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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 8:59, on January 2, 2020.

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

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APPEARANCES

BOARD MEMBERS PRESENT:

Bruce U'u, Chairperson

Gwen Ueoka, Vice Chairperson

Zachary Helm, Member

Herman Nascimento, Member

Jason Williams, Member

Lahela Aiwohi, Member

Allan Almeida, Member

Staff present:

Edward Kushi, First Deputy Corporation Counsel

Gerald Enriques, Deputy Prosecuting Attorney

Georgette Tyau, Deputy Director

Maria Khangsengsing, Secretary to Boards/Commissions

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January 2, 2020; 8:59

WAILUKU, MAUI, HAWAII

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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. KHANGSENGSING: Maria Khangsengsing, department of liquor control.

MEMBER AIWOHI: Lahela Aiwohi.

MEMBER WILLIAMS: Jason Williams, Wailuku.

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

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

VICE CHAIR HELM: Zach Helm, Molokai.

MEMBER NASCIMENTO: Herman Nascimento, Makawao.

MEMBER UEOKA: Gwen Ueoka, Wailuku.

MEMBER ALMEIDA: Allan Almeida, Wailuku.

MS. TYAU: Georgette Tyau, liquor control.

MR. ENRIQUES: Gerald Enriques, Maui County Prosecutors.

CHAIR U'U: Thank you. At this time we're gonna -- a few, a few notes to read aloud. Just as a reminder, there will -- we no longer have a court reporter present at the meeting, all guys, so please remind everyone to please state their names before speaking to identify -- to be identified

1 correctly on the transcript. So please state for the record  
2 who's absent and who's excused and I guess we've just gotta be  
3 more vocal, being no court reporter with a vision, yeah, so --  
4 and one speak at a time.

5 That's specifically for you, Jason. Not speak over.

6 (Laughter.)

7 MEMBER WILLIAMS: Thank you.

8 CHAIR U'U: Hey, by the way, everybody, happy new  
9 year.

10 And at this time Chuck Bergson is not here, but he's  
11 stated to show up and Candace Ariaga is working.

12 We will now hear Complaint and Accusation  
13 No. 2019-06, against Tante's Maalaea LLC doing business as  
14 Tante's Fish Market Restaurant and Bar. Will the respondent  
15 or its representatives please step forward and state your  
16 names.

17 MR. MARCOL: Michael Marcol for Tante's Maalaea.

18 CHAIR U'U: Have a seat. State your last name.

19 MR. MARCOL: Marcol, M-A-R-C-O-L.

20 CHAIR U'U: What capacity do you represent the  
21 respondent, Mr. Marcol?

22 MR. MARCOL: I'm the authorized agent.

23 CHAIR U'U: Okay. At this time you have the option  
24 of having the charges publicly read or you can waive the  
25 reading. What is your preference?

1 MR. MARCOL: I'll waive the reading.

2 CHAIR U'U: Waive the reading. So, Mr. Marcol, for  
3 the record, do you represent the respondent involved?

4 MR. MARCOL: Yes.

5 CHAIR U'U: Okay. So do you have legal counsel?

6 MR. MARCOL: No.

7 CHAIR U'U: Do you understand that you have the  
8 right to have your legal counsel present?

9 MR. MARCOL: Yes, I do.

10 CHAIR U'U: Do you understand the charges against  
11 you?

12 MR. MARCOL: Yes.

13 CHAIR U'U: What is your plea to each count?

14 MR. MARCOL: I plead no contest. I believe -- I  
15 already spoke with the prosecuting attorney and there's two  
16 counts that we'll plead no contest to.

17 MR. ENRIQUES: That's correct. Gerald Enriquez for  
18 the Maui County Prosecutors. The plea agreement is as  
19 follows: The licensee will plead no contest to Counts 1 and 2  
20 and Counts 3, 4, 5, and 6 will be dismissed with prejudice  
21 pursuant to the agreement. There is a sentencing agreement  
22 for both Count 1 and 2. The parties have agreed upon a \$500  
23 fine with \$250 suspended for one year on the condition that  
24 another violation of the same or similar nature does not occur  
25 within that year, and that's for Counts 1 and 2.

1 CHAIR U'U: Counts 1 and 2. Okay.

2 And, everybody, clarification on the changes? Any  
3 questions by the board?

4 (No response.)

5 CHAIR U'U: Seeing none.

6 MEMBER WILLIAMS: This is Jason Williams. Gerald,  
7 so it's \$500 for each one; right?

8 MR. ENRIQUES: Correct.

9 MEMBER WILLIAMS: Okay. So --

10 CHAIR U'U: Yeah. We can do that later also, Jason.

11 MEMBER WILLIAMS: I can do it now.

12 CHAIR U'U: Sorry. Clarify your (inaudible).

13 MEMBER WILLIAMS: Thank you.

14 CHAIR U'U: We'll need a yes or no answer. Do you  
15 understand the violations the department of liquor control  
16 alleges against you?

17 MR. MARCOL: Yes.

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

20 MR. MARCOL: Yes.

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

24 MR. MARCOL: I understand.

25 CHAIR U'U: Is your plea of no contest voluntary and

1 not the result of force, threats, or of promises apart from  
2 any plea agreement?

3 MR. MARCOL: Yes, it's voluntary.

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

10 MR. MARCOL: Yes.

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

12 MR. MARCOL: Yes, I do.

13 CHAIR U'U: The board hereby finds the licensee has  
14 entered a knowing and voluntary plea of no contest. The board  
15 accepts your plea and finds you guilty of Counts 1 and 2  
16 reflected in Complaint and Accusation No. 2019-06.

17 Will the department present a summary of the case.

18 MR. ENRIQUES: Gerald Enriques here. On February 6,  
19 2019, at approximately 9:07 p.m., Liquor Control Officer Marc  
20 Velasquez approached the premises of Tante's Fish Market  
21 Restaurant and Bar in Maalaea to deliver a circular and  
22 conduct a routine inspection. Upon arrival, LCO Velasquez  
23 attempted to open the glass front doors, but discovered that  
24 they were locked. He looked through the doors and observed  
25 three people sitting at the bar. One of these people, known

1 to LCO Velasquez as Michael Marcol, recognized him and  
2 unlocked the door to allow him entry.

3           Upon entry, LCO Velasquez observed that Marcol was  
4 drinking something and asked him what he was drinking. Marcol  
5 stated that it was just orange juice, but allowed LCO  
6 Velasquez to smell the liquid when asked, when he asked to do  
7 so. LCO Velasquez told Marcol that he smelled vodka in the  
8 orange juice and asked if there was vodka in the orange juice  
9 and Marcel admitted that there was.

10           Officer Velasquez also observed a second drink in  
11 front of a female patron, subsequently determined to be a  
12 Tante's employee, sitting at the bar and asked what was in  
13 that drink. Marcol stated that it was chocolate. Officer  
14 Velasquez asked if it was only chocolate, and Marcel admitted  
15 that it was chocolate and vodka. Marcol subsequently provided  
16 LCO Velasquez with a receipt showing the cost and type of  
17 drinks that Marcol and the employee were consuming.

18           Officer Velasquez then asked if there was anyone on  
19 the premises with an employee approved by the director  
20 certification card, and Marcol admitted that there was not.  
21 LCO Velasquez asked Marcol what his title was, and Marcel  
22 stated that he was kind of an owner, but was also a manager.  
23 He admitted that he did not have an employee approved by the  
24 director card.

25           CHAIR U'U: Thank you.

1           Mr. Marcol, you have -- you now have the opportunity  
2 to make a statement regarding this case. You may also inform  
3 the board of any mitigating circumstances which may or may not  
4 apply to sentencing.

5           MR. MARCOL: Sure. I mean, there is no mitigating  
6 circumstances. It was a mistake, it was an error. We have  
7 since made sure that everybody has a liquor card and the  
8 prosecuting attorney checked on that and he did concur that  
9 about 12 of our employees now all have liquor cards. And it  
10 was an error on our part that will never happen again.

