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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 9:25 a.m., on February 6, 2020.

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

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APPEARANCES

BOARD MEMBERS PRESENT:

Zachary Helm, Vice Chairperson

Allan Almeida, Member

Candace Ariaga, Member

Jason Williams, Member

Richard Bergson, Member

Staff present:

Edward Kushi, First Deputy Corporation Counsel

Gerald Enriques, Deputy Prosecuting Attorney

Glenn Mukai, Director

Georgette Tyau, Deputy Director

Maria Khangsengsing, Secretary to Boards/Commissions

1 FEBRUARY 6, 2020; 9:25 A.M.

2 WAILUKU, MAUI, HAWAII

3 -oOo-

4 VICE CHAIR HELM: (Gavel.) Thank you for your
5 patience. The meeting of the liquor control adjudication
6 board is now called to order pursuant to Section 281-91 Hawaii
7 Revised Statutes and Section 8-13.3 of the Charter of the
8 County of Maui to consider the matters and issues as posted on
9 today's agenda.

10 Will the board members and staff please introduce
11 yourselves.

12 MS. KHANGSENGSING: Maria Khangsensing, department
13 of liquor control.

14 MEMBER WILLIAMS: Jason Williams, Wailuku.

15 MEMBER ARIAGA: Candace Ariaga, Lanai.

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

17 VICE CHAIR HELM: Zach Helm, Molokai.

18 MEMBER ALMEIDA: Allan Almeida, Wailuku.

19 MEMBER BERGSON: Richard Bergson, Lahaina.

20 DIRECTOR MUKAI: Glen Mukai, liquor control.

21 MS. TYAU: Georgette Tyau, liquor control.

22 MR. ENRIQUES: Gerald Enriques, Maui Prosecutors.

23 VICE CHAIR HELM: We will -- we will now hear
24 Complaint and Accusation No. 2020-01, accusation against RAA
25 Corp., doing business as Diamond's Ice Bar and Grill,

RALPH ROSENBERG COURT REPORTERS, INC.

1001 Bishop Street, #2460, Honolulu, HI 96813

808-524-2090 courtreporters@hawaii.rr.com

1 Dispenser General License No. 228, address 1279 South Kihei
2 Road, Suite 314, Kihei, Maui, Hawaii.

3 Will the respondent or its representative please
4 step forward and state your names and in what capacity you
5 represent the respondent.

6 UNIDENTIFIED SPEAKER: Is it okay to stand?

7 VICE CHAIR HELM: Sure. Come forward, please.

8 Or, excuse me, just another note, not present today
9 is Bruce U'u and Gwen Ueoka --

10 MEMBER: Jason Williams.

11 DIRECTOR MUKAI: Lahela.

12 MR. KUSHI: Lahela.

13 VICE CHAIR HELM: -- Lahela Aiwohi and Herman
14 Nascimento are not present here today.

15 Go ahead, sir.

16 MR. SCHOENSTEDT: Michael Schoenstedt, I'm the proud
17 owner of Diamond's as of March of last year. The incident
18 happened prior to that, so I invited Mick to join me, who was
19 the owner prior to that.

20 MR. RYAN: And I was there on the night. Michael
21 Ryan.

22 VICE CHAIR HELM: Thank you. At this time you have
23 the option of having the charges publicly read or you can
24 waive the reading.

25 MR. SCHOENSTEDT: I think we'll waive.

1 VICE CHAIR HELM: What is your preference?

2 MR. SCHOENSTEDT: Waive the reading.

3 VICE CHAIR HELM: Okay. For the record, do you
4 represent the respondent involved?

5 MR. SCHOENSTEDT: Yes.

6 VICE CHAIR HELM: Okay. Do you have legal counsel?

7 MR. SCHOENSTEDT: No.

8 VICE CHAIR HELM: Do you understand that you have
9 the right to have your legal counsel present?

10 MR. SCHOENSTEDT: Yes.

11 VICE CHAIR HELM: Do you understand the charges
12 against you?

13 MR. SCHOENSTEDT: Yes.

14 VICE CHAIR HELM: What is your plea in each count?

15 MR. SCHOENSTEDT: No contest.

16 VICE CHAIR HELM: Thank you. Do you understand the
17 violations the department of liquor control alleges against
18 you?

19 MR. SCHOENSTEDT: Yes.

20 VICE CHAIR HELM: Do you understand that you have
21 the right to plead not guilty -- no contest?

22 MR. SCHOENSTEDT: Yes.

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

1 MR. SCHOENSTEDT: Yes.

2 VICE CHAIR HELM: Is your plea of not -- no contest
3 voluntary and not the result of force, threats, or of promises
4 apart from any plea agreement?

5 MR. SCHOENSTEDT: Yes.

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

12 MR. SCHOENSTEDT: Yes.

13 VICE CHAIR HELM: Do you still wish to plead no
14 contest?

15 MR. SCHOENSTEDT: Yes.

16 VICE CHAIR HELM: Okay. Thank you. The board
17 hereby finds that the licensee has entered a knowing and
18 voluntary plea of no contest. The board accepts your plea and
19 finds you guilty of Counts 1, Count 2, Count 3.

