
12 to 3:00 a.m. I have a seven-month-old baby, but to
13 illustrate that our passion is to provide a great service
14 for the community all the while being within the limits of
15 the -- the Liquor Commission rules and regulations.

16 Like Dave said, this is not something that we're
17 proud of. This is not something that we take very
18 lightly. And I would invite you to ask your Liquor
19 Control agents, if you see them, what steps have we taken
20 to prevent this from happening again. I think you'll get
21 some positive feedback from all of them. I have had an
22 opportunity to meet most of them. I haven't met them all
23 yet.

24 But my commitment to you and to the community is
25 we'll do everything within our power to prevent this from

1 happening again.

2 CHAIR FUJII: Thank you, Mr. Jimenez and
3 Mr. Mello. Any questions directed to the licensee by
4 Members of the Board?

5 MEMBER HELM: I do. Frank and Dave, thank you,
6 first of all, but what is the capacity of your
7 establishment?

8 MR. MELLO: What do you mean? How many people
9 we can --

10 MEMBER HELM: Yeah. Can -- you can allow.

11 MR. MELLO: I believe it's 125.

12 MEMBER HELM: Have you ever turned people down
13 before?

14 MR. JIMENEZ: We do.

15 MR. MELLO: Let me answer that real quick. And
16 another -- another thing we have done as being proactive
17 is, since we stay open late night, people that have a
18 tendency to leave the other bars that close at 1:00 or
19 whatever, they always say, "Let's stop there at Mello's,"
20 we do not allow anybody in after -- 12:30?

21 MR. JIMENEZ: 1:00 a.m.

22 MR. MELLO: 1:00 a.m., if they do not have an
23 existing wristband meaning they were there already.

24 MR. JIMENEZ: And that is -- sorry. And that's
25 something that one of the liquor agents had recommended

1 that we do, that we do not want to be the property that
2 everyone goes to another bar, pays their final tab and
3 says, "Hey, let's go have one more shot somewhere else."
4 That's -- so that's a preventative measure that we've
5 taken to ensure that -- that people don't come in drinking
6 and -- and get in that one last shot. So we turn away
7 about 50 to 60 people every Friday and Saturday.

8 MEMBER HELM: And what is your recommendation
9 for your employees? Do you meet every so often to --

10 MR. JIMENEZ: So --

11 MEMBER HELM: -- go over some of your --

12 MR. JIMENEZ: Yes. So we have --

13 MEMBER HELM: -- rules?

14 MR. JIMENEZ: -- pre-shift -- pre-shift
15 meetings. Basically, what I do is I go prior to the
16 evening shifts, talk to the individuals, say this is the
17 game plan for today, this is what we're gonna be doing.
18 For underage, to prevent underage drinking, we also do
19 spot checks. If somebody looks to be 21 or under 21, not
20 only did the bouncer check their ID, but myself or one of
21 our other staff members check for an ID.

22 MEMBER HELM: Just a little recommendation since
23 you asked for it. If you have any --

24 MR. MELLO: We welcome it.

25 MEMBER HELM: Maybe putting in surveillance

1 cameras in your back doors so, you know, those people that
2 you thought might have snuck in, at least would have --

3 MR. JIMENEZ: Yeah, we've mitigated that by
4 putting audio alarms. So whenever the door opens, it's a
5 pretty loud alarm that goes off. And, unfortunately, it
6 has gone off a couple times. And our security staff goes
7 to the door and says, "You guys aren't coming in."
8 It's -- it's not that kind of place.

9 MEMBER HELM: It's very interesting that you
10 said that it took you a while to start profiting,
11 business. And I'm happy that you finally --

12 MR. MELLO: Thank you.

13 MEMBER HELM: -- finally making some money, you
14 know. It's a tough business, too, yeah. So --

15 MR. MELLO: Yeah.

16 MEMBER HELM: Anyway, thank you.

17 CHAIR FUJII: Thank you, Zach. Any other
18 questions directed to the --

19 MEMBER U`U: I got a question. How much -- how
20 much employees do you have, total number of employees you
21 guys are employing?

22 MR. JIMENEZ: Approximately 30.

23 CHAIR FUJII: Anything else by the Members of
24 the Board directed to the licensee? Go ahead.

25 MEMBER U`U: I like the measures you guys took

1 with the wristband. I like the security door. I like the
2 route. And I've never heard that before so far from
3 anybody coming before this Board. So I commend you guys
4 for that.

5 MR. MELLO: Thank you very much.

6 CHAIR FUJII: Along that line, if I may, Bruce,
7 expand a little bit more. The last stop, you know,
8 that -- that's a dangerous thing to be the last stop.

9 MR. JIMENEZ: Yes, sir.

10 CHAIR FUJII: The licensee to be the last stop
11 because, you know, it's late in the evening, early
12 morning, we're talking about. And, boy -- and you know
13 what can happen in that hour if people have been out from
14 early evening to the last stop. And we've heard a lot of,
15 you know, loss of life and that type of thing here and
16 that -- because of that last stop. Although, that last
17 stop wasn't really the only guilty party there because
18 there were many other stops before then. But, again, I
19 think taking preventive measures at 1:00 or 12:30,
20 whatever it might be, is a wise thing to do. Again, we
21 recommend -- so nobody -- everybody seems to be wanting to
22 move even closer to midnight, you know, which is even
23 safer, too, but, again, that's a good decision that you
24 have come up with.

25 Any further questions for the -- directed to the

1 Board, then? Mr. Hanano, what would be the Director's
2 argument as to penalty on Counts 1 and 2?

3 MR. HANANO: Yes. Thank you, Chair. Original
4 license for this licensee was issued back in April of
5 2012. There are no prior convictions of any kind. In
6 light of that, we're recommending the following: In Count
7 1, \$2,000 fine with 1,000 suspended on the condition that
8 there is no further convictions for the same offense
9 within a one-year period; and, in Count 2, a \$250 fine.

10 CHAIR FUJII: Thank you, Mr. Hanano. The Board
11 will take all matters as presented by the licensee and the
12 Prosecutor into consideration. At this time, I would like
13 to entertain a motion to go into deliberation.

14 MEMBER U`U: Motion to deliberate.

15 CHAIR FUJII: Moved by Bruce.

16 MEMBER TANAKA: Second that.

17 CHAIR FUJII: Okay. All in favor, raise your
18 hand. Motion carried. We are entering deliberations, so
19 we'll call you back.

20 (Deliberations, 10:23 a.m. to 10:36 a.m.)

21 CHAIR FUJII: The Board is now back in open
22 session. Mr. Jimenez, Mr. Mello, the Board has
23 deliberated under Counts 1 and Count 2. And on Count 1,
24 the Board has assessed a penalty of \$2,000 of which --
25 which \$1,000 will be suspended provided there is no same

1 violation within a period of one year. On Count 2, the
2 Board is also assessing a penalty which is \$250 of which
3 we will -- the Board will waive the penalty provided there
4 is no --

5 MEMBER HELM: Suspend.

6 CHAIR FUJII: Suspend the penalty provided there
7 is no violation of same offense on Count 2. After much
8 discussion, the Board is really supportive of your
9 improvements to the wristband, alarming the back door,
10 that type of proactive measures you've taken. So, again,
11 we're appreciative that you're here to explain everything
12 to us. And we -- we think you're heading in the right
13 direction. Thank you for coming. And the Board will
14 notify you when the penalty is due.

15 MR. MELLO: Thank you very much. Thank you.

16 MR. JIMENEZ: Thank you.

17 CHAIR FUJII: Item D is next on our agenda. We
18 will now hear Complaint and Accusation Number 2017-6.
19 Before we begin, Mr. Hanano, there are some changes, I
20 believe?

21 MR. HANANO: Yes, Chair. Pursuant to plea
22 agreement -- see -- Count 1 will be a no contest plea,
23 Counts 2 and 3 will be dismissed with prejudice pursuant
24 to the plea agreement.

25 CHAIR FUJII: So the remaining will be only

1 Count 1, would be the --

2 MR. HANANO: That's correct.

3 CHAIR FUJII: The Board will take action on
4 Count 1, then. Okay. So we have the Respondent.

5 MR. STEWART: Good morning, Board. My name's
6 Gordon Stewart, I'm the attorney for Aumakua Holdings.
7 With me is President of Aumakua Holdings, Melanie Oxley.

8 MS. OXLEY: Good morning.

9 CHAIR FUJII: Welcome. I don't know if that's a
10 good word to use here. You don't want to be here, but
11 you're welcome. Ms. Oxley, how do you spell your last
12 name?

13 MS. OXLEY: O-X-L-E-Y.

14 CHAIR FUJII: O-X-L-E-Y. Thank you, both of
15 you, for being here. At this time, I guess, Mr. Stewart,
16 we'll direct most of the questions to you.

17 MR. STEWART: And we will waive the reading of
18 the --

19 CHAIR FUJII: You'll waive the reading?

20 MR. STEWART: Yes, sir.

21 CHAIR FUJII: Okay. Again, Mr. Stewart, do you
22 represent the Respondent involved?

23 MR. STEWART: Yes, I do.

24 CHAIR FUJII: And are you their legal counsel?

25 MR. STEWART: Yes, sir.

1 CHAIR FUJII: Do you understand the charges the
2 Department alleges against you?

3 MR. STEWART: Yes, we do.

4 CHAIR FUJII: What is your plea to Count 1?

5 MR. STEWART: Pursuant to the plea agreement, we
6 plead guilty to that.

7 CHAIR FUJII: Thank you. Do you understand the
8 violation the Department of Liquor Control alleges against
9 you?

10 MR. STEWART: Yes, we do.

11 CHAIR FUJII: Do you understand the right -- you
12 have the right to plead not guilty?

13 MR. STEWART: Yes, we understand that.

14 CHAIR FUJII: Do you understand, by pleading
15 guilty, you waive the right to a hearing in which you
16 could present evidence and question witnesses on your
17 behalf?

18 MR. STEWART: Yes, we understand that.

19 CHAIR FUJII: Is your plea of guilty voluntary,
20 and not the result of force, threats or promises apart
21 from any plea agreement?

22 MR. STEWART: No, it hasn't been.

23 CHAIR FUJII: Do you understand, on Count 1, if
24 the Board accepts your plea of guilty, you will be found
25 guilty and that the Board may issue a reprimand, or assess

1 and collect a penalty up to \$2,000, or revoke any license
2 at any time, and/or suspend the licensees to use the
3 license?

4 MR. STEWART: Yes, we understand that.

5 CHAIR FUJII: Do you still wish to plead no
6 contest?

7 MR. STEWART: Yes, we do.

8 CHAIR FUJII: The Board hereby finds that the
9 licensee has entered a knowing and voluntary plea of no
10 contest. The Board accepts your plea and finds you guilty
11 on Count 1 -- Count 1 reflected in Complaint and
12 Accusation Number 2017-6. At this time, Mr. Hanano, will
13 give us the Department summary of the case.

14 MR. HANANO: Yes. Thank you, Chair.

15 On July [sic] 20, 2015, at about 6:02 p.m.,
16 Mackenzie Laird was involved in a motor vehicle accident
17 with another vehicle near the intersection of Kahekili
18 Highway and Waiehu Beach Road in Waiehu. Laird left the
19 scene of the accident, but was followed by a witness.
20 Police who responded to the call were able to locate Laird
21 at the Foodland in Wailuku. Upon contact, police observed
22 obvious signs of impairment such as red eyes, flushed
23 face, stumbling and unsteadiness on her feet, and a strong
24 odor of liquor emanating from her breath. Upon further
25 investigation, it was determined that Laird was unable to

1 properly perform the standardized field sobriety tests
2 administered by the police. She was subsequently arrested
3 and taken to the Wailuku Police Station where she provided
4 a breath sample of .200. The legal limit being .080.

5 An investigation regarding possible violations
6 of the liquor laws was initiated where Laird voluntarily
7 provided a statement to Liquor Control Officer Amy Martin.
8 Laird indicated the following in pertinent part: Stated
9 that prior to the accident, she was drinking at the Maui
10 Brewing Company in Kihei; that she arrived there at about
11 12:00 p.m., but does not remember what time she left;
12 stated that she consumed about six beers and, also, shared
13 beer samples with a friend; stated that she was served by
14 a male bartender and was drinking at the bar, but then was
15 seated at a table inside; laird indicated that she paid
16 with a credit card and felt "buzzed" when she left; she
17 also indicated that she had left Maui Brewing Company in a
18 taxi, but does not remember anything after that; she
19 surmised that she must have gotten into her own vehicle
20 after the taxi dropped her off at home; stated that she
21 usually drinks once every few months, but hardly ever
22 drinks now since the incident.

23 Also, as part of the investigation, Officer
24 Martin spoke to employees of the Maui Brewing Company. To
25 summarize, the employees remembered Laird and acknowledged

1 that Laird was served liquor; however, some of the
2 employees felt that Laird was possibly "on something"
3 because Laird and her friends -- and her friend were
4 acting weird. Employees also confirmed that they did call
5 a taxi for Laird because they felt it was unsafe for Laird
6 to be driving in the condition that she was in. Employees
7 also suspected that Laird later returned to the Maui
8 Brewing Company's parking lot where she allegedly backed
9 into another patron's vehicle, then drove off.

10 Also as part of the investigation, Officer
11 Martin was able to obtain the Maui Brewing Company bar
12 receipt associated with Laird. According to the receipt,
13 Laird paid for several different types of drinks
14 containing liquor.

15 Nothing further, Chair.

16 CHAIR FUJII: Thank you, Mr. Hanano.
17 Mr. Stewart, Ms. Oxley, you now have the opportunity --
18 first of all, any questions by Members of the Board
19 regarding the report, anyone?

20 MEMBER HELM: Excuse me. Peter, what was the
21 count, her --

22 MR. HANANO: The breath reading?

23 MEMBER HELM: Yeah. What was it?

24 MR. HANANO: .200, which is nearly three times
25 the legal limit. The legal limit is .08, so that's two

1 and-a-half times maybe.

2 MEMBER HELM: Thank you.

3 CHAIR FUJIII: Okay. We can move on, then.

4 Mr. Stewart, Ms. Oxley, you now have an opportunity to
5 make a statement regarding this case. You may also inform
6 the Board of any mitigating circumstances that may or may
7 not apply to sentencing. Mr. Stewart.

8 MR. STEWART: Yes. I would like to, first of
9 all, say that my client takes this very seriously. They
10 have a great record with the Liquor Board. And there are
11 some mitigating circumstances here.

12 What occurred, according to what I was able to
13 come up with -- because my client was not cited until a
14 year and-a-half after the incident, so I was kind of -- my
15 footwork was a little bit difficult to follow up on. But
16 there was a receipt, but she was with a young man and they
17 consumed that alcohol together. We do not believe that
18 she was intoxicated when she was at the store -- excuse
19 me -- this is a tasting room, Maui Brewing Company's
20 tasting room. And she -- and -- but she was not served
21 for the last hour she was there. And for some reason, she
22 started acting a lot different than someone who is
23 intoxicated. We don't know whether she was -- she became
24 under the influence of something other than alcohol or
25 not, but she was there for approximately an hour, and then

1 they put her and -- her and her boyfriend or male friend
2 in -- in a cab, and they -- to take her home, which
3 apparently the cab did.

4 And like I said, I wasn't able to do any
5 investigation on that, so I can't share any more details
6 on that due to the length of time. But in the
7 neighborhood of about an hour later, for some reason, she
8 came back. Somebody drove her back there. She got in her
9 car, was in an accident in the Maui -- in the parking lot,
10 which is detached from where the tasting room is, so --
11 but a patron came in because his car had been struck by
12 her car. And then she left. So from the time that she
13 got in that cab, we have no idea what she did.