11           CHAIR U'U: Any questions by board members?

12           (No response.)

13           CHAIR U'U: Seeing none, director's report --  
14 argument as to a penalty.

15           MR. ENRIQUES: This license was issued in September  
16 2018. The licensee has no prior history of violations, so  
17 based on that, we're requesting the following per the plea  
18 agreement: For both Count 1 and Count 2, a \$500 fine, \$250  
19 suspended for one year on the condition that another violation  
20 of the same or similar in nature does not occur within that  
21 year.

22           CHAIR U'U: Any questions by the board?

23           (No response.)

24           CHAIR U'U: Seeing none, the board will take this  
25 matter into consideration. I'll entertain a motion to go into

1 deliberation. Can I have a motion?

2 VICE CHAIR HELM: So moved.

3 MEMBER AIWOHI: Second.

4 CHAIR U'U: Moved by Zach Helm and seconded by  
5 Lahela Aiwohi. Motion carried. (Gavel.)

6 (Pause in Proceedings: 9:07 a.m.-9:11 a.m.)

7 CHAIR U'U: (Gavel.) The board is now back in  
8 session. After deliberation, we went along with the  
9 recommended fines. On Count 1, a \$500 fine and \$250 being  
10 suspended, and Count 2, a \$500 fine with \$250 being suspended  
11 provided there is no conviction of the same offense for a  
12 period of one year. And it was also brought up next time if  
13 you could tell the truth when they ask what's in your  
14 beverage.

15 MR. MARCOL: Yeah.

16 CHAIR U'U: And the department will notify you when  
17 payment is due. Thank you for your time. Happy new year.

18 MR. MARCOL: Thanks.

19 CHAIR U'U: We will now hear Complaint and  
20 Accusation No. 2019-07, Dirty Monkey Lahaina LLC doing  
21 business as the Dirty Monkey.

22 MR. ROBB: Good morning, members.

23 MEMBERS: Good morning.

24 CHAIR U'U: Thank you for stepping forward. Could  
25 you please state your name and in what capacity you represent

1 the respondent.

2 MR. ROBB: My name is Matthew Robb, I'm one of the  
3 owners/general managers/operating partners.

4 CHAIR U'U: So Matthew Robb?

5 MR. ROBB: Matthew Robb, R-O-B-B as in boy.

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

9 MR. ROBB: We can waive the reading.

10 CHAIR U'U: Okay. Mr. Robb, for the record, do you  
11 represent the respondent involved?

12 MR. ROBB: Yes.

13 CHAIR U'U: Do you have legal counsel?

14 MR. ROBB: No.

15 CHAIR U'U: Do you understand that you have a right  
16 to have legal counsel present?

17 MR. ROBB: Yes.

18 CHAIR U'U: Do you understand the charges against  
19 you?

20 MR. ROBB: Yes.

21 CHAIR U'U: What is your plea for each count?

22 MR. ROBB: We also talked to Gerald as well as far  
23 as a plea deal filing no contest for the two counts that we  
24 talked about.

25 MR. ENRIQUES: Chair, Gerald Enriques on behalf of

1 the Maui County Prosecutors. The plea agreement is as  
2 follows: The licensee will plead no contest to Counts 1 and  
3 3, Counts 2 and 4 will be dismissed pursuant to the plea  
4 agreement. And we have agreed upon the following sentence:  
5 Count 1, a \$2,000 fine, 1,000 of which would be suspended for  
6 one year on the condition that another violation does not  
7 occur within that year. Count 3, a \$500 fine with \$250  
8 suspended for one year on the condition that another violation  
9 does not occur within that year.

10 CHAIR U'U: Thank you. Any clarity needed by the  
11 board members?

12 MEMBER AIWOHI: No.

13 CHAIR U'U: I will need a yes or no answer. Do you  
14 understand the violations the department of liquor control  
15 alleges against you?

16 MR. ROBB: Yes, I do.

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

19 MR. ROBB: Yes, I do.

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

23 MR. ROBB: Yes, I do.

24 CHAIR U'U: Is your plea of no contest voluntary and  
25 not the result of force, threats, or of promises apart from

1 any plea agreement?

2 MR. ROBB: Yes.

3 CHAIR U'U: Do you understand that on each count, if  
4 the board accepts your plea of no contest, you'll be found  
5 guilty and that the board may issue a reprimand or assess and  
6 collect a penalty of up to \$2,000 or revoke any license at any  
7 time or suspend the right of the licensee to use the  
8 licensee's license?

9 MR. ROBB: Yes.

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

11 MR. ROBB: Yes.

12 CHAIR U'U: The board hereby finds that the licensee  
13 has entered a knowing and voluntary plea of no contest. The  
14 board accepts your plea and finds you guilty of Counts 1 and 3  
15 in Complaint and Accusation No. 2019-07.

16 Will the department present a summary of the case.

17 MR. ENRIQUES: This is Gerald Enriques. On  
18 March 16th, 2019, at approximately 1:45 a.m., Maui Police  
19 Department Officers William Cleghorn III and Mitchell Pombrio,  
20 both who -- both of whom had received formal training in  
21 detecting signs of intoxication, were conducting bar checks at  
22 the premises of the Dirty Monkey located at 844 Front Street  
23 in Lahaina.

24 Officer Cleghorn was standing at the top of the  
25 steps leading up to the Dirty Monkey, while Officer Pombrio

1 was standing outside to the left of the entrance. Officer  
2 Cleghorn observed a male known to him as Steve Hairens,  
3 H-A-I-R-E-N-S, from police prior -- prior police contact while  
4 Hairens was intoxicated, standing near the bar located to the  
5 right of the entrance.

6 Officer Pombrio was approximately 15 feet away from  
7 Hairens with a clear view of him and he observed Hairens  
8 consuming a light-brown or amber-colored drink out of a clear  
9 plastic cup. Officer Pombrio noted that the liquor was not  
10 dark like a cola, but more along the lights of a Bud Light  
11 beer or a mixed drink. When Hairens saw Officer Pombrio, he  
12 rapidly consumed the drink and exited the bar. Officer  
13 Pombrio observed Hairens to be stumbling and staggering,  
14 needing to use the banister to get down the steps without  
15 falling down.

16 Officer Cleghorn also observed Hairens stumbling out  
17 of the bar and down the steps. Officer Cleghorn advised him  
18 that he should walk home due to his level of intoxication.  
19 Hairens claimed that he was not driving and continued walking  
20 to the back parking lot of Dirty Monkey, where Officer Pombrio  
21 also Hairens slowly stumbling and repeated the remand -- the  
22 reminder not to drive.

23 Approximately five minutes later, Officers Cleghorn  
24 and Takayama observed the -- a silver Nissan Frontier  
25 traveling north on Front Street just south of way Wahie Lane.

1 The vehicle veered -- excuse me, swerved right to the east  
2 shoulder and almost collided with a parked vehicle. As the  
3 vehicle got closer, Officer Cleghorn observed the sole  
4 occupant and operator to be Hairens. While directly next to  
5 Cleghorn, Hairens veered to the right again and collided with  
6 the curb directly in front of the Dirty Monkey. Hairens  
7 continued north on Front Street, crossing left of center and  
8 going completely into the oncoming lane by Longhi's before  
9 slowly drifting back into the north lane of travel. Officer  
10 Cleghorn and Takayama got into their patrol vehicles and  
11 notified Officer Pombrio of what they had observed before  
12 attempting to locate Hairens. Officer Cleghorn subsequently  
13 heard Officer Pombrio calling off on a traffic stop of Hairens  
14 in the Safeway parking lot located at 1221 Honoapiilani  
15 Highway.