20 Prosecuting Attorney, will you present a summary of
21 the case.

22 MR. ENRIQUES: On October 27th, 2018, at
23 approximately 9:43 p.m., Liquor Control Officers Cullen Kawano
24 and Marc Velasquez arrived at the premises of Diamond's Ice
25 Bar and Grill in Kihei to conduct an inspection. Upon

1 arrival, Officer Kawano observed the premises to be very busy
2 due to a Halloween event.

3 Officer Kawano subsequently observed a male, later
4 identified as William Baker, seated on a stool at the bar.
5 Baker appeared to be very unsteady and having trouble
6 maintaining his balance while seated on the stool. He was
7 observed to be shifting back and forth on the stool, at one
8 point even sliding off the stool and having to grasp or catch
9 the bar counter to steady himself so he could reseat himself.

10 Suspecting that Baker was intoxicated, Officer
11 Kawano approached him to make contact and conduct a
12 welfare check. Officer Kawano introduced himself to Baker and
13 asked if he was okay, to which Baker responded, quote, I'm
14 drunk. At this point, Officer Kawano observed Baker to have
15 flushed red facial features, red watery eyes, slurred speech,
16 and the strong odor of liquor emanating from his breath.

17 Officer Kawano identified himself as a liquor
18 control officer to Baker and asked what he had been drinking
19 that night. Baker said that he had been drinking gin while
20 within Diamond's. While speaking with Baker, Officer Kawano
21 continued to observe him to be unsteady on his -- on his feet,
22 staggering and needing to steady himself by grabbing Officer
23 Kawano's arm and random nearby patrons.

24 The owner of Diamond's, known to Officer Kawano as
25 Michael Ryan, walked over to speak with Baker briefly.

1 Officer Kawano then told Ryan that he needed to interview
2 Baker outside. Ryan and Diamond's manager Jocylan Wilson
3 assisted Baker in making his way outside. Baker was observed
4 to have difficulty standing upright and focusing on the
5 situation, repeatedly hugging and greeting people on his way
6 out.

7 Once outside, Baker had difficulty producing his ID,
8 instead producing his bank card before claiming that he didn't
9 know where his ID was. Baker was observed to again have
10 increased difficulty remaining upright as the interaction
11 continued, as well as difficulty focusing and responding to
12 Officer Kawano's questions. A female patron observed the
13 situation and volunteered to take Baker home.

14 Ryan was asked if he thought Baker had been over-
15 served that night. He hesitated initially, then said that
16 Baker looked like he had had too much to drink that night.
17 When asked, Wilson produced Baker's bar tab and claimed that
18 he had been buying drinks for other patrons. Wilson further
19 told -- further told Officer Kawano that Baker had been
20 drinking Tanqueray-brand gin. The receipt, which appeared to
21 have been opened at 8:34 -- 8:34 p.m., showed three Tanqueray
22 drinks. However, it also listed purchases of Crown Royal, Big
23 Wave, Jim Beam, and Cazadores. Finally, Wilson was asked if
24 she believed that Baker appeared to be intoxicated and
25 confirmed that he appeared to be intoxicated.

1 VICE CHAIR HELM: Mike or Mick, you have the
2 opportunity to make a statement regarding this case, you may
3 also inform the board of any mitigation -- mitigating
4 circumstances which may or may not apply to sentencing.

5 MR. RYAN: Okay. I think that's -- that's what he
6 wrote down and it's definitely not what happened. He was
7 sitting at the bar and I did see him, but my people had their
8 eye on him and he was okay. He had three Tanquerays in the
9 course of two hours, but -- he had his couple of drinks, he
10 had a driver with him, she sat next to him and had a meal.
11 She finished her meal while he was getting ready, she finished
12 her meal and then they went to leave.

13 Then we did go outside and, honest to God, guys,
14 what bar owner will you tell the liquor control, This guy is
15 wasted, you know, it's -- he wasn't wasted. He walked by
16 himself to his car, where he walked outside and he walked
17 straight across. The lady had a -- his keys at all time and,
18 I mean, the -- I have never said he was intoxicated. He --
19 and the girl, my manager, never did walk outside with him. He
20 actually went back in and got my girl from outside, my bar
21 manager, and took her outside for 20 minutes and questioned
22 her. So there was a lot of that did not take place. I mean,
23 he wasn't -- he definitely wasn't drunk. He walked by his own
24 legs, I watched him walk out with the lady that drove him
25 home.

1 We have a statement from the lady, Wendy, if you
2 would like to look at it, or Mike can read it to you if it's
3 okay.

4 VICE CHAIR HELM: That's fine.

5 MR. SCHOENSTEDT: Yeah. And I had the privilege of
6 being there that evening as well and I did observe. He did
7 get up, did stumble, sat back down, that is when they were
8 approached. He was going outside, he was pretty jolly and
9 happy, hugged people on the way out, but never felt like he
10 was going to tip over. I mean, he was -- he was happy, he was
11 there for the Gay Pride Week that we have and we sponsor, so
12 he was -- he was happy and jolly and was supportive of the
13 group.

