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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 9:04 a.m. on October 3rd, 2019.

Reported by: Sandra J. Gran, RPR, CSR 424

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APPEARANCES

BOARD MEMBERS PRESENT:

- Bruce U'u, Chairperson
- Herman Nascimento, Member
- Jason Williams, Member
- Lahela Aiwohi, Member (in at 9:12 a.m.)
- Allan Almeida, Jr., Member
- Gwen Ueoka, Member

Staff present:

- Edward Kushi, First Deputy Corporation Counsel
- Gerald Enriques, Deputy Prosecuting Attorney
- Glenn Mukai, Director
- Georgette Tyau, Deputy Director
- Lianne Suzuki, Private Secretary

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OCTOBER 3RD, 2019; 9:03 A.M.

WAILUKU, MAUI, HAWAII

-oOo-

CHAIR U'U: (Gavel.) The meeting of the liquor control adjudication board is now called to order. Would the board members and staff please introduce yourselves, starting with our commission secretary.

MS. SUZUKI: Lianne Suzuki, liquor control.

MEMBER WILLIAMS: Jase Williams, Wailuku.

MR. KUSHI: Ed Kushi, corp. counsel's office.

CHAIR U'U: Bruce U'u, Paia.

MEMBER UEOKA: Gwen Ueoka, Wailuku.

MEMBER NASCIMENTO: Herman Nascimento, Makawao.

MEMBER ALMEIDA: Allan Almeida, Wailuku.

DIRECTOR MUKAI: Glenn Mukai, liquor control.

DEPUTY DIRECTOR TYAU: Georgette Tyau, liquor control.

MR. ENRIQUES: Gerald Enriques, prosecutor's office.

CHAIR U'U: Thank you all. I'd also like to mention that at this time Members Candace Ariaga, Richard Bergson, and Vice Chair Zachary Helm is excused, so I'm assuming Lahela Aiwahi will come shortly.

On another note, Members, we have -- B is gonna be cancelled -- postponed. Any questions on that?

(No response.)

1 CHAIR U'U: Seeing none --

2 MR. KUSHI: Yeah, Mr. Chair, if I may.

3 CHAIR U'U: Yes.

4 MR. KUSHI: Something -- they defer it, yeah.

5 CHAIR U'U: Yes.

6 MR. KUSHI: But, you know, again, just to let the
7 board know, in the event you have the hearing next week -- or
8 next month and in terms of a -- there's a sentencing issue
9 involved and you want to suspend a fine, the question becomes
10 when do you start suspending the fine? Do you start it as of
11 today, assuming that they were judged guilty today, or the
12 next time? Just keep that in mind.

13 CHAIR U'U: Okay.

14 MR. KUSHI: Okay.

15 CHAIR U'U: Thank you. Anything else? Mr. Kushi,
16 anything else?

17 (No response.)

18 CHAIR U'U: Seeing none --

19 (Laughter.)

20 CHAIR U'U: We will now hear Complaint and
21 Accusation No. 2019-01 against BC Restaurant Operator Inc.
22 doing business as Merriman's Kapalua. Will the respondent or
23 its representative please step forward and state your names
24 and in what capacity you're representing the respondent.

25 MR. GEIGER: Good morning, Chair, Board Members. My

1 name is James Geiger, I'm here as the attorney for the
2 respondent BC Restaurant Operator doing business as Merriman's
3 Kapalua.

4 To my left/your right is the general manager,
5 Danielle Kuck, who is also representing the licensee.

6 CHAIR U'U: Thank you. At this time you have the
7 option of having the charges publicly read or you can waive
8 the reading. What is your preference?

9 MR. GEIGER: We would agree to waive the reading of
10 the public and I believe that we have reached a plea agreement
11 with the prosecutor on this particular matter and I guess I
12 would turn it over to the prosecutor at this time.

13 MR. ENRIQUES: That's correct. The plea agreement
14 is as follows: The licensee will enter a no contest plea to
15 Counts 1, 2, 3, 4, 6, and 10.

16 CHAIR U'U: Okay. Six and 10. Hang on one second
17 now. Slow down, slow down. Okay. So, again, Count -- and
18 then continue.

19 MR. ENRIQUES: Six and ten. With a sentencing
20 agreement and I can go into that later on if that's okay.

21 CHAIR U'U: So for the record, Count 1, 2, 3, 6, and
22 10, no contest.

23 MR. ENRIQUES: And 4.

24 MR. GEIGER: And 4.

25 CHAIR U'U: And 4. Okay.

1 MR. KUSHI: What about the rest?

2 CHAIR U'U: What about the rest, yes?

3 MR. ENRIQUES: The rest of those we would dismiss,
4 Counts 5, 7, 8, and 9.

5 CHAIR U'U: Okay. Any questions from the
6 commissioners?

7 (No response.)