16           Upon stopping Hairens, Officer Pombrio approached  
17 the vehicle and knocked on the front windshield, Officer  
18 Pombrio observed that Hairens appeared surprised to see him.  
19 Hairens opened the door to the vehicle and Officer Pombrio  
20 asked him if he recalled police speaking to him at the Dirty  
21 Monkey. Hairens said that he did, and further stated that his  
22 house was right over there before pointing towards Keao  
23 Street. Officer Pombrio asked Hairens several times to  
24 produce his license, but Hairens appeared to have difficulty  
25 physically providing it. He was observed to have the odor of

1 alcohol emanating from his breath as he spoke. And when  
2 Officer Pombrio spoke with Hairens about striking the curb,  
3 Hairens spontaneously stated, quote, That means I'm drunk and  
4 driving.

5 Upon arrival, Officer Cleghorn took over the  
6 investigation from Officer Pombrio. Again, Hairens was  
7 observed to have various signs of intoxication including red  
8 watery eyes, slurred speech, and the odor of liquor emanating  
9 from his person. Hairens voluntarily participated in field  
10 sobriety maneuvers and was unable to perform them as  
11 instructed and demonstrated. Notably, while performing the  
12 walk-and-turn maneuver, Hairens fell backwards and hit his  
13 head while completing -- trying to complete the turn portion  
14 of the maneuver, after which the maneuvers were terminated for  
15 his safety. Hairens was subsequently arrested and voluntarily  
16 provided a breath sample at the Lahaina Police Station, which  
17 revealed a breath alcohol level of .210.

18 Liquor control officer Martin Davis was assigned to  
19 investigate this matter and made contact with Hairens.  
20 Hairens claimed that he purchased and consumed an entire  
21 bottle of tequila at home before he went to the Dirty Monkey,  
22 but denied drinking at the bar. He further admitted that he  
23 was, quote, already wasted, when he arrived at the Dirty  
24 Monkey, estimating his level of intoxication at an 8 or a 9 on  
25 a scale of 1 to 10, with 1 being totally sober and 10 being

1 passed-out drunk. Hairens estimated that he arrived at the  
2 Dirty Monkey at approximately 11:45 p.m. and left at  
3 approximately 1:00 a.m.

4 Various employees of the Dirty Monkey were  
5 interviewed regarding this incident, with some employees  
6 stating that Hairens was a regular patron who consumed Red  
7 Bull and vodka drinks and typically stayed from 11:00 p.m.  
8 through closing. None of the employees interviewed could  
9 remember Hairens being present on the night of the incident  
10 and employees gave conflicting statements on whether Hairens  
11 typically paid in cash or with a credit card.

12 CHAIR U'U: Any questions by members of the board at  
13 this time?

14 (No response.)

15 CHAIR U'U: Seeing none, Mr. Robb, you have -- you  
16 now have the opportunity to make a statement regarding this  
17 case. You may also inform the board of any mitigating  
18 circumstances which may or may not apply to sentencing.

19 MR. ROBB: Yes. We take these allegations very  
20 seriously at the Dirty Monkey. It's one of -- you know, it's  
21 my livelihood, it's our and my partners livelihood, so we --  
22 we understand the legality of this situation. What we've done  
23 to try to -- we're always trying to be on the offensive, not  
24 the defensive, so what we've done since that particular  
25 incident happened was we've implemented a training system for

1 our staff completely. We've also fired the person that was  
2 serving that night because, obviously, they were using poor  
3 judgment. And we know we're the last stop and what comes to  
4 us when we're the last stop is responsibility and so by doing  
5 so, we've implemented a lot more rules for that kind of thing  
6 and, hopefully, this won't happen again.

7 And, you know, we actually -- our officers and  
8 everybody, all my staff, as you can see, I think you have an  
9 is it as an exhibit, they've done a training. We've also done  
10 an online TIPS training to try to alleviate this thing from  
11 happening again. So, again, you know, we take these  
12 allegations very seriously. We turned three years old  
13 yesterday, so it's been a -- quite a long journey for three  
14 years for us and we're doing our best and hope you guys can  
15 understand that.

16 CHAIR U'U: Thank you.

17 Questions by board?

18 VICE CHAIR HELM: Yeah, Chair.

19 CHAIR U'U: Commissioner Helm.

20 VICE CHAIR HELM: So is this individual 86ed  
21 already? I mean, he's not going to be coming at your bar in  
22 the future?

23 MR. ROBB: This individual has been 86ed.

24 VICE CHAIR HELM: Okay.

25 MR. ROBB: He's a very popular person in town.

1 (Laughter.)

2 MR. ROBB: So, yes.

3 VICE CHAIR HELM: Thank you.

4 CHAIR U'U: Any more questions?

5 (No response.)

6 CHAIR U'U: Seeing none, at this time we take the  
7 director's argument as to a penalty.

8 MR. ENRIQUES: This license was issue in December of  
9 2016. The licensee has one prior set of violations stemming  
10 from a complaint and accusation that was adjudicated in August  
11 2018, although -- although those violations were not for the  
12 same type of violations in this case. Based on that, we're  
13 requesting the following per the plea agreement: Count 1, a  
14 \$2,000 fine, \$1,000 suspended for one year on the condition  
15 that another violation does not occur within that year. Count  
16 3, a \$500 fine, \$250 suspended for one year on the condition  
17 that another violation does not occur within that year.

18 CHAIR U'U: I'm sorry. Count 1 is \$2,000 with a  
19 thousand being suspended?

20 MR. ENRIQUES: Correct. The mandatory minimum is  
21 \$1,000.

22 MEMBER AIWOHI: Oh, okay.

23 MR. ENRIQUES: No portion of which can be suspended,  
24 just to make that clear.

25 MEMBER AIWOHI: Thanks for the clarification.

1 CHAIR U'U: Okay. And Count 3 is 500 and 250?

2 MR. ENRIQUES: Yes.

3 CHAIR U'U: Okay. Any questions by the board?

4 MR. KUSHI: Mr. Chair, what are the prior -- or  
5 priors.

6 MR. ENRIQUES: This is the --

7 CHAIR U'U: Halloween.

8 MR. ROBB: Halloween when we first opened.

9 MEMBER: I remember that.

10 MEMBER AIWOHI: Right.

11 MR. ENRIQUES: This Halloween offense is -- I can  
12 give you the -- you want the exact counts?

13 MEMBER AIWOHI: This is the standing?

14 MR. ROBB: I can tell you, if you'd like.

15 MR. KUSHI: Halloween?

16 MEMBER AIWOHI: Not enough security. Yeah, there  
17 was not enough security.

18 MEMBER WILLIAMS: Not enough security, the outfits.

19 MEMBER AIWOHI: The outfits.

20 MEMBER WILLIAMS: Yeah, the outfits.

21 CHAIR U'U: You're not stating your name.

22 MEMBER AIWOHI: Sorry.

23 CHAIR U'U: So state your name again, please.

24 MR. ROBB: Matthew Robb for the Dirty Monkey. There  
25 was a -- we had just opened and we had had some violations due

1 to some explicit outfits, glassware not being cleared off the  
2 tables --

3 MR. KUSHI: Okay. I remember now.

4 MR. ROBB: Glassware not being cleared off the  
5 tables, aisle ways, things like that. There was a total of  
6 eight counts, four were dismissed. And that was our first  
7 time of being open and to give you an example, we haven't been  
8 back here since, we did things to make sure that didn't happen  
9 again. We went through two more Halloweens with zero  
10 citations.

11 CHAIR U'U: Thank you.

12 Does that answer?

13 (No response.)

14 CHAIR U'U: Okay. This board will take this matter  
15 into consideration. I will entertain a motion to go into  
16 deliberation.

17 MEMBER WILLIAMS: So moved.

18 MEMBER AIWOHI: Second.

19 CHAIR U'U: A motion by Mr. Rivers and second by.

20 MEMBER AIWOHI: Lahela.

21 CHAIR U'U: Zach Helm.

22 MEMBER AIWOHI: Jason Rivers.

23 MEMBER WILLIAMS: Jason Williams. (Inaudible.)

24 (Laughter.)

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

1 (Response.)

2 CHAIR U'U: (Gavel.) Thank you.

3 (Pause in Proceedings: 9:24 a.m.-9:31 a.m.)