14 We also know that while she was there, she had
15 food because there's a food truck there that she ate --
16 that she ate at, from facts I was able to come up with.

17 And so it's one of these things that I have to
18 honestly share with you is kind of a mysterious matter.
19 The bartenders, they all talk to each other. That's
20 why -- there was, actually, a shift change in there. And
21 that's when one of the early bartenders said, no, you're
22 not -- she's not gonna be served any more.

23 And -- and so that's the type of mitigation I'm
24 talking about here. This is out of character for my
25 client. They -- they love having this tasting room. They

1 sell T-shirts. They have tours of the brewery facility
2 and so forth. And this is the most difficult thing.

3 And it's really unfortunate that rather than
4 staying home after she got a cab ride, that she's -- came
5 back and got her car. And so from the time that she got
6 in that cab, we don't know what she was doing, you know.
7 And -- and so -- and I know it's not funny, excuse me,
8 but -- so it's a most difficult thing.

9 And the reason we're pleading guilty to it is
10 because I don't know how we can really come up with a -- a
11 defense per se except that we do not think she was under
12 the influence when she was there, she was not over -- we
13 don't believe she was over-served, and they made a
14 determination that she wasn't going to be served any more.

15 And they're very careful up there. It's a lot
16 of tourists and a lot of, you know, families come up there
17 and stuff. And that's the kind of atmosphere they have
18 there.

19 CHAIR FUJII: Mr. Stewart, can I give you
20 another minute? We just want to keep it short because --

21 MR. STEWART: Oh, I'm sorry. I didn't mean to
22 talk so much. That's what I get paid for, by the word.
23 And anyway -- and the reason I kind of rambled on a little
24 bit more than I should is we do take it very seriously.
25 And -- and they have a great system set up.

1 And if you have any questions for Ms. Oxley,
2 you're welcome to ask.

3 CHAIR FUJII: Yeah, we're willing to hear from
4 her, also, and then we might get back to you again. Thank
5 you. Ms. Oxley, you have a statement to make?

6 MS. OXLEY: Yeah. I'll try to keep it short.

7 CHAIR FUJII: No. Go ahead.

8 MS. OXLEY: I will say that this -- we do take
9 this very seriously. We -- all of our bartenders, they
10 take the Liquor Control class, they get their liquor card
11 license through the testing that you guys provide here, as
12 well as in our employee handbook, before they are able to
13 even start working at our company, one of the first things
14 they do is read our employee handbook that continues on
15 with what our liquor policies are. And that is something
16 that they sign and becomes a part of their employee file.

17 We are a company that we're constantly looking
18 at even our liquor sales and what's appropriate for us to
19 be doing. I'm sure all of you know that, in Kahana, when
20 my husband and I first bought this business, it would stay
21 open until late into the early morning for the next day.
22 We no longer do that. We shortened those hours.

23 And even probably two to three years ago, we did
24 an analysis of our sales. And, typically, during the day,
25 we sell four times the amount of beer that we do any

1 liquor, wine or domestic beer combined. And that is we
2 are targeting people who are coming to drink just our
3 craft beer mostly. What we realized is that, after 10:00
4 p.m., 11:00 p.m., midnight, 1:00 a.m., those sales
5 changed. We were selling twice as much liquor now as our
6 house beer from Maui Brewing Company that we brew
7 ourselves.

8 That told us right there that we were taking on
9 more liquor liability. Those people that were coming in
10 after 10:00 p.m. weren't even our target audience. So we
11 decided that we would close at 10:00 p.m. That is both
12 our Kahana pub as well as Kihei. Because, you know,
13 personally, I think when we start seeing a change in the
14 liquor consumption to be more of -- alcohol consumption, I
15 should say, being more of liquor, wine, spirits, and so
16 forth, over a beer of choice, that was our decision to
17 close at an earlier time, like 10:00 p.m.

18 CHAIR FUJII: Thank you. Any question by
19 Members of the Board directed to Mrs. -- Mr. Stewart or
20 Ms. Oxley? Go ahead, Bruce.

21 MEMBER U`U: I have a question. So how long do
22 you think she was at -- at your restaurant or your tasting
23 room?

24 MS. OXLEY: Yeah. From --

25 MEMBER U`U: What was approximate times, you

1 would guess?

2 MS. OXLEY: Yeah. From speaking with the
3 bartenders on that day, it looked to be two and-a-half
4 hours. And -- so we went through a shift change. It
5 looked like she came in somewhere like 12:00, 12:30, and
6 she was there for about two, two and-a-half hours,
7 drinking. Then the last hour, so around 3:30, is when we
8 have -- our p.m. bar team comes in to relieve the a.m. bar
9 team. And it was then at that point that our a.m.
10 bartender said we are no longer serving them, we've
11 started to notice that they shouldn't be served any more,
12 they communicated that to our p.m. bartenders. So now our
13 p.m. bartenders were already on the alert that they could
14 not be served any more. Obviously, we weren't pushing
15 them out the door.

16 And that's when, as even the time got changed,
17 even though they weren't being served, they started to
18 still witness, I guess, mannerisms that our team was
19 alerted for and they weren't comfortable with anymore. So
20 that's when they, you know, approached those customers,
21 let them know that they felt that it was going to be
22 needed -- that a taxi was cabled -- called. Our
23 bartenders called that taxi, that taxi came. Our
24 bartenders walked those patrons out into the taxi, assured
25 that they got on their way in a taxi and not their

1 personal vehicle.

2 It was after that where -- obviously,
3 unbeknownst to us, where she returned back to the site.
4 And we're not sure how. I don't know if it was in another
5 taxi or a friend brought her back. And that's when she
6 picked up her personal vehicle.

7 MEMBER U`U: What kind of drinks do you guys
8 serve there?

9 MS. OXLEY: We --

10 MEMBER U`U: What --

11 MS. OXLEY: Beer, mostly, because we do have
12 selected wines as well as just four different cocktails,
13 like with just local -- local Maui Ocean Vodka and so
14 forth. We don't have a -- I wouldn't call it a full bar.

15 MEMBER U`U: Well --

16 MS. OXLEY: She, however, just -- she consumed
17 beer.

18 CHAIR FUJII: If I may, Mr. Hanano, when was the
19 accident, what time in the evening or what the timeframe
20 was it?

21 MR. HANANO: About 6:02 p.m.

22 CHAIR FUJII: Okay. Thank you. Any other
23 questions? Go ahead, Bruce.

24 MEMBER U`U: The reason I ask, I just took a
25 sobriety test, drinking, and took me three and-a-half

1 hours of drinking wine, I drank about a bottle and-a-half,
2 and I still was legally sober. And so -- so for some of
3 the guys who drank a bunch, they hit the limit of what
4 Mr. Hanano said, but it was rounds of tequila and rounds
5 of wine -- ah, beer. So I don't know how you could get
6 that intoxicated in that time drinking that amount. It's
7 just puzzling for myself in my head, after just doing that
8 course I did recently. And I like the fact that you guys
9 called the taxi, by the way.

10 MS. OXLEY: Yeah. I mean, and -- and that's the
11 question that we have as well, looking at the tab that we
12 had for her. And, you know, if you went kind of further
13 on our statements, our bartenders did question what else
14 may be going on. The statement from Bridget, our
15 bartender, noticed that she was making more than what she
16 thought was normal trips to our bathroom. You know, we
17 don't know what our patrons do when they go in the
18 bathroom. However, it is something that, as you can see,
19 our bartenders are even still thinking about. So that's
20 when they started to suspect maybe some actions that might
21 be going on that we weren't necessarily in control of
22 anymore. That's when they decided to cut them off, make
23 them aware that they were no longer going to be served.
24 And even as they still witnessed further awkwardness, if
25 you will, or suspected actions, even though they were no

1 longer drinking on our premise, they still came to the
2 conclusion that, yes, they needed to step forward and let
3 them know that they were going to be calling them a taxi.
4 And that was the only way that they were comfortable with
5 them leaving our premise.

6 CHAIR FUJII: Before we get additional
7 questions, I want to explain, Mr. U`u, he was in a
8 controlled testing environment when he mentioned all this
9 liquor he consumed.

10 MS. OXLEY: Yeah.

11 CHAIR FUJII: We did have a liquor conference
12 early part of the week with the police there doing
13 controlled, you know, drinking. And he volunteered, so --

14 MS. OXLEY: Yeah.

15 CHAIR FUJII: So, anyway, it wasn't something
16 that we put him out on the street.

17 MS. OXLEY: Right.

18 CHAIR FUJII: Made him sleep it off or whatever.

19 MS. OXLEY: Or that he does every weekend on his
20 own time. No. That is not how I took that, yeah.

21 CHAIR FUJII: We didn't want him on the Board
22 supporting you guys out there, you know.

23 MS. OXLEY: Yeah.

24 CHAIR FUJII: This was a controlled situation
25 here.

1 MR. STEWART: I -- just quickly, I took part in
2 a high school -- in the gymnasium where several of us were
3 served alcohol. And the kids would come back as so many
4 drinks and they would take a breathalyzer and so forth.
5 And about 15 years later, some young man came to ask me to
6 represent him, and he said, "Yeah, I remember when you got
7 drunk at the high school." But I was --

8 CHAIR FUJII: In a controlled situation.

9 MR. STEWART: Absolutely.

10 CHAIR FUJII: Okay. We want to move on. Any
11 other questions directed to the licensee regarding this
12 case, anyone? Any further questions? If not, Mr. Hanano,
13 what would be the Director's argument as to penalty?

14 MR. HANANO: Yes. Thank you, Chair. The
15 original license for this licensee was issued back in
16 December of 2014. There is no prior history of
17 liquor-related violations. In light of that, Count 1,
18 \$2,000 fine, with 1,000 suspended on the condition that
19 there's no further convictions for the same offense within
20 one year.

21 CHAIR FUJII: Will you repeat that again? 2,000
22 and 1,000 suspended, is that what you said?

23 MR. HANANO: Yes.

24 CHAIR FUJII: Thank you. So we're just looking
25 at Count 1.

1 MR. HANANO: That's correct.

2 CHAIR FUJII: Thank you. The Board will take
3 all matters as presented here into consideration. At this
4 time I would like to entertain a motion to go into
5 deliberation.

6 MEMBER TANAKA: So moved.

7 CHAIR FUJII: Moved by Doris. Is there a
8 second?

9 MEMBER HELM: Second.

10 CHAIR FUJII: Seconded by Zach. Any discussion?
11 All in favor, say "aye."

12 (Response.)

13 CHAIR FUJII: We will call you back. The Board
14 will go into deliberation.

15 (Deliberations, 10:58 a.m. to 11:17 a.m.)

16 CHAIR FUJII: The Board is back in open session.
17 Mr. Stewart, Ms. Oxley, the Board has reviewed everything
18 that was presented by both of you this morning as well as
19 the Prosecutor, also, presented the case. So on Count 1,
20 the Board will issue a penalty of \$2,000 and we'll suspend
21 \$1,000 provided there is no conviction of the same offense
22 for a period of one year.

23 MS. OXLEY: Thank you.

24 CHAIR FUJII: So we appreciate you being here,
25 explaining the situation. And the Department will notify

1 you when payment is due. Thank you.

2 MR. STEWART: Thank you.

3 MS. OXLEY: Thank you. Have a good day.

4 CHAIR FUJII: Board Members, we're gonna be
5 starting our final case for today, Item E. We will now
6 hear Complaint and Accusation Number 2017-7 against BCHT
7 Corporation doing business as Stopwatch Sportsbar and
8 Grill. And I can see the Respondent is at the front desk
9 here. Will you identify yourself and state your name and
10 what capacity you represent the Respondent?

11 MS. HIU: My name is Catherine Hiu, and I'm the
12 Secretary/Treasurer of BCHT Corporation dba Stopwatch
13 Sportsbar and Grill. I also manage.

14 CHAIR FUJII: And, sir?

15 MR. MEADOWS: I am Todd Meadows. I work --

16 CHAIR FUJII: Spell your last name.

17 MR. MEADOWS: Meadows, M-E-A-D-O-W-S.

18 CHAIR FUJII: Okay. And what is your position
19 there, Mr. Meadows?

20 MR. MEADOWS: I am the doorman at Stopwatch.

21 CHAIR FUJII: Thank you. Ms. Hiu, Mr. Meadows,
22 at this time you have the option of having the charges,
23 there's five of them, publicly read or you can waive the
24 reading.

25 MS. HIU: Please read them.

1 CHAIR FUJII: You would like the --

2 MS. HIU: Yes.

3 CHAIR FUJII: -- charges be read? Madam
4 Secretary, if you would.

5 MS. CORDEIRO: Complaint and Accusation Number
6 2017-7, In the matter of the accusation against BCHT
7 Corporation dba Stopwatch Sportsbar and Grill, Dispenser
8 General License Number 142 [sic], at 1127 Makawao Avenue,
9 Makawao, Maui, Hawaii.

10 Count 1: On July 22nd, 2016, at approximately
11 10:50 p.m., BCHT Corporation dba Stopwatch Sportsbar and
12 Grill, a Dispenser General license, did, through its
13 employee(s), sell, serve or furnish liquor to, or allow
14 consumption of liquor by a patron, who was at the time
15 under the influence of liquor, as defined in Section 281-1
16 of the Hawaii Revised Statutes and Section 08-101-5 of the
17 Rules of the Liquor Commission, contrary to Section
18 281-78(b)(1)(B) of the Hawaii Revised Statutes and Section
19 08-101-60(b)(1)(B) of the Rules of the Liquor Commission,
20 County of Maui.

21 Count 2: On July 22nd, 2016, at approximately
22 10:50 p.m., BCHT Corporation dba Stopwatch Sportsbar and
23 Grill, a Dispenser General licensee, did, through its
24 employee(s), knowingly permit a patron who was at the time
25 under the influence of liquor as defined in Section 281-1

1 of the Hawaii Revised Statutes and Section 08-101-5 of the
2 Rules of the Liquor Commission, to be or remain in or on
3 the premises, contrary to Section 281-78(b)(5) of the
4 Hawaii Revised Statutes and Section 08-101-60(b)(5) of the
5 Rules of the Liquor Commission, County of Maui.

6 Count 3: On July 22nd, 2016, at approximately
7 10:50 p.m., BCHT Corporation dba Stopwatch Sportsbar and
8 Grill, a Dispenser General licensee, did, through its
9 employee(s), fail to exercise due care, as defined in
10 Section 08-101-5 of the Rules of the Liquor Commission, in
11 determining whether a patron was under the influence of
12 liquor as defined in Section 281-1 of the Hawaii Revised
13 Statutes and Section 08-101-5 of the Rules of the Liquor
14 Commission, contrary to Section 08-101-60(b)(11) of the
15 Rules of the Liquor Commission, County of Maui.

16 Count 4: On July 22nd, 2016, at approximately
17 10:50 p.m., BCHT Corporation dba Stopwatch Sportsbar and
18 Grill, a Dispenser General licensee, did fail to comply
19 with the condition that it is subject to any other laws or
20 rules applicable to the business of the licensee by
21 allowing patrons to smoke cigarettes within 20 feet of its
22 entrance, contrary to Section 281-38 of the Hawaii Revised
23 Statutes and Section 08-101-40(a) of the Rules of the
24 Liquor Commission, County of Maui.