8 CHAIR U'U: Seeing none, Mr. Geiger, for the record,
9 do you represent the respondent involved?

10 MR. GEIGER: I do.

11 CHAIR U'U: So I suppose you're legal counsel?

12 MR. GEIGER: I am.

13 CHAIR U'U: Do you understand the charges against
14 you?

15 MR. GEIGER: Yes, the licensee understands the
16 charges to which they are pleading no contest. I have
17 reviewed the charges with the licensee and they understand.

18 CHAIR U'U: Okay. Do you understand the violations
19 the department of liquor control alleges against you?

20 MR. GEIGER: Yes, the licensee does.

21 CHAIR U'U: Do you understand that you have the
22 right to plead not guilty?

23 MR. GEIGER: Yes, the licensee does.

24 CHAIR U'U: Do you understand that by pleading no
25 contest, you waive the right to a hearing in which you could

1 present evidence and questions -- question witnesses on your
2 behalf?

3 MR. GEIGER: Yes, the licensee does.

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

7 MR. GEIGER: Yes, the licensee's pleas are
8 voluntary.

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

15 MR. GEIGER: Yes, the licensee understands that.

16 CHAIR U'U: Do you still wish to plead no contest?

17 MR. GEIGER: Yes, the licensee still wishes to plea
18 no contest to the, I guess, six counts.

19 CHAIR U'U: Okay. The board hereby finds the
20 licensee has entered a knowing and voluntary plea of no
21 contest. The board accepts your plea and finds you guilty of
22 Counts 1, 2, 3, 4, 6, and 10 reflected in Complaint and
23 Accusation No. 2019-01.

24 Will the department present a summary of the case.

25 MR. ENRIQUES: On May 8th, 2018, at approximately

1 11:38 p.m. Liquor Control Officer Cullen Kawano and Liquor
2 Control Trainee Marc Velasquez approached the front door of
3 the licensed premises of Merriman's Kapalua in Kapalua to
4 conduct an inspection. Upon arrival, Officer Kawano observed
5 that the business was closed or in the process of closings and
6 the door was unlocked.

7 Upon entering the building, Officer Kawano observed
8 three individuals, later identified as Arthur Schreffler, III,
9 William Hermans, and Joy Lee standing at the bar with
10 Schreffler and Hermans having what appeared to be a pint glass
11 of beer in front of them. After speaking with the
12 individuals, Officer Kawano determined that Schreffler and
13 Hermans were employees who had just finished working and that
14 Lee was not an employee. Schreffler and Hermans admitted that
15 the pint glasses contained beer and that Schreffler had poured
16 the beer for them without recording the service.

17 When informed that Officer Kawano had found
18 Schreffler and Hermans consuming liquor in the establishment,
19 Schreffler did not deny doing so. Schreffler later admitted
20 that he was a manager, that he did not sign out on a time
21 sheet system because he was a manager, and that no one else
22 was on duty with an Employee Approved By the Director Card.

23 Over the next two weeks Officer Kawano attempted to
24 speak with management regarding this incident, eventually
25 making contact with General Manager Danielle Kuck.

1 On June 8th, 2018, at approximately 12:50 p.m. again
2 Officer Kawano and Trainee Marc Velasquez approached the front
3 door of the licensed premises at Merriman's Kapalua to conduct
4 an inspection of the premises and as well as an inspection of
5 the wine tasting event occurring therein. Upon entering,
6 Officer Kawano observed approximately 70 patrons seated at
7 long tables with eight prefilled glasses of what appeared to
8 be wine in front of each patron.

9 (Member Aiwahi entered the room.)

10 MR. ENRIQUES: Trainee Velasquez was unable to
11 determine the exact volume of wine, but noted that the large
12 glasses did not appear to be very full. The patrons were
13 observed to be drinking the wine during the course of the
14 event, with some patrons utilizing a spit cup.

15 Officer Kawano attempted to locate an employee on
16 duty with an Employee Approved By the Director Card, but had
17 difficulty doing so as one did not appear to be present in the
18 event area. Officer Kawano subsequently spoke with general
19 manager Kuck, the same manager that he had spoke with
20 regarding the May 8th, 2018, incident. When asked about
21 employee time sheets and managers clocking in and out, Kuck
22 appeared surprised and informed Officer Kawano that managers
23 were still not required to clock in and that she had never
24 clocked in previously. Officer Kawano provided Kuck with
25 information regarding the time sheet rules prior to leaving.