4 CHAIR U'U: (Gavel.) The board is now back in  
5 session. After careful deliberation, the board assesses a  
6 penalty -- for Count 1, the board assesses a penalty of \$2,000  
7 with \$1,000 being suspended provided there is no conviction  
8 for the same offense for a period of one year; and on Count 3,  
9 a \$500 fine with \$250 being suspended, again, provided there  
10 is no conviction for the same offense for a period of one  
11 year.

12 Thank you for your time and happy new year.

13 MR. ROBB: Thank you.

14 CHAIR U'U: The department will notified you when  
15 payment is due.

16 MR. ROBB: Great.

17 CHAIR U'U: Okay.

18 MR. ROBB: Thank you.

19 CHAIR U'U: We'll now hear Complaint and Accusation  
20 No. 2019-08 against 90210 Management Company LLC doing  
21 business as Grand Wailea Resort Hotel and Spa. I think it's  
22 some people here, try to move to --

23 MEMBER WILLIAMS: Chair.

24 CHAIR U'U: Mr. Williams.

25 MEMBER WILLIAMS: This is Jason Williams. You guys,

1 I have -- want to disclose that my wife is -- is an employee  
2 of Grand Wailea.

3 MEMBER UEOKA: This is Gwen Ueoka and I -- I will  
4 recuse myself from this transaction. Thank you.

5 CHAIR U'U: Thank you.

6 MR. KUSHI: Mr. Chair.

7 CHAIR U'U: Yes.

8 MR. KUSHI: For Member Williams, maybe it's -- ask a  
9 couple questions for the record. So your wife works for Grand  
10 Wailea?

11 MEMBER WILLIAMS: Yes, sir.

12 MR. KUSHI: Is she in a management capacity at --

13 MEMBER WILLIAMS: Yes, she is.

14 MR. KUSHI: Okay. Is -- in her management capacity,  
15 is she involved in any of the liquor license -- liquor  
16 operations of the hotel?

17 MEMBER WILLIAMS: Not liquor operations, no.

18 MR. KUSHI: She being an employee of Grand Wailea,  
19 would that, in your mind, be any cause for bias for or against  
20 the licensee?

21 MEMBER WILLIAMS: No, not at all.

22 MR. KUSHI: Okay. With that, Mr. Chair, I leave it  
23 to your recommendations.

24 CHAIR U'U: To?

25 MR. KUSHI: I don't see a conflict.

1 CHAIR U'U: Okay. So I'll leave it to the board.  
2 As stated by Ed Kushi, he doesn't see a conflict with him  
3 participating. Would that mean he could participate in the  
4 vote also?

5 MR. KUSHI: Right.

6 CHAIR U'U: Do I see -- does anyone have any issues  
7 with that?

8 VICE CHAIR HELM: Chair, no, I -- Zach Helm,  
9 Molokai. I see no problem.

10 CHAIR U'U: The chair doesn't see any problem so  
11 we'll allow Mr. Williams --

12 MR. KUSHI: The appropriate disclosure was made,  
13 right.

14 CHAIR U'U: Okay. Thank you. Thank you.

15 Thank you for stepping forward. Would you please  
16 state your name and in what capacity you represent the  
17 respondent.

18 MR. NAKAMURA: Good morning, Mr. Chair, members of  
19 the board, and commission staff. Craig Nakamura, attorney on  
20 behalf of 90210 Management doing business as the Grand Wailea  
21 Hotel. And with me is Mr. Shane Komine, who is the assistant  
22 director of food and beverage; also Bart Santiago, he's in the  
23 back, who's the director of finance; and Gale Fujiwara, who is  
24 the director of meetings and convention services.

25 CHAIR U'U: Thank you. At this time you have the

1 option of having the charges publicly read.

2 MR. NAKAMURA: We'll waive the reading of charges.

3 CHAIR U'U: Thank you. Mr. Nakamura, for the  
4 record, do you represent the respondent involved?

5 MR. NAKAMURA: Yes, I do.

6 CHAIR U'U: So you are legal counsel?

7 MR. NAKAMURA: Yes.

8 CHAIR U'U: Do you understand the charges against  
9 you?

10 MR. NAKAMURA: Yes, we do.

11 CHAIR U'U: What is your plea to each count?

12 MR. NAKAMURA: As with the other applicants -- or  
13 licensees, we did enter into a plea arrangement with the  
14 prosecuting attorney. We've agreed to plead no contest to  
15 Counts 1 and 4, and Counts 2 and 3 will be dismissed.

16 MR. ENRIQUES: Gerald Enriques on behalf of the Maui  
17 County Prosecutors. That's correct. The agreement is as --  
18 as he stated. I would add that there is a sentencing  
19 agreement as follows: For Count 1, it's a second offense  
20 within 5 years, the \$2,000 mandatory fine, no portion of  
21 which -- which can be suspended per Section 8-11-101 -- 104(a)  
22 of the rules; and for Count 4, a \$1,000 fine.

23 CHAIR U'U: Okay. I will need a yes or no answer,  
24 Mr. Nakamura. Do you understand the violations the department  
25 of liquor control alleges against you?

1 MR. NAKAMURA: Yes, we do.

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

4 MR. NAKAMURA: Yes, we do.

5 CHAIR U'U: Do you understand that by pleading no  
6 contest, you waive the right to a hearing in which you could  
7 present evidence and question witnesses on your behalf?

8 MR. NAKAMURA: Yes, we do.

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

12 MR. NAKAMURA: Yes, it is.

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

19 MR. NAKAMURA: Yes, we do.

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

21 MR. NAKAMURA: Yes, we do.

22 CHAIR U'U: The board hereby finds that the licensee  
23 has entered a knowing and voluntary plea of no contest. The  
24 board accepts your plea and finds you guilty of Counts 1 and 4  
25 reflected in Complaint and Accusation No. 2019-08.

1 Will the department present a summary of the case.

2 MR. ENRIQUES: Again, Gerald Enriques on behalf of  
3 Maui County Prosecutors. On June 7, 2019, Liquor Control  
4 Officer Martin Davis was assigned to investigate a report of a  
5 possible overservice-type incident that occurred at the Grand  
6 Wailea Resort Hotel and Spa. LCO Davis eventually made  
7 contact with Daniel J. Trevino, who I'll refer to as J.  
8 Trevino from now on, who had made a report by his attorney  
9 Graham Mottola.

10 J. Trevino claimed that on June 4th, 2019, he  
11 arrived at the Grand Wailea with his girlfriend Janice Kurose  
12 and father Daniel R. Trevino, who I'll refer to as R. Trevino  
13 from now on. On June 5th, 2019, J. Trevino consumed a couple  
14 of mimosas with breakfast, then went down to the beach and  
15 consumed two beers. He claimed that he felt fine after  
16 drinking those drinks because he had eaten that morning.

17 At approximately 11:00, J. Trevino and Kurose went  
18 to the Grotto Bar -- which is, essentially, a pool bar where  
19 customers can remain in the water and consume drinks while  
20 seated on various stools in the water -- where J. Trevino  
21 admitted that he got really drunk. Kurose later told him that  
22 he consumed five frozen mixed drinks, like Mudslides, before  
23 his father R. Trevino showed up at 12:30 p.m. and told him to  
24 slow down because he was racking up a huge bill. However,  
25 both Trevinos continued to consume drinks, with J. Trevino

1 estimating that he had several shots of tequila and a couple  
2 of Coor's Light beers. J. Trevino recalled that there was  
3 only one bartender working at the bar while he was there and  
4 that bartender was there the entire time.

5 At approximately 2:00 p.m., J. Trevino left to use  
6 the water slides. He estimated his level of intoxication when  
7 he left the bar at 8 or 9 on a scale of 1 to 10, with 1 being  
8 totally sober and 10 being black-out drunk. Trevino claimed  
9 that he got his father a wristband to use the water slide and  
10 when he went to use the slide, a male employee jumped over the  
11 rope barrier and punched him in the face. He later claimed  
12 that he fell down some stairs after he was punched, resulting  
13 in two sprained ankles, scrapes and bruises on his face and  
14 body.