25 Count 5: On July 22nd, 2016, at approximately

1 10:50 p.m., BCHT Corporation dba Stopwatch Sportsbar and
2 Grill, a Dispenser General licensee, did, through its
3 employee, provide more than two drinks of any liquor to
4 individual patrons at one time, contrary to Section
5 08-101-84(b) of the Rules of the Liquor Commission, County
6 of Maui.

7 CHAIR FUJII: Thank you, Ms. Secretary. Well
8 done. Mr. Meadows, Ms. Hiu --

9 MR. MEADOWS: Yes.

10 CHAIR FUJII: -- do you represent the Respondent
11 involved?

12 MS. HIU: Yes, I represent the Respondent. And
13 Mr. Meadows would be a witness.

14 CHAIR FUJII: All right. So, again, do you
15 understand the charges against you?

16 MS. HIU: Yes.

17 CHAIR FUJII: What is your plea to Count 1?

18 MS. HIU: Not guilty.

19 CHAIR FUJII: Count 2?

20 MS. HIU: Not guilty.

21 CHAIR FUJII: Count 3?

22 MS. HIU: Not guilty.

23 CHAIR FUJII: Count 4?

24 MS. HIU: Not guilty.

25 CHAIR FUJII: Count 5?

1 MS. HIU: Not guilty.

2 CHAIR FUJII: Thank you. Is the Department and
3 Respondent ready to proceed?

4 MR. HANANO: Yes, Chair.

5 MR. MURAI: Mr. Chair, before we proceed, I note
6 that Ms. Hiu identified Mr. Meadows as a witness. And I'm
7 not sure if the --

8 CHAIR FUJII: We will have all witnesses leave
9 the room --

10 MR. MURAI: Okay.

11 CHAIR FUJII: -- if he is a witness, and whoever
12 else may be witnesses in the back there while the
13 proceedings begin.

14 MR. MURAI: So maybe we can ask Mr. Hanano and
15 Ms. Hiu whether anyone else besides Mr. Meadows in the
16 room is going to be a witness in this matter?

17 MS. HIU: Yes, I have two other witnesses. Do
18 you want them to leave the room?

19 CHAIR FUJII: So this hearing will be taken in
20 two phases. So if the Respondent -- we'll have to ask all
21 witnesses for this case to wait outside until you are
22 called. All -- all the witnesses that's gonna be
23 responding at this witness desk here need to leave the
24 room.

25 MR. MEADOWS: Me, too?

1 MS. HIU: Yeah.

2 CHAIR FUJII: Yeah.

3 MR. HANANO: For the record, the Department,
4 State, doesn't have any witnesses present --

5 CHAIR FUJII: Thank you.

6 MR. HANANO: -- in the room.

7 MR. PACHECO: Outside.

8 CHAIR FUJII: Okay. Like I started at the
9 beginning, the Department and Respondent ready to proceed?

10 MS. HIU: Yeah.

11 CHAIR FUJII: Both, Mr. Hanano --

12 MR. HANANO: Yes.

13 CHAIR FUJII: This hearing will be taken in two
14 phases. If the Board finds the Respondent guilty, the
15 Department and Respondent will be given an opportunity to
16 present arguments to the Board as to what the penalty
17 shall be, if the Respondent is found guilty.

18 The Board will now invoke the exclusionary rule,
19 which we already did, and ask all witnesses for this case
20 to wait outside until they are called to testify. So,
21 again, no witnesses that's here that's present to testify
22 in the room. If there are none of the witnesses in the
23 room, then, the Department's -- may have an opening
24 statement.

25 MR. HANANO: Thank you.

1 CHAIR FUJII: Begin with an opening statement,
2 Mr. Hanano.

3 MR. HANANO: Good morning, Board Members, Chair.
4 On Friday, July 22nd, 2016, at about 10:46 p.m.,
5 Liquor Control Officer Cullen Kawano was conducting an
6 inspection of the Stopwatch Sportsbar and Grill in
7 Makawao. As he is approaching the bar, Officer Kawano
8 observes multiple patrons smoking cigarettes near the
9 front entrance of -- of the establishment.

10 Once inside, Officer Kawano observed a patron,
11 later identified as Randall Palar, seated at a table with
12 another male and female. There were several drinks on the
13 table.

14 And at some point, Officer Kawano observed the
15 server, Diane Tessler, bring three shots of Jack Daniels
16 Tennessee Whiskey to the table. All three of the patrons
17 seated at the table, including Mr. Palar, consumed each of
18 their whiskey shots.

19 A short time later, Ms. Tessler serves Mr. Palar
20 a bottle of Miller Lite beer.

21 A very short while later, Officer Kawano
22 observes Mr. Palar get up from his seat, take a few steps,
23 then trips and falls and falls flat on his face. Other
24 patrons and employees of the Stopwatch rushed to
25 Mr. Palar's aid and tried to assist him with getting back

1 up on his feet. As he gains -- tries to regain his
2 composure, as best he could, he staggers off and almost
3 falls again.

4 As part of the evidence in this case, you will
5 see a video of Mr. Palar's fall and subsequents --
6 subsequent attempts by a patron and other employees of
7 Stopwatch try to assist him.

8 At the end of this case, I will ask you to find
9 Stopwatch Sportsbar and Grill guilty of all counts as
10 charged. Thank you.

11 CHAIR FUJII: Thank you, Mr. Hanano. The
12 Respondent, Ms. Hiu, do you have an opening statement?

13 MS. HIU: Yes. Well, we take these charges
14 seriously. As you know, this is our business and a
15 livelihood for a number of our employees. And we do serve
16 the community, Upcountry community and other -- others.

17 Our employees today will testify that we did
18 exercise due care in serving Mr. Palar, and that we do not
19 serve people that we already deem to be intoxicated, nor
20 do we allow them to remain on the premises, and we do not
21 serve more than two drinks per customer at one time, and
22 we do not allow smoking within 20 feet of our entrance.

23 CHAIR FUJII: Okay. Mr. Hanano, are we ready to
24 have examination of witnesses?

25 MR. HANANO: Yes, Chair.

1 CHAIR FUJII: Do you have a witness?

2 MR. HANANO: Department will be calling Liquor
3 Control Officer Cullen Kawano as its first witness.

4 CHAIR FUJII: Please state your name.

5 MR. KAWANO: Cullen Kawano.

6 CHAIR FUJII: Mr. Kawano, I will be reading the
7 oath, and you respond to the oath after I'm done. Thank
8 you. Do you solemnly swear or affirm that the testimony
9 you are about to give before this Board in connection with
10 this case will be the truth, the whole truth and nothing
11 but the truth?

12 MR. KAWANO: Yes, I do.

13 CHAIR FUJII: Thank you.

14 CULLEN KAWANO,
15 was called as a witness on behalf of the Department; after
16 having been first placed under oath, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. HANANO:

19 Q Good morning, Mr. Kawano. Please state your
20 name and occupation for the record.

21 A Cullen Kawano, Department of Liquor Control,
22 Liquor Control Officer II.

23 Q And how long in total have you been a Liquor
24 Control Officer?

25 A For just over, I believe, five years.

1 Q Were you working on Friday, July 22nd, 2016, at
2 about 3:30 p.m.?

3 A Yes.

4 Q Do you remember what your assignment was on that
5 date?

6 A If I remember correctly, I believe I was
7 assigned to conduct inspections in the Central and
8 Upcountry areas.

9 Q You said Central and Upcountry?

10 A I believe so.

11 Q And what was your shift that day?

12 A If I started at 3:30, I would then end my shift
13 at 12:15 a.m.

14 Q During your shift that day, did you conduct an
15 inspection at the Stopwatch Sportsbar and Grill located in
16 Makawao?

17 A Yes, I did.

18 Q And, generally speaking, what did you do as far
19 as your investigation was concerned?

20 A Upon approaching the premise, I had observed
21 that there were individuals outside the premise, directly
22 under the overhang, smoking. So I walked through. I had
23 greeted the doorman there, and continued to walk into the
24 premise. Upon entering the premise, I just kind of took
25 in observation of the room, watched the different tables.

1 That's my initial inspection.

2 Q Okay. And so you're just giving a general
3 account of what you did?

4 A Yes.

5 Q Okay. And as part of your, I guess, inspection,
6 did you later determine if there were any violations that
7 you observed as a result of your inspection?

8 A Yes, I did. In addition to the initial
9 violation that I observed upon approach, which is the
10 individuals who were smoking were less than 20 feet away
11 from the doorway of the premise, main entry of the
12 premise, I -- I was observing one of the tables there and
13 I noticed that there were quite a few drinks at the table
14 for the number of the people. There were three people
15 seated at the table. So I took a count of the -- the
16 number of drinks on the table and observed the service to
17 that table which exceeded more than two drinks per
18 individual seated at the table, taking into account that
19 there were a glass of water on the table. And this -- I
20 just continued observing the premise.

21 I attempted to take photos, but because of the
22 busyness of the premise, it was difficult. I then --

23 Q I'll stop you right there.

24 A Okay.

25 Q We'll go into detail a little more later on.

1 A Okay.

2 Q But what I wanted to ask you is did you complete
3 a report of your inspection or investigation that -- of
4 that night at the Stopwatch?

5 A Yes, I did.

6 Q And let's see. I'm going to -- for the record,
7 I'm going to hand you what's been marked as Department's
8 Exhibit D, as in delta, 1. Do you recognize what that is?

9 A Yes, I do.

10 Q What is that?

11 A It's a copy of the Notice of Violation that I
12 issued that evening, and, also, the -- my report that was
13 submitted.

14 Q Is that your entire report? Take a moment to
15 look at it.

16 A Yes, it appears to be a redacted copy of my
17 report. The only thing that I do not have here in front
18 of me is a -- is the DVD which was a part of the evidence
19 that I submitted.

20 Q That was submitted in -- in evidence?

21 A Yes.

22 Q And this report number is under -- you have the
23 number there?

24 A Yes, I do. It's 17-00055-000.

25 Q Okay. And that exhibit, for identification,

1 D-1, is that a fair and accurate copy of the original
2 report other than the redactions that you submitted in
3 regards to the investigation at Stopwatch that night?

4 A Yes. It includes the initial report as well as
5 the supplementary report.

6 Q Okay. All right. Okay. Now I'm gonna ask you
7 more specific questions about what you saw as you were
8 conducting your investigation that night. About -- do you
9 remember what time you arrived at the premises?

10 A Can I refer to the --

11 Q Yes.

12 A So I arrived at the premise at about 10:46 p.m.

13 Q Okay. And you said earlier that you observed
14 people smoking?

15 A Yes.

16 Q And --

17 A When I -- I arrived -- walked up to the premise
18 at about 10:46. And at that point, I kind of stood
19 outside, observed what was going on before approaching the
20 premise. So that's when I -- I had observed the --

21 Q About --

22 A -- patrons.

23 Q Approximately how many people were out -- out
24 there smoking?

25 A I'd say probably about two to three. They were

1 kind of coming and going, but the individuals out there
2 smoking, I believe there were two individuals smoking.
3 And there were some other patrons outside talking story
4 and entering the -- entering and exiting the premise.

5 Q And approximately how far were the -- they were
6 smoking cigarettes, I guess?

7 A Yes.

8 Q About how far were they from the front door of
9 Stopwatch?

10 A I would say not more than maybe five or six
11 feet. They were -- they were directly under the overhang
12 for the premise.

13 Q While these people were smoking, did you see any
14 patrons enter or exit --

15 A Yes, I did.

16 Q -- Stopwatch?

17 A Yes.

18 Q And what did you observe with respect to these
19 people smoking and the patrons entering and exiting?

20 A I observed that the patrons, basically, they had
21 to cross through the path or within the -- the smoke of
22 the patrons that were smoking. There's no other way to
23 enter the premise without passing through.

24 Q Okay. And was there anybody at that time --
25 when you observed the people smoking, was there any -- any

1 employee of Stopwatch outside or near the front door?

2 A Yes. The doorman/security person, Mr. Meadows,
3 was stationed at the door.

4 Q Okay. Was that Tim Meadows?

5 MS. HIU: Todd.

6 A I believe it's Todd.

7 Q (By Mr. Hanano) Todd, Todd Meadows?

8 A Yeah.

9 Q Okay. So he was there when --

10 A Yes. He was checking IDs at the door.

11 Q So later on, you were able to, I guess, go into
12 the premises, correct?

13 A Yes.

14 Q And approximately how many employees were
15 working that night?

16 A There were two employees within the premise and
17 one outside of the premise.

18 Q Okay. The one you mentioned was Mr. Meadows?

19 A Mr. Meadows.

20 Q Okay. So the two inside, you -- you know their
21 names?

22 A Yeah. Diane Tessler and Kimberly Kilborn.

23 Q Okay. Do you know what each of them -- what
24 their job assignments were at --

25 A Yes. That evening, Kimberly was the bartender

1 behind the bar and Diane was the server/manager on duty
2 for the premise.

3 Q Do you have an estimate as to -- this is what, a
4 Friday night, right?

5 A I'm not sure the specific day of the week.

6 Q July 22nd, 2016. Okay. Whatever that -- I
7 believe it's a Friday, but --

8 A Yes, it's a Friday night.

9 Q Okay, so it's a Friday night. Were you able to
10 observe how many patrons were within the premise?

11 A Yes. There was roughly about 30 patrons within
12 the premise.

13 Q Would you say that that's busy or slow or --

14 A About normal to not really busy. I've seen that
15 place with sufficiently more people, but there was a good
16 amount of people within the premise.

17 Q Okay. So you inspected this premises before?

18 A Yes.

19 Q Approximately how many times?

20 A I'm not sure. Multiple times.

21 Q An estimate, about over 100, less than 100, less
22 than 50?

23 A Maybe close to 100.

24 Q So -- so, in your opinion, based on your past
25 experiences, it was what again?

1 A Like a normal size crowd.

2 Q So it wasn't slow, but it wasn't like extra
3 busy?

4 A Yes.

5 Q Now, once you're -- you're inside, what did you
6 observe with respect to whatever maybe drew your attention
7 as far as violations?

8 A So I observed that there was entertainment that
9 evening. So I took into account that. And then I, also,
10 was observing the table that I spoke of before that had an
11 older male individual and a male and female individual.
12 And then I observed that the table appeared to have
13 multiple drinks. So in my report, I included that I
14 observed three drinks, which include to be water, a bottle
15 of beer, which later was discovered to be Miller Lite
16 beer, a mug which appeared to include beer, two rocks
17 glasses containing a dark brown liquid. While I was
18 observing and taking into account the number of drinks, I
19 saw the server, Diane Tessler, come and serve three shots
20 to the table, at which point there were 10 drinks total on
21 the table, seven of which appeared to include liquor.

22 Q So you had -- you had the mug of beer, a --

23 A Bottle of beer.

24 Q -- bottle of beer --

25 A Two rocks or cocktail -- two short cocktail

1 glasses.

2 Q Okay. What -- what did you suspect or believe
3 was in those?

4 A It appeared to be a mixed cocktail of some sort
5 to include liquor.

6 Q In the two -- in the two --

7 A Yes.

8 Q -- rocks glasses?

9 A Yes.

10 Q What is a rocks glass?

11 A A rocks glass is a short cylindrical glass
12 almost like a tumbler.

13 Q Is it like smaller than a pint?

14 A Yes.

15 Q But bigger than a shot?

16 A About half of the height of -- of a pint with a
17 wider base.

18 Q And then -- then you said Ms. Tessler brought
19 three more drinks?

20 A Yes.

21 Q So that's one, two, three, six, seven?

22 A Seven.

23 Q Okay.

24 A Yes.

25 Q And then you said there were other drinks on the

1 table?