1 Subsequent investigation of the tasting event
2 revealed that the Kapalua Wine and Food Festival provided the
3 majority of the event staff and handled the event itself
4 without the assistance of Merriman's Kapalua staff, with the
5 involvement of Merriman's Kapalua appearing to be limited to
6 primarily to providing the venue and limited staff that would
7 check guest passes for the event.

8 CHAIR U'U: Thank you.

9 Any questions by members of the board?

10 (No response.)

11 CHAIR U'U: Seeing none, Mr. Geiger, you have the
12 opportunity to make a statement regarding this case. You may
13 also inform the board of any mitigating circumstances which
14 may or may not apply to sentencing.

15 MR. GEIGER: Okay. Thank you, Board Members. We
16 appreciate the opportunity to be here today.

17 Merriman's -- actually, as I was on my way up here
18 today, I noted it's the opening date of the 97th Annual Fair.
19 Merriman's has about a third of the history and we hope to be
20 a long operator in the state of Hawaii and so we take these
21 things very seriously. Ms. Kuck will address you in a minute
22 to let you know what we've done to fix these issues so that
23 they don't happen again. And we just want you to know we do
24 believe we're a good operator, we do take these rules
25 seriously, and we are here to have you sit in judgment over

1 how we should be -- how these items should be handled.

2 So with that, I'll turn it over to Ms. Kuck to let
3 you know what we've done to address these issues.

4 MS. KUCK: Okay. So for the first incident, the
5 manager was a back-of-the-house sous-chef, who we hadn't
6 previously had as employees approved by the director as they
7 generally aren't the only manager there when we're open, but
8 he was there cleaning up. And so we've now removed to all
9 managers, kitchen and front of the house, are required to have
10 their liquor cards. We also brought in the LC to our
11 restaurant and had as many of our service staff to -- obtain
12 their cards as possible, so pretty much all of our service,
13 servers and bar tenders -- well, all bartenders definitely
14 are, but all of our servers. We had about 30 people that day
15 get certified just so that everyone would understand the
16 rules, so there should never be anybody who would be a manager
17 there without their liquor card.

18 In addition, we do have a companywide no pau hana
19 policy, but it was, you know, violated that evening, so we put
20 locks on our beer taps so that we can't run into that
21 situation again. When the manager locks up, there's no longer
22 access to any kind of alcohol but -- only the manager would
23 have those keys.

24 And then also we've made sure all managers
25 understand how to print a time sheet from the computer system

1 and that they're clocking into the POS system as soon as they
2 enter the building so that they can be considered on duty.

3 We've also declined -- we've declined participation
4 in this year's Kapalua Wine and Food Festival and any future
5 participation. We've let them know we're not interested in
6 doing that because it's -- you know, we kind of relied on them
7 to lead us through that and we just want to make sure we're
8 relying on ourselves in the future. So if we did any wine
9 tasting event like that, we would make sure to get any
10 necessary permit, but we decided not to be a part of that,
11 that particular event anymore.

12 MR. GEIGER: I think that addresses pretty much what
13 we've done to not have these things happen again. I would
14 note also that the second event, which was the Wine Festival,
15 was effectively a one-off event for Merriman's, it was the one
16 and only time they've done anything like that, and as you've
17 heard, it's the last time they'll do anything like that.

18 So if the board has any questions of us, we'd be
19 happy to answer.

20 CHAIR U'U: Questions by board members?

21 MEMBER WILLIAMS: None, Chair.

22 CHAIR U'U: So question, I have one, so that was a
23 wine testing, that was a wine tasting event?

24 MS. KUCK: Educational wine seminar for people who
25 purchased a pass to go to the Kapalua Wine and Food Festival.

1 They asked us, they approached us if we could have it there,
2 so it was all organized -- they decided, you know, what wine
3 it was. Our staff helped set it up and pour out the wine. It
4 was a one-ounce pour of wine, 8 one-ounce pours of wine that
5 they were, you know, talking about and explaining.

6 CHAIR U'U: So the permit, you guys are in charge of
7 getting the liquor license or is it --

8 MS. KUCK: We -- well, we should have gotten a
9 special permit, but I wasn't really aware that, I didn't know
10 that was something we would need to do that type of wine
11 tasting, it's not something that we do in our regular
12 practice. So, you know, in regular practice, we know the two
13 drinks rule and, you know, we clear drinks as we serve them.
14 We don't do wine flights or wine tastings, so I wasn't aware
15 that we needed a special wine tasting permit.