15 R. Trevino claimed that when he met his son at the  
16 Grotto Bar, his son was drinking a mixed-tropical-type drink  
17 and Coor's Light beer at the same time and had racked up a  
18 \$222 tab. R. Trevino claimed that his son showed signs of  
19 intoxication in his eyes and appeared to be having a good  
20 time, but was not belligerent or having problems speaking. R.  
21 Trevino remained at the bar for another hour and 15 minutes  
22 before they went to ride the water slides. He drank two beers  
23 in that time, while his son drank two or three shots of  
24 tequila and a beer.

25 R. Trevino claimed that when they went down -- went

1 to use the water slides, his son took his slippers down the  
2 slide with him and was warned by a female employee about doing  
3 so. When they got back down to the pool after riding the  
4 slide, they were also approached by an employee who offered  
5 them water because they appeared dehydrated.

6 After that, he claimed they went back to the bar, he  
7 didn't -- he didn't specify which bar it was, and consumed  
8 more drinks before trying to ride the water slide a second  
9 time. When they went to the top of the slides, he saw the  
10 same female employee there, but this time she was accompanied  
11 by a male employee. R. Trevino claimed that the male employee  
12 proceeded to jump over the rope barrier Superman-style and  
13 punch his son in the face, knocking him down. The male  
14 employee then ran away and a scuffle ensued.

15 Kurose was also interviewed by LCO Davis and, in  
16 general, mostly corroborated the statements of both Trevinos  
17 regarding the pre-water slide events. Notably, Kurose  
18 estimated that J. Trevino's level of intoxication was an 8 on  
19 a scale of 1 to 10, and she claimed that he knew -- that she  
20 knew he was intoxicated because he could not remember the  
21 details of the assault. She also claimed that she did not  
22 really know what went on during the water slide incident.

23 As part of the investigation, LCO Davis requested  
24 and reviewed various items from the Grand Wailea including  
25 employee time sheets, security incident reports, and security

1 camera footage of the Grotto Bar and the water slide areas, as  
2 well as police reports from the Maui Police Department.

3 In summary, the following relevant information was  
4 obtained:

5 First, LCO Davis requested in writing video footage  
6 of relevant areas for the date of the incident between 10:30  
7 a.m. and 3:00 p.m.; however, the video footage he received  
8 only covered the time period between 11:34 a.m. to 2:00 p.m.  
9 Furthermore, the recordings of the slide and pool areas only  
10 covered the period between 2:53 p.m. and 3:01 p.m. for one  
11 recording and 3:01 p.m. to 3:15 for the other recording.

12 Also, this other information was obtained: Noell  
13 Grace was the bartender scheduled to work at the Grotto Bar on  
14 the date of the incident and she was clocked in from 9:00 a.m.  
15 through 7:00 p.m.

16 The Trevinos and Kurose opened a tab at the Grotto  
17 Bar at 11:36 a.m. and closed it out at 1:43 p.m. The total  
18 charge was \$292.50 and the drinks ordered were two mai tais,  
19 three Mudslides, two Grand Coconuts, six 16-ounce Coor's Light  
20 beers, and six tequila shots. Grace was listed as the  
21 bartender on this receipt.

22 Video footage of the Grotto Bar from approximately  
23 11:30 a.m. to 2:00 p.m. generally corroborated the Trevinos'  
24 version of events, with the following additional relevant  
25 information revealed:

1           There did not appear to be any footage of the  
2 Trevinos or Kurose leaving and returning to that particular  
3 bar.

4           J. Trevino was seen sliding off his stool on  
5 multiple occasions, with Kurose and/or R. Trevino assisting  
6 him back up.

7           J. Trevino appeared to have been served three mixed  
8 drinks, three 16-ounce Coor's Light beers, and two shots of  
9 liquor between 11:36 a.m. and 1:21 p.m.

10           Kurose was served four mixed drinks and two shots of  
11 liquor in that same period.

12           And R. Trevino was served three 16-ounce Coor's  
13 Light beers and two shots of liquor between 12:22 p.m. and  
14 1:22 p.m.

15           Grace did not appear to deny a request from J.  
16 Trevino for additional drinks, although there was no audio on  
17 that recording.

18           Video footage of the water slides was filmed at a  
19 distance and became somewhat pixilated when zoomed in, but  
20 appeared to reveal the following information:

21           At approximately 2 :53 p.m., a large male employee  
22 blocked the Trevinos and Kurose from going up the stairs to  
23 the water slide.

24           Approximately 46 seconds later, a scuffle occurred  
25 with the Trevinos and/or Kurose falling backwards down the

1 steps.

2 The Trevinos get back up and shoving occurs, with  
3 the male employee continuing to block them.

4 Within one minute of that, what appears to be  
5 security personnel arrive.

6 Movement continues on the steps, with someone on J.  
7 Trevino's side of the stairs appearing to hold him back from  
8 going up the stairs and the male employee continuing to block  
9 the stairs.

10 And the Trevinos and Kurose eventually walked back  
11 down the stairs with security personnel and the male employee  
12 following them.

13 Grand Wailea employees provided the following  
14 additional information regarding these events:

15 Grand Wailea Security Officer Princess Tan  
16 interviewed Kurose, who said that she told Grace to stop  
17 serving J. Trevino. Tan also interviewed Grace, who confirmed  
18 Kurose's story and claimed the Trevinos were at the bar for a  
19 while, but did not cause any problems. Grace also claimed  
20 that J. Trevino kept trying to order drinks, but she stopped  
21 serving J. Trevino after Kurose asked her to do so.

22 Recreation supervisor Christopher Melchor claimed  
23 that the incident began when slide attendant Samantha Kinney  
24 asked a supervisor to relieve her because J. Trevino was  
25 making her uncomfortable. Coworker Kainoa Rodrigues switched

1 positions with Kinney and Melchor told them that the Trevinos  
2 were intoxicated and were not allowed to use the slide.  
3 Melchor further related that R. Trevino punched him in the  
4 nose while trying to chase Rodrigues. And he also -- and  
5 Melchor informed the police that he was the person who offered  
6 water to the Trevinos.

7 Rodrigues generally corroborated Kinney and  
8 Melchor's claims, adding that the Trevinos appeared  
9 intoxicated and became aggressive when he told them they  
10 couldn't use the slide. He further claimed that one of the  
11 Trevinos jumped over the rope and attacked him, so he put his  
12 hands up to defend himself and one of the Trevinos fell face  
13 first.

14 Brandi Laborte stated that she was the person who  
15 told the Trevinos that they couldn't take their slippers down  
16 the drive. She further stated that one of the Trevinos  
17 appeared intoxicated and began getting loud at her, but that  
18 his -- his girlfriend intervened, made him apologize, and told  
19 her, We had too much at the Grotto Bar.

20 Kinney stated that the Trevinos stumbled up the  
21 stairs at the water slide and that J. Trevino asked if he  
22 could kiss her. She told him no, but he approached her and  
23 attempted to kiss her multiple times, coming within 6 inches  
24 of her face with puckered lips and causing her to dodge out of  
25 the way.

1           As a result of this incident, both Trevinos were  
2 banned from the resort and arrested for disorderly conduct.  
3 R. Trevino was also arrested for assault in the 3rd degree  
4 stemming from the punch to Melchor in the face after leaving  
5 the stairs.

6           CHAIR U'U: Any questions from the board?

7           (No response.)

8           CHAIR U'U: Seeing none, I have a question. So the  
9 Count 4, failed to provide information, documents, books, or  
10 records requested by the commission board.

11          MR. ENRIQUES: That one stems from the request for  
12 video recording footage for a certain time period, but not all  
13 footage for that time period was provided.

14          CHAIR U'U: Okay. Okay. Requested for video  
15 footage, but not all was provided during a specific time  
16 period?

17          MR. ENRIQUES: Yes.

18          MEMBER AIWOHI: Lahela Aiwahi. So when not all was  
19 provided, was that based on it wasn't recorded at that time,  
20 was it difficult -- technical difficulties, or just wasn't  
21 provided by choice?