2 A Yeah, there were three glasses which looked like
3 they contained water.

4 Q Okay. Again, now, let me go back to these three
5 patrons that were at the table. Can you describe them?

6 A Yes. There's an older male individual and there
7 were -- there was another middle-aged male individual and
8 a middle-aged female individual sitting at the table.

9 Q Okay. Now, this older male individual, did
10 you -- were you able to later identify him?

11 A Yes.

12 Q And what was -- who was that?

13 A That was Mr. Palar.

14 Q Randall Palar?

15 A Randall.

16 Q Now -- okay. After Ms. Tessler served the three
17 shots of -- and do you know what kind of shots they were,
18 again?

19 A Yes. I later found out that -- I believe it was
20 Jack Daniels -- yes, it was Jack Daniels Tennessee Whiskey
21 is what I later --

22 Q Jack Daniels --

23 A -- later was revealed.

24 Q Okay. And -- and after Ms. Tessler served the
25 three shots to the three individuals -- one of which was

1 Mr. Palar, correct?

2 A Yes.

3 Q What did you observe happen?

4 A I observed that they consumed the three shots.

5 Q Okay. And about, roughly, what -- what's the
6 period of time from when Ms. Tessler served it to when
7 they drank it?

8 A I'd say within five minutes.

9 Q Now, after you -- so you actually observed
10 Mr. Palar drink the shot of Jack Daniels, is that correct?

11 A Yes.

12 Q Okay. Following that, what did you observe
13 next?

14 A I observed that Ms. Tessler came back to the
15 table, picked up the empty shot glasses, and then later
16 returned with an additional bottle of beer and served it
17 to Mr. Randall Palar.

18 Q What kind of beer was that, do you know?

19 A It was identified as Miller Lite beer.

20 Q Okay. So you saw Ms. Tessler serve it. When
21 you say serve, can you like describe in detail?

22 A Yes. She brought it to the table and placed the
23 beer in front of Randall Palar.

24 Q And were you able to see whether or not
25 Mr. Palar took any sips or drank the beer?

1 A No. I did -- I did not see if he consumed that
2 beer. I was observing other parts of the premise at the
3 time.

4 Q Okay. Now, at some point in time, while you --
5 you were observing other parts of the premise, did
6 something draw your attention?

7 A Yeah. I observed that the male and female
8 individual exited the premise. Shortly thereafter, I
9 observed Mr. Palar stand up. He appeared unsteady on his
10 feet at that time. And then I saw him actually fall
11 directly in front of me onto the floor.

12 Q Okay. About how -- how close or far were you
13 from Mr. Palar when you saw this happen?

14 A I'd say probably within about five feet, not
15 more than -- not more than 10 feet.

16 Q And when you saw him fall, did you see him slip
17 on anything?

18 A It didn't appear that he slipped. It appeared
19 almost that he was unsteady on his feet initially, he kind
20 of shuffle-stepped. And it looked almost like he knew he
21 was gonna fall 'cause he looked like he reached out to
22 grab. And he was unsuccessful and ended up falling.

23 Q Did it -- did it appear to you if he tripped on
24 anything?

25 A No.

1 Q Okay. So -- so he's -- how far, again, away was
2 he?

3 A About five feet.

4 Q Five feet, okay. So he's five feet away and
5 then you see him fall. And can you describe how he fell?

6 A Basically, he fell straight forward. He ended
7 up with his face against the ground, his knees and feet
8 against the ground, and his back side was up.

9 Q Okay. And -- and what happened after Mr. Palar
10 fell in that manner?

11 A I observed for a few seconds to see if he made
12 any attempt to get up, any attempt at movement. He kind
13 of just stayed there for -- for a bit. At which time I --
14 I -- I approached as, I believe, Ms. Kilborn approached
15 and another patron. And we -- we, basically, helped
16 Randall Palar up. Diane came over. I, actually,
17 approached Mr. Palar, within about two feet, and took hold
18 of his arm just to see if he was okay. I could smell the
19 liquor coming off his breath at that point. Looking at
20 his face, his face was red, flushed, and I could see that
21 his eyes were red and watery. And I could feel -- as I
22 was holding onto his arm, I could feel that he felt
23 unsteady, but, being that he said okay, I -- I gave him
24 the chance to walk to kind of assess him after falling, so
25 I took a step back. He walked past me, towards the door.

1 And I -- as I observed him walking towards the door, he
2 took short shuffled steps, almost in a -- in a very
3 unsteady fashion. And he appeared that he was gonna fall
4 again or felt himself falling again and he reached out to
5 braise himself. And at that point, I followed him out the
6 door to speak with him, make contact with him.

7 Q Now just going back for clarification, on -- on
8 the shots, the Jack Daniels Whiskey shots --

9 A Yes.

10 Q -- there were three, right?

11 A Yes.

12 Q And did you see Mr. Palar as well as the other
13 male and the other female actually drink the shots?

14 A Yes. I observed each of them consuming the
15 shots.

16 Q Okay. And then you said he was given a beer --

17 A Yes.

18 Q -- shortly after that. How soon after he was
19 given the beer did you see him walk up and -- and fall?

20 A I'd say with -- less than five minutes.

21 Q Okay. Now, when he fell, you said, at some
22 point, you went to him and tried to assist him as well?

23 A Yes.

24 Q Okay. So you're like right there and face to
25 face with him, basically?

1 A Yes. I was face to face --

2 Q And you're like --

3 A -- with him.

4 Q -- touching him?

5 A Within, I'd say, about a -- about a foot to two
6 feet. And I actually had my arm -- my hand underneath his
7 arm to steady him as I talked to him.

8 Q Okay. And were you able to observe any signs of
9 intoxication at that point, when you were that -- that
10 close to him?

11 A Yes. I could smell the liquor on his person and
12 breath, the red, flush facial features and the watery and
13 red eyes, and he had a semi-dazed look initially, and
14 slightly slurred speech, but clear enough where it was
15 very understandable.

16 Q Did you observe him to be swaying or anything
17 like that?

18 A Yes. He had a slight sway in his stance.

19 Q And you said, at some point, you went out and --
20 and you spoke to him?

21 A Yes.

22 Q And so what did he tell you, basically?

23 A Basically, when I -- I stopped him outside, I
24 asked if I could ask him a few questions. He almost
25 immediately stated to me that he knew why I was talking to

1 him. And I asked him, "Oh, is that right?" And he
2 responded, "Yes, because I have a liquor card." And I
3 said, "Oh, you have a employee approved by Director liquor
4 card?" He's like, "Yes, I do. Do you want to see it?"
5 I'm like, "Sure." So he handed me his card. And then I
6 proceeded to ask him the questions as to how many drinks
7 he had that evening, which he said he had a shot of Jack
8 Daniels Whiskey and he had three Miller Lite beers. He
9 stated that he had been at the premise for about two
10 hours. He also stated that -- when I asked how he felt
11 and how he was doing, he said he was feeling good and
12 buzzed. And -- and he replied, "At least that's what I
13 would call it." And then he stated that he came to party
14 'cause it was a hurricane party and that he's -- he had
15 been waiting to party.

16 Q Okay. Did -- did he disclose whether or not --
17 you know, when you're talking to him this time, did he,
18 Mr. Palar, disclose whether or not he was drinking
19 anything prior to --

20 A I had asked him --

21 Q -- Stopwatch?

22 A -- that question, and he seemed to not want to
23 respond to that question.

24 Q So he didn't give you an answer when you asked
25 him that?

1 A No. At that point, he -- he kind of stopped
2 responding and kind of told me that he didn't want to
3 answer any other questions.

4 Q Okay. Okay. Now, as part of your investigation
5 in the case, did you obtain any -- I don't know what you
6 call it -- bar receipts or tabs?

7 A Yes. After speaking with Mr. Palar, I reentered
8 the premise, spoke to Diane Tessler and asked for
9 Mr. Randall Palar's tab, bar tab.

10 Q Okay. I'm gonna --

11 A And --

12 Q -- stop you right there.

13 A Yes.

14 MR. HANANO: Chair, at this time the Department
15 would like to move into evidence Exhibit D1.

16 CHAIR FUJIII: Yes, permitted.

17 MR. HANANO: And I believe we have copies for
18 the Board.

19 Q (By Mr. Hanano) Okay. So let me -- okay. So
20 we're talking about the receipts, right?

21 A Yes.

22 Q And you said you -- did you -- did you -- were
23 you able to get a copy of Mr. Palar's tab that night?

24 A Yes, I did.

25 Q Okay.

1 MR. HANANO: And for the record, I'm going to
2 ask the Board Members to look at Page 13 of Exhibit D1.
3 It's a 13 with the circle around it at the bottom. Okay.

4 Q (By Mr. Hanano) Mr. -- Officer Kawano, if you
5 could refer to Page 13 of the Exhibit D1. Do you recognize
6 that?

7 A Yes.

8 Q Okay. And can you explain to the Board Members
9 what that is?

10 A It's a copy of my evidence, Item Number 1, which
11 on the original is an original receipt copy, an original
12 receipt that I received, which is taped to the right-hand
13 side, and a copy of that receipt which is -- which is
14 attached to -- in the left-hand portion, that's the copy
15 portion.

16 Q Okay. So you just -- one is the original, one
17 is a copy?

18 A Yes.

19 Q The same thing, basically?

20 A Yeah. Because it's thermal paper, just to make
21 sure that it -- it doesn't fade or we don't lose it, I
22 always try to make a copy.

23 Q Sometime later, were you given another receipt
24 that, I guess, was -- was representative of Mr. Palar's
25 bar tab that -- that night?

1 A Yes. After speaking with the premise and
2 requesting time sheets and other sales records, I received
3 a settled receipt copy that almost matched what I received
4 for that initial evening.

5 Q Okay. When you say almost -- oh, I'm sorry.
6 For the record, that's -- and correct me if I'm wrong --
7 Page 15?

8 A Yes. Item Number 3.

9 MR. HANANO: Okay. Board Members, Page 15.

10 Q (By Mr. Hanano) Okay. Now, you said it almost
11 matched?

12 A Yes.

13 Q Why was it not an exact match?

14 A The number of Miller Lite beers that was served
15 had changed from three to -- to two.

16 Q Okay. Now -- well, let me ask you this: Did
17 you -- did you obtain any other evidence in addition to
18 the receipts?

19 A Yeah. So in addition to the receipts and the
20 time sheets, I was later able to have the premise send me
21 a video clip from that evening.

22 Q Okay. Can you explain how that happened?

23 A So I had initially requested if they had any
24 surveillance and if I could obtain the -- the
25 surveillance. And they were un -- they said they were

1 unfamiliar with the system and would try to get the
2 surveillance. But due to scheduling on my end and their
3 end, because, I guess, they work primarily early in the
4 morning and I work evenings, they weren't sure how -- how
5 long the system was going to hold it, so they recorded --
6 I guess they played back the footage and recorded it on
7 what was explained to be a employee's cell phone. And
8 then that clip was actually emailed to me.

9 Q Okay. So you got that from Stopwatch?

10 A Yes.

11 Q Or -- or an employee or representative of
12 Stopwatch?

13 A Yes. It was emailed to me from Stopwatch.

14 Q Okay. Did you have an opportunity to look at
15 that video clip?

16 A Yes, I did.

17 Q Okay. And was that clip -- can you explain what
18 the clip is, in general?

19 A Yeah.

20 Q I don't want you to go into detail; just
21 generally.

22 A So, yes, the clip -- the clip is just of the
23 incident with Randall Palar falling.

24 Q And about how -- how long would you say the clip
25 is, approximately?

1 A Not more than a minute or two.

2 Q And were you able to submit that clip as
3 evidence into --

4 A Yes.

5 Q -- the case?

6 A I -- I burned the clip to DVD and it was
7 submitted as evidence.

8 Q I want to show you what's been marked as Exhibit
9 D2. Do you recognize that?

10 A Yes. It's the DVD that I made of that video.

11 Q Okay. And that video clip that's on there, is
12 that a fair and accurate representation of what you
13 observed as far as Mr. Palar's fall, I guess, moments
14 during -- before, during and after Mr. Palar fell as you
15 described earlier? Is that a fair and accurate
16 represent --

17 A Yes.

18 Q -- representation of that? Okay.

19 MR. HANANO: Chair, Department would move
20 Exhibit D2 into evidence.

21 CHAIR FUJII: Approved. Go ahead. Ms. Hiu, do
22 you have any objections to --

23 MS. HIU: No, I do not.

24 CHAIR FUJII: -- these exhibits? No objection?

25 MS. HIU: No.

1 MR. HANANO: Okay. And at this time, Mr. Chair,
2 the Department would ask permission to play the -- the
3 video clip for the Board.

4 CHAIR FUJII: Yeah, the Board accepts your --
5 approves permission.

6 MR. HANANO: Thank you.

7 MR. MURAI: Peter, are you going to introduce
8 like a copy of the video into the record?

9 MR. HANANO: Yeah. That's what it is right
10 here. I'm playing the actual exhibit.

11 MR. MURAI: Okay.

12 MR. HANANO: So the Board will have this when
13 they deliberate. They can watch it as many times as they
14 want.

15 MR. MURAI: Okay.

16 MR. HANANO: So maybe I'll have you -- yeah.
17 It's going to repeat. So can the Board see that? I think
18 it's going to loop around back.

19 Q (By Mr. Hanano) So, Mr. Kawano, Officer Kawano,
20 I'm gonna have you stand there. And I'm going to be asking
21 you some questions. Let's pause it for now. Okay. Officer
22 Kawano, if you could explain, basically, what's in this
23 video. Are you in the video?

24 A Yes.

25 Q Okay. Can you --

1 A So I'm right here in the video, wearing a
2 jacket.

3 Q And where is Mr. Palar?

4 A Mr. Palar is right here. This is the gentleman.

5 Q He has like a hat or --

6 A Bandanna.

7 Q -- bandanna on?

8 A Yeah.

9 Q Okay. And can you see the table that he was
10 seated at earlier --

11 A Yes.

12 Q -- with the two other patrons?

13 A This is the table here that he was seated at.

14 Q So right on the right like by the pole there?

15 A Yes.

16 Q Okay. And so I'm going to play it. And -- can
17 you kind of explain what's going on here?

18 A So now I'm -- this is where I'm making contact
19 and asking him if he's okay. He tells me he's all right,
20 and he shuffle steps. And just outside of here, he
21 stumbles just before exiting the premise, but --

22 Q It's not on the video, though?

23 A Yeah.

24 Q That's when you said he kind of held himself up?

25 A Yes. Yes.

1 Q That -- that part is not on the video?

2 A Yeah. The -- the camera angle doesn't catch the
3 very front portion of the door.

4 Q All right. Okay. Do you recognize anybody
5 else?

6 A Yes. So this is Kimberly Kilborn who was the
7 bartender that evening. And this is Diane Tessler who was
8 the server that evening and manager on duty.

9 MR. HANANO: Has everyone been able to see that?
10 Okay. I'll stop it.

11 Q (By Mr. Hanano) Okay, Officer Kawano, did
12 everything you testify to occur in the County of Maui, State
13 of Hawaii?

14 A Yes, it did.

15 Q Thank you.

16 MR. HANANO: I have no further questions, Chair.

17 CHAIR FUJIII: Thank you. Mr. Kawano, we will
18 have the Respondent cross-examine, if she prefers.

19 Ms. Hiu, when --

20 MS. HIU: Yes.

21 CROSS-EXAMINATION

22 BY MS. HIU:

23 Q So, Mr. Kawano, referring to that video and to
24 your report, did you say that he tripped and fell in your
25 report?