16 CHAIR U'U: So the permit was pulled by -- not
17 Merriman's --

18 MS. KUCK: I don't think any permit was pulled.

19 CHAIR U'U: Oh, okay.

20 MS. KUCK: Kapalua Wine and Food Festival has their
21 own permits, but it wasn't related to our location.

22 CHAIR U'U: Okay.

23 MEMBER AIWOHI: It was basically like, We have
24 the liquor license -- the understanding was, We have the
25 liquor license, we should be covered?

1 MS. KUCK: (Nodding head.)

2 CHAIR U'U: Any more questions by the board?

3 (No response.)

4 CHAIR U'U: So you guys are gonna discontinue being
5 a part of --

6 MS. KUCK: Kapalua.

7 CHAIR U'U: Kapalua.

8 MS. KUCK: Kapalua Wine Festival.

9 MEMBER AIWOHI: That's disappointing.

10 CHAIR U'U: So how much, how much years you guys
11 been involved in that --

12 MS. KUCK: I believe --

13 MR. GEIGER: That was the only time.

14 MS. KUCK: Well, we've been involved with the wine
15 festival --

16 MEMBER AIWOHI: For years.

17 MS. KUCK: -- for years, we go and do a food booth
18 there --

19 MEMBER AIWOHI: Right.

20 MS. KUCK: -- that doesn't have any alcohol, so
21 we -- we would still continue that. It was just recently that
22 they approached us that they were looking for other venues in
23 Kapalua to try to share with their people.

24 MEMBER AIWOHI: Right.

25 MS. KUCK: And so we just wanted --

1 MEMBER AIWOHI: So to give you guys the business.

2 MS. KUCK: Yeah, and the hotel.

3 MEMBER AIWOHI: Kind of share that wealth of --

4 MS. KUCK: Yeah. Trying to get more Kapalua
5 restaurants involved.

6 MEMBER AIWOHI: Right.

7 MS. KUCK: The intention was good, it was just not
8 within the parameters of our license.

9 MEMBER WILLIAMS: In the future do you think it
10 would be on your own, not part of the actual event?

11 MS. KUCK: Yes, yes. Because we didn't collect any
12 money or anything for that.

13 MEMBER WILLIAMS: Yeah, I understand.

14 CHAIR U'U: Question for staff, just out of my
15 curiosity: What's the cost of a permit to run a function like
16 that? Is it -- is there a permitting fee? I have no idea,
17 I'm just curious.

18 DIRECTOR MUKAI: Well, the permit is free.

19 CHAIR U'U: The permit's free?

20 MR. KUSHI: It's a special license; right?

21 DIRECTOR MUKAI: No. They basically held a wine
22 tasting within their premises, but, actually, the licensee is
23 responsible in her -- for her premises.

24 CHAIR U'U: Okay, okay.

25 DIRECTOR MUKAI: Right.

1 CHAIR U'U: Okay. Any -- any questions by the
2 board?

3 MR. KUSHI: Mr. Chair, if I may.

4 CHAIR U'U: Mr. Kushi.

5 MR. KUSHI: This is maybe for the board members and
6 for myself too. Question to Mr. Enriquez: Can you -- maybe I
7 lost it, but can you repeat the -- on Count 6, the allegations
8 to support that Count 6? I didn't hear it in your summary.
9 The license failed to have liquor service to a customer made
10 by a licensee -- licensee or an employee approved -- employee
11 of the licensee.

12 MR. ENRIQUES: Based on the information in the
13 report, the staff for the event was provided by, I believe,
14 the festival with participation limited by the licensee
15 strictly to providing the venue and, I guess, staff to check
16 the guest passes. The glasses in this event were prefilled,
17 so based on that, it seemed -- I wasn't the one that charged
18 it, but to my recollection, it was -- that seemed like the
19 basis for supporting Count 6, because the glasses were
20 prefilled by someone that supposedly was not an employee.

21 MR. KUSHI: Oh. By the event organizers?

22 MR. ENRIQUES: Yeah, by someone other than the
23 licensee.

24 MR. KUSHI: Oh, okay.

25 CHAIR U'U: I have a question: Count 1 and 10 is

1 pretty similar, a time sheet.

2 MR. KUSHI: Different days.

3 CHAIR U'U: Two days. Okay.

4 MR. ENRIQUES: Different days.

5 CHAIR U'U: Okay. May 2019 and June. Okay, okay.

6 Director's -- any questions, by the way, any more
7 questions?

8 (No response.)