22          MR. ENRIQUES: The footage was cut off like it was  
23 only -- appeared to be only a certain time period for those  
24 recordings. And to my recollection, there was no indication  
25 or representation that the footage did not exist, at least at

1 the time that it was requested.

2 MEMBER WILLIAMS: This is Jason Williams. Just  
3 wondering, did they ever provided it later on?

4 MR. ENRIQUES: No.

5 MEMBER WILLIAMS: Was it requested again and  
6 provided or no?

7 MR. ENRIQUES: To my recollection, I believe -- and  
8 Mr. Nakamura can correct me on this, but I believe he was in  
9 communication with the investigator at the time. I believe  
10 that the footage no longer exists.

11 CHAIR U'U: Mr. Nakamura or Mr. Komine, you now have  
12 the opportunity to make a statement regarding this case and  
13 may also inform the board of any mitigating circumstances  
14 which may or may not apply to sentencing.

15 UNIDENTIFIED SPEAKER: Is it in color? Sorry,  
16 sorry, sorry.

17 (Laughter.)

18 MR. NAKAMURA: Thank you, Mr. Chair. Thanks for the  
19 opportunity to provide this brief statement on behalf of the  
20 hotel. As you heard from the report, that this is a very,  
21 very serious incident for us. We don't treat it lightly at  
22 all, we certainly don't like our -- our guests being drunk and  
23 disorderly, we don't like fights on the property, we don't  
24 like harassment of our employees, and so this was a very --  
25 not a very common incident, but we take it very seriously and

1 we're doing -- please be assured that we're doing everything  
2 we can to make sure it doesn't happen again.

3 As you heard, the guests were -- there were three  
4 guests that were drinking at the Grotto Bar for -- from about  
5 11:00 to 1:30, Noell Grace was the bartender. Grace was  
6 interviewed, she said the party was drinking, but never really  
7 gave her a problem, but she did eventually cut them off when  
8 one of the -- the girlfriend, Ms. Kurose, asked them -- asked  
9 her to.

10 Trevino left the Grotto Bar and went up to the pool  
11 and, as you heard, made unwanted advances towards the pool  
12 attendant, at which point she asked to be replaced. A male  
13 attendant replaced her. The party, the Trevino party again  
14 went up on the slide, they were told they couldn't go down  
15 because they were intoxicated and that's when the pushing and  
16 shoving and, you know, everything else occurred. Again, this  
17 is not something that -- as I'm sure you can understand, this  
18 is not something that we appreciate or that we want or  
19 encourage or allow at the hotel and we're doing -- we are  
20 doing everything we can to make sure this doesn't happen  
21 again.

22 The first exhibit is, basically, the criminal --  
23 documentation from the criminal cases against Daniel J.  
24 Trevino and Daniel R. Trevino, the father. Daniel J. Trevino  
25 pled no contest to disorderly conduct and Daniel J. -- Daniel

1 R. Trevino, the father, pleaded guilty to disorderly conduct  
2 with an assault charge being dismissed.

3 With that, you know, I'd like to introduce Shane  
4 Komine, as I -- as I mentioned before, he will give some  
5 background about the training procedures that the hotel uses  
6 for its employees.

7 MR. KOMINE: Thank you, Craig.

8 Shane Komine, assistant director of food and  
9 beverage. We do take this very serious. As Craig said, it's  
10 not something that we want our guests to -- to go through, our  
11 team members to go through as well, and, you know, we have a  
12 responsibility as well as a property to ensure that all our  
13 guests and team members are taken care of, our guests, you  
14 know, are watched after and -- and not overserved.

15 And training we've implemented property-wide, and we  
16 do have a documentation sheet with this, is everyone that does  
17 serve alcohol or supervises needs to have a liquor card.  
18 Everyone also needs to go to TIPS training and be certified.  
19 So every one of our F & B employees is certified and has a  
20 liquor card as well as our -- our MODs who are on property.  
21 We also make sure that if it's coming to expiration, 90 days  
22 out there's a notice that goes out to these team members. And  
23 we've been working with the liquor commission as well to try  
24 to bring the testing on property. I understand there's been  
25 some -- some understaffing, but if -- if that happens, our

1 team members will come down to the commission to get their  
2 liquor card renewed so it's -- it's tracking. If a team  
3 member is uncooperative, there is disciplinary action up to  
4 and including termination, depending on how long they go  
5 without -- without the proper documentation. And if, you  
6 know, if they -- they're expired, they're removed from the  
7 schedule until they can provide it.

8 MR. NAKAMURA: So just to -- again, Craig Nakamura.  
9 Just to go over the exhibits very quickly, Exhibit 2 is the  
10 Waldorf Astoria job skills training plan. This is the  
11 document, you know, that shows the training that each new  
12 employee at the hotel goes through, including, you know,  
13 liquor service and consumption of liquor.

14 Exhibit 3 is a memo that we provide to employees  
15 regarding how to go about getting their liquor card from the  
16 department of liquor control.

17 Exhibit 4, as mentioned, we do have -- the hotel  
18 does have an in-house TIPS training program. Mr. Komine is a  
19 certified TIPS trainer. We also have recently hired a second  
20 TIPS trainer, certified TIPS trainer, Annie Harnish, who is on  
21 staff. So we use these two people on staff to help train all  
22 of the employees and they go through this regular training  
23 process. And Exhibit 4 is the test, is an example of the TIPS  
24 exam that's given to our employees.

25 Exhibit 5 is the tracking system that Mr. Komine

1 mentioned that, you know, we now have put into place a list  
2 here which has each employee's name and the dates that they've  
3 obtained their liquor card or TIPS training and if they didn't  
4 get it, as he mentioned, you know, they're not allowed to work  
5 until they do complete that training.

6 And then I'll -- I'll just let -- go back to  
7 Mr. Komine and ask him to talk a little bit more about what  
8 was done after the violation.

9 MR. KOMINE: You know, we -- we made sure that  
10 every -- every outlet, not just the pool area where this  
11 incident happened, managers were -- and continue to preshift  
12 employees on the importance of, you know, over -- overserving  
13 guests and ensuring that we take care of them on our end. You  
14 know, we have a right as the largest property here on Maui to  
15 ensure all our guests on property and as they leave property  
16 are -- you know, get home safe and get back to their room safe  
17 and, you know, we -- we've made sure that as a -- a whole  
18 hotel that this message rang clear with -- with every one of  
19 our employees.

20 The individual was pulled separately and spoken to  
21 multiple times by the management team and, you know, we  
22 continue to make sure that these sort of incidents don't  
23 happen again moving forward.

24 CHAIR U'U: Thank you.

25 MR. NAKAMURA: Chair, and just to very briefly to

1 address Mr. Williams' question, yes, the --

2 CHAIR U'U: Mr. Nakamura.

3 MR. NAKAMURA: Yes.

4 CHAIR U'U: No. Wait.

5 MR. NAKAMURA: Sorry. Craig Nakamura again. The  
6 second violation is for failure to provide information and I  
7 think my -- I'm sorry, maybe the chair asked the question, but  
8 they asked for -- the investigator asked for videos from the  
9 day in question from 10:30 to 3:00 and the videos provided  
10 from the Grotto Bar were from 11:00 to 2:00 and two videos for  
11 the slide and pool area, one from 2:53 to 3:01 and the other  
12 from 3:01 to 3:15. So these -- what occurred here is the --  
13 as I'm sure you know, the hotel has a security staff that  
14 reviews all of these videos, you know, they're responsible for  
15 security at the hotel, they reviewed the videos that they had  
16 and they took portions which were relevant to the incident in  
17 question and it happened to be for these time periods.

18 So rather than give them, you know, the periods for  
19 the entire period that was requested, they took, you know,  
20 snippets from what they thought was relevant, what showed  
21 things that were relevant to the incident. And there was --  
22 there's no other -- the video no longer exists as far as the  
23 video, the entire video of the incident. So we did -- I  
24 believe we tried to cooperate as much as possible. I mean, I  
25 was actually actively involved in providing the videos, trying

1 to line up the staff members for questioning by the  
2 investigator and trying to work with them to provide any  
3 information that they requested.