1 A Yes. And in my report, I believe I said that he
2 stumbled and tripped.

3 Q Okay. So would it -- would -- did he trip on
4 the -- there was a chair there in the video.

5 A He didn't appear to actually trip on the chair.
6 He appeared kind of like he tripped over his own feet and
7 he lost his footing. He appeared that he was reaching for
8 the chairs to steady himself and just didn't negotiate it
9 in a fashion that could keep him stable and upright.

10 Q Okay. And later on in your report, you
11 mentioned that there was a deep red mark where his face
12 impacted the floor. So would you say that he fell hard?

13 A Not -- well, he -- he fell from a straight
14 upright position, yes. So he -- he impacted the floor.
15 So there was -- there was a red mark on the side of his
16 face.

17 Q Okay. So going back to the Item Number 1, which
18 is the tickets that is shown, you see how many Jack
19 Daniels are on the ticket?

20 A Yes. The ticket says four Jack Daniels.

21 Q Okay. So looking at the ticket, would these be
22 the only items that might have been served in a glass?

23 A No. There were other glasses on the table. So
24 there was the two rocks glasses which contained an unknown
25 cocktail, which, after interviewing Diane, she said one

1 contained a liquor cocktail, one contained a soda
2 cocktail, but could not explain why they were both served
3 in rocks glasses, nor could she explain that she doesn't
4 normally serve them in rocks -- serve what's called a
5 chaser, which would be the soda, in a rocks glass.
6 Kimberly, also, when asked that question, just to clarify,
7 also stated that it's not normally served in -- in that
8 type of glass. So neither one could -- could explain
9 which one was liquor, which one wasn't liquor or if both
10 of them were indeed liquor.

11 Q Did you specifically ask what type of glass a
12 soda back would be served in?

13 A I believe I asked Ms. Kilborn that first. Yes,
14 I asked Ms. Kilborn. And she stated that nonalcoholic
15 beverages are served in plastic cups or pint-style
16 glasses. Stated -- she also stated that nonalcoholic
17 beverages like soft drinks are not served in rocks style
18 cocktail glasses.

19 Q But did you ask specifically for a soda back,
20 what a soda back would be served in?

21 A I asked her specifically for any drink that was
22 nonalcoholic.

23 Q Okay. But not specifically a chaser?

24 A No.

25 Q Okay. So the other glass that you're -- you're

1 considering may have been a cocktail does not appear on
2 the receipt?

3 A No, it does not.

4 Q Thank you.

5 MS. HIU: I don't have any further questions.

6 CHAIR FUJII: Ms. Hiu, no further questions?
7 Board Members, anyone, questions addressed to the witness?
8 Anyone? No one. Thank you, Mr. Hanano.

9 MEMBER HELM: Excuse me. I have one question.
10 What is the -- the amount of feet that you need to smoke
11 cigarettes from a bar?

12 A Yeah. Hawaii state law is 20 feet.

13 MEMBER HELM: Okay. Thank you.

14 CHAIR FUJII: No further questions. Mr. Kawano,
15 thank you for being here. Mr. Hanano, further witness?

16 MR. HANANO: At this time the Department does
17 not have any other witnesses or evidence to present, and
18 we rest.

19 CHAIR FUJII: Thank you. Let's move on, then.
20 The Respondent, do you have witnesses today?

21 MS. HIU: Yes. I would like to call Mr. Todd
22 Meadows.

23 CHAIR FUJII: Mr. Meadows, go to the --

24 MR. MEADOWS: Okay.

25 CHAIR FUJII: Mr. Meadows, I'll be reciting the

1 oath, and you just need to respond to the oath verbally.

2 MR. MEADOWS: Yes.

3 CHAIR FUJII: Mr. Meadows, do you solemnly swear
4 or affirm that the testimony you are about to give before
5 this Board in connection with this case will be the truth,
6 the whole truth and nothing but the truth?

7 MR. MEADOWS: I do.

8 CHAIR FUJII: Thank you. Mr. Hanano.

9 MR. HANANO: I believe it's the licensee's
10 witness.

11 CHAIR FUJII: Oh, I'm sorry. You can
12 cross-examine, Ms. Hiu.

13 TODD MEADOWS,
14 was called as a witness on behalf of the Respondent; after
15 having been first placed under oath, testified as follows:

16 DIRECT EXAMINATION

17 BY MS. HIU:

18 Q Mr. Meadows, what is your capacity at Stopwatch?

19 A I am the doorman at Stopwatch.

20 Q Okay. Did you observe Mr. Palar enter Stopwatch
21 on Friday, July 22nd?

22 A No, I did not.

23 Q Did you -- well, do you -- is it your -- okay.
24 So you did not open the door for him?

25 A No. He was already in.

1 Q I see. Okay. So when you came to work, did you
2 notice him there?

3 A No, I did not.

4 Q So at what point did you notice him?

5 A He had fell down, tripped on a chair. And
6 that's when I entered the building. And then he came out
7 of the -- of Stopwatch with me.

8 Q Okay. So did you speak with him then or did you
9 ask --

10 A Briefly. I said, "You need to leave Stopwatch."
11 So I had him come out.

12 Q Okay. And did you ask him to do anything or --

13 A No. I just asked him to leave Stopwatch.

14 Q Okay. But did you notice where he was sitting
15 or did you notice what he did once you asked him to leave?

16 A I didn't see the incident per se. I just know,
17 right briefly after, he had fallen down, after he fell
18 down, went inside, had him come out with me.

19 Q Okay. And was he sitting on a -- after he came
20 out, did he sit on a truck in the parking lot?

21 A He went out -- he went out to where his friend's
22 vehicle was. So when his friends were done, they were
23 going to drive him home.

24 Q Okay. So you made sure that he was not --

25 A Driving, that's correct.

1 Q Okay. And so how long was he in the parking
2 lot?

3 A I'd say 20 minutes or so. And then his friends
4 came out and drove him home.

5 Q Okay. Let's see. Do you enforce the smoking
6 regulations?

7 A Yes, I do.

8 Q So -- well, how do you do that?

9 A Well, if somebody is -- either they come out of
10 Stopwatch and they're -- I could clearly see that they're
11 a smoker, I'll have 'em go about 20 feet away from the
12 entrance of the building.

13 Q Okay. So during that night, did you notice that
14 there were any people that were trying to smoke there at
15 Stopwatch?

16 A There were people trying to smoke there at
17 Stopwatch, but they were in the area where it's okay to
18 smoke.

19 Q Okay. So what areas would that be?

20 A That would be either to the right or the left of
21 the entrance, about 20 feet away from the building, and/or
22 out in the parking lot.

23 Q Okay. Did you notice if it was a windy or rainy
24 night?

25 A I think it was a little rainy. Yes.

1 Q Okay. Would that have been a factor in -- or a
2 problem?

3 A Well, what it ends up to be is that if it's
4 raining, of course the patrons don't -- and they're
5 smoking, they don't want to be out in the rain. So there
6 is an overhang at Stopwatch on either side of the
7 entrance. And that's 20 feet away from the -- the
8 entrance. So I ask 'em to smoke away from the door,
9 approximately 20 feet away from the entrance. That's my
10 job as well as being the doorman.

11 Q All right. Thank you.

12 CHAIR FUJII: Thank you, Ms. Hiu.

13 MS. HIU: No more questions.

14 CHAIR FUJII: Mr. Hanano.

15 MR. HANANO: Yes. Thank you, Chair.

16 CROSS-EXAMINATION

17 BY MR. HANANO:

18 Q So you're, I guess, like the -- like the
19 security at the door?

20 A That is correct.

21 Q Okay. And have you received any training with
22 regard to the Rules of the Liquor Commission?

23 A Yes. I -- I had a handbook and saw some videos
24 and I was, also, trained.

25 Q Okay. So you're familiar with the definition of

1 under the influence of liquor as defined by the rules?

2 A I am.

3 Q Okay. And so part of your job is to make sure
4 that no one, first of all, enters that are under the
5 influence of liquor?

6 A That is correct.

7 Q And, also, if there's anybody inside that is
8 under the influence of liquor, you'll -- it's your job to
9 assist or take that -- or remove that person out from the
10 premises, correct?

11 A That is correct.

12 Q Now, this particular evening, you were stationed
13 at the door, correct?

14 A That is correct.

15 Q But you said you don't recall Mr. Palar --

16 A Entering.

17 Q Yeah.

18 A That is correct.

19 Q You weren't at the door when he entered?

20 A He -- he was there before I started my shift.

21 Q What time did you start?

22 A I start -- on that particular -- what day was
23 that, (inaudible)? Was that a Friday?

24 Q Yeah.

25 A Yeah. I'm there at anywhere between 7:45 and

1 8:00. Sometimes I'm there a little bit earlier.

2 Q That's p.m.?

3 A Yes.

4 Q And when do you end?

5 A I end when the bar closes. Generally speaking,
6 it's like 1:00, we start, you know, saying last call,
7 and -- yeah.

8 Q So 1:00 a.m., all right. So as far as you --
9 you -- your recollection is, Mr. Palar was already in
10 there, right?

11 A That is correct. And I didn't notice -- he
12 was -- to me, he wasn't a regular customer. I didn't
13 really recognize him.

14 Q He was not a regular customer?

15 A Not that -- I mean, he's -- he's come in, but
16 I -- I didn't really recognize him as a regular customer,
17 that's correct.

18 Q How many times have you seen him before in your
19 bar -- in the bar?

20 A Maybe once before this incident.

21 Q And how long have you been working there?

22 A About seven months.

23 Q Okay. So at some point, it was brought to your
24 attention that Mr. Palar was involved in an incident where
25 he, basically, fell flat on his face, correct?

1 A Yes. He had -- my understanding is, is that he
2 tripped on a chair as he was getting up. He was -- he had
3 his hand on a chair, and it was unsteady, and then he fell
4 down.

5 Q So he kind of braced himself on the chair?

6 A Yeah.

7 Q And then the chair gave way and then he fell
8 down?

9 A That's correct.

10 Q Is that -- is that your --

11 A That's correct.

12 Q Okay. But you didn't see anything, right?

13 A That's correct.

14 Q Right. Did you see the video?

15 A No, I did not.

16 Q Okay. And I think you testified earlier, once
17 it was brought to your attention that this incident
18 happened, you went in there and you removed Mr. Palar from
19 the premises?

20 A Yes.

21 Q And that was based upon the fact that he was
22 under the influence of liquor as defined by the rules?

23 A It was just because he had -- I mean -- how can
24 I say it? I wasn't sure if he was really under the
25 influence or he just had an accident, but it was like I

1 wanted to remove him, though, because --

2 Q And what was your reason for removing him?

3 A Because he had just fallen down and he was a
4 little unsteady. So --

5 Q So it was because he was intoxicated, right?

6 A It could be, yes.

7 Q Okay. And so you got to have contact with him,
8 you got close to him?

9 A Yes.

10 Q Okay. And you smelled alcohol, right?

11 A Yes.

12 Q You observed him swaying from side to side?

13 A A little bit, but not -- not horrible, yes.

14 Q Eyes were red and watery?

15 A Yes.

16 Q And at some point, you said you were able to get
17 him out?

18 A Uh-huh.

19 Q And then he was like waiting by some car or
20 truck?

21 A That is correct. He was waiting for his
22 friends.

23 Q And because -- and you kept an eye on him?

24 A Yes, I did.

25 Q Okay. Because you didn't want him to get in a

1 car and drive, right?

2 A Of course. He had -- he had told me that he was
3 waiting for his friends, and they were going to drive him
4 home.

5 Q Okay. Now, you remember speaking to Cullen
6 Kawano?

7 A I do.

8 Q And so that was that night, right?

9 A That is correct.

10 Q Like right almost immediately after the fall
11 happened, correct?

12 A Well, Cullen was, actually, there for a little
13 while, just standing --

14 Q Okay. Anyway --

15 A Yes, I remember Cullen coming in.

16 Q Right. After you found out about the fall --

17 A Yes.

18 Q -- Cullen came and spoke to you, right?

19 A That is correct.

20 Q And so you gave him a statement, right?

21 A I did.

22 Q And at that time, isn't it true that you told
23 him that Mr. Palar arrived about an hour or so prior to
24 the incident, correct?

25 A That was my assumption. I'm not sure if he was

1 there an hour. He could have been, yes.

2 Q Okay. But you told Officer Kawano that,
3 correct?

4 A I think he was there about an hour. Because, I
5 mean, he was already inside and --

6 Q Okay. Let me stop you right there.

7 A Yes.

8 Q My question to you is, did you tell Officer
9 Kawano that Mr. Palar had arrived about an hour or so
10 prior to the incident? Did you tell him that? Did you
11 make a statement to that effect?

12 A I think I did.

13 Q Did you also make a statement to Officer Kawano
14 something to the effect that Mr. Palar appeared to be fine
15 and not at all intoxicated when he arrived?

16 A I did.

17 Q And you also told him that Mr. Palar appeared to
18 have some liquor in him?

19 A Yes.

20 Q And that you observed him swaying?

21 A I did.

22 Q And you would agree with me that swaying is a
23 sign of intoxication, correct?

24 A After -- after he had fallen down, too, if he --
25 you've seen the video, which I have not. Any person would

1 have been, you know, a little off. I mean, the guy just
2 fell down on his face, basically.

3 Q Sure.

4 A So --

5 Q But -- but my question to you, okay, you're -- I
6 guess your job is to -- it's almost like you're an expert,
7 almost. I wouldn't go that far, but your job, right, is
8 to make sure that people aren't under the influence of
9 liquor?

10 A That is correct. And --

11 Q So -- so would you agree with me that one
12 indication of that is swaying?

13 A Yes.

14 Q Okay. Another indication is red, watery eyes,
15 right?

16 A Yes.

17 Q Flush face, red face, right? Just one factor --

18 A Yes.

19 Q I'm not saying just because you have --

20 A Yes, it could be, yes, with anybody. Yes. I
21 mean, not necessarily this Randy Palar.

22 Q Staggering, that's another indication that
23 they're under the influence of liquor, correct?

24 A Yeah.

25 Q Okay.

1 MR. HANANO: I have no further questions, Chair.

2 CHAIR FUJII: Thank you, Mr. Hanano. Questions
3 from the Board Members toward Mr. Meadows? Any questions
4 directed to Mr. Meadows regarding this case here? Thank
5 you, Mr. Meadows.

6 MR. MEADOWS: Thank you.

7 CHAIR FUJII: You're excused. Ms. Hiu, you have
8 more witnesses?

9 MS. HIU: Yes, I do. I have Kimberly Kilborn.

10 CHAIR FUJII: Thank you. Would you bring her
11 in?

12 Up there, please. I will be reading a state --
13 oath, and I want you to respond to it. So do you solemnly
14 swear or affirm that the testimony you are about to give
15 before this Board in connection with this case will be the
16 truth, the whole truth and nothing but the truth?

17 MS. KILBORN: Yes.

18 CHAIR FUJII: Okay. Would you get the mic down
19 closer to you? There you go. Okay. We'll begin with
20 Ms. Hiu.

21 MS. HIU: Yes.

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KIMBERLY KILBORN,

was called as a witness on behalf of the Respondent; after having been first placed under oath, testified as follows:

DIRECT EXAMINATION

BY MS. HIU:

Q Hi, Kimberly. How long have you worked in liquor service?