9 CHAIR U'U: Seeing none, the director's argument to
10 a penalty.

11 MR. ENRIQUES: The license for this licensee was
12 transferred to this entity back in 2008. There are no prior
13 violations, as near as I can tell, although there was an
14 Administrative Notice of Written Caution in 2013 and 2016 for
15 a manager that didn't have an Employee Approved By the
16 Director card. So in light of that and in light of the
17 circumstances here, we are recommending the following:

18 As to Count 1, the -- per the plea agreement, a \$500
19 fine with \$250 suspended for one year on the condition that
20 another violation does not occur within that year.

21 Count 2, a \$500 fine, \$250 suspended for one year on
22 the condition that another violation does not occur within
23 that year.

24 Count 3, a \$500 fine, \$400 suspended for one year on
25 the condition that another violation does not occur within

1 that year.

2 Count 4, a \$500 fine, \$400 suspended for one year on
3 the condition that another violation does not occur within
4 that year.

5 Count 6, a \$500 fine, \$400 suspended for one year on
6 the condition that another violation does not occur within
7 that year.

8 And count 7, a \$500 fine, \$250 suspended for one
9 year on the condition that another violation does not occur
10 within that year.

11 CHAIR U'U: Count 7?

12 MR. KUSHI: Count 7?

13 MR. ENRIQUES: Count 10. Count 10. I'm sorry.

14 CHAIR U'U: Would you repeat Count 10 again. I'm
15 sorry.

16 MEMBER UEOKA: \$500 with 250 suspended.

17 MR. ENRIQUES: Count -- I'll just read it again just
18 to clarify. Count 10, a \$500 fine, \$250 suspended for one
19 year on the condition that another violation does not occur
20 within that year.

21 CHAIR U'U: Okay. So for clarity, Commission
22 Members, Count 1 is \$500 fine, \$250 suspended; Count 2, again,
23 500 with 250 suspended; Count 3, 500 with 400 being suspended;
24 Count 4, 500 with 400 being suspended; Count 6, 500 with 400
25 being suspended; and Count 10, 500 with 250 being suspended.

1 MEMBER WILLIAMS: And just for clarity, you say
2 suspended in case -- unless another violation happens, that's
3 another violation of the same type or any violation?

4 MR. ENRIQUES: The language used says another
5 violation, I would say, just out of fairness, it should be the
6 same type of violation.

7 MEMBER WILLIAMS: Okay, okay. Perfect.

8 CHAIR U'U: Okay. Any questions by the board for
9 clarity?

10 MEMBER WILLIAMS: In addition -- and so while we're
11 all on the same page with that agreement, it's another
12 violation of the same type?

13 MR. ENRIQUES: Yes.

14 MEMBER WILLIAMS: Okay.

15 MR. GEIGER: That was the licensee understanding.

16 MEMBER WILLIAMS: Perfect.

17 MR. ENRIQUES: And that was our intent as well.
18 I'll repeat the language.

19 MEMBER WILLIAMS: I just want to make sure that, you
20 know, if something would happen, you know, jaywalking and
21 then -- okay, perfect. All right.

22 CHAIR U'U: At this time the board will take the
23 matter into consideration. I'll entertain a motion to go to
24 deliberation.

25 MEMBER WILLIAMS: So moved.

1 MEMBER UEOKA: Second.

2 CHAIR U'U: Second? All those in favor, say "aye."

3 (Response.)

4 CHAIR U'U: Any opposed?

5 (No response.)

6 CHAIR U'U: (Gavel.)

7 (Pause in Proceedings: 9:25 a.m.-9:32 a.m.)

8 CHAIR U'U: The board is now back in open session.

9 I think Jason wanted to make a comment.

10 MEMBER WILLIAMS: I'll make it after, make after you
11 go through your --

12 CHAIR U'U: Didn't see that coming.

13 (Laughter.)

14 CHAIR U'U: After careful deliberation, the board
15 has come up with the fine amounts: Count 1, \$500 fine with
16 \$250 being suspended; Count 2, \$500 fine with \$250 being
17 suspended; Count 3, \$500 fine with \$400 being suspended;
18 Count 4, \$500 fine with \$400 being suspended; Count 6, \$500
19 fine with \$400 being suspended; and the change is Count 10
20 with \$500 fine, \$400 suspended providing there is no
21 conviction of the same offense for a period of one year and
22 that runs concurrent with all the fines.

23 MEMBER WILLIAMS: Okay. And the only thing I wanted
24 to say was we take plea agreements very seriously and we don't
25 like going against a plea agreement already made, but we just

1 felt it was more appropriate with the decision of the board
2 suspending a little bit more and understanding what you guys
3 have done and what you plan to do in the future and we want to
4 keep -- assure you and us have a great working relation.