14 Later I was able to contact Wendy and talk to 'em
15 and she said, Yeah, I sat down, talked to Bill, I know Bill,
16 he's my neighbor, offered to give him a ride home. I had his
17 keys, I like to drive his Mercedes. So they were already
18 paid, they were getting up to leave, that's when the stumble
19 happened. So at that time they were already had cashed out
20 and done, he had a designated driver, probably why he felt a
21 little more comfortable having some beverages, knowing that he
22 had a designated driver. She worked up at Supercuts and
23 wasn't drinking that evening, so she liked to be a designated
24 driver for people so they can indulge maybe more than they
25 normally would if they had to drive home. So they were on

1 their out, they had paid, that's when the incident had
2 happened. That didn't come out in the report and I think
3 that's an important fact to understand.

4 MR. RYAN: And plus, other -- one other thing, we do
5 a lot of fund raisers and it was for the AIDS Foundation, it
6 wasn't a Halloween party.

7 VICE CHAIR HELM: Thank you. Any questions by board
8 members?

9 MR. SCHOENSTEDT: Would you like to see the letter?

10 VICE CHAIR HELM: Yeah, we can -- we can circulate
11 that, please.

12 MR. RYAN: Perhaps it'd be better if Mike read it.
13 Can you read it for the board?

14 MR. SCHOENSTEDT: You want me to read it?

15 MR. RYAN: Thank you.

16 MR. SCHOENSTEDT: I entered the bar after I had
17 finished a shift of work at Kihei Supercuts. Upon entering, I
18 sat next to Bill, he's a neighbor of mine in Kihei. I asked
19 him if he was driving home, he told me he planned on it. I
20 asked him if I could drive him home because I love to drive
21 his Mercedes car and I always offer to be a designated driver
22 when I'm not drinking. I ordered my food, ate at the bar
23 while Bill and others continued to patron the bar. There was
24 never a moment where I or -- nor the staff was concerned for
25 our or his safety.

1 Upon completing my meal and Bill having his last
2 drink, we paid our tabs and got up to leave the bar. At that
3 moment, while standing to leave, two officers of the LC
4 commission entered the bar and came face to face with us.
5 They asked Bill, whom is elder man, if he was okay to drive?
6 I already had his keys in my hand and told them, We are
7 heading out. I'm driving. Another person who frequents the
8 bar offered to follow me to Bill's house right down the street
9 and offered to drive me back to Diamond's to retrieve my
10 vehicle. When I arrived back at Diamond's, I learned that the
11 LC cited the bar. I'm willing to testify under oath.
12 Unfortunately, she couldn't make it today. And she signed it.

13 VICE CHAIR HELM: Thank you.

14 Any questions by members of the board?

15 MEMBER ALMEIDA: I have one. Allan Almeida,
16 Wailuku. For Mr. Enriques.

17 MR. ENRIQUES: Yes.

18 MEMBER ALMEIDA: At what time did the -- 'cause he
19 said the receipt showed 2043 or 8:43 the last drink was served
20 (inaudible).

21 MR. RYAN: We have their receipts here if you want
22 to see 'em.

23 MEMBER ALMEIDA: Okay. Yeah. What time did --

24 MR. RYAN: Do you have receipts, Mike?

25 MEMBER ALMEIDA: What time did Bill get there?

1 MR. SCHOENSTEDT: Unfortunately, it's a new POS that
2 I put in kind of as the new owner, the first thing you do is
3 try to improve things, which we had done a lot at Diamond's.
4 But not knowing the old system very well, it's hard for me to
5 know that the time that's on there is at the time that the
6 receipt was started, the tab was started, is that the time it
7 was cashed out, so I -- unfortunately, I'm not familiar enough
8 with the old system to tell you what is that date that's
9 there. The event started earlier, since she was there and had
10 a meal and ate, one thing we're not notorious for is quick
11 food, so -- I don't want to put that on the public record,
12 but, yeah, it takes a little while, you know, it can be an
13 hour till you finally get your food and you're -- kind of
14 have eaten. So I would imagine she had been there at least an
15 hour and if she sat down with him and was chatting, it had
16 been a -- a couple hours.

17 MEMBER ALMEIDA: A couple hours. Okay. Thank you.

18 MR. SCHOENSTEDT: Yeah.

19 MEMBER WILLIAMS: I just have one question. Jason
20 Williams.

21 VICE CHAIR HELM: Go ahead, Jason.

22 MEMBER WILLIAMS: I was just wondering, if -- if you
23 don't agree with the -- if you didn't agree with the -- with
24 the charges, why did you plead no contest?