A About 13 years.

Q Okay. And how long have you worked at Stopwatch and what's your position?

A A little bit over four years, I think, now, and I'm a bartender.

Q Okay. On the night of July 22nd, 2016, did you speak with liquor inspector Kawano when he asked you about nonalcoholic beverages and what they were served in?

A Yes, I did.

Q And what was your answer to him?

A Well, he asked me what kind of glasses I served soda in. And generally I serve them in plastic. That was my answer.

Q Okay. What would you have asked -- answered if he had asked you more specifically about a Coke back?

A Then I would say it depends on what they're drinking.

Q Okay. So what -- well, say, for instance, what

1 type of things?

2 A Normally, if people are sipping on something,
3 say, as whiskey or scotch, and they ask for a soda back, I
4 will use one of the small tumblers with ice in it. If
5 they are just taking a shot, generally I serve the same
6 amount of liquor in another shot glass or one of the
7 really small tumblers.

8 Q Okay. Like tumblers, is that a glass?

9 A It's a glass, yeah.

10 Q So did you notice Randy Palar in the bar prior
11 to his falling down?

12 A I noticed him, but just in terms of like I saw
13 him.

14 Q Okay. Did you see him fall?

15 A I saw it out of my peripherals. So I didn't see
16 the whole fall. Just kind of one of those things you see
17 out of the side of your eye.

18 Q Okay. But you helped pick him up?

19 A I did.

20 Q And how did he seem to you?

21 A When I picked him up, he seemed a little bit
22 dazed. I didn't spend much time with him as I had other
23 things to attend to behind the bar.

24 Q Okay. But did you -- did he remain on the
25 premises?

1 A He left the building on his own pretty much
2 immediately after it happened. I do know that he remained
3 outside for a little while.

4 Q Okay. And are you familiar with Miller Lite
5 beers?

6 A Yes.

7 Q Okay. Do you -- do you know what the alcoholic
8 contents of a Miller Lite beer is?

9 A Somewhere between three and four percent, I
10 believe.

11 Q Okay. And as far as beers go is, that a high or
12 low alcohol?

13 A Low.

14 Q Low?

15 A Yeah.

16 Q Okay. So let's suppose that if Randy Palar sat
17 down at the bar and you noted he wasn't intoxicated when
18 he came in, if he then proceeded to order two Miller Lite
19 beers and a shot of Jack Daniels, would you consider that
20 a reasonable level of consumption?

21 A It depends on the timeframe.

22 Q Okay. And what do you -- okay, would depend on
23 the timeframe. So say it was within an hour or so?

24 A That's, to me, not a considerable amount of
25 alcohol.

1 Q Okay. And do you exercise due care when you
2 serve customers?

3 A Absolutely.

4 Q So what you try to observe -- what do you try to
5 observe?

6 A Speech is the main thing I notice when people
7 get drunk, their eyes, how they respond to you, movements.

8 Q Okay. So when you picked -- helped Randy Palar
9 get up, would you say that he seemed -- did the fall
10 affect him?

11 A I believe so. When I ran over to him, his --
12 his face was on the ground. So he hit his head.

13 MS. HIU: Okay. No further questions.

14 CHAIR FUJII: Mr. Hanano.

15 MR. HANANO: Thank you.

16 CROSS-EXAMINATION

17 BY MR. HANANO:

18 Q So you were the bartender that evening, right?

19 A Correct.

20 Q And let me ask you this. Okay. So we were
21 talking about this -- this soda back and all that. Is
22 that -- does that come with -- is the soda free?

23 A Pretty much, yeah.

24 Q So if you order like a soda and Jack Daniels,
25 that's -- I mean, is that like a -- like a chaser for the

1 shot or --

2 A Exactly.

3 Q Okay.

4 A Yeah.

5 Q Would you put like just a regular soda into a
6 rocks glass cup by itself?

7 A If they're using it as a back or as a chaser, I
8 would, yeah.

9 Q Okay. And that would be like in addition to
10 having the shot, is that what you mean?

11 A Yes.

12 Q What -- what if you didn't have a shot?

13 A If it's a mixed drink, then it just goes into
14 one glass. I wouldn't give them another soda on the side.

15 Q Okay. So is the soda on the side, is that free
16 or --

17 A Yes. Typically, once we go into the late-night
18 hours, we don't charge patrons for soda, period,
19 especially if they're a designated driver.

20 Q Okay. What if it's like -- when you say
21 late-night hours, what do you mean by that?

22 A After 10:00, once the entertainment starts, all
23 of our mixed drinks, we don't charge for soda, only for
24 juices and things like that.

25 Q Okay. But, again, the soda back would be in

1 conjunction with a shot?

2 A Yes.

3 Q Is the price for a Jack Daniels -- the soda
4 versus a shot of Jack Daniels, is that the same price?

5 A It would be the same price, yeah.

6 Q And is that -- like is it called -- I mean, is
7 it like called the same thing on the receipt?

8 A It wouldn't even be specified on the receipt --

9 Q It would just say Jack Daniels?

10 A -- because we wouldn't charge for the soda. The
11 only type of things that gets specified like that would be
12 the juices.

13 Q Okay. All right. Okay. So you're -- you
14 worked at Stopwatch for four years, correct?

15 A Just about that timeframe, yeah.

16 Q And you're the bartender?

17 A Uh-huh.

18 Q And 13 years in the liquor industry?

19 A Yes.

20 Q So you're familiar with the rules and the laws,
21 especially the one with respect to under the influence of
22 liquor?

23 A Yes, I am.

24 Q So you know what the definition of that is?

25 A Yes.

1 Q And, basically, if someone fits that category,
2 you don't serve 'em, correct?

3 A Yes.

4 Q And that night, you said you hardly had any
5 contact with Mr. Palar?

6 A I didn't. He was sitting at a table, where it's
7 my job mainly to tend to the bar.

8 Q So how much contact would you say you had with
9 him prior to the fall?

10 A Maybe a hello or good evening in passing. I
11 didn't, actually, have a conversation with him at any
12 point.

13 Q Did you see him walking around?

14 A No, I didn't.

15 Q Okay. And when -- did you have a chance to see
16 the video that was --

17 A I did.

18 Q And you're in that video, correct?

19 A Yes, I am.

20 Q You're the one that kind of almost like --

21 A I'm the one that --

22 Q -- picked him up?

23 A -- comes over and --

24 Q Right.

25 A -- picks him up, yes.

1 Q So you got to get close to him, right?

2 A Yes, I did.

3 Q And you smelled -- did he have a liquor -- smell
4 of liquor on his breath?

5 A I didn't actually take notice of that. My main
6 concern was to see if he was okay because I knew that he
7 had hit his head.

8 Q Okay. So maybe he did, maybe he didn't, you
9 just didn't notice?

10 A No, I didn't -- I didn't take notice.

11 Q All right. What about his eyes?

12 A It's kind of dark in there and --

13 Q Okay.

14 A -- being that I had other things to attend to,
15 and other people were already starting to come around and
16 help, I decided to go back to the bar and tend to the
17 people that were already there.

18 Q So you're not sure, then?

19 A I'm not. I didn't have any main contact with
20 him other than picking him up off the ground. He did seem
21 to be a little bit dazed.

22 Q Did you, at any time during that night, refuse
23 to serve liquor to Mr. Palar?

24 A No. He, at no point, ordered anything from me.

25 Q Did you have any -- any -- at any time attempt

1 to have him removed from the premises?

2 A No, I didn't.

3 Q And to your knowledge, he didn't fall down when
4 he entered the bar?

5 A No, not when he entered the bar.

6 Q And just after seeing him fall, is it safe to
7 say that you, yourself, would not have given him any more
8 liquor, correct?

9 A I wouldn't have, but not necessarily on the fact
10 of intoxication level. If somebody hits their head like
11 that, that was my main concern, you know. When I ran up
12 to him, his hands were on his side which --

13 Q Right.

14 A -- indicated to me he didn't brace himself.

15 Q But at that point, you weren't -- or you said
16 you didn't or -- you weren't able to or you didn't assess
17 his sobriety, right?

18 A No, I didn't.

19 Q Okay. So you don't know whether or not you
20 would have served him based on that?

21 A No.

22 Q Okay.

23 A Yeah.

24 Q And you don't know if Mr. Palar had anything to
25 drink prior to coming to Stopwatch, correct?

1 A I do not know.

2 Q But you would agree with me that red, watery
3 eyes, that's an indicator of possibly someone being under
4 the influence of liquor, correct?

5 A I agree that it's a possible factor, although
6 there are many things that can cause people's eyes to be
7 red or watery.

8 Q Absolutely.

9 A Yeah.

10 Q And as well as an odor of liquor, that's another
11 factor that possibly could contribute or -- or be a sign
12 of someone who is under the influence of liquor, correct?

13 A Absolutely.

14 Q Unsteadiness on their feet, that's another sign
15 that would be contributed to being under the influence of
16 liquor, correct?

17 A Oh, yes. Yeah.

18 Q Someone who is swaying side to side, is that
19 another indicator?

20 A Yes.

21 Q What about someone who staggers and falls down
22 flat on their face, is that a sign that they're under the
23 influence of liquor?

24 A Sure. If it -- I mean, if it happens in the
25 right way, yes.

1 MR. HANANO: No further questions.

2 CHAIR FUJII: Thank you. Any questions by
3 Members of the Board directed to Kimberly at this point?
4 I have one question. I know you've had 13 years with the
5 liquor industry and four years as bartender. Has
6 Mr. Palar been -- having sat at the bar, or what's your
7 experience with him other than that incident that evening?

8 A I recognize him, so he's been in a few times to
9 the bar. I don't know him personally, but I've never had
10 any prior problems with that patron.

11 CHAIR FUJII: He has never slipped or fell --

12 A No.

13 CHAIR FUJII: -- in the --

14 A No.

15 CHAIR FUJII: -- times that he been --

16 A No.

17 CHAIR FUJII: -- being served there?

18 A Not at all.

19 CHAIR FUJII: Thank you. No further questions?
20 Thank you. And do you have any more witnesses?

21 MS. HIU: Yes. I have Diane Tessler.

22 CHAIR FUJII: Just curious, how many more
23 witnesses?

24 MS. HIU: That will be the last one.

25 CHAIR FUJII: Thank you. Ms. Tessler, I'll be

1 reading an oath, and I would like you to respond at the
2 end.

3 MS. TESSLER: Okay.

4 CHAIR FUJII: Do you solemnly swear or affirm
5 that the testimony you are about to serve -- to give
6 before this Board in connection with this case will be the
7 truth, the whole truth and nothing but the truth?

8 MS. TESSLER: Yes.

9 CHAIR FUJII: Thank you.

10 DIANE TESSLER,
11 was called as a witness on behalf of the Respondent; after
12 having been first placed under oath, testified as follows:

13 DIRECT EXAMINATION

14 BY MS. HIU:

15 Q Hi, Diane.

16 A Hi.

17 Q How long have you worked in liquor service?

18 A 25 years.

19 Q Okay. And how long have you worked at the
20 Stopwatch?

21 A A little over five years.

22 Q And what is your capacity there, what's your
23 position?

24 A My position is a server.

25 Q Okay. What was your first contact with Randy

1 Palar the night of July 22nd?

2 A He was seated at a table with two other guests,
3 and I approached the table. And that was my first
4 interaction with him.

5 Q Did you recognize him as a regular customer?

6 A No. I don't believe I've ever seen him before.

7 Q Okay. At -- at the time you talked -- the
8 first -- when you first talked to him, did he appear to be
9 intoxicated?

10 A No, he did not.

11 Q Okay. And who was sitting at his table?

12 A There was another man and a woman with him.

13 Q Okay. Do you remember what the initial drink
14 order for that table was?

15 A Yes, I do. They had -- they ordered a 26-ounce
16 Big Swell and a Miller Lite and a Jack and Coke and three
17 waters.

18 Q So what kind of glass or container would they
19 have been in?

20 A The Big Swell was in a large mug, Miller Lite
21 was in a bottle, and the Jack and Coke was in a rocks
22 glass, and the waters were served in plastic cups.

23 Q Okay. I want to show you the -- this Item
24 Number 1, which is the ticket for the table.

25 CHAIR FUJIII: Mr. Hanano, any objections?

1 MR. HANANO: No objection. If you could refer
2 to the page number, the page number that is on the bottom,
3 the one with the circle around it?

4 A 13.

5 MR. HANANO: 13.

6 Q (By Ms. Hiu) So at another point, did Mr. Palar
7 order another beer?

8 A Yes, about, I would say, 20 minutes after the
9 first round was served.

10 Q He ordered another Miller --

11 A Miller Lite.

12 Q -- Lite?

13 A Yes.

14 Q Okay. And at what point did they order some
15 shots?

16 A They ordered three shots of Jack and a Coke
17 back, and I'm thinking it was about 20 minutes after --

18 Q Okay.

19 A -- I had served the Miller Lite.

20 Q So looking at that tab, Item Number 1, do you
21 see those -- the Jack Daniels on the ticket there?

22 A Yes.

23 Q So that would account for -- refresh our mind
24 about the -- the service for those Jack --

25 A One of the Jack Daniels was the Jack and Coke

1 that I served to the woman, and three of the Jack Daniels
2 were the round of shots, which I also served a Coke back
3 with in a small rocks glass.

4 Q All right. So did Mr. Kawano ask you later on
5 in the evening what kind of container you would be serving
6 a nonalcoholic beverage in?

7 A He did.

8 Q And what was your answer to that?

9 A I told him that I typically serve Coke backs in
10 a small rocks glass, plastic cups. I -- if somebody is
11 just having water or soda and not alcohol, I serve them in
12 plastic cups.

13 Q Okay. So if there were -- if there were five
14 glasses on the table which Mr. Kawano observed, how many
15 would have contained liquor?

16 A Four.

17 Q And that would be the four Jack Daniels?

18 A Yes. The Jack and Coke was still on the table,
19 the three shots of Jack.

20 Q Okay. And --

21 A Then the beers were --

22 Q And was there another glass on the table as
23 well?

24 A Yes, the Coke back as well as the waters.

25 Q Okay. And why doesn't the ticket show the Coke

1 back?

2 A We don't charge for Coke back. It's just a
3 couple ounces of soda or juice or whatever they want to
4 chase their shot with.

5 Q Okay. So did you in fact provide more than two
6 drinks of liquor to individual patrons at one time?

7 A No.

8 Q What was the last drink you served Randy Palar?

9 A A Miller Lite.

10 Q Okay. And did he appear intoxicated when he
11 ordered it?

12 A No.

13 Q Were you -- during this time of service, were
14 you assessing whether there was any level of intoxication
15 in your customers?

16 A Yes.

17 Q Okay. And -- and you did state that he did not
18 appear to be intoxicated when he ordered that drink?

19 A That's correct.

20 Q Okay. Do you recall how soon after you served
21 the third bottle of Miller Lite that Randy Palar got up to
22 leave the table?

23 A A couple minutes.

24 Q Did you see him fall?

25 A No. I had my back turned. I heard him fall and

1 turned and saw that he had fallen.

2 Q Then you went over to observe what happened?

3 A Yes.

4 Q So -- okay. When he went outside and cleared
5 the table, did you notice how much of the -- okay. Well,
6 let's see. Did you -- did he order another bottle of
7 beer?

8 A He did order a third beer.

9 Q Okay. And --

10 A That was the last drink I had served him.

11 Q That was the last drink, okay. And when you
12 came back to clear the table, did you notice how much of
13 the third bottle he had consumed?