4 MEMBER WILLIAMS: Mr. Chair.

5 MR. NAKAMURA: I'll answer questions.

6 CHAIR U'U: Questions by board members? And please  
7 state your name prior to the question.

8 MEMBER WILLIAMS: This is Board Member Jason  
9 Williams. Just -- just wanted to find out, the employee who  
10 was -- was the bartender who was the only one serving --

11 MR. NAKAMURA: Correct.

12 MEMBER WILLIAMS: -- and -- and it was a substantial  
13 amount of alcohol, was the employee disciplined or let go or  
14 what happened to --

15 MR. KOMINE: The employee was not --

16 CHAIR U'U: Please state your name, Shane.

17 MR. KOMINE: Shane Komine.

18 CHAIR U'U: Thank you.

19 MR. KOMINE: No, the employee was not let go, she  
20 was spoken to separately. So as a property we have a -- with  
21 the union collective bargaining agreement, we have 48 hours to  
22 notify a team member when we're -- you know, when an incident  
23 does happen. With this incident, in the investigation, we  
24 didn't get back her statement or the security report until  
25 about ten days after the incident, so that 48-hour window that

1 we had to be able to notify them and the union had passed. So  
2 at that point we cannot move forward with actual progressive  
3 disciplinary action to have them sign off, but we did  
4 statements from our managers that did speak to her two  
5 separate incidences -- incidences that were also put into her  
6 file.

7 MEMBER WILLIAMS: Thank you.

8 MR. KOMINE: Yeah.

9 VICE CHAIR HELM: Chair. Zach Helm, board member.  
10 Yeah, just a question. You know, your security, were they on  
11 that -- during that incident, when they there during the  
12 incident or do you always have a security personnel there  
13 during operation?

14 MR. KOMINE: We do, yeah. 24 hours security is  
15 there. They do have patrolled areas. At that point they were  
16 not specifically at the Grotto Bar, they were around the pool  
17 area, but when they were called by the pool team, they  
18 responded as quickly as they could.

19 VICE CHAIR HELM: Okay.

20 MEMBER WILLIAMS: Last question. Jason Williams.  
21 Just wondering, are your managers also have a liquor license?  
22 I didn't see any manager's names on -- on your lists, do  
23 managers also have liquor card?

24 MR. KOMINE: Absolutely. Every -- every one of our  
25 managers in food and beverage from our front office MODs, our

1 security supervisors, anybody that's going to be there on  
2 property, they do possess liquor cards that are valid.

3 MEMBER WILLIAMS: Awesome. And they go through the  
4 same training?

5 MR. KOMINE: Yes.

6 CHAIR U'U: Mr. Kushi.

7 MR. KUSHI: Yeah. Mr. Chair, if I may, a couple  
8 questions. First, is the sliding board or the pool, is it  
9 part of the licensed premises for this bar?

10 MR. NAKAMURA: Yes, it is.

11 MR. KUSHI: It is?

12 MR. NAKAMURA: Yes, it is.

13 MR. KUSHI: So a patron can take a drink up to the  
14 sliding --

15 MR. NAKAMURA: No. They're not allowed to take  
16 alcohol.

17 MR. KUSHI: So why is it part of the licensed  
18 premises then?

19 MR. NAKAMURA: It's just included as any other pool  
20 on the property would be.

21 MR. ENRIQUES: My understanding is by statute -- I'm  
22 sorry, Gerald Enriques. My understanding is by statute or  
23 rule, the -- for hotels, the entire premises is licensed  
24 premises.

25 MR. KUSHI: So a patron could take a drink up to the

1 top of the slide?

2 MR. NAKAMURA: The staff does not allow them to take  
3 drinks up there.

4 MR. KUSHI: Well, okay. The second question is: As  
5 far as the production of the video, videotapes, is the  
6 allegations -- is the allegation here that they didn't provide  
7 the entire time or didn't provide it at all?

8 MR. ENRIQUES: The entire tape.

9 MR. KUSHI: Okay.

10 MR. ENRIQUES: They -- there's a fairly substantial  
11 gap of approximately one hour, I think, that wasn't provided  
12 before -- I think 10:30 -- one second. They were requested to  
13 provide footage for relevant areas between 10:30 a.m. and 3:00  
14 p.m., video footage received only covered the time period  
15 between 11:34 a.m. to 2:00 p.m. for the bar area and only  
16 covered 2:53 p.m. to approximately 3:15 p.m. for the water  
17 slide and other areas.

18 MR. KUSHI: Okay. And then the reason for not  
19 providing the entire tape would be what?

20 MR. NAKAMURA: I think I can explain that.

21 MR. KUSHI: And it's not relevant.

22 MR. NAKAMURA: Craig, Craig Nakamura. Yeah, I  
23 believe that what happened was the security -- the security  
24 officers reviewed the videotape and provided the portions of  
25 the tape that they thought were relevant. So as indicated in

1 the report, Mr. J. Trevino started drinking at the Grotto Bar  
2 at about 11:00 and they provided the tape -- the tape from  
3 about 10 -- 11:30.

4 MR. KUSHI: So, Mr. Nakamura, is that -- so your --  
5 your clients' people decided on their own not to provide  
6 those --

7 MR. NAKAMURA: Yeah. I think they reviewed the  
8 videotape and they provided the portion of the tape that they  
9 thought was relevant.

10 MR. KUSHI: Okay. They didn't consult with the  
11 liquor inspectors or anything?

12 MR. NAKAMURA: No.

13 MR. KUSHI: Okay.

14 MR. NAKAMURA: At that point, that -- that's all the  
15 tape that they had.

16 MR. KUSHI: Okay.

17 MR. NAKAMURA: In other words, they kept the portion  
18 of the tape that they thought was relevant and they -- and the  
19 rest --

20 MR. KUSHI: And they deleted the rest.

21 MR. NAKAMURA: Yeah, the rest was gone.

22 MR. SANTIAGO: May I speak.

23 MR. NAKAMURA: Yes.

24 MR. SANTIAGO: Bart Santiago, director of finance.  
25 Our system has a 30-day saving window, so after 30 days, it's

1 saved over the last day, so at this point in time, that  
2 footage is no longer available.

3 MR. KUSHI: Well, the incident happened like June  
4 5th, when did the inspector requested the tape? I'm assuming  
5 it's within that 30-day period.

6 MR. ENRIQUES: Yes, it was. According to the  
7 report -- I'm sorry, Gerald Enriquez here. It was requested  
8 on June 14th, 2019, and there were discussion -- and it was  
9 received within the 30 days as June 21st was when the  
10 investigator reviewed the footage.

11 MR. KUSHI: Okay. Mr. Chair, if I may continue.

12 CHAIR U'U: Yes.

13 MR. KUSHI: That being the case, I wanted to know  
14 the factual backgrounds, but where is it in the rules that  
15 they're required to even have a videotape?

16 MR. NAKAMURA: I agree.

17 MR. ENRIQUES: I don't believe there's anything in  
18 the rules that they're required to do it. I think at most  
19 they're just required to produce items upon request.

20 MR. KUSHI: Right. I mean, if -- say it was a small  
21 establishment, not a big hotel, and they don't have the  
22 capacity to videotape the entire premises, are you gonna still  
23 ask them for it and if they don't have it, you're going to  
24 file a complaint against them?

25 MR. ENRIQUES: I mean, were I the person that was

1 leading that particular case and it came to me, if they didn't  
2 have that footage, you know, that would be something that I  
3 probably wouldn't charge that particular offense.

4 MR. KUSHI: But the fact that you knew that they had  
5 it and they didn't produce it, that's why the charges was --  
6 was filed?