25 MR. SCHOENSTEDT: Interesting -- I'm a new bar

1 owner, haven't been through the process very much. As I
2 understand the regulations, the person was in the bar, I
3 believe they probably were intoxicated. They were on their
4 way out, which as the bar owner, you're meant to do. It is
5 very -- been challenging when you do identify someone as,
6 okay, you've come to that point and I need to get you out of
7 the bar, you can't just pick them up and drag them out, that's
8 not how you do business, so you have to do it in a graceful
9 period. So I -- to me, there has to be some soft period, if
10 you will, where you've, okay, it's time for you to get a safe
11 ride home and leave the establishment. I believe that's what
12 was occurring, but I -- if you read it to the law, then the
13 person was in the bar, had not left the bar yet, so, yes, I do
14 feel that according to how it's written...

15 MR. RYAN: (Inaudible.)

16 MR. ALMEIDA: I have a question. On situations like
17 this, do you have someone monitoring this -- these individuals
18 that you -- that may over -- over drink or, you know --

19 MR. SCHOENSTEDT: Yeah. We have -- security is on
20 site when we have these types of events, they do monitor, you
21 know, we do coaching. You know, for me, this was a -- a great
22 learning opportunity -- or a teaching opportunity, I won't
23 call it learning, a teaching opportunity to reiterate back to
24 staff how important it is, that it's a great responsibility.
25 You know, when I -- I told them -- we had a monthly meeting, I

1 told them on Tuesday, you know, we all find out if we have
2 jobs on Thursday. And I think that's a good way to wake
3 people up, but, you know, a liquor license is a privilege,
4 we're not entitled to have one, so we need to, you know, treat
5 it like it's our livelihood, it's mine, it's theirs. We did a
6 lot of business last year, we improved a lot, and the people
7 that are remaining, they need to treat it that way, that this
8 is your livelihood, so I -- it was a great teaching moment for
9 us.

10 VICE CHAIR HELM: Mike, also, how often do you meet
11 with your staff to go over the rules and regulations?

12 MR. SCHOENSTEDT: Once a month we have our monthly
13 meeting and then it's, you know, on an as-needed basis.

14 VICE CHAIR HELM: Okay. Thank you.

15 MR. RYAN: May I add -- just add to that? During
16 the course of having the bar, we would watch people and if
17 they were overserved, we'd make sure they got home and there's
18 many a times that we've paid their taxi home to make sure they
19 got home safely. That's not our policy to put drunks on the
20 road and not being very happy that -- you know, we're doing
21 all right.

22 VICE CHAIR HELM: Okay. Thank you, Mike and Mick.
23 Director's argument as to penalty, Mr. --

24 MR. KUSHI: If I may, Mr. Chair.

25 VICE CHAIR HELM: Yeah. Go ahead.

1 MR. KUSHI: A question for, I think, Mr. Schoen or
2 Mr. Ryan. Did any of your -- either of you or any of your
3 employees ask this person to leave or did he leave
4 voluntarily?

5 MR. RYAN: No, he was actually standing next to the
6 LC guy and I was speaking to him like we're speaking now and
7 he was sitting right there and he turned and then he says, Oh,
8 and then he might've touched him, just as you are get -- the
9 bar was pretty full, it's for an AIDS fund-raiser, and that's
10 when they started talking. But, no, we had no question to ask
11 him to leave, we didn't see the head dropping, he was well
12 alert, his sense of humor was perfect and he worked -- walked
13 well. He's -- he's maybe a little older than me, so sometimes
14 you get up, you have that little grab, just -- especially my
15 ankles, I do it, you know.

16 MR. KUSHI: I understand. I understand.

17 (Laughter.)

18 MR. RYAN: Yeah. Thank you.

19 MR. SCHOENSTEDT: And, unfortunately, I was
20 observing from across the room, so I don't know what
21 transpired.

22 MR. KUSHI: So the -- Mr. Chair, if I may?

23 VICE CHAIR HELM: Sure.

24 MR. KUSHI: Ed Kushi, corp. counsel's office. If --
25 if the liquor inspectors didn't show up and talk to this

1 patron, maybe he would have stayed a little longer?

2 MR. SCHOENSTEDT: No. They had already paid by the
3 time -- the reason why he stumbled is he was on his way out,
4 so he stood up, stumbled, is what I observed, sat back down
5 'cause he had stumbled. That's when they approached, but at
6 that point they had already paid, she was done with her meal
7 and they were on their way out. That's why he stood up, was
8 they were ready to leave.

9 MR. KUSHI: Okay. So at no time did any of you or
10 your employees say, Hey, look, buddy, you've got too much, get
11 out.

12 MR. RYAN: No.

13 MR. SCHOENSTEDT: That -- I can't answer --

14 MR. RYAN: Then she -- Wendy had the keys when she
15 walked -- when she was in the bar eating her meal. So it
16 wasn't like a decision, Oh, you'd best drive, you know, I'm
17 wasted, I'm -- no. She already had the keys, they had already
18 decided that's how he was getting home. Thank you.