14 A Yes. He had not touched it.

15 Q Okay. So Mr. Kawano had requested a copy of the
16 ticket from you?

17 A Yes.

18 Q Was this before or after you had settled the
19 tab?

20 A Before.

21 Q Before. So how did you handle that tab that was
22 not settled?

23 A I gave Mr. Kawano a copy of it. Was that your
24 question?

25 Q Yes. And how did you -- did you subsequently

1 get it rung up and, you know, presented to Mr. Palar to
2 have him pay it?

3 A I took it outside to him, yes.

4 Q Okay. And did you adjust the tab in any way?

5 A I did. I removed the Miller Lite that had not
6 been consumed.

7 Q And what was your reason for that?

8 A He had not consumed any of it, and I didn't feel
9 that he should have to pay for it.

10 Q Okay. So in the final settlement of the tab,
11 what did that tab show?

12 A The tab showed two beers, two Miller Lites, one
13 Big Swell, and four Jack Daniels.

14 Q Okay. And in -- so in summary, what was it --
15 what was the total of what Mr. Palar drank that night?

16 A Two beers, one shot.

17 Q Okay. What kind of beers were they?

18 A Miller Lites.

19 Q Okay. So he consumed two Miller Lites and a
20 shot of Jack Daniels?

21 A Yes.

22 Q Okay. And within about what length of time was
23 he there?

24 A Over an hour. I'd say an hour and-a-half.

25 Q And would you consider this a reasonable order

1 for a customer, you know, to be serving a customer?

2 A Yes.

3 Q And in your estimation, was Mr. Palar
4 intoxicated?

5 A No.

6 Q So he did not show any signs of intoxication at
7 any time while he was sitting at the table?

8 A No, he did not.

9 Q Okay. And in your opinion, did you exercise due
10 care in determining whether or not Mr. Palar was under the
11 influence?

12 A Yes.

13 MS. HIU: Okay. No further questions.

14 CHAIR FUJII: Thank you. Mr. Hanano.

15 MR. HANANO: Okay. Thank you, Chair.

16 CROSS-EXAMINATION

17 BY MR. HANANO:

18 Q So, Ms. Tessler, you agree that you served
19 Mr. Palar three Miller Lite beers and a shot of Jack
20 Daniels, is that correct?

21 A That is correct.

22 Q Friday night, was that -- was that busy?

23 A It was a fairly busy night.

24 Q And at some point, Mr. Palar comes in and opens
25 a tab, correct?

1 A Yes.

2 Q And that was, I think, as stated on the receipt,
3 about 10:26 p.m.?

4 A Yes. They came in before the -- the -- before I
5 rang up the tab, I would say 20 minutes before, I -- I
6 served the drinks and rang the drinks in about 20 minutes
7 later.

8 Q Okay. Did the other -- the man and the woman
9 that was with Mr. Palar, did they pay for any drinks?

10 A No.

11 Q Did they run a separate tab?

12 A No. They were all on one tab.

13 Q Mr. Palar paid for everything?

14 A Yes, he did.

15 Q Okay. So you say, first, you -- you served him
16 a beer, correct?

17 A Yes.

18 Q Mr. Palar. And then, after that, did he order
19 the three shots?

20 A No. The woman that was with them ordered the
21 shots.

22 Q Okay. So -- well, actually, I think you said he
23 got a beer, the woman got a --

24 A Jack and Coke.

25 Q -- Jack and Coke, and the male with the woman

1 got the Big Swell mug of beer?

2 A Yes.

3 Q Correct? Okay. Then right after that -- well,
4 not right after, but subsequent to that, 20 minutes later,
5 they ordered three shots of Jack?

6 A No. He ordered a beer 20 minutes later.

7 Q Okay, 20 minutes later. Okay. And then after
8 that came the three shots?

9 A Correct.

10 Q And two were like regular shots in a shot glass,
11 is that correct?

12 A Yes.

13 Q And one was, you said, in like that rocks glass
14 that was like the one that was ordered previously, same
15 type of glass?

16 A Smaller glass.

17 Q Smaller glass.

18 A The Coke back, is that what you're asking?

19 Q Yeah, the Coke back.

20 A Yes.

21 Q Yeah. Okay. So there were three shots and one
22 Coke back?

23 A Yes.

24 Q Okay. All right. Got it. And then prior to
25 that, it was just one, I guess, mixed JD Coke, the Big

1 Swell beer and then the two Millers, right?

2 A Yes.

3 Q Okay. Got it. So Mr. Palar was there for what,
4 you said, about an hour?

5 A Over an hour.

6 Q Over an hour. A bit over an hour. He -- he
7 didn't have anything to eat while he was there, huh?

8 A No. Our kitchen was closed.

9 Q And you're not -- you don't know if Mr. Palar
10 had anything -- any kind of liquor drink prior to him
11 coming to Stopwatch and ordering from you, right? You
12 don't know?

13 A I don't know, but I didn't feel that he did. He
14 didn't show me any indication that he did.

15 Q So you didn't see like his eyes, if they were
16 watery or red? Did you see that?

17 A They were not.

18 Q They were not?

19 A At the time of service, no.

20 Q So at the time you served him the last Miller
21 Lite that he didn't drink, he was fine?

22 A Yes.

23 Q He wasn't swaying or red eyes or anything like
24 that?

25 A No.

1 Q No.

2 A His speech was fine. He --

3 Q Speech was fine, okay. And you consider, what,
4 two Miller Lites and a -- and a shot a reasonable order,
5 is that -- is that what you said? And that --

6 A Yes.

7 Q And -- and would you consider that a reasonable
8 order to someone who is intoxicated?

9 A No.

10 Q Now, you said that the -- Mr. Palar's tab was, I
11 guess, adjusted because of -- he didn't -- he didn't drink
12 from the last Miller Lite beer, is that correct?

13 A Correct.

14 Q You don't serve that to someone else, do you?

15 A No.

16 Q Is that like a normal practice, where someone
17 orders a drink and, if they don't drink it, then you just
18 don't charge them for that? Is that normal?

19 A I've done that several times, yes.

20 Q Is that like normal practice?

21 A I feel --

22 Q (inaudible)?

23 A Well, I feel that's the honest thing to do.

24 Q Okay. How many times have you done that since
25 you've been working here?

1 A Probably four or five.

2 Q You've been there five years?

3 A Uh-huh.

4 Q Okay. So how many times have you engaged in
5 that kind of practice during the five years that you have
6 been at Stopwatch where they order it, but they don't
7 drink it, so you don't charge them?

8 A I would say four or five times.

9 Q Okay. So it's very -- a very limited situation?

10 A Yeah, it's limited situation.

11 Q Mr. Palar gave you a tip, right?

12 A Yes, he did.

13 Q Like 20 -- 20 bucks?

14 A Yes.

15 Q For, what, \$50 tab?

16 A Yes.

17 Q Is that -- what is that, like 40 percent?

18 A Yes. It's a good tip.

19 Q Is that on the high side?

20 A Yes. I was surprised.

21 Q Okay. So you -- you know, according to what --
22 what you're saying is you wouldn't have any problem
23 with -- with -- when you gave Mr. Palar the third Miller
24 Lite bottle of beer, you wouldn't have any problems with
25 him getting into a car and driving away --

1 A No.

2 Q -- at -- at that point?

3 MR. HANANO: I have no further questions.

4 CHAIR FUJII: Thank you, Mr. Hanano. Any
5 questions by Members of the Board to Ms. Tessler here,
6 clarification? If not, we're going to go on to --
7 Ms. Tessler you're excused, yeah. Thank you. Mr. Hanano,
8 we'll start off with you as far as what rebuttal evidence
9 that's been presented.

10 MR. HANANO: Yes, Chair. I would like to recall
11 Officer Kawano.

12 CHAIR FUJII: Mr. Kawano, just a reminder you
13 are still under oath.

14 MR. KAWANO: Yes.

15 CHAIR FUJII: Okay.

16 CULLEN KAWANO,
17 was called as a witness on behalf of the Department; after
18 having been first placed under oath, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. HANANO:

21 Q Okay. Officer Kawano, I have some follow-up
22 questions that I would like to ask you.

23 A Sure.

24 Q Okay. So the first one is when you initially
25 saw Mr. Palar and the other two individuals on the table,

1 how many drinks did you see on the table? And if you
2 could describe in detail like the cup that -- or glass
3 that it was in.

4 A Yeah. So there were -- to my memory, I -- I
5 recall three almost pint-style glasses which looked to
6 contain water, a mug which appeared to contain beer, a
7 bottle of beer, and two of those rocks tumblers/glasses
8 were on the table initially.

9 Q Initially?

10 A Yes.

11 Q Okay. And just to clarify now, this is -- the
12 two rocks glasses that you saw, was there any liquid in
13 it?

14 A Yes. There was a dark brown liquid in the -- in
15 both of those glasses.

16 Q Was there ice or anything like that?

17 A I couldn't -- from the distance I was at, I
18 couldn't tell if there was ice in the glass or not.

19 Q But the liquid was the same?

20 A Yes. It was the exact same dark brown color.

21 Q Okay. And just for clarification, now, this was
22 before the three shots came?

23 A Yes.

24 Q And you're sure about that?

25 A Yes.

1 Q That there was two rock -- rocks glasses?

2 A There were two rocks glasses on the table.

3 Q Okay. When the three shots -- when Ms. Tessler
4 brought the three shots of whiskey, did she -- well, I
5 think you testified earlier that she didn't clear
6 anything, correct?

7 A Yes.

8 Q Okay. Did she bring -- I mean, can you describe
9 the shot glasses, what that looks like?

10 A They're short -- short glass -- short glasses
11 with a -- with a -- a small amount of liquor. So not like
12 a -- like a tumbler or a cocktail glass. It's probably
13 about the size of maybe a half dollar or larger in
14 circumference and a little bit shorter than a rocks or a
15 tumblers glass.

16 Q So there are three of those?

17 A Yes.

18 Q All right. Okay. Now, let me ask you about
19 some -- some of your training and experience with regard
20 to observation and detection of someone who is under the
21 influence of liquor as defined by the Rules of the Liquor
22 Commission.

23 A Yes.

24 Q Can you -- can you -- let's go into your -- your
25 training. What type of -- well, let me back up. How long

1 have you been an officer, again?

2 A Just over five years.

3 Q Five years total?

4 A Yes.

5 Q And during that five years, did you receive any
6 type of training with regard to, you know, like I said,
7 detection of someone who is under the influence of liquor?

8 A Yes.

9 Q Can you explain what that -- that is?

10 A We not only have -- have had -- I've not only
11 had training in the specific definitions, but I've, also,
12 had multiple prohibitions, overservice type cases, been in
13 and out of bars, restaurants, areas where liquor is
14 served, I've had contact with individuals who have been
15 drinking who were arrested by police officers. I have,
16 also, had the opportunity to observe police officer
17 drinking labs in which they get people intoxicated for the
18 purpose of observation of not only to our standards, but
19 as well as their standards for arrest.

20 Q Okay. So if I had to ask you, in -- in your
21 experience, how many -- how many overservice cases have
22 you investigated during those five years that you were a
23 Liquor Control Officer, approximately? We're not looking
24 for, you know, an exact amount, but roughly.

25 A I'd say, investigated, probably in the realm of

1 about maybe 50 or so.

2 Q And, basically, everything that you testified to
3 earlier was based on that training and experience that you
4 have?

5 A Yes.

6 MR. HANANO: No further questions.

7 CHAIR FUJII: Ms. Hiu, you want to --

8 MS. HIU: Yes.

9 CROSS-EXAMINATION

10 BY MS. HIU:

11 Q When you're trained, do you have any procedure
12 for trying to determine whether there is in fact alcohol
13 in a drink?

14 A Yes. We -- not only -- through our
15 observations, we've seen what beer looks like in different
16 kinds of glasses, the shade, the color, the bubbles,
17 the -- the head or froth that appears on those types of
18 drinks. We've also smelled drinks in certain cases,
19 actually picked up the drink to take a whiff of the drink.
20 As well as we -- we will directly ask the person that
21 served -- or the person that consumed, did your drink
22 contain liquor or were you served liquor.

23 Q All right. So in this case, did you smell any
24 of the glasses that were on the table?

25 A I did not have the opportunity to smell any of

1 the glasses.

2 Q Okay. How about asking the person drinking?

3 A Yes. I asked Mr. Randall Palar what he had
4 consumed and --

5 Q Well, specifically, the glasses on the table.
6 Did you ask anyone what those glasses contained?

7 A I asked him about the shots. And he said
8 specifically that they were shots of Jack Daniels. I
9 asked the server, Diane Tessler, what the drinks contained
10 that she served.

11 Q Uh-huh. And did she tell you that one of them
12 was a -- a soda back?

13 A Yeah. She stated that one of the two rocks
14 glasses that were on the table contained only soda.

15 Q Okay. But you didn't test it or --

16 A I didn't have a method of testing or an
17 opportunity to test it.

18 Q Okay. But you -- even though she told you that
19 one of the glasses were -- contained soda, you determined
20 that it was a cocktail?

21 A Yes. Based on not only my experience of seeing
22 how generally soda backs or sodas are served, but, also,
23 asking Ms. Tessler, Ms. Kilborn, asking them specifically
24 how they normally serve nonalcoholic beverages. Neither
25 one of them stated that it would ever be served in a rocks

1 glass.

2 Q But you didn't --

3 A Ms. Tessler -- sorry. Ms. Tessler, also, when
4 asked specifically why -- after stating that she doesn't
5 serve soda or soda backs, soda -- nonalcoholic beverages
6 in rocks glasses, that they're normally served in plastic
7 cups or pints, I then asked her to explain why in this
8 circumstance she would have served a soda and a cocktail
9 in the exact same glass on the table. And she had no
10 explanation as to why she would have done such a thing.

11 Q But you didn't ask her specifically about a soda
12 back, did you?

13 A I asked her nonalcoholic beverages.

14 Q Okay. But that was in general?

15 A Yes, a generalized statement, which a soda would
16 be a nonalcoholic beverage.

17 Q But not specifically as a chaser or a back?

18 A No. I did not use the words chaser or back. I
19 just said if -- when serving nonalcoholic beverages like
20 soda, what type of glassware or cup would you use.

21 Q Okay. So -- and you -- going back to the ticket
22 on Page 13, does that ticket indicate that there was more
23 than four shots of Jack Daniels served to the table?

24 A No. The ticket, on Page 13 -- which when I
25 asked, I asked specifically for Mr. Palar's tab -- and it

1 only shows four total Jack Daniels drinks.

2 MS. HIU: Okay. No further questions.

3 CHAIR FUJII: No rebuttal, okay.

4 MR. HANANO: No further questions, Chair.

5 CHAIR FUJII: Okay, Mr. Kawano, thank you.

6 MR. MURAI: Questions from --

7 CHAIR FUJII: Oh, questions from the Board,
8 first of all, anybody, for Mr. Kawano before he leaves?
9 Thank you.

10 Ms. Hiu, do you have any rebuttal evidence you
11 would like to produce now?

12 MS. HIU: Well, I would like to recall
13 Ms. Tessler.

14 CHAIR FUJII: Ms. Tessler, I remind you are
15 still under oath.

16 MS. TESSLER: Yes.

17 CHAIR FUJII: Ms. Hiu.

18 MS. HIU: Yes.

19 DIANE TESSLER,
20 was called as a witness on behalf of the Respondent; after
21 having been first placed under oath, testified as follows:

22 DIRECT EXAMINATION

23 BY MS. HIU:

24 Q So Mr. Kawano has stated that -- in his report
25 that you -- when asked about serving soft drinks in a

1 plastic cup, you could not explain why you would serve
2 Coke in the same type of glass as a Jack Daniels Whiskey
3 and Coke.