5 MS. KUCK: Thank you.

6 CHAIR U'U: Okay. Well said.

7 MR. GEIGER: Thank you, Members.

8 CHAIR U'U: Anything else?

9 (No response.)

10 CHAIR U'U: Thank you for your time.

11 MS. KUCK: Thank you.

12 MEMBER AIWOHI: Thank you.

13 DIRECTOR MUKAI: One more. May I speak to corp
14 counsel.

15 CHAIR U'U: Okay. You want to take a recess.

16 DIRECTOR MUKAI: Yes.

17 CHAIR U'U: Let's take a five-minute recess.

18 (Gavel.)

19 (Pause in Proceedings: 9:34 a.m.-9:37 a.m.)

20 CHAIR U'U: (Gavel.) We're now back in open
21 session. For the record -- for the record, Lahela Aiwohi came
22 in at 9:10 and we've gotta put it down. The mayor's office is
23 asking us to say who is present or not present -- or excused,
24 we should say so, that's good for the record.

25 Moving on, I need some clarity on what we're doing.

1 MR. KUSHI: Next on the agenda, Chair, is the
2 Aumakua one --

3 DIRECTOR MUKAI: No.

4 MEMBERS: No.

5 MR. KUSHI: Yeah, for the record, it's deferred to
6 the next meeting.

7 Okay. So next on the agenda is the complaint
8 against Macadangdang Group LLC and I understand they entered A
9 guilty plea to all counts?

10 MR. ENRIQUES: Yes, that's correct.

11 MR. KUSHI: And they were provided a stipulation and
12 waiver form?

13 MR. ENRIQUES: That's correct. And they also appear
14 to have signed.

15 MR. KUSHI: Maybe you could -- it should be
16 reflected in the evidence as far as an exhibit what they read
17 and signed and the fact that they didn't appear today, they
18 waived their appearance.

19 MR. ENRIQUES: Okay. I guess for the record, I
20 request that this be Exhibit 1, it's an acknowledgment and
21 alternative answers to the charge in which Virgilio
22 Macadangdang, owner and a member of Macadangdang Group LLC,
23 has signed and checked off the guilty plea box of this, of
24 this form. So I believe that pursuant to Rule 08-102-92, the
25 adjudication hearing is allowed to proceed without them being

1 present.

2 MR. KUSHI: Okay. Any evidence that they were
3 notified of the hearing date and time?

4 MR. ENRIQUES: There was because they signed off on
5 the form, they signed as of, I think, August 28th, 2019, and
6 they were given notice that the hearing date was today, that's
7 on the form as well.

8 MR. KUSHI: Okay. Enter that into evidence.

9 MR. ENRIQUES: Yeah. I will move to enter this into
10 evidence.

11 MR. KUSHI: Okay. At the proper time.

12 That being the case, Mr. Chair, the board can go
13 ahead and hear the case, but you still need to go through the
14 motions.

15 CHAIR U'U: Okay. Well, we'll now hear Complaint
16 and Accusation No. 2019-03 against Macadangdang Group LLC dba,
17 doing business as, Joey's Kitchen. There is no respondent or
18 representative president -- present, and so in that case, I
19 guess they're going to waive their rights to read and they
20 don't have legal counsel. So I would understand that they
21 probably know the charges against them because they signed off
22 and the plea to each count is guilty.

23 And I guess at this time I'll turn it over to
24 Mr. Enriquez.

25 MR. ENRIQUES: And just to clarify, I believe that

1 pursuant to 08-102-92, failure of the licensee or their
2 representative to appear before the board after proper notice
3 is served constitutes the licensee waiving their right to be
4 entitled to be heard in person or through counsel, just to
5 clarify as far as what that statutes means.

6 CHAIR U'U: I think on my end I might have to say
7 that the board accepts the plea and finds you guilty of Counts
8 1 through 7, I would assume. Correct?

9 MR. ENRIQUES: I think eventually you would have to
10 do that, I'm not sure if the factual basis needs to come first
11 or --

12 MR. KUSHI: Why don't -- why don't you make that
13 motion after he presents.

14 CHAIR U'U: Okay. Go ahead, Mr. Enriquez.

15 MR. ENRIQUES: Okay. On May 4th, 2019, at
16 approximately 9:45 p.m. Liquor Control Officer Marc Valesques
17 and -- approached the licensed premises of Joey's Kitchen in
18 Napili. Upon arrival, Officer Velasquez note -- looked
19 through the front windows and saw what appeared to be a glass
20 of beer on a kitchen window counter. Officer Velasquez took a
21 picture and began recording the scene. He then recorded an
22 employee, later identified as Michael Nakamura, take a sip of
23 the beer. Officer Velasquez attempted to enter the premises,
24 but the door was locked. He knocked on the door until another
25 employee, later identified as Barbie Rose Acosta let him in.