19 VICE CHAIR HELM: Okay. At this time, the
20 director's argument as to the penalty.

21 MR. ENRIQUES: Gerald Enriques, Maui Prosecutors.
22 This license was issued in April 2007. The licensee has three
23 prior sets of violations stemming from incidents in 2009,
24 2012, and 2013. The -- notably, the 2013 violations were
25 adjudicated in August 2015, that hearing ultimately resulted

1 in the licensee being adjudicated guilty of, amongst other
2 violations, two counts of permitting a patron under the
3 influence of liquor to remain on the premises and two counts
4 of failure to exercise due care in determining whether a
5 patron was under the influence of liquor. In other words,
6 this is essentially the same, two of the same violations that
7 are at issue today.

8 MR. KUSHI: For Count 2 and 3?

9 MR. ENRIQUES: Yes. Based on that and also based
10 upon the licensee choosing to take responsibility of their own
11 accord with no plea agreement, we are requesting the
12 following: A \$1,000 fine for Count 1, that's the mandatory
13 for overservice, a \$750 fine for both Count 2 and 3.

14 MEMBER WILLIAMS: That's for each?

15 MR. ENRIQUES: Yes.

16 MEMBER WILLIAMS: Okay.

17 MR. ENRIQUES: So a total of 2500, if my -- if my
18 math's correct.

19 VICE CHAIR HELM: Okay. Thank you. At this time
20 the board will take this matter into consideration. I will
21 entertain a motion to go into deliberation. So all of those
22 in favor, say aye.

23 (Response.)

24 VICE CHAIR HELM: Opposed?

25 (No response.)

1 VICE CHAIR HELM: Motion carried. At this time
2 we're going to deliberate. Thank you.

3 (Pause in Proceedings: 9:46 a.m.-9:57 a.m.)

4 VICE CHAIR HELM: (Gavel.) The board is now back in
5 open session. The board has assessed a penalty of a thousand
6 dollars on Count 1; and in Count 2, a \$750 suspended for one
7 year provided that no conviction -- no conviction of the same
8 offense for -- within a year, and Count 3, 750 and one year
9 suspension provided that there is no conviction of the same
10 offense for a period of one year.

11 The department will notify when your payment is due.
12 Thank you very much.

13 MR. SCHOENSTEDT: Thank you.

14 VICE CHAIR HELM: We will now hear Complaint and
15 Accusation No. 2020-02, accusation against Kyo-Ya Hotels &
16 Resorts, LP doing business as Sheraton Maui Hotel; Hotel
17 License No. 251; 2605 Kaanapali Parkway, Kaanapali, Maui,
18 Hawaii.

19 MR. OKI: Good morning, Mr. Vice Chairperson and
20 Members of the Board.

21 VICE CHAIR HELM: Good morning.

22 MR. OKI: Shimpei Oki appearing on behalf of Kyo-Ya
23 Hotels & Resorts, LP, doing business as Sheraton Maui Hotel.
24 To my left is Mr. Tetsuju Yamazaki, who is the general manager
25 at the Sheraton Maui Hotel.

1 VICE CHAIR HELM: Good morning.

2 MR. YAMAZAKI: Good morning.

3 VICE CHAIR HELM: At this time you have the option
4 to -- of having the charges publicly read or you can waive the
5 reading. What is your choice?

6 MR. OKI: The licensee waives reading of the
7 charges. Thank you.

8 VICE CHAIR HELM: Okay. So for the record, do you
9 represent the respondent involved?

10 MR. OKI: That's correct.

11 VICE CHAIR HELM: Okay. Do you have legal counsel?

12 MR. OKI: I am legal counsel for the licensee, yes.

13 VICE CHAIR HELM: Do you understand the charges
14 against you?

15 MR. OKI: Yes, we do.

16 VICE CHAIR HELM: What is your plea to each count?

17 MR. OKI: Based on the plea agreement -- or plea
18 offer that was received from the prosecutor's office, the
19 licensee is prepared to plead no contest.

20 MR. ENRIQUES: Sorry. Gerald Enriques for the
21 prosecutor's office. For the record, the agreement is as
22 follows: Licensee will plead no contest to Counts 3, 6, 7, 8,
23 and 9. Counts 1, 2, 4, and 5 will be dismissed pursuant to
24 the agreement.

25 The sentencing agreement is as follows: For Count

1 3, a \$500 fine, 250 of which will be suspended for --

2 UNIDENTIFIED SPEAKER: Okay.

3 MR. ENRIQUES: Sorry.

4 VICE CHAIR HELM: Would you repeat that again.

5 UNIDENTIFIED SPEAKER: What was that? Can you slow,
6 please.

7 MR. ENRIQUES: Oh, I'm sorry.

8 VICE CHAIR HELM: Repeat that from the beginning,
9 please.

10 MR. ENRIQUES: Okay. The agreement is as follows:
11 The licensee will plead no contest to Counts 3, 6, 7, 8, and
12 9.