7 MR. ENRIQUES: This one, it just -- I mean, I'm  
8 speaking personally here, just reviewing it, it seems odd  
9 that -- well, let me rephrase. Allowing -- allowing a party  
10 under investigation to select the evidence that they provide  
11 is concerning to us, so that's partly why we charged it. And  
12 also the circumstance, the actual footage that was provided  
13 was also concerning because it left out portions of areas that  
14 could be relevant. And, thirdly, it just seems odd that  
15 there's no footage from these areas -- let me rephrase, that  
16 there would be no footage from these areas. Whether it was  
17 deleted or not, I'm -- you know, I don't know exactly when  
18 that occurred, but apparently the investigator was told that  
19 that footage no longer existed when they tried to get it.

20 MR. KUSHI: Yeah. Well, anyway, Mr. Enriquez, maybe  
21 it's not today to -- we can do it another day, but I'm  
22 concerned about, again, the charge against the licensee  
23 regarding -- requiring XYZ as part of the operations, but it's  
24 not stated in the rules. Versus like, you know, time sheets,  
25 it's clearly stated in the rules.

1 MR. ENRIQUES: Right.

2 CHAIR U'U: Yeah, I have a -- and me too, I have a  
3 concern, whose rule? And the concern is it -- we're  
4 supposedly fining someone a \$1,000 fine and it -- within here  
5 it says failed to provide any information, documents, books or  
6 records requested by the commission, and it doesn't say  
7 videos, though, and it says any information. I just -- you  
8 know, you know, so I'm assuming that, again, what was said by  
9 corp. counsel, not everyone get videos and I'm assuming that's  
10 why there isn't the -- the video in here. So we're fining  
11 someone -- well, it's recommended that we fine someone for  
12 failure to provide videos, but there isn't a section in there  
13 that defines the video portion of it.

14 MR. ENRIQUES: I mean, arguably, information or  
15 records, video surveillance footage would be covered under  
16 that. What I -- I think what you're kind of getting at there  
17 is that maybe if we were to charge people with this particular  
18 violation, that there should be an explicit provision that  
19 says, you know, video footage is provided. That's more on  
20 the, I guess, legislative or administrative rule side and, you  
21 know, I think a better venue for that might be with the actual  
22 commission.

23 MR. KUSHI: Correct. Yeah, you know, Mr. Chair,  
24 again, I understand the prosecutor's case, the department's  
25 case, because they knew they had the video, the licensee

1 admits they had the video, but they didn't produce it and they  
2 chose selectively to cut out portions. And as a -- as an  
3 inspector, it would piss me off too.

4 CHAIR U'U: Right.

5 MR. KUSHI: You know, knowing that they had it, but,  
6 you know, they took the unilateral action to delete it without  
7 consulting with the inspectors. If there's privileged  
8 information on there, that could have been made arrangements  
9 with the department saying that we feel that this portion of  
10 the tape is privileged, uninvolved with this case, and it  
11 should not be reviewed in camera, sort of thing, but, again,  
12 just pointing out.

13 CHAIR U'U: Okay. Thank you.

14 Any more questions?

15 MEMBER ALMEIDA: Yeah. I think the -- Allan  
16 Almeida. Mr. Chair, I think an unedited video should -- you  
17 know, like you guys said, it's not in the provision, so it's  
18 kind of hard to clarify. It says any information.

19 CHAIR U'U: Right.

20 MEMBER ALMEIDA: And especially with the video being  
21 edited.

22 CHAIR U'U: Right.

23 MEMBER ALMEIDA: It's kind of concerning, as  
24 Mr. Kushi stated.

25 CHAIR U'U: Right.

1 MR. KUSHI: Mr. Chair, last comment. The department  
2 knew that they had the video, that's why they requested it.  
3 If the department knew they didn't have a video, I don't think  
4 they would request it.

5 MEMBER AIWOHI: Right.

6 CHAIR U'U: So are you saying potentially,  
7 potentially if they didn't have a video, we wouldn't have a  
8 fine, then, is all you're saying?

9 MEMBER AIWOHI: True.

10 MR. KUSHI: You wouldn't have a case.

11 MEMBER AIWOHI: And that's a -- they wouldn't have  
12 come forward.

13 MR. ENRIQUES: I wouldn't charge that.

14 MEMBER AIWOHI: Right.

15 CHAIR U'U: Right, right. That's what I meant by  
16 that, so --

17 Okay. Any more questions? Sorry. Any more  
18 questions by anyone for that matter?

19 (No response.)

20 CHAIR U'U: Director's argument as to penalty.

21 MR. ENRIQUES: Gerald Enriques here. This license  
22 was transferred from the prior entity in May 2006. The  
23 licensee has one prior written warning for a failure to  
24 display license type of violation, and one prior set of  
25 violations stemming from a complaint and accusation that was

1 adjudicated in May 2018. Two of those violations were for the  
2 same type of violations in the current case; namely,  
3 overservice and failure to provide items requested by the  
4 commission. So based on that, we're requesting the following:  
5 For Count 1, as a second offense within five years, the  
6 mandatory \$2,000 fine with no portion suspended per Section  
7 8-101-104(a) of the rules; and for Count 4, a \$1,000 fine. I  
8 should note that for Count 4, their prior -- their identical  
9 offense that they got was for a \$500 fine, so that's why it's  
10 a \$1,000 this time.

11 CHAIR U'U: With no suspension?

12 MR. ENRIQUES: No. For that one, there's no  
13 agreement as to suspension.

14 CHAIR U'U: Say that again. Please clarify.

15 MR. ENRIQUES: For the \$1,000 fine for Count 4,  
16 we're not requesting that it be suspended. There is no  
17 agreement as to that.

18 MR. KUSHI: Mr. Chair, for Count 4, there's no  
19 minimum mandatory involved.

20 MR. ENRIQUES: Correct.

21 CHAIR U'U: Okay. Any more questions by board  
22 members?

23 (No response.)

24 CHAIR U'U: Seeing none, I'll take the -- this  
25 matter into consideration. I'll entertain a motion to go into

1 deliberation.

2 MEMBER WILLIAMS: So moved.

3 MEMBER AIWOHI: Second.

4 CHAIR U'U: It's been moved and then seconded. Call  
5 for a vote. All those in favor, say aye.

6 (Response.)

7 CHAIR U'U: Gavel.

8 (Pause in Proceedings: 10:10 a.m-10:34 a.m.)

9 CHAIR U'U: (Gavel.) Again, after careful  
10 deliberation, the board is now back in session. Count 1, a  
11 \$2,000 fine, and for Count 4, I'll turn it over to our  
12 esteemed Ed Kushi here.

13 MR. KUSHI: Yeah. Mr. Chair, if I may, on your  
14 behalf. The board had full and -- a full discussion. By the  
15 standard of preponderance of the evidence, they do not find  
16 that the department met the threshold to pass that burden,  
17 preponderance of the evidence, in that based on the evidence  
18 and the testimony, that the licensee did not fail to provide  
19 any information -- any and all information, documents, books  
20 or records as requested by the department. Accordingly, the  
21 board has found --

22 CHAIR U'U: -- that Count 4 be dismissed. The  
23 department will notify you when payment is due. And happy new  
24 year.

25 MR. KOMINE: Thank you.

1 MR. NAKAMURA: Happy new year. Thank you very much.

2 MR. SANTIAGO: Thank you.

3 MR. NAKAMURA: We appreciate your time.

4 MEMBER WILLIAMS: I make a motion that we --

5 CHAIR U'U: Any other -- anything else prior?

6 MEMBER UEOKA: And we're suspending the thousand?

7 CHAIR U'U: Yes, yes.

8 MEMBER UEOKA: Okay. 'Cause I don't think we said  
9 that.

10 CHAIR U'U: That's okay. Anything else?

11 (No response.)

12 CHAIR U'U: Motion to adjourn?

13 MEMBER WILLIAMS: Motion to adjourn.

14 MEMBER NASCIMENTO: Second.

15 CHAIR U'U: Second. Motion to adjourn and a second.

16 All those in favor, say aye.

17 (Response.)

18 CHAIR U'U: (Gavel.) Happy new year.

19 (The proceedings were adjourned at 10:35 a.m.)

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