1 Officer Velasquez asked Acosta who was working that night and
2 she identified herself and Nakamura.

3 Officer Velasquez asked Nakamura whose beer was on
4 the counter. Nakamura admitted that it was his beer and that
5 he had poured it from the tap, but denied drinking it on three
6 separate occasions and claimed that he was waiting for the
7 phone to die down. He further claimed that he was not
8 drinking because the establishment was closed and offered to
9 let Officer Velasquez smell his breath. Nakamura admitted
10 that he did not pay for the beer because it was his pau hana
11 beer and further admitted that he had -- that he had not
12 finished work yet. Nakamura also admitted that he was a
13 manager, but did not have an Employee Approved By Director
14 card. When confronted by Officer Valesques about the
15 recording of Nakamura consuming the beer, Nakamura sighed and
16 looked distressed before going back to the counter and pouring
17 the beer into the sink.

18 Officer Valesques then spoke with Acosta regarding
19 the employee time sheets. Acosta admitted that managers did
20 not sign in and out because they were salaried and she further
21 admitted that she was not displayed in the time sheets.

22 On May 5th, 2019, Officer Valesques returned to the
23 premises to speak with owner Virgilio Macadangdang. While
24 there, Officer Valesques noticed an ad for a dinner at the
25 restaurant with wine pairings for \$135 per person. He also

1 noticed that the wine list did not display the volume of wine
2 per pour for the glasses of wine. When asked about the two
3 violations observed, Macadangdang admitted that the violations
4 had occurred and stated that they would be fixed immediately.
5 He also further stated that they had fixed the employee time
6 sheet issue.

7 CHAIR U'U: Thank you.

8 Any questions by members of the board?

9 (No response.)

10 CHAIR U'U: Seeing none, director's argument as to
11 penalty.

12 MR. KUSHI: Mr. Enriquez, can you explain Counts
13 No. 6 and 7? What is this all you can drink? Was that a
14 special event or --

15 MR. ENRIQUES: That was relating to a tasting menu
16 that they had which offered multiple drinks for a flat rate.
17 And then Count 7, that was a failure to disclose the volume of
18 a wine pour on the price list.

19 MEMBER WILLIAMS: Just to clarify, so did they say
20 all you can drink or did it just fail not to say?

21 MR. ENRIQUES: It was -- it's either all you can
22 drink or --

23 (Multiple speakers.)

24 MR. ENRIQUES: More than two per --

25 CHAIR U'U: A fixed price.

1 MR. ENRIQUES: Yeah, for a fixed price. More than
2 two drinks of an alcoholic beverage for a fixed price, which
3 in this case I believe it was -- I want to say six for a fixed
4 price. Give me a second, I can pull the -- this up.

5 MEMBER WILLIAMS: Okay. Or do we have a copy of the
6 flier?

7 MR. ENRIQUES: I have the flier here, so if you give
8 me a second, I can pull it up.

9 (Pause - referring.) Six, six separate glasses. I
10 believe they said it was a four-ounce pour per.

11 MEMBER WILLIAMS: Per glass?

12 MR. ENRIQUES: Yes.

13 MEMBER WILLIAMS: Okay.

14 CHAIR U'U: Mr. Kushi.

15 MR. KUSHI: Yeah. Mr. Enriquez, before you get into
16 recommending for sentences, was there any plea agreement?

17 MR. ENRIQUES: No.

18 MR. KUSHI: Okay. Thank you.

19 CHAIR U'U: Okay.

20 MEMBER WILLIAMS: I'm just wondering, the form they
21 signed that's in back, was there -- was there any explanation
22 or any -- anything as -- did they say anything or just sign?

23 MR. ENRIQUES: No, the -- all the form has was
24 just -- yeah, there was no explanation. It was just simply a
25 check off on the guilty plea box.

1 MEMBER WILLIAMS: Okay.

2 MR. ENRIQUES: Oh, just to clarify, I was incorrect,
3 it's a -- it was actually a two-ounce pour.

4 MEMBER WILLIAMS: Two, yeah. Four, I was like wow.

5 (Multiple speakers.)

6 MR. ENRIQUES: I might be thinking of another case.

7 My apologies.

8 MEMBER WILLIAMS: Okay.

9 CHAIR U'U: Any more questions by the board?

10 (No response.)