13 VICE CHAIR HELM: Okay.

14 MR. ENRIQUES: Counts 1, 2, 4, and 5 will be
15 dismissed with prejudice pursuant to the agreement.

16 And the -- there is a sentencing agreement, which is
17 as follows --

18 MR. KUSHI: Do it -- do it after the case.

19 MR. ENRIQUES: That's fine.

20 VICE CHAIR HELM: Okay.

21 Okay. Let's see. Do you understand the violations
22 the department of liquor control alleges against you?

23 MR. OKI: Yes.

24 VICE CHAIR HELM: Okay. Do you understand that you
25 have the right to plead no contest?

1 MR. OKI: Yes.

2 VICE CHAIR HELM: Do you understand that by pleading
3 no contest, you waive the right to hear -- to a hearing in
4 which you could present evidence and question witnesses on
5 your behalf?

6 MR. OKI: Yes, sir.

7 VICE CHAIR HELM: Is your plea of no contest
8 voluntary and not the result of force, threats, or of promises
9 apart from any plea agreement?

10 MR. OKI: Yes.

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

17 MR. OKI: Yes.

18 VICE CHAIR HELM: Do you still wish to plead no
19 contest?

20 MR. OKI: Yes, based on the plea offer provided by
21 the prosecutor's office, licensee is prepared to plead no
22 contest to those charges.

23 VICE CHAIR HELM: The board hereby finds that the
24 licensee has entered a knowing and voluntary plea of no
25 contest. The board accepts your plea and finds you of

1 Counts 3 -- is that right?

2 MR. ENRIQUES: Yes.

3 VICE CHAIR HELM: -- 6, 7, 8, and 9.

4 Will the department present a summary of the -- the
5 case. Thank you.

6 MR. ENRIQUES: Thank you. Gerald Enriques, Maui
7 Prosecutors.

8 On September 28th, 2018, at approximately
9 11:22 p.m., Liquor Control Officer Cullen Kawano and Liquor
10 Control Officer Trainee Salika Khangsengsing arrived at the
11 Sheraton Maui Hotel premises to conduct an inspection of the
12 3rd Annual Maui Salsa Bachata Congress. LCO Andrew Carbonel
13 later joined the investigation.

14 Upon entry, the officers observed approximately 200
15 or -- 200 plus patrons in the hotel's ballroom, with a large
16 dance floor set up. Some of the patrons who were dancing were
17 also observed to be consuming liquor.

18 The ballroom had a portable bar set up on one side,
19 staffed by two employees: One bartender and the manager on
20 duty. Subsequent investigation revealed that the two
21 employees were the only ones working within the ballroom.
22 Their manager was also observed to be leaving the area from
23 time to time with the bartender remaining behind as the only
24 employee within the room for some time.

25 Officer Kawano observed the bartender to pour seven

1 shots of tequila, then allow one patron to walk away with four
2 of the shots and a second patron to walk away with three of
3 the shots. He further observed the patrons to return to their
4 table and serve the shots to their group, followed by one of
5 the patrons returning to the bar five minutes later to
6 retrieve three more shots and deliver them to the same group.

7 While observing the event, officers observed
8 increasing amounts of empty glasses being left at tables
9 without being cleared in a timely manner. It was later
10 determined that the manager was the employee responsible for
11 clearing glasses and bottles from the -- from tables, but had
12 been leaving the ballroom to retrieve additional liquor from
13 storage. I believe the manager was the employee with the
14 employee approved by the director card.

15 Officers also observed toddlers and minor children
16 present within the ballroom. One of the minors was observed
17 to be present in the ballroom consumption area after midnight.

18 VICE CHAIR HELM: Thank you.

19 Okay. Now, you now have the opportunity to make a
20 statement regarding this case. You may also inform the board
21 of any mitigation circumstances which may or may not apply to
22 sentencing.

23 MR. OKI: Thank you, Vice Chairperson. With the
24 permission of the board, we have a copy of the internal
25 memorandum that was circulated within the hotel after this

1 incident outlining the mitigation measure that has taken --
2 been taken within the operations to improve the situation.

3 I hope I have enough copies.

4 VICE CHAIR HELM: Sir, excuse me. What's your name
5 now?

6 MR. OKI: Oh. Shimpei Oki, last name is Oki.

7 VICE CHAIR HELM: Shimpei?

8 MR. OKI: Yes.

9 VICE CHAIR HELM: How do you spell that?

10 MR. OKI: S-H-I-M as in Mary, P as in Paul, E-I.
11 And last name is Oki, O-K-I.

12 VICE CHAIR HELM: Oh. Thank you.

13 MR. OKI: Okay. Now -- sorry.

14 VICE CHAIR HELM: Go ahead.

15 MR. OKI: And Mr. Yamazaki is available to answer
16 any questions the board may have.

17 MR. YAMAZAKI: Just -- if I may just make one
18 clarification point about the minors that was in the venue.

19 VICE CHAIR HELM: Yes, sir.

20 MR. YAMAZAKI: So we actually had a baby-sitter who
21 was arranged who was outside the venue. We have a ballroom
22 and we have a courtyard area and -- and she was watching the
23 minors and, you know, the three-year-old and I guess that was
24 the child of a band member who was performing, you know,
25 for -- at this event and I guess the child just kind of went

1 into the venue. What we didn't do is to remove the minor
2 right away and just so happened that the officers went in
3 to -- at the timing and then observed the minor. They're very
4 young, so then, again, we -- we should have, you know, asked
5 them to go back outside and it didn't happen, so that's one of
6 the things that happened as well.