4 A I did explain to him.

5 Q So -- and what was your explanation?

6 A What I said here. I said when I'm serving only
7 a -- a soda or water to somebody, I would serve that in a
8 plastic cup, but when it's a Coke back, we typically serve
9 Coke backs in the smaller rocks glass.

10 MS. HIU: Okay. Thank you.

11 CHAIR FUJII: Any questions by the Board
12 Members? Oh.

13 MR. HANANO: No questions.

14 CHAIR FUJII: From the Prosecutor? Okay. None
15 from the Board? Thank you, Ms. Tessler. Mr. Hanano, I
16 think we're ready for the Director's final argument.

17 MR. HANANO: Okay. So I think the main issue in
18 this case, anyway, with regard to Counts 1, 2 and 3, come
19 down to whether or not Randall Palar was under the
20 influence of liquor as defined by the Rules of the Liquor
21 Commission. I do have -- I don't know if the Board -- did
22 the Board receive a copy of the -- so, basically, I'm not
23 gonna read it, but it's, basically, if, you know, you're
24 not in -- in -- in -- your normal mental faculties or
25 ability to care for one's self and guard against casualty

1 is not there, you basically fit the definition. And if
2 you look at that, you know, it's pretty specific. And
3 that's what we have here.

4 We have testimony that Mr. Palar was fine when
5 he came in. You heard the security person say that.
6 Obviously, he -- he was not fine when he left. The
7 question is, you know, what happened.

8 It doesn't matter if, you know, you -- you have
9 10 beers before you come into the bar and then you get
10 served one and that causes you to fall down flat on your
11 face. If you're served that one, then you're in
12 violation.

13 What we have here is he was served, basically,
14 three beers and one shot. So the question is, you know,
15 does -- was he -- was he -- did he fall because he was
16 under the influence of liquor or something else.

17 I mean, according to Ms. Tessler, he was fine.
18 I mean, you know, she didn't observe any signs of
19 intoxication, which is very suspect. I mean, you got to
20 look at -- take her testimony with a grain of salt. She
21 has an interest, you know, in her job, in her testimony,
22 what she says. And it's, basically, inconsistent with
23 what Mr. Meadows said.

24 And what I want the Board to do is look at the
25 video. I mean -- and I want to point some things out to

1 the Board. Look at the video, replay it and replay it
2 again and again as many times as you need to. Because
3 looked at it about 25 to 30 times. Each time, I -- I pick
4 up something else. So I want to ask you guys to look at
5 it and -- and study it, you know, and -- and look at
6 the -- look at the details of what happened. Okay.

7 If you see Mr. Palar, okay, he's already down.
8 But if you look at the beginning part, okay, he's trying
9 to get his balance. He's trying to negotiate around the
10 chair and, at one point, even tries to use the -- possibly
11 use the chair as a brace, but he can't even find the
12 chair. And -- and -- and then that's why he fell flat on
13 his face. I think he thought that he was gonna brace
14 himself on the chair. There it is right there. And he
15 kind of did on one hand, but he still fell. There was no
16 trip. There was no slip. He just -- you know, he didn't
17 have his normal mental faculties and ability to care for
18 himself against casualty. That's what happened, you know.

19 And we're staying that he's -- he's under the
20 influence, you know. I don't think he -- when he -- he
21 almost falls again here, staggers back the other way. And
22 according to Officer Kawano, he had to brace himself
23 again.

24 You know, arguably, they can say, yeah, that's
25 because he hit his head. Well, look at the big picture.

1 Look at, you know, the evidence. He has an odor of liquor
2 on his breath, he has red eyes, he's staggering. You
3 know, it's all indications of being under the influence of
4 liquor. And they want you to like come up and -- and just
5 pick one, well, that's because he fell down, but look at
6 what happened before he fell. He can't even negotiate
7 around the chair and even grab the chair sufficient enough
8 to hold himself up. He just falls flat on his face.

9 I mean, who does that? Someone who is under the
10 influence of liquor.

11 So -- so, you know, you guys take a look at it
12 and look at it and look at it as many times as you need
13 to, because I think that's the key, but look at everything
14 else, too. And, you know, I think when the Board looks at
15 all the evidence, it will come to the conclusion that he
16 was under the influence.

17 And, you know, of course, Ms. -- Ms. Tessler is
18 not going to come up here and say I served a drunk person.
19 I mean, that's not gonna happen. We wouldn't be here if
20 that was the case. Okay. She's got to protect her job,
21 she's got to, you know, protect herself. And so -- you
22 know, of course, maybe, you know. I'm sure -- or, you
23 know, the Department is sure or reasonably certain that,
24 you know, at the time she served the drinks she didn't
25 think he was intoxicated.

1 But that's -- that's the other charges, you
2 didn't exercise due care in checking to see. I don't
3 think she like, oh, I'm gonna serve this drunk guy four
4 drinks. No. She didn't exercise due care in assessing
5 whether or not, you know, he was under the influence of
6 liquor. That's the whole thing, you know. I don't think
7 she went there and just served someone who she knew was
8 intoxicated. She's not going to testify to that.

9 The other thing is this thing about the smoking.
10 Okay. It's 20 feet from the entrance. And you heard
11 Mr. Meadows testify that they were under the roof because
12 it was raining. That -- that makes sense because nobody
13 is going to go to the area where they're going to get wet
14 and smoke. So, you know, they went next to the building
15 under the roof to smoke.

16 The thing about the drinks, okay, so Officer
17 Kawano says there are 10, three of them were water, one
18 mug of beer, two -- actually, one mug of beer, two rocks
19 glasses and then the three shots. So what is that, six,
20 seven. Yeah, three shots, two rocks glasses, one bottle
21 of beer and the Big Swell mug. Okay. So that comes out
22 to seven, which is more than the two. Okay.

23 And, you know, Ms. Tessler comes in and says,
24 well, you know, one of the rocks glasses contained soda
25 because that was a back. Well, that's inconsistent with

1 the -- with the testimony. Officer Kawano said before the
2 shots were brought is when he saw the two rocks glasses.
3 And, you know, that -- that makes sense because, you know,
4 there was one drink that was a mixed drink in the rocks
5 glass, there was no other shots on the table. So why
6 would that be a back to something that -- a shot that
7 wasn't even there? And on top of that, Officer Kawano
8 says there were only the three shots that were brought.
9 There was no rocks glass chaser or back with the shot.

10 So going off of that, in addition to the fact
11 that, you know, their normal procedure is you don't put
12 just a soda inside a rocks glass unless it's a chaser, but
13 there's no -- no shot to chase. So it's not a chaser.
14 It's -- it's a -- it's a -- same like the other one, JD
15 and Coke.

16 So based on that, the Department is asking that
17 you find the licensee Stopwatch Bar and Grill guilty as
18 charged. Thank you.

19 CHAIR FUJII: Ms. Hiu, you have a final argument
20 in rebuttal?

21 MS. HIU: Yes. So we have testimony from our
22 doorman that he did not allow smoking within 20 feet of
23 the entrance and that he exercised due care in -- in
24 keeping Mr. Palar outside the premises after there -- the
25 accident where he fell down.

1 We noted that the server, Diane Tessler,
2 observed that Mr. Palar was not intoxicated when he
3 entered the premises, and she exercised due care in
4 serving Mr. Palar. And he was not over-served as shown by
5 the ticket. He had two Miller Lite beers and a whiskey
6 shot. And because he did not consume the third Miller
7 Lite beer and he was not allowed back in to consume it,
8 she took it off his tab.

9 We're charged with kind of a fine line to
10 determine whether people are intoxicated or not. And if
11 they do not exhibit signs of intoxication, we don't know
12 what their history is, that they came in, whether they
13 drank something previous, but we can just observe, you
14 know, how they are at the table. And she did not observe
15 that he was -- showed these signs of intoxication.

16 And he would not have been noticed if Mr. Palar
17 hadn't tripped and the chair he tried to brace himself
18 fell over and he fell and hit his head, hard enough to
19 leave a red mark. And I'm sure, you know, this must have
20 had some effect on Mr. Palar's behavior.

21 There's no way to know for sure what was
22 affecting him or how much. There was no blood alcohol
23 test. And he did not disclose if he was drinking prior to
24 coming in to Stopwatch.

25 He was on his way outside when he fell. And he

1 continued to exit as he recovered from his fall. So we
2 did not allow him to remain on the premises. And the
3 doorman did not allow him to return.

4 Did Dianne Tessler provide more than two drinks
5 of liquor to our customers at one time? No. As evidenced
6 by the ticket, there were no more than two drinks per
7 person.

8 And in question in particular was the drinks in
9 the glasses rather than the ones in the bottle or the mug.
10 And the simple explanation for that glass that was that it
11 was a soda back. It's the same color as a Coke, but
12 there's no hard evidence that it was alcohol and not, in
13 fact, a soda back.

14 So I don't believe we're guilty as charged.

15 CHAIR FUJII: Thank you. Mr. Hanano, Director's
16 final argument.

17 MR. HANANO: I don't have any rebuttal.

18 CHAIR FUJII: Okay. Is there any other business
19 relating to this case that need to be taken up by any of
20 the Members or the Prosecutor or the licensee?

21 MR. HANANO: No, Chair.

22 CHAIR FUJII: Okay. Nothing. So, anyway, the
23 Board will take this matter into consideration. Everybody
24 leave, and we will entertain a motion to go into
25 deliberation.

1 MEMBER HELM: Make a motion.

2 MEMBER U`U: The -- the potential fine amounts?

3 CHAIR FUJII: After.

4 MEMBER U`U: Okay.

5 CHAIR FUJII: We're gonna discuss whether it's
6 guilty or not.

7 MEMBER U`U: Second.

8 CHAIR FUJII: We'll call you. Okay, moved and
9 seconded that we move into deliberation. All in favor,
10 say "aye."

11 (Deliberations, 1:12 p.m. 2:29 p.m.)

12 CHAIR FUJII: The Board is back in open session.
13 Finally, we're getting to the bottom of all of this. And
14 I'm sure you folks already wanting to know what's
15 happening with us. The Board has found the Respondent
16 guilty on charges 1 -- I'm sorry -- on Count 1 and Count
17 4. The other three counts are dismissed.

18 So at this time, Ms. Hiu, we offer you a point
19 of view as -- as to argument as to the penalty on Count 1
20 and Count 4, if you want to. Following that, there is --
21 the Director will also --

22 MS. HIU: I don't know what the penalty is. You
23 mean specifically or just in general?

24 CHAIR FUJII: Just in general.

25 MR. MURAI: Well, Ms. Hiu, just for your

1 information, if you're curious about what the penalty is
2 for Count 1, or, actually, for any liquor violation, the
3 maximum penalty is \$2,000, but, for Count 1, if it is a
4 first offense or if it's an offense with no prior
5 convictions for the same within the last five years, it's
6 a minimum \$1,000, maximum \$2,000. If the -- your
7 establishment has had more than one overservice offense in
8 the last five years, then it's, you know, a higher
9 minimum. So -- but that's the range, 1,000 to 2,000.

10 MS. HIU: Okay. That's on 1?

11 MR. MURAI: Yes. And as far as the smoking
12 violation, you know, if you follow the State law, then,
13 for the establishment, if it's a first offense, I believe
14 it's \$100. Of course, you're free to argue whatever you
15 feel is -- would be appropriate in -- from where you sit.

16 MS. HIU: Yeah. Well, I think it's difficult.
17 You know, it's a judgment call as to whether -- what point
18 a person crosses the line between, you know, actually
19 being under the influence as you're defining it. And I
20 think that, you know, we did try to determine, you know,
21 whether that person was, you know, sober or not. We did
22 not -- he did not exhibit any signs until he actually
23 stood up and, you know, tried to negotiate. And the signs
24 that were, you know, specifically stated as by the liquor
25 inspector can be attributed to, you know, other

1 conditions, including the fact that he did, you know, hit
2 his head on the floor.

3 So that's all I have to say.

4 CHAIR FUJII: Thank you. Peter, what is your
5 final argument as to penalty?

6 MR. HANANO: Yes. Thank you, Chair. For Count
7 1 -- let's see -- Department is going to recommend a
8 \$2,000 fine, suspend 1,000 on the condition that there's
9 no further convictions within a one-year period. There's
10 no prior violation within the past five years, although,
11 you know, there is a record, actually kind of a lengthy
12 record, but none that's relevant to any suspension or
13 anything like that. So \$2,000, suspend 1,000. And then
14 for Count 4, we'll recommend a \$250 fine.

15 CHAIR FUJII: Thank you. The Board will go into
16 deliberation and discuss it among ourselves whether we
17 would stand with the recommendations of both the licensee
18 and the Department. So we'll call you again. We hope to
19 be out of here in 15 minutes at the most. Okay. Thank
20 you. Motion for deliberation.

21 MEMBER U`U: Motion.

22 VICE-CHAIR PAGAN: Second.

23 CHAIR FUJII: Okay. All in favor?

24 (Response.)

25 CHAIR FUJII: Motion carried.

1 (Deliberations, 2:33 p.m. to 2:44 p.m.)

2 CHAIR FUJII: The Board is back in open session.
3 Before we get to the penalties, I would like to repeat the
4 violations and the outcome of Counts 1 to Count 5 for the
5 record. Count 1, of course, we found -- the Board found
6 the licensee guilty. Count 2, the licensee was found not
7 guilty. On Count 3, the Board found -- made a dismissal
8 of the case, of the charge. On Count 3, dismissal. Count
9 4 was guilty. And Count 5, not guilty.

10 Now, back to the penalty phase of the results of
11 today's hearing. It's been a long day, yeah. Okay. The
12 Board, on Count 1, has assessed a penalty of \$2,000 of
13 which \$1,000 will be suspended provided there is no
14 conviction of the same offense for a period of one year.
15 Count 1. Yes, Count 1. On Count 4, the Board has
16 assessed a penalty of \$250 for Count 4, the penalty of
17 \$250.

18 The Board appreciates all of you being here so
19 patiently. And the -- the Department will notify you when
20 payment is due.

21 MS. HIU: Thank you.

22 CHAIR FUJII: Thank you for coming.

23 MS. HIU: Thank you.

24 CHAIR FUJII: Any other business, Mr. Director?

25 DIRECTOR MUKAI: No.

1 CHAIR FUJII: Mr. -- well, first of all, we got
2 to make it official. Welcome, Mark, to your first
3 meeting.

4 DEPUTY DIRECTOR HONDA: Thank you.

5 CHAIR FUJII: No further business, then someone
6 make a motion to adjourn.

7 MEMBER TANAKA: I move that we adjourn.

8 CHAIR FUJII: We are adjourned. (Gavel.)

9 (Meeting adjourned, 2:45 p.m.)

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CERTIFICATE

I, TONYA MCDADE, Certified Court Reporter of the State of Hawaii, do hereby certify that the proceedings contained herein were taken by me in machine shorthand and thereafter was reduced to print by means of computer-aided transcription; and that the foregoing represents, to the best of my ability, a true and accurate transcript of the proceedings had in the foregoing matter.

I further certify that I am not an attorney nor an employee of any of the parties hereto, nor in any way concerned with the cause.

DATED this ___ day of December, 2016.

/S/ Tonya McDade

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