11 CHAIR U'U: Seeing none, the director's argument as
12 to a penalty.

13 MR. ENRIQUES: The original license for this
14 licensee was issued back in January 2019, there are no prior
15 violations and this licensee took responsibility for what
16 happened. In light of that and also in light of
17 Mr. Nakamura's lack of honesty with the department, we are
18 requesting the following:

19 Count one, a \$500 fine, \$250 suspended for one year
20 on the condition that another violation does not occur within
21 that year.

22 Count 2, a \$100 fine.

23 Count 3, a \$500 fine, \$250 suspended for one year on
24 the condition that another violation does not occur within
25 that year.

1 Just so I'm clear, the intent here is that
2 violations of the same nature do not occur within that year.

3 MEMBER WILLIAMS: Right.

4 MR. ENRIQUES: Going on, Count 4, a \$100 fine.

5 Count 5, a \$100 fine.

6 Count 6, \$100 fine, \$100 suspended for one year on
7 the condition that another violation of that nature does not
8 occur within that year.

9 And count 7, \$100 fine, \$100 suspended for one year
10 the condition that another violation of that nature does not
11 occur within that year.

12 CHAIR U'U: Okay. So --

13 MR. KUSHI: Mr. Chair, if I may. Just to give them
14 another chance, it's about 9:45, would the board's secretary
15 please check the -- outside, see if the licensee is around
16 before you get into deliberations.

17 CHAIR U'U: Okay. Give them another chance.

18 MS. SUZUKI: No one is here.

19 MR. KUSHI: Check the bathroom.

20 (Laughter.)

21 MR. KUSHI: Okay. So for the record, they are not
22 present at this time.

23 CHAIR U'U: Okay.

24 MR. ENRIQUES: So just so I'm clear, was there a
25 finding of adjudication of guilty or --

1 CHAIR U'U: That's what I'm -- that's what I brought
2 up prior.

3 MR. KUSHI: Go ahead.

4 CHAIR U'U: And so that goes in that next one.

5 And the board hereby finds the licensee has entered
6 a knowing and voluntary plea of guilty. The board accepts
7 your plea and finds you guilty of Counts 1, 2, 3, 4, 5, 6, and
8 7.

9 Okay. So I would call -- motion to deliberate?

10 MEMBER WILLIAMS: Motion.

11 CHAIR U'U: There's a motion, is there a second?

12 MEMBER AIWOHI: Second.

13 CHAIR U'U: All those in favor, say "aye."

14 (Response.)

15 CHAIR U'U: Any opposed?

16 (No response.)

17 CHAIR U'U: (Gavel.)

18 (Pause in Proceedings: 9:49 a.m.-10:04 a.m.)

19 CHAIR U'U: The board is now back in session, in
20 open session.

21 MR. KUSHI: Mr. Chair.

22 CHAIR U'U: Yes.

23 MR. KUSHI: Mr. Chair, if I may.

24 Mr. Enriques, could you make an offer to introduce
25 that waiver document into evidence.

1 MR. ENRIQUES: Oh. For the record, I guess I'd like
2 to admit the Acknowledgment and Alternative Answers to the
3 Charges document in CA No. 2019-3 into evidence.

4 MR. KUSHI: Department's Exhibit No. 1?

5 MR. ENRIQUES: Yeah.

6 MR. KUSHI: Okay. Thank you.

7 CHAIR U'U: Okay. Thank you.

8 For Count 1, a \$500 fine with \$250 being suspended;
9 Count 2, a \$100 fine; Count 3, \$500 fine with \$250 being
10 suspended; Count 4, a \$100 fine; Count 5, a \$100 fine with
11 \$100 of that being suspended; Count 6, a \$600 fine with \$100
12 being suspended; and Count 7, a \$100 fine with \$100 of that
13 being suspended providing there is no conviction of the same
14 offense for a period of one year.

15 I would say the department would notify them when
16 payment is due, but --

17 MEMBER UEOKA: They're not here anyway.

18 CHAIR U'U: -- I'd be talking to myself. I do that
19 at home.

20 (Laughter.)

21 CHAIR U'U: Anything else, Director?

22 DIRECTOR MUKAI: No. Thank you.

23 CHAIR U'U: Thank you.

24 Motion to adjourn?

25 MEMBER WILLIAMS: I make motion to adjourn.

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CHAIR U'U: Is there a second?

MEMBER AIWOHI: Second.

CHAIR U'U: All those in favor, say "aye."

(Response.)

CHAIR U'U: (Gavel.)

(The proceedings were adjourned at 10:06 a.m.)