7 VICE CHAIR HELM: Okay. Any questions by the board
8 members?

9 MEMBER WILLIAMS: Just for your improvements, they
10 don't really say a number of how much staff is needed per --
11 per number of people. It just says crowds over a hundred,
12 over a hundred. What is your new -- what is your policy
13 for -- for how many staff members for --

14 MR. YAMAZAKI: Sure. So in our business there's a
15 lot of variety of situations, so, you know, it's difficult to
16 sometimes quantify, but, basically, what we're going to do is
17 to make sure that we have two attendants per bar, so -- and
18 the manager on the side. So, again, we do by -- based on the
19 management, but also type of a -- the liquor that's being
20 served, if it's a beer or wine event or there's an other
21 liquor event. So based on those, we'll be adding the service
22 to clear things out.

23 MEMBER WILLIAMS: Okay.

24 MR. YAMAZAKI: And another thing to consider is
25 there's a cash bar event and there's a hostess bar event, so

1 that makes a difference as well. So, again, when we have a
2 hostess bar, we're going to be adding additional staff.

3 MEMBER WILLIAMS: Okay.

4 MR. YAMAZAKI: Yeah.

5 MEMBER WILLIAMS: And then -- and then the
6 prosecutors were saying that there was a -- the manager had
7 the -- the card, but also the bartender had a card too; right?

8 MR. ENRIQUES: I believe they did. I think the rule
9 says that the manager is supposed to be present in the
10 venue --

11 MEMBER WILLIAMS: Okay.

12 MR. ENRIQUES: -- at all -- at all times.

13 MR. OKI: And to my understanding, the bartender has
14 one as well.

15 MEMBER WILLIAMS: And then is there someone -- is
16 there someone who -- who will be the person who actually runs
17 and gets more -- more liquor or more wine? 'Cause the
18 manager, again, needs to be present the whole time, so you
19 will never want to give opportunity that someone will walk in
20 and there's no manager there.

21 MR. YAMAZAKI: That is correct. So we do have other
22 manager on property, so if one of the procedure also is to
23 make sure when that person has to leave the premises to get
24 more liquor, we need to have that person -- you know, either
25 the other person picks it up or the other person to watch the

1 bar instead, a licensed -- you know, the cardholder, so that
2 way there's always a person at the bar.

3 MEMBER WILLIAMS: Okay.

4 MR. YAMAZAKI: So that will be another mitigation
5 plan we will be going.

6 MEMBER WILLIAMS: And very last thing, just
7 wondering, have you considered -- we've seen other cases, have
8 you considered getting everyone a card?

9 MR. YAMAZAKI: Yes. So one of -- also the plan that
10 we're doing is to expand -- usually we have food and beverage
11 managers and associates who involved with the liquor carry the
12 card, but we're expanding that to the bell persons, managers
13 and associates, so that way we have more awareness in general.
14 In fact, next Thursday we're holding a -- the testing at the
15 property with the liquor commission help -- assistance to
16 start to do that. So, you know, we're getting -- I think it's
17 a minimum of 20 people have to come in to have testing on
18 property and everything, but we're expanding that as well.

19 MEMBER WILLIAMS: Okay.

20 MR. YAMAZAKI: Yeah.

21 MEMBER WILLIAMS: Thank you, sir.

22 VICE CHAIR HELM: Any further questions by the board
23 members?

24 MR. KUSHI: Mr. Chair, if I may, a question for the
25 department.

1 VICE CHAIR HELM: Go ahead.

2 MR. KUSHI: On -- regarding Count 7, serving more
3 than two drinks of distilled spirits at one time, based on the
4 new rule change, that would -- I know this happened in --

5 MR. ENRIQUES: '18.

6 MR. KUSHI: -- 2018.

7 MR. ENRIQUES: Right.

8 MR. KUSHI: Based on the new rule change, this
9 wouldn't be violated; right?

10 DIRECTOR MUKAI: Well, based on the new rule change,
11 it still holds that for distilled spirits, only two drinks, no
12 more than two drinks. But on the beer and wine, it's --
13 allows flights.

14 MR. KUSHI: Well, okay. A question for the --
15 Mr. Chair, a question for the licensee.

16 Was this a special event?

17 MR. YAMAZAKI: Yes. So this is a local event.

18 There's a salsa advocate who will -- you know, I think what
19 they do is to gather people, fund the venue to the hotel in
20 this particular case, and they do a -- like a contest of the
21 dancing in the beginning part of the night, there's about ten
22 contestants and there's like a judge or something like that
23 and then they will do the judge. And once that's completed
24 and then it seemed like the winner of the contest and
25 everything, they kind of open up the -- you know, dance floor

1 to kind of gather and dance. So it's a -- it's a -- like a
2 local -- local event.

3 MR. KUSHI: Is it like a private event? Do you sell
4 tickets for it or is it open to the public?

5 MR. YAMAZAKI: I think it's open to the public and I
6 believe sell ticket -- that portion, the hotel doesn't deal
7 with much in case -- in terms of how they -- the people come.
8 I'm not quite familiar, but I believe they sell tickets or
9 invite people join, I believe.

10 MR. KUSHI: So ahead of the event, you would know
11 about how many people would show up?

12 MR. YAMAZAKI: Sure, yeah. 'Cause I do a guarantee
13 of a -- how many people that's coming, yeah, like RSVP. We
14 ask the client, so -- I believe this one is -- must be a
15 ticket.

16 MR. KUSHI: And then the -- per the report, it's
17 over 200 people there?

18 MR. YAMAZAKI: Correct. Yes.

19 VICE CHAIR HELM: Okay. No further questions by the
20 board members?

21 (No response.)

22 VICE CHAIR HELM: Okay. The director's argument as
23 to the penalties.

24 MR. ENRIQUES: This license was issued in April
25 2005, the licensee has no prior history of violations,

1 although they did receive warnings for consumption in
2 nonconsumption areas and multiple drinks. Based on that, we
3 are requesting the following per the plea agreement:

4 For Count 3, a \$500 fine, 250 of which will be
5 suspended for one year on the condition that another violation
6 of the same or similar nature does not occur within that year.

7 Count 6, a \$100 fine.

8 Count 7 and 8, so for both of these, a \$500 fine,
9 250 of which will be suspended for one year on the condition
10 that another violation of the same or similar nature does not
11 occur within that year.

12 And for Count 9, a \$100 fine.

13 VICE CHAIR HELM: So what is Count 8? Same as
14 the --

15 MR. ENRIQUES: Same as Count 7, so a \$500 -- 500/250
16 suspended for one year.

17 VICE CHAIR HELM: And Count 9?

18 MR. ENRIQUES: A \$100 fine.

19 VICE CHAIR HELM: Okay. Thank you.

20 The board will take this matter into consideration.
21 I will entertain a motion to go into deliberation. All those
22 in favor?

23 (Response.)

24 VICE CHAIR HELM: Opposed?

25 (No response.)

1 VICE CHAIR HELM: Motion carries. Okay. (Gavel.)
2 (Pause in Proceedings: 10:14 a.m.-10:23 a.m.)
3 VICE CHAIR HELM: (Gavel.) The board is now back in
4 open session. Okay. The board has assessed a penalty for
5 Count 1 at a hundred dollars. I'm sorry, Count 6 at a hundred
6 dollars.
7 MR. KUSHI: Count 6?
8 UNIDENTIFIED SPEAKER: Count 8.
9 MR. KUSHI: Count 3.
10 VICE CHAIR HELM: Count 3.
11 UNIDENTIFIED SPEAKER: Oh, yeah. Here's your copy.
12 VICE CHAIR HELM: Oh. I'm way ahead of you guys.
13 (Laughter.)
14 VICE CHAIR HELM: I apologize for that. Okay. For
15 Count 3, the board has assessed a penalty of \$500 with \$250
16 suspension for one year provided that there is no conviction
17 within a period of one year.
18 Okay. There you go, Count 6. A hundred dollar fine
19 for Count 6.
20 Count 7, a \$500 fine with \$250 for a suspension
21 provided that there is no conviction of the same offense
22 within the period of a year.
23 Count 8, a \$500 fine with a \$500 suspension for one
24 year provided there is no conviction of the same offense for a
25 period of a year.

1 And Count 9, a hundred dollar fine.

2 The department will notify you when payment is due.

3 Thank you very much.

4 MR. OKI: Thank you very much.

5 MR. YAMAZAKI: Thank you.

6 VICE CHAIR HELM: Okay. Glenn, do you have
7 anything?

8 DIRECTOR MUKAI: We have nothing.

9 VICE CHAIR HELM: None?

10 DIRECTOR MUKAI: Thank you all for attending.

11 VICE CHAIR HELM: Okay. Thank you very much. Make
12 a motion.

13 (Inaudible comment.)

14 VICE CHAIR HELM: You want to go over that --

15 MEMBER WILLIAMS: Travel.

16 MEMBER ARIAGA: The travel.

17 VICE CHAIR HELM: The travel policy? No need? We
18 just take this?

19 DIRECTOR MUKAI: Oh, yeah. Just a reminder to turn
20 in your -- the form that's due at -- it's the financial report
21 form, it's the --

22 VICE CHAIR HELM: This?

23 DIRECTOR MUKAI: If you need -- if you guys misplace
24 the form, you know, contact Maria, she will provide you with
25 the form.

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MEMBERS: Thank you.

UNIDENTIFIED SPEAKER: Entertain a motion.

VICE CHAIR HELM: Okay. Entertain a motion.

MEMBER WILLIAMS: Motion.

VICE CHAIR HELM: Okay.

MEMBER ARIAGA: Second.

VICE CHAIR HELM: Okay. Meeting adjourned.

(Gavel.) Thank you.

(The proceedings were adjourned at 10:27 a.m.